



THE UPDATE

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CHARTER - 7 - DISCLOSURE - POLICE DISCIPLINE FILES

R. v. Auger 2010 ABPC 196 per Creagh, PCJ:

Impaired driving trial. Accused alleged that he was unlawfully detained, attacked and mistreated by police. Defence application for police disciplinary files. Files that fell under *McNeil* [2009] 1 SCR 66 already disclosed. Additional disclosure sought: "any and all disciplinary files concerning any of the police witnesses."

Held: Application dismissed.

Defence argument that all files concerning "all complainants and internal systems which keep track of warnings" ought to be provided by police to the Crown for vetting, rejected. As per *Letourneau* 2009 ABPC 222, the Supreme Court has mandated disclosure of "findings of misconduct and not allegations ... unless the allegation had reached a certain stage." *R. v. Perreault and Bone* 2010 ABPC 104 not followed. "Disclosure is intended to assist an accused in making full answer and defence ... and should not turn criminal trials into a conglomerate of satellite hearings on collateral matters."

T. Engel - Defence Counsel

CHARTER - 8 - ODOUR OF MARIJUANA - VEHICLE

R. v. Harding 2010 ABCA 180 per Slatter, McDonald, Bielby, JA - T. Judge: Thomas, J:

Conviction appeal on marijuana trafficking charge. Vehicle stop because licence plate obscured by mud. Upon speaking with the driver the officer (who had considerable experience in the area) smelled a very strong odour of raw marijuana. Accused immediately arrested.

Held: Appeal dismissed.

Reasonable grounds to arrest without a warrant existed. In assessing grounds, the officer's training and experience must be considered: *Rajaratnam* 2006 ABCA 333. As per *Yague* 2005 ABCA 140, the fact that the officer was concurrently conducting a traffic inquiry while observing grounds for a drug offence, did not make the detention arbitrary. Given that the smell was of raw marijuana, no inference was necessary. The possession was not a past event. "The smell of raw marijuana alone was sufficient to conclude that the appellant was at the time in possession of marijuana."

R. Hladun - Defence Counsel

CHARTER - 8 - TIP - REASONABLE GROUNDS

R. v. Nicholson 2010 ABQB 379 per Mahoney, J:

Trial on charges of cocaine trafficking. Vehicle stop. Issue regarding reasonable grounds to stop the vehicle and search. Police received information from two confidential informants, as well as other evidence arising from police surveillance.

Held: No s. 8 breach.

As per *Debot* [1989] 2 SCR 1140, confidential tip information alone can give rise to reasonable grounds to arrest. In the present case, the tip information was corroborated by police surveillance evidence of "numerous incidences ... that gave rise to reasonable grounds." Once grounds existed, a warrantless search of the accused's vehicle was lawfully incidental of the arrest: *Caslake* [1998] 1 SCR 51.

P. Fagan - Defence Counsel

**IMPAIRED DRIVING - 254(2)
CC - 8 - MOUTH ALCOHOL**

R. v. Spiewak 2010 ABPC 181
per Barley, PCJ:

Impaired driving trial. Accused told police that he had not consumed alcohol in last 30-40 minutes. Screening test performed. After test complete, open alcohol found in vehicle. Issue as to whether officer ought to have waited 15 minutes prior to screening test given the possibility of mouth alcohol.

Held: No. s. 8 beach.

“Suspicion that the accused was the owner of the alcohol in the car does not relate to a suspicion that the accused had consumed alcohol in the preceding 15 minutes ... Even drinking in the car does not equate to drinking in the preceding 15 minutes ... The accused had denied repeatedly that he had consumed alcohol in the preceding 15 minutes.” As per **Bernshaw**, “mere possibility” of recent consumption is not enough.

I. Savage - Defence Counsel

**KIENAPPLE - 259(4) CC & 94(2)
TSA - STAY ENTERED**

R. v. Marroquin 2010 ABPC 223
as per Sully, PCJ:

Trial on a charge of driving while disqualified contrary to s. 259(4) CC. Accused driving during a court ordered prohibition. Accused also charged with drive while unauthorized under s. 94(2) TSA, arising from the same incident. Guilty plea previously entered to the TSA charge. Issue as to whether **Kienapple** applied, and whether a stay ought to be entered in relation to the criminal charge.

Held: Stay entered.

Kienapple stay appropriate as per **Cail** 2009 ABPC 235. “Accordingly, judicial comity comes into play. As Judge M.G. Allen stated in **Letourneau** 2008 ABPC 192, the principle of judicial comity provides that Judges of coordinate jurisdiction should follow each other.”

A. Myers - Defence Counsel

**SENTENCE - INTERNET
LURING - 9 MONTHS JAIL**

R. v. Rouse 2010 ABPC 192 per
Allen, PCJ;

21 year old accused with no record pleaded guilty to two counts of internet luring, contrary to s. 172.1(1)(b) CC. 15 and 12 year old female complainants. One of the girls met the accused at a movie. Both young girls participated in sexual conversation, and both girls showed the accused their breasts via web cam.

Held: 9 months jail plus 3 years probation.

CSO available to the court, but not appropriate. Regarding the 752 CC serious person injury offence exception to CSO availability, no evidence presented to the court that the complainants “likely suffered psychological damage.” Denunciation and deterrence paramount. As per **Legare** 2009 SCC 9, the purpose of s. 172 CC is to “close the cyberspace door before the predator gets in to prey.”

C. Connolly - Defence Counsel

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