**R. v. Brander, 2003 ABQB 756**

Date: 20030904
Action No. 017156316Q1

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

2003 ABQB 756 (CanLII)

BETWEEN:

HER MAJESTY THE QUEEN

- and -

KENNETH J. BRANDER

---

REASONS FOR JUDGMENT
of the
HONOURABLE MR. JUSTICE C. S. BROOKER

---

APPEARANCES:

J. W. Hak
for the Crown

A. D. Pringle, Q.C.
for the Accused

**INTRODUCTION**

[1] Saturday, June 2nd, 2001 will be a day that many Edmontonians will remember, but none more than the members of the Ramirez family and the Brander family. For it was on that day that an horrific crash occurred in Edmonton at the intersection of Yellowhead Trail and 121st Street. It was there that an unmarked police car being driven Eastbound at a high rate of speed by Kenneth Brander crashed broadside into Carlos Ramirez's Tempo as it turned left

across the police car's path. As a result of the crash, Carlos Ramirez's grandson Giovanni was killed, his grandson Jonathon was seriously injured, and he and his daughter Gloria were injured.

[2] The conduct of this case was difficult for the counsel involved. There were in excess of 50 witnesses called, including a number of experts. Their evidence had to be marshalled, distilled and put before the Court in a logical and cohesive way. In addition, having to testify and re-live the experience was very emotional for those witnesses who had been involved in or who had seen the accident or came across its aftermath. I want to specifically commend and thank both counsel for their courtesy, compassion and professionalism in fulfilling their respective roles in this trial.

2003 ABQB 756 (CanLII)

**BACKGROUND FACTS**

[3] On June 2nd, 2001, Ken Brander and his partner Jean Guy Lavoie were members of the tactical unit in the Edmonton Police Service ("EPS"). That day Brander was the acting sergeant. There were no special circumstances requiring their expertise as tactical squad members on that day and they had, therefore, been assigned general police duties, including enforcement of traffic laws.

[4] When they set out that morning, they were using an unmarked Ford Crown Victoria police vehicle, charcoal grey in colour, which vehicle was normally driven by the unit's sergeant. That particular Crown Victoria was equipped with a siren, strobe lights located in the headlight area, wigwag headlights, red and blue strobe lights located inside the vehicle on the upper portion of the front windshield as well as inside the back window area. The vehicle was also equipped with a switch which permitted the ordinary running lights of the vehicle to be turned off. Constable Lavoie had checked the emergency lights that morning prior to he and Brander setting out.

[5] The emergency equipment in the Crown Victoria was operated from a console situated between the bucket seats of the driver and right front passenger and somewhat to the rear. In order to operate the switches for the emergency equipment, a driver would be obliged to take his eyes off the road and turn in his seat to reach back and to his right to the switches.

[6] At the time of the accident, Constables Brander and Lavoie were on the way to confirm a service address for an arrest warrant on an individual in a section of Edmonton. Constable Brander was driving. Constable Lavoie was the front right passenger. Constable Brander was proceeding eastbound on Yellowhead Trail. Road and visibility conditions were good. The day was overcast. The road was clear and dry. It was a Saturday morning and traffic conditions were moderate.

[7] The accident occurred at the intersection of 121st Street and Yellowhead Trail. At this location Yellowhead Trail runs east and west. There were three through lanes for eastbound traffic as well as a right lane for vehicles turning south on 121st Street and a left turn lane into

the CN Rail yards. There were three through lanes for westbound traffic as well as a left turn lane for traffic to turn south onto 121 Street. The east and west lanes were divided by a grass median.

2003 ABQB 756 (CanLII)

[8] While the intersection was controlled by traffic lights, the configuration of those traffic lights at the time in question permitted vehicles to turn left off of the Yellowhead Trail south onto 121st Street on a simple green light. To the west of the intersection there is a railway overpass. Yellowhead Trail dips down to go under the railway overpass with the result that there is a gradual uphill portion of Yellowhead Trail eastbound from the bottom of that dip up to 121st Street.

