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Segal's Motor Vehicle and Impaired Driving Newsletters

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— Segal's Motor Vehicle and Impaired Driving Newsletter

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Minister of Transportation Launches Statutory Review of Canada's Transportation Legislation Including the *Canada Transportation Act*

Case Law Highlights

1. — Highway traffic; Tinted windows; Requirement under Act that tint be measured by photometer; No evidence that police officer trained on photometer; Accused acquitted; Motor Vehicle Act (N.B.), s. 238(1.4).

R. v. Perron, 2014 CarswellNB 290, 2014 CarswellNB 291, 2014 NBPC 39, 2014 NBCP 39 (N.B. Prov. Ct.), Dejardins Prov. J.: The accused was charged with driving with tinted windows. Section 238(1.4) of the Act requires that tinting "that prevents more than thirty percent of any light from passing through in either direction when measured by a photometer" is prohibited. The officer was not qualified to operate the photometer. The operator should be trained and qualified. Several good questions were raised but could not be answered unless the operator was trained and qualified to answer. There was a reasonable doubt.

2. — "Over 80"; Video of toilet; Video not showing genitals or underwear; S. 8 breach but no s. 24(2) remedy; Practice changed in interim; Criminal Code, s. 253(1)(b); Charter of Rights, ss. 8, 24(2).

R. v. Arbelo, 2014 ONCJ 275, 2014 CarswellOnt 7913 (Ont. C.J.), Bourque Prov. J.: The accused was charged with "over 80". He was videoed while using the toilet while standing. The video is from the side and back and at no times are his genital shown. No underclothing was visible. The practice has since changed. No s. 24(2) remedy was warranted.

3. — "Over 80"; Crown appeal; Right to counsel; Facilitating right to counsel; Burden on accused to show inadequate legal advice; Police entitled to rely on what accused says; Crown appeal allowed; Criminal Code, s. 253(1)(b); Charter of Rights, s. 24(2).

R. v. Edmonton, 2014 CarswellAlta 869, 2014 ABCA 186 (Alta. C.A.): The accused was charged with "over 80". He was acquitted at trial. The Crown's summary conviction appeal was dismissed. On further appeal, a new trial was ordered. At one stage the audio at the station recorded: "it's up to you, you can keep trying, there are lots of numbers". That was after the respondent spent from 11:13 to 11:20 p.m. in the phone room trying to reach toll free numbers and was told he should call back in 10 minutes. He made other phone calls between 11:26 and 11:40 p.m. and then said he was done. The message to call back in 10 minutes was not the officer's failing as found at first instance. Nor is there a duty to probe further as to what an accused means when he says he is "done". The accused had the burden of proof to show that he had not in fact received adequate legal advice appropriate to the occasion. The police were not here to play "twenty questions". The police reasonably concluded from the appellant's actions that the respondent had terminated efforts to reach counsel.

4. — Sentence appeal; 10 year prohibition under Motor Vehicle Act (B.C.); Guilty plea to failing to remain under provincial act and careless; While distracted killed pedestrian; Alcohol and drugs not factors; Checked pedestrian but left scene; Pre-existing anxiety attack; Appeal dismissed; Motor Vehicle Act (B.C.), s. 98.

R. v. McLaren, 2014 CarswellBC 1611, 2014 BCSC 982 (B.C. S.C.), Ross J.: The appellant pleaded guilty to careless and failing to remain under provincial legislation and received a 10 year prohibition. The issue was whether the prohibition was too long. The appellant was distracted by a passenger. Neither alcohol, drugs or speed were factors. He stopped but then fled. He suffered from anxiety. The 10 year prohibition also was on the back of an incident of driving while prohibited and disobeying a traffic control device. After canvassing the range, no discernible error was identified and the appeal was dismissed.

Other

Minister of Transportation Launches Statutory Review of Canada's Transportation Legislation Including the Canada Transportation Act

On June 25, 2014, the Hon. Lisa Raitt, Minister of Transport, launched a statutory review of Canada's transportation legislation, including the *Canada Transportation Act*. The review is being done a year

earlier than required to address a range of changing conditions and challenges, including those related to the transportation of grain on the Prairies. It will also examine what improvements could be made in a number of areas, including: our strategic transportation gateways and corridors; Canada's transportation safety and environmental regimes; the role of technological innovation in improving transportation services and infrastructure; the safe movement of goods through communities; support for the northern transportation system; federally regulated passenger rail services; the vitality of our aviation sector and air connectivity; and governance and service delivery for key federal operations, assets, and agencies.