



THE UPDATE

Issue #4 January 30, 2009

CHARTER - 7 - DISCLOSURE - INFORMATION - VALIDITY - POLICE OFFICER RECORDS 789(2) CC - CONVICTIONS

R. v. Roquebrune - 2008 ABPC 276 per Fraser, PCJ:

Impaired driving trial. Accused made a complaint of excessive force used during arrest. Defence sought disclosure of all records relating to complaints of excessive force made against the arresting officer. Issue as to whether the disclosure application was governed by *Stinchcombe* or the third party disclosure rules.

Held: Third party disclosure rules as per O'Connor applicable.

Any complaints made about the same officer by other persons could not be said to constitute "the fruits of the investigation" as required by *Stinchcombe*. The police and Crown are to be considered distinct entities where the disclosure sought constitutes third party records. "*Stinchcombe* does not compel the Crown to become an investigator at the behest of the defence": *Khan* [2004] 13 MVR (5th) 244.

T. Engel - Defence Counsel

R. v. Bhatti - 2008 ABPC 245 per Shriar, PCJ:

Accused charged on a single Information with four offences: impaired driving, refusal, drive while disqualified and breach of probation by drinking. Defence alleged that counts 3 and 4 violated s. 789(2) CC by making reference to previous convictions. Application to quash Information as a nullity.

Held: Application to quash dismissed, counts 3 and 4 severed.

No evidence of actual prejudice. "I am not convinced that the Information document in this case does in fact breach 789(2) because no information, meaning no particular count, offends the section. This is in accordance with what I think is a plain reading of the words of section 789(2) and consistent with the reasoning of the Saskatchewan Court of Appeal in *Zdunich* (1992) 97 Sask R 208 and *Colby* [2002] SKCA 54. Further if the joint Information violated 789(2), the appropriate remedy was to sever counts 3 and 4.

K. Beyak - Defence Counsel

SENTENCE - DRUGS - CSO - COCAINE TRAFFICKING

R. v. Stabsdown - 2008 ABPC 250 per Redman, PCJ:

32 year old accused pled guilty to trafficking in cocaine and breach of probation. \$80 sale of cocaine to an undercover officer. Accused had a number of previous convictions for possession of drugs and breach of recognizance. "The issue is whether it is appropriate to make a conditional sentence order for a person with a substantial criminal record and who has now been convicted of trafficking in cocaine and breach of probation."

Held: 22 month CSO.

Since 2007 accused had made a substantial effort to address a drug problem through attendance at various treatment facilities. "Although this offender is far from risk-free, I am satisfied that any concerns regarding community safety can be addressed in the conditional sentence order."

G. White - Defence Counsel

SENTENCE - CHILD INTERNET LURING - 172 CC

R. v. Daniels - 2008 ABPC 252 per Semenuk, PCJ:

28 year old accused pled guilty to luring a child over the internet for a sexual purpose. Police posed as a 16 year old girl and engaged in extensive internet communication with the accused who wanted to hire her for “head and sex.” Several meetings were arranged, but the accused failed to attend for all of them. Accused’s record included a conviction for sexual interference from 1999.

Held: 15 months jail plus 3 years probation.

“Having reviewed the ... authorities, it appears to me that the usual sentence for a single charge of luring a child for an accused with no prior criminal record is around 12 months imprisonment. There being no minimum sentence, a CSO is available, but is rare. With a related criminal record, the range of sentence goes up and can be anywhere between 15 months and 2 years imprisonment.”

T. Roulston - Defence Counsel

SENTENCE - THEFT - BREACH OF TRUST - \$2,000,000 THEFT

R. v. Elashuk - 2008 ABPC 241 per Semenuk, PCJ:

Accused pled guilty to theft from his employer. In excess of \$2,000,000 taken over a 6 year period. In his capacity of finance manager for a truck lease company the accused prepared false invoices for the purchase of non-existent vehicles and false loan and lease agreements. No restitution paid. Joint submission for 3.5 years in jail.

Held: 3.5 years jail.

Joint submission accepted “with some reluctance.” The basis for the plea bargain “is not weighty.” Crown did not have evidentiary problems with their case. Joint submission arrived at in part on the basis of compassion for the accused. “Where the magnitude of the loss approximates \$2,000,000 with no restitution made, the range of sentence in Alberta is somewhere between 4-7 years imprisonment.” Mitigating factors included: timely guilty plea, cooperation with police and the absence of a related or recent criminal record.

B. Der - Defence Counsel

SENTENCE - THEFT - THREE COUNTS - BREACH OF TRUST

R. v. Alexander - 2008 ABPC 277 per Semenuk, PCJ:

Accused pled guilty to three counts of fraud. \$22,136 taken from a law firm where she worked as a bookkeeper. \$512,200 then taken from a car dealership where she was employed as the financial controller. Finally, a \$364,947 fraud in relation to submitting false GST returns to Revenue Canada. 54 year old accused with no record. No restitution. Gambling addiction. Negative PSR.

Held: 4.5 years jail.

Offences were planned, deliberate and sophisticated. Multiple complainants spanning a 4 year period. Primary mitigating factors included: guilty plea, no record, the accused’s financial ruin and bankruptcy. Conditional sentence not available given that a global penitentiary term of imprisonment was required.

B. Der - Defence Counsel

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