[9] There are intersections at 124th Street and at 127th Street both of which are controlled by traffic lights. It is about 400 metres from the intersection of 127th Street to 124th Street and about 700 metres from the intersection of 124th Street to 121st Street.

[10] As they proceeded eastbound on Yellowhead Trail, Constables Brander and Lavoie were obliged to stop for a red traffic light at 127th Street. They were stopped in a group of vehicles. They were about four vehicles back in the middle through lane. While waiting for the light to change, Constable Brander noticed two “souped up” vehicles stopped beside each other first in line in the group of vehicles. One was in the lane to Constable Brander’s left, the other in the middle lane. They were revving their engines. When the light changed the two vehicles accelerated away from the intersection squealing their tires and fish-tailing. There was an immediate discussion between Brander and Lavoie about stopping those vehicles for speeding and/or stunting but at that point in time their position was somewhat boxed in by the other vehicles around them. As they proceeded away from the light at 127th Street, the traffic around the police vehicle broke up somewhat and Constable Brander was able to manoeuvre through traffic such that, by the time he was east of 124th Street, he was clear of the traffic and the road ahead was clear. He accelerated as he wanted to catch up to the speeding vehicles in order to get into a position to get their license numbers and stop them. As he proceeded down into the dip and out of it towards 121st Street, he estimates his speed at 110 km/hr. and in any event no more that 120 km/hr. Constable Lavoie estimated the speed of the Crown Victoria at 100 km/hr. The lowest speed calculated by the Crown’s expert — Mr. McGuinnes, is 130 km/hr. The speed limit for eastbound traffic on Yellowhead Trail at this point was 70 km/hr. However, it was not unusual for traffic to exceed that speed by 10 to 20 kph.

[11] As Constable Brander was proceeding up and out of the dip, he observed the Ramirez vehicle in the left turn lane for westbound traffic on Yellowhead Trail. He took his foot off the accelerator and placed it over but not on the brake pedal as a precaution in order to be able to react quickly to the potential risk that the Tempo might commence a left turn across his path. However, as Constable Brander got closer to the intersection, he became less concerned about the Ramirez vehicle commencing its left turn, concluding that the police vehicle was by that point readily visible to the operator of the Ramirez vehicle. When the police car was too close to the intersection to stop, Carlos Ramirez began a left hand turn across the path of the police car. Constable Brander immediately applied the brakes but was unable to stop in time. The Crown

Victoria impacted with the right rear passenger portion of the Ramirez vehicle. The Ramirez vehicle broke into two. The gas tank fractured, spilling gas over the two young boys in the back of the Ramirez vehicle. The gas ignited causing a major fire in the rear portion of the Ramirez vehicle. Ms. Ramirez was thrown out of the vehicle onto the roadway. Both boys were on fire at the time they were pulled from the rear portion of the vehicle. Giovanni died as a result of his injuries. Johnathon suffered grievous burns resulting in the loss of one arm and all of the fingers on his remaining hand as well as severe facial scarring. Carlos Ramirez and his daughter Gloria Ramirez suffered less serious bodily injuries in the accident.

2003 ABQB 756 (CanLII)

## ADDITIONAL FACT FINDINGS

[12] There were a number of witnesses to this accident and its aftermath. It was clear to me as I watched the various eye-witnesses testify that what they had seen had profoundly affected everyone of them. In addition, I heard from a variety of experts, a number of whom were involved in accident reconstruction analysis or accident investigation. Not unexpectedly, there is contradictory evidence on a number of matters some of which are significant to my ultimate analysis. As well, there are some conclusions which, although not necessarily subject to contradictory evidence, should be set out here for completeness. For ease, I shall discuss these matters by heading and state my conclusion on each. The matters are:

i. What was the colour of the traffic light facing Constable Brander when he drove into the intersection at 121st Street?
ii. Were the running lights, emergency lights or siren on at the material time?
iii. Did Constable Brander have a duty to try and catch and stop the racing vehicles?
iv. Did Carlos Ramirez see the Crown Victoria prior to commencing his left turn?
v. Was the Tempo defective?
vi. What was the speed of the Crown Victoria immediately before its brakes were applied?

