

Recent Developments in Impaired Driving Law

Presented by:

Ron P. Piché

Piché & Company, Saskatoon



Impaired Driving Law Today



Former View of the Court

- ▶ The days of *Queen v. Iron* are behind us. Random stops are not necessarily arbitrary as they were in the days of *Queen v. Iron*.

Latest Developments: Initial Stop

- ▶ In *Queen v. Houben* (2006) SKCA 129 our court of appeal stated that the Highway Traffic Act did not confer the authority to stop a vehicle on the basis of something less than reasonable grounds.



Latest Developments: Initial Stop

- ▶ *Section 209.1* of the Traffic Safety Act does confer on police the power to stop a motor vehicle to confirm operators license, valid registration, and sobriety of the driver.

Latest Developments: Initial Stop

- ▶ In *Queen v. Papillon* (2014) SKCA 45 where the court ruled that a police vehicle pulling up behind a parked vehicle does not constitute a detention.

Latest Developments: Grounds For ASD

- ▶ Grounds for ASD (Approved Screening Device):
 - In *Queen v. Yates (2014) SK CA 52* our Court of Appeal stated that the test under *Section 254 (2)* is that the Crown is only required to prove a reasonable suspicion that a driver possibly had alcohol in his or her body. Further, the officer need not have direct proof that the driver has alcohol in his or her body.

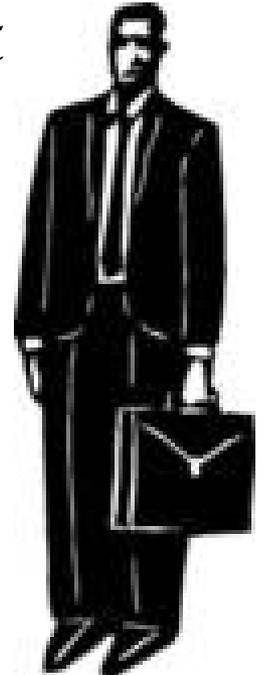


Latest Developments: Section 254 (3) Demand

- ▶ Grounds for *Section 254 (3)*:
 - In *Queen v. Gunn (2012) SKCA 80* the Court of Appeal ruled that reasonable grounds is less than a *prima facie* case or of a greater probability. Implicit, as well, is that the court should not consider what was not observed by the officer.
 - In *Queen v. Chehil (2013) SK CA 49 (CanLii)* where the Supreme Court said that exculpatory, neutral, or equivocal information cannot be disregarded when assessing a constellation of factors leading up to reasonable suspicion.

Latest Developments: Right to Counsel

- ▶ Leading case remains *Queen v. Willier*. No *Prosper* where accused settles on someone else.
- ▶ *Prosper* applicable only where accused not prepared to contact anyone else.



Latest Developments: Right to Counsel

- ▶ Negative developments since *Willier*:
 - *Queen v. Rice* (2011) SJ 743. Where the court found that failure to provide a phone book, or reading glasses did not constitute a breach of Section 10 (b) where the accused decided to speak with legal aid.
 - *Queen v. McLeod* (2011) SKQB 428. Where the Saskatchewan the court found that the failure to provide a phone book did not breach the implementational duty under 10 (b).

Latest Developments: Right to Counsel

- ▶ Positive Developments since *Willier*:
 - *Queen v. O'Connor* (2013) SJ 562. Where the court ruled that police did not go far enough in attempting reach the accused's father in order to help reach a lawyer.
 - *Queen v. Bitz* (2011) SKQB 438 (*CanLII*). Where an accused stated he wished to call counsel but it appears the issue was not pursued at the detachment. The court ruled that while the detainee must establish reasonable diligence, the Crown must show the detainee had a reasonable opportunity to call counsel.



Latest Developments: Waiver of Right to Counsel

- ▶ What constitutes a proper waiver of the right to counsel?
 - Waiver must be clear.
 - Waiver must be unequivocal.
 - The accused must have knowledge of the right being waived.
 - The accused must have knowledge of the effects of the right.

Latest Developments: Overholding

- ▶ *Queen v. Salisbury (2012) SKCA 32 (CanLII)*. Where the Saskatchewan Court of Appeal ruled that a stay was not an appropriate remedy for overholding.
- ▶ What is the appropriate remedy?
 - Future remedies may include a reduction in the fine a reduction, a reduction in the driving prohibition, or a non-incarceratory sentence.



Latest Developments: Overholding

- ▶ Overholding - is the remedy of a stay ever available?
 - Need more than continued detention. In *Queen v. Whitford* (2011) Unreported Sask. Provincial Court, the accused was detained without medical attendance having suffered a badly sprained ankle. The court held a stay was warranted.

Poll Question

Rate your success in defending these offences of late:

- ▶ Better than ever
- ▶ Same
- ▶ Worse than ever

Concluding Remarks

- ▶ .08 prosecutions continue to be a technical mine field;
- ▶ Excellent cases such as *Lux* will arise from time to time;
- ▶ The pendulum will tilt back in time;

Questions?

Comments?



Presented by:

Ron Piché
Piché & Company, Saskatoon