



# THE UPDATE

Issue #11 July 31, 2009

## CHARTER - 8 - WARRANT - MANNER OF SEARCH

*R. v. Cornell* 2009 ABCA 147 per Ritter, O'Brien, Slatter, JA - T. Judge: Park, J:

Conviction appeal on drug related charges. Search of a residence with a warrant. Warrant found to be valid. Issue regarding manner of search. Aggressive tactical team police entry with weapons drawn.

### **Held: Appeal dismissed.**

No constitutional violation arose from the police failure to "knock and announce" before forcefully entering the home. The "knock and announce rule" in *Eccles v. Bourque* involved an arrest warrant, where there was no risk that evidence would be destroyed. The Charter does not require that general investigative police members execute warrants. "The police should not be criticized for not taking any measurable risk to their personal safety when executing a warrant. The fact that the police entered the dwelling with their handguns drawn is not objectionable". O'Brien, JA dissenting.

M. Bates, D. Chow -  
Defence Counsel

## CHARTER - 11(B) - IMPAIRED DRIVING - STAY ENTERED

*R. v. Rimmer* 2009 ABPC 110 per Wenden, PCJ:

Impaired driving trial. 11(b) stay application. Accused charged in June of 2006 and was released on a defective PTA. PTA did not indicate what year the accused was to appear. Accused failed to appear. A warrant issued one year after a new Information was affirmed. Accused was arrested on warrant on March 8, 2008. Trial of the matter ultimately concluded in April 2009.

### **Held: Stay of Proceedings.**

The address on the original PTA was the accused's parents, and they continued to live at that address as of 2009. Police did not use reasonable diligence in attempting to execute the warrant. As per *Wright* 2003 ABQB 1003: "Since the Crown did not attempt to justify any policy ... of using a passive strategy to execute warrants, it is not possible to conclude that any limitations on institutional resources justified the delays in this case." Inference drawn that accused had suffered prejudice to his fair trial rights given the passage of time.

M. MacDonald - Defence Counsel

## DANGEROUS DRIVING - EXCESSIVE SPEED - GUILTY

*R. v. Penner* 2009 ABQB 259 per Moen, J:

Dangerous driving causing death trial. Accused driving on a highway going at least 140 km/hr in a 100 zone. More likely that accused was travelling at about 160 km/hr. Accused almost slammed into a vehicle from behind, swerved to avoid the vehicle, and then lost control. A passenger in the accused's vehicle was killed.

### **Held: Conviction entered.**

Accused travelling well in excess of speed limit. "This speed was a marked departure from the standard care of a reasonably prudent driver ... A reasonably prudent driver would not drive as fast as he was, even though the road conditions were good." The speed combined with the sudden jerking of the wheel in an effort to avoid a collision constituted the actus reus. The fact that the vehicle then hit a tree and the passenger was killed, not relevant to the finding of dangerous driving.

J. Thomas - Defence Counsel

**POSSESSION - 4(3) CC -  
PROOF OF OFFENCE**

*R. v. Nguyen* 2009 ABQB 234 per  
Graesser, J:

Trial on drug and weapons  
offences. Search warrant executed  
at a residence. Items found in  
various places, and in a vehicle.  
Numerous accused. Issue  
regarding proof of possession.

**Held: Convictions entered.**

The Crown may establish  
knowledge as required by s. 4(3)  
CC by inference as opposed to  
direct evidence: *Aiello* (1978), 38  
CCC (2d) 485 (Ont CA), aff.  
[1979] 2 SCR 15. An inference  
drawn establishing an essential  
element must be the only  
reasonable inference. Constructive  
possession requires proof of  
knowledge and some measure of  
control. "Control" means "consent  
with the power to affect the  
location of the item." Occupancy  
can be evidence of possession.  
Authorities reviewed.

B. Peterson, A. Fong, R. Gregory -  
Defence Counsel

**SENTENCE - DANGEROUS  
DRIVING CAUSING HARM**

*R. v. Robillard* 2009 ABCA 152 per  
Costigan, Ritter, Watson, JA - T.  
Judge: Sanderman, J:

Crown appeal from sentences of 3  
months and 1 year consecutive on  
charges of dangerous driving causing  
bodily harm and leaving the scene.  
19 year old unlicensed driver struck a  
bicyclist. Cyclist suffered burns, skin  
loss requiring multiple skin grafts,  
and fractures to his pelvis, leg and  
ribs. Accused failed to appear for  
trial, and spent 22 days in pre-trial  
custody. Unrelated record.

**Held: Appeal allowed, dangerous  
driving sentence increased to 2  
years.**

1 year consecutive for leaving the  
scene upheld. Although there was no  
evidence of a driving pattern prior to  
the collision, the driving pattern after  
the collision was serious, including  
dragging the cyclist for 20 metres and  
then driving forward and backwards  
trying to dislodge the bike, before  
running from the scene.

D. Hatch - Defence Counsel

**SENTENCE - DRUGS -  
STEROIDS TRAFFICKING**

*R. v. England* 2009 ABQB 251 per  
Clackson, J:

Accused pleaded guilty to one  
charge of possession of steroids for  
the purpose of trafficking. Between  
February and October 2006, the  
accused "had 12 large shipments of  
steroids pass through his hands ...  
the value of those substances was  
between \$1.6 million and \$2.3  
million ... Mr. England agrees that  
he distributed between \$1 million  
and \$1.4 million worth of steroids."  
38 year old accused with no record.  
Positive PSR.

**Held: 20 months jail.**

Extremely serious offence given the  
value, quantity, length of time and  
scope of the illegal enterprise.  
Strict conditional sentence and a  
very large fine could in similar  
circumstances address denunciation  
and deterrence, however, accused  
not able to pay a large fine.  
Therefore, jail necessary.

J. Chadi - Defence Counsel

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