### i. What was the colour of the traffic light facing Constable Brander when he drove into the intersection with 121st Street?

[13] We know from the evidence of Ed Foster that in the phase one sequence of the signal lights for this intersection, the green light and the yellow light are on at the same time and for the same duration for east and westbound traffic.

[14] Constable Brander testified the light facing him at 121st Street was green. He also stated that the warning board lights had not yet activated as he approached the intersection. Mr. Ramirez testified the light facing him was green when he pulled into the westbound left turn lane and was still green when he commenced his left turn. Dwight Roth, who was in the vehicle behind Mr. Ramirez confirmed that the light was green for the Tempo when it started to make its

turn. Kelli Mantai, also in the westbound left turn lane, confirmed that the lights for westbound traffic were green when the Tempo commenced its left turn and that it was still green at the time of the impact. Tina Wilson testified that the lights were green for eastbound traffic at the time of the accident.

2003 ABQB 756 (CanLII)

[15] On the other hand, David Arts, proceeding westbound, says he saw the lights for westbound traffic turn yellow when he was about 1/4 block east of the start of the left turn lane. He also testified that he last saw the light about 15 seconds before the collision and that it was yellow. Wayne Malarchuk, eastbound, saw the Crown Victoria enter the intersection of 121st St. on a yellow light. He said he saw the warning board lights start to flash before that.

[16] John Horseman was stopped at the intersection facing north on 121st Street. He testified that he saw the light for eastbound traffic turn yellow. He said he took his foot off the brake and started to roll forward in anticipation of his light changing to green. Then the accident occurred. Thus, his evidence suggests the light was yellow for eastbound traffic at the time of the accident.

[17] While I believe all these witnesses were giving their honest recollection as to the colour of the light, clearly some of them are wrong. I find that the traffic light was green for eastbound traffic when the Crown Victoria entered the intersection of 121st Street. That finding is consistent with the evidence of Constable Brander, who was approaching the intersection eastbound at a high rate of speed and, thus, obviously very interested in the colour of the light. It is also consistent with the evidence of Mr. Ramirez, who was turning left at that exact time and, thus, also very interested in the colour of the light as he turned. Finally, it is supported by the evidence of the drivers of the majority of the vehicles in the left turn lane directly behind Ramirez, ie. Dwight Roth and Kelli Mantai. All of these individuals were close to the intersection and involved in entering the intersection at the time or would be very shortly. I find, therefore, their evidence is to be preferred to the others who were less directly concerned with the colour of the lights at the particular moment.

**ii. Were the running lights, emergency lights or siren on at the material time?**

[18] The testimony of Constable Brander as well as Constable Lavoie makes it clear that the Crown Victoria was equipped with a siren, wig- wag headlights, strobe lights in the headlights, red and blue strobe lights inside at the top of the windshield as well as in the back window. As well, their evidence is that the vehicle was equipped with a toggle switch which permitted the ordinary running lights to be turned off or deactivated.

[19] The emergency lights worked. Constable Lavoie had tested them that morning. There is no suggestion that the siren did not work. The evidence is clear that no one activated any of the emergency equipment on the Crown Victoria at any point from 127th Street to the time of the accident. Moreover, Constable Brander testified that he had, as was his custom, turned off the normal running lights of the Crown Victoria before setting out that morning. One of the reasons he followed that practice was to give the unmarked police car a lower profile.

[20] Constable Brander explained that police training was that when you intended to stop someone in a vehicle, you did not activate your emergency equipment until you were right up behind that vehicle. In other words, you did not alert the other vehicle too soon and risk precipitating a chase. That evidence was corroborated by Sgt. Daley.

2003 ABQB 756 (CanLII)

[21] It is clear on all of the evidence that none of the emergency lights, siren, or running lights were on at any time material to the accident.

### iii. Did Constable Brander have a duty to try and catch and stop the racing vehicles?

[22] Kelli Mantai described the two racing vehicles. They were racing side by side and travelling extremely fast.

[23] Tina Wilson described the two vehicles as “kind of drag racing”. She was sufficiently concerned about these two racing vehicles that she remarked to her children at the time how unsafe their driving was.

[24] Constable Brander described the two racing vehicles as spinning their wheels, one fishtailing, and both driving at a fast speed. In fact, he thought they were driving dangerously.

[25] Constable Brander indicated that as a police officer, he had a duty to stop the vehicles that he had seen racing away from the stop light at 127th Street. Sgt. Daley agreed that he did. Common sense also supports that assertion.

[26] I accept these descriptions of the driving of the two racing vehicles. I find that Constable Brander had a duty to take reasonable steps to stop them. It follows that I find that Constable Brander was acting in the course of executing his duties as a constable with the ESP at the time of this collision.

### iv. Did Carlos Ramirez see the Crown Victoria prior to commencing his left turn?

[27] Mr. Ramirez testified before me that he did not see the black car, that is, the Crown Victoria, before he heard it braking. He testified that he did not see any oncoming vehicles when he began his turn. Further, he specifically denied having seen that car going down the hill, at the bottom of the hill, or coming up from the bottom of the hill.

[28] Kim Gilbert, the paramedic who drove Mr. Ramirez to the hospital gave evidence of a prior inconsistent statement given by Mr. Ramirez. She testified that Mr. Ramirez told her on the way to the hospital that he had seen the car at the bottom or going down the hill while he was turning, but that he did not think the car was going that fast. This statement was made spontaneously very shortly after the event. Mr. Ramirez had no recollection of this conversation when it was put to him on cross-examination.

[29] There is no doubt that Mr. Ramirez has, understandably, been deeply affected by these events. I expect he has relived and reconstructed them in his mind countless times since the accident.

[30] Ms. Gilbert is a disinterested witness. While there can be no doubt that Mr. Ramirez was, understandably, in a highly emotional state — perhaps even in shock — when he was talking to Ms. Gilbert, I am satisfied her recounting of his statement is accurate. She made a written note of the conversation shortly after it took place and, later, accurately transcribed it to her statement.

[31] I cannot use this statement for the proof of the truth of its contents as it is hearsay evidence. However, the fact that Mr. Ramirez gave this earlier statement which is inconsistent with his evidence on this point at trial, causes me to conclude that it would be unsafe to accept Mr. Ramirez's evidence that he did not see the black car before he heard it braking.

**v. Was the Tempo defective?**

[32] Mark Firth is a professional engineer who was qualified as an expert on material failure analysis. Bradley Hemstreet is the Manager of Alberta's Motor Vehicle Inspection Program and he was qualified as an expert in auto collision repairs and damage analysis. Both testified as to what they found when they examined the Tempo wreckage following the accident, as well as to the conclusions and opinions they reached.

[33] The evidence is uncontradicted that welds which attach major structural components to the Tempo frame were either defective or non-existent and that this caused the Tempo to break into two pieces in the collision. I accept this evidence. I also accept the uncontradicted opinion of Bradley Hemstreet that it was the breaking into two pieces of the Tempo which permitted the fuel tank to come into contact with the road surface thereby causing it to rupture, spread gasoline about and then ignite.

**vi. What was the speed of the Crown Victoria immediately before its brakes were applied?**

[34] I have found the determination of this question one of the more difficult in this trial. A number of accident reconstructionists testified as to their opinions regarding the likely speed or speed range of the Crown Victoria immediately prior to its applying its brakes in an attempt to avoid this accident. Those opinions of speed were based on mathematical calculations based on certain laws of physics — principally, the laws of the conservation of momentum.

[35] Constable Zee was the primary accident reconstructionist. He is a member of the EPS. He was assigned to be the primary investigator of this accident and as well, he acted as the accident reconstructionist. Of the five level IV reconstructionists on the Edmonton police force at the time, Constable Zee was the most junior. He instructed his measurement team to measure all the

2003 ABQB 756 (CanLII)

roadway evidence. He testified that he personally measured one of the skid marks which he determined came from the Crown Victoria. He said he measured it at 37 metres but he did not write that figure down anywhere and simply recalled it from memory. He said that he marked with chalk where the skid marks to be measured started, taking into account incipient skid. Incipient skid he described as the light skid mark that a trained observer can see on the road surface which precedes the heavy black skid. It consists of scratch marks, patterns in the gravel or other debris. He did not specifically measure how long the incipient skid was, nor did he attempt to photograph it. He could not recall at trial how much of the Crown Victoria's skid mark was made up of incipient skid.

[36] Constable Zee also measured the elevation change from the dip to the intersection of 121st Street that day. He used a line method and arrived at an elevation change of 2.65 metres. Later, on March 23rd, 2003 he measured the line of sight again, using a Geodimeter and the same elevation change measured 6.05 metres. He was clearly wrong in his first measurement.

[37] Constable Montpetit, a member of the measurement team, did a drag sled test the day of the accident to determine the co-efficiency of friction. He arrived at a figure of .87. Constable Zee also did a drag sled test that day and arrived at a figure of .8. When he used a Vericom machine to test for the co-efficiency of friction, he obtained a figure of .78.

[38] Based on the information he collected, primarily through his measurement team, as well as using his training and applying the appropriate mathematical formulas, Constable Zee initially calculated that the Crown Victoria's minimum speed at the time Constable Brander applied his brakes prior to impact, was 142 km/hr. However, because he had not used correct weights for the vehicles in his initial calculations, he revised this figure downwards to 138 km/hr.

[39] Constable Zee also calculated the speed of the Tempo at the time of collision to be 36 km/hr. and, indeed, he assumes that the Tempo was travelling that speed for some distance prior to impact — certainly for at least 6 seconds prior to impact as his time/distance analysis photos show. He also expressed the opinion that it was not reasonable to assume that the Tempo was stopped at or near the stop line in the left turn bay before commencing its turn. He said that if it were, it would require an unnatural acceleration by the Tempo to achieve a pre-impact speed of 36 km/hr.

[40] Constable Zee admitted that this was a difficult accident reconstruction. He further admitted that he was under pressure to get his report done quickly.

[41] Corporal Brownell, an accident reconstructionist with the RCMP also testified. He led a team of RCMP who was asked to review the EPS investigation of this accident including Constable Zee's accident reconstruction report. It was clear from his evidence that there were a number of deficiencies in the initial EPS investigation and, upon being advised of them, Constable Zee attempted to rectify those deficiencies.

[42] Corporal Brownell, while he initially arrived at a different speed and departure angle

2003 ABQB 756 (CanLII)

calculation than Constable Zee, changed his view somewhat once he had a chance to speak with Constable Zee and obtain some clarifications and explanations. Nevertheless, he did have to rely on the EPS measurements, particularly the 34.5 metre measurement of the skid mark, and other technical data contained in Constable Zee's report. Further, he had to rely on Constable Zee's description of the marks he saw on the roadway at the time, including Constable Zee's determination of the point of impact.

2003 ABQB 756 (CanLII)

[43] Corporal Brownell confirmed that, based on the technical information, measurements, and roadway interpretation of Constable Zee and his measurement team, the assumptions and calculations of Constable Zee were reasonable. Corporal Brownell, however, prefers to use ranges in his calculations. He calculated a pre-braking speed range for the Crown Victoria of between 137 to 142 km/hr. and a pre-impact speed for the Tempo of between 33 km/hr. and 36 km/hr.

[44] Contrary to what Constable Zee did in this case, Corporal Brownell's practice is to measure all the tire skid marks and to measure and record the incipient skid mark specifically and separately from the black skid. Also, he takes photos both before and after he has marked the roadway evidence.

[45] Finally, I note Corporal Brownell's evidence was that this is one of the more complicated accident reconstructions that one could have and that there are some areas of this reconstruction which are quite subjective.

[46] The final reconstructionist called by the Crown was Steve McInnis, a professional engineer. He calculated speeds using two methods. The first was the momentum analysