



THE UPDATE

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CHARTER - 2(B) - BAIL - 517 CC - PUBLICATION BAN

R. v. White - September 3, 2008
ABCA 294 per Conrad, Ritter,
Slatter, JA:

Issue as to whether the s. 517 CC mandatory publication ban of bail hearings is unconstitutional. Accused charged with murder. Bail judge found that s. 517 violated s. 2(b) and was not saved by s. 1.

Held: Appeal allowed, s. 517 CC found to be constitutional.

The mandatory nature of the bail hearing publication ban (upon request by the accused) violates s. 2(b), but the violation is saved by s. 1. *Oakes* test met. The legislation is rationally connected to the objective of ensuring a fair trial. Deference to Parliament's choices is required. "Merely because the court can think of alternative ways to approach the problem [such as bans only in jury cases] does not make the selected approach unconstitutional." Authorities reviewed.

L. Stevens - Defence Counsel

CHARTER - 7 - DISCLOSURE - INFORMER PRIVILEGE

R. v. Williamson - September 11,
2008 ABQB 560 per Verville, J:

Accused charged with drug related offences. Case set for preliminary inquiry. Application for disclosure regarding two confidential informants.

Held: Application denied.

Accused needing to establish that innocence is at stake in order to invade upon informer privilege. The trial judge is best positioned to assess whether or not innocence is at stake. Although such an application may in rare circumstances be made before a judge of the superior court (as opposed to the trial judge), exceptional circumstances are required: *Ly* 2004 BCCA 173, *Commanda* 2007 QCCA 947. As per *Marriott* 2005 NSSC 70, the accused cannot claim that his innocence is at stake at the preliminary inquiry stage. No exceptional circumstances existing necessitating the pre-trial weighing of competing interests.

R. Davidson - Defence Counsel

IMPAIRED DRIVING - AS SOON AS PRACTICABLE

R. v. Darlington - September 9,
2008 ABPC 258 per Daniel, PCJ:

Impaired driving trial. Issue being whether or not the breath samples were taken forthwith or as soon as practicable. 6 minute delay between the arrest and the reading of the breath demand, as the officer wrote notes and called a tow truck. Further 12 minute delay after the demand awaiting the police backup (to wait for the tow truck).

Held: Conviction entered.

The tow truck was necessary given the "dangerous placement" of the accused's vehicle on the roadway and the presence of an intoxicated passenger. Regarding the taking of a few minutes to make notes, "had [the officer] failed to make timely, inclusive and accurate notes, he would have been roundly criticized."

J. Lutz - Defence Counsel

IMPAIRED DRIVING - CARE OR CONTROL - ACQUITTAL

R. v. Berquist - September 4, 2008 ABPC 254 per Barley, PCJ:

Care or control trial. Accused found in the driver's set of a running vehicle. Accused pulled over when he realized that he was "in no condition to drive." The gear shift was on the steering column. "A lurching drunk might accidentally put his foot on the brake, but it is difficult to see how he might accidentally reach around the steering wheel and pull the gear shift toward him."

Held: Acquittal entered.

Accused had not performed acts that could lead to a risk that the vehicle could unintentionally be set in motion. As per *Ogrodnick* [2007] 409 AR 46 (CA), "I must consider all the facts before concluding that the accused is in care and control, not just the potential of a future change in intention."

T. Foster - Defence Counsel

SENTENCE - ASSAULT - DOMESTIC VIOLENCE - CSO

R. v. Lawson - August 28, 2008 ABPC 251 per Redman, PCJ:

Accused pled guilty to assault and breach of recognizance. Domestic assault after a night of drinking. Accused placed his hand on the complainant's throat and pushed her to the bed, and he later pushed her face into a pillow. Prior record included convictions for assault and criminal harassment, and was on probation at the time of the offence. 35 year old accused who had undertaken alcohol counselling. Crown sought 30 day jail sentence.

Held: 90 day CSO imposed.

Denunciation and deterrence paramount given the domestic relationship. Sentencing aims achieved through a conditional sentence. Conditions included house arrest.

G. White - Defence Counsel

SENTENCE - SEXUAL TOUCHING - 7 YEARS JAIL

R. v. K.I. - August 22, 2008 ABPC 243 per Hamilton, PCJ:

Accused convicted following trial of sexual touching, contrary to s. 151 CC. Multiple assaults upon a young boy who was between 7 and 9 years old. Accused sodomized the victim a number of times. Medical evidence confirmed scarring in the anal area. DNA evidence showed that the last assault was to the point of ejaculation. Victim had since attempted suicide on at least two occasions. Accused was a friend of the family.

Held: 7 years jail.

Breach of trust. Very serious assaults. Accused exhibited a total lack of remorse. The sexual abuse of a child has long-lasting detrimental effects. "In every case of the sexual abuse of a child there is a very real risk of very real harm to the child": *MP* (1992), 127 AR 65 (CA). Sentence reduced to 5 years and 4 months after credit given by pre-trial custody time.

T. Roulson - Defence Counsel

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