



THE UPDATE

Issue #6 March 26, 2010

CROSS-EXAMINATION - ALLEGED MISCONDUCT

R. v. Steele 2010 ABQB 161 per Macklin, J:

Trial on charges including obstruction of a police officer. Arresting officer was a dog handler. Accused sought to cross-examine the officer (and call evidence respecting) prior unrelated (and unproven) incidents of alleged excessive force.

Held: Application dismissed.

Evidence sought to be introduced was collateral. "The Applicant is asking for the right to cross-examine and lead evidence on unproven allegations for which no charges have been laid. The Court in *McNeil* [2009] 1 SCR 660 considered the laying of charges to be the threshold test for production.

T. Engel - Defence Counsel

OBSTRUCTION - 139 CC - ELEMENTS OF OFFENCE

R. v. Hoskins 2010 ABPC 83 per Fradsham, PCJ:

Preliminary inquiry on charges including obstruction of justice, contrary to s. 139(2) CC. After allegedly assaulting the complainant, the accused threatened to kill her if she called the police. No judicial proceedings were in existence at the time. Issue as to whether 139(2) CC requires that a "judicial proceeding" was in existence, or was proposed, at the time of the alleged act of obstruction.

Held: Committed to stand trial.

"Section 139(2) ... is broad enough to capture, when the requisite intent is present, all acts a person commits which 'in any manner' results in an obstruction, or an attempt to obstruct, the course of justice. The 'course of justice' includes much more than matters only involving the criminal law."

R. Snukal - Defence Counsel

SENTENCE - THEFT - BREACH OF TRUST - 4 YEARS JAIL

R. v. Bandura 2010 ABCA 89 per Cote, Ritter, McDonald, JA - T.
Judge: Creagh, PCJ:

Defence appeal from 4 year jail sentence imposed in relation to two separate thefts from employers, with the total amount stolen being \$52,000. Prior record included 9 previous embezzlement type convictions. 43 year old accused. "All were crimes of pre-meditation, duration (that is multiple thefts), and significant amounts of money. She was in no need, and no addiction of any kind is alleged."

Held: Appeal dismissed.

Specific deterrence of primary importance. No error in principle.

P. Royal - Defence Counsel

**VETROVEC CAUTION -
CRITERIA TO CONSIDER**

R. v. Chau 2010 ABCA 86 per
McFadyen, Ritter, Martin, JA - T.
Judge: Macklin, J:

Appeal from conviction on sexual
assault charges. Complainant was
a prostitute with a lengthy record
who had given varying accounts of
the allegation. Issue as to whether
trial judge misdirected himself
with respect to the *Vetrovec*
caution.

Held: Appeal dismissed.

Decision regarding the need for a
Vetrovec caution is based on two
criteria: the degree to which the
credibility of the witness is suspect,
and the importance of the evidence
to the Crown's case. Test properly
applied and "great care and
caution" was exercised by the trial
judge in reviewing the
complainant's evidence. "I do not
agree with the appellant's
submission ... that the only
evidence capable of being
confirmatory is evidence that
relates only to the issue in dispute
and directly confirms that aspect of
the impugned witness' account.
Such a conclusion would have
overruled what the Supreme Court
said in *R. v. Kehler* [2004] 1 SCR
328."

M. Bloos - Defence Counsel

**VIDEO EVIDENCE - 714.1 CC -
FACTORS TO CONSIDER**

R. v. Denham 2010 ABPC 82 per
Rosborough, PCJ:

Impaired driving trial. Crown
application to have toxicologist testify
via video link from Winnipeg.

Held: Application granted.

Purpose of 714.1 CC is to modernize
the criminal trial process. Alberta
courts make extensive use of CCTV.
The quality of the video service is
excellent. "However desirable in-
person confrontation of witnesses is
thought to be, that practice is not
fundamental to our system of justice."
Proper cross-examination and
credibility assessments may be made
via video evidence. "I share Stuart
C.J.'s belief that video evidence,
'...will soon become essential to the
conduct of court business.'"

K. Sproule - Defence Counsel

**VOLUNTARINESS - FAILURE
TO KEEP A RECORD - TEST**

R. v. Alayadi 2010 ABPC 79 per
Johnson, PCJ:

Sexual assault trial. Accused was
interviewed by investigating officer
over the telephone. No exact record
of what was said. Officer recorded
a summary of the statement in his
notes immediately following the
call. Accused testified that he was
afraid of police in general.
Voluntariness inquiry.

Held: Statement admissible.

Completeness of the recording of a
statement may have an impact upon
the Court's ability to determine
voluntariness: *Moore-McFarlane*
47 CR (5th) 203. Accused was not
in custody, and officer did not have
the ability to record the
conversation. The officer wrote a
summary of what he thought was
important. However, the statement
was not the product of an
interrogation. The incomplete
record did not give rise to
voluntariness concerns.

F. Hunter - Defence Counsel

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