



THE UPDATE

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CHARTER - 10(B) - "NO, NOT RIGHT NOW" - ASSERTION

R. v. Jackman - July 3, 2008 ABPC 201 per Anderson, PCJ:

Drug raid of an apartment. Following an aggressive police entry with guns drawn, all of the occupants of the home were arrested, handcuffed and held in the kitchen. Upon being advised of her 10(b) rights, accused stated: "no, not now." Accused was then questioned and admitted to living in the apartment.

Held: 10(b) breach, statement excluded.

Given the circumstances of the detention, "no, not now" was sufficiently equivocal to require police to either hold off or obtain a clear and unequivocal waiver: *Turcotte* 2008 ABPC 16. "Saying 'not now' implies an intent to speak to a lawyer, but at a more opportune time." Further, statement found to be involuntary. "I have little doubt that in the minutes following the entry by police, there was a general atmosphere replete with fear of reprisal for non-compliance, an atmosphere of induced surrender."

A. Boyd - Defence Counsel

IMPAIRED DRIVING - EVIDENCE TO THE CONTRARY

R. v. Beards - Set. 4, 2008 ABPC 255 per Burch, PCJ:

Impaired driving trial. Evidence to the contrary. Expert evidence established that if the accused eliminated alcohol at the precise rate as tested by the expert, then the probable blood-alcohol concentration at the time of driving would have been 79 mg%. Any variation in elimination rates would create a potential straddle case.

Held: Conviction entered.

As per the majority judgment in *Gibson* [2008] SCC 16, "in all cases straddle evidence merely constitutes an attempt to defeat the statutory presumption itself and, as such, does not tend to show that the accused's blood alcohol concentration did not exceed the legal limit at the time of the alleged offence within the meaning of s. 258(1)(d.1)."

P. Shipanoff - Defence Counsel

ROBBERY - ELEMENTS OF OFFENCE - ASSAULT

R. v. Murray - June 6, 2008 ABPC 170 per Anderson, PCJ:

Robbery trial. Accused approached a car jockey at an auto dealership, opened the door, told her to get out and grabbed her arm saying "Give me the fucking keys." Accused then drove away with the car. Issue as to whether offence of robbery proven.

Held: Conviction entered.

As per *Oakley* (1986) 24 CCC (3d) 251 (Ont CA), accused's words did not constitute personal violence or threatened violence as required by ss. 343(a) or (b). However, robbery proven under 343(c) CC. The accused intentionally touched the complainant without her consent and with the intent to steal. 343(c) requires proof only of a common assault as defined by s. 265 CC: *Fleury* 57 AR 239 (CA).

M. Grotski - Defence Counsel

**SENTENCE - ASSAULT -
DISCHARGE APPLICATION**

R. v. Triplett - August 29, 2008
ABPC 247 per Allen, PCJ:

42 year old accused pled guilty to assault. Conditional discharge application. Complainant was a 16 year old girl who attempted to intervene in an argument between her mother and the accused (who were in a common law relationship). Accused punched the complainant twice on the side of the head. One previous impaired driving conviction.

Held: 18 month suspended sentence.

Conditional discharge not in the public interest. "Public interest is not synonymous with general deterrence. General deterrence should be weighed in addressing the public interest but it is only one factor to be considered ... Since Parliament has not attempted to curtail the meaning of 'public interest', the phrase should be given a broad interpretation ... the public interest includes an interest in remorse and reparation."

R. Davidson - Defence Counsel

**SENTENCE - WEAPONS - 88 CC -
KNIFE - 60 DAYS JAIL**

R. v. Ugodnikov - August 29, 2008
ABPC 249 per Stevens - Guille, PCJ:

Accused convicted after trial of possession of a knife for a purpose dangerous to the public peace. Incident occurred during an unruly celebration on Whyte Ave. following an Edmonton Oilers Stanley Cup finals game. Police saw an individual lying on the ground being kicked by several others. Accused then seen holding a lock-blade knife crouching over the victim. Accused was combative upon arrest.

Held: 60 days jail.

Young accused with no record. "It is absolutely necessary that persons who decide to carry a weapon on Whyte Avenue or anywhere else in the City must understand that the consequence will be that you go to jail. Anything less than that simple message will not in my view suffice to provide for general deterrence. The public is entitled to at least that protection from the Courts. Anything less encourages serious injury and more."

R. Morin - Defence Counsel

**SENTENCE - THEFT FROM
EMPLOYER - 1 YEAR JAIL**

R. v. Westerson - Sept. 17, 2008
ABPC 266 per Skene, PCJ:

Accused pled guilty to defrauding her employer of \$48,520.65. Accused was employed as a book keeper, and wrote several cheques to herself to fund a gambling addiction. No restitution paid. Accused also suffered from severe depression and had been the victim of a violent domestic relationship. Dated and unrelated record.

Held: 12 months jail and 12 months probation.

Accused had failed to follow through with AADAC recommendations addressing her gambling addiction. "Danger to community includes financial dangers: *McKinnon* 2005 ABCA 8 ... The Court of appeal states in many cases that there should be circumstances, usually referred to as 'exceptional circumstances,' before a CSO is appropriate: *Jaikaran* 2007 ABCA 98; *McKinnon* 2005 ABCA 8."

J. Nahman - Defence Counsel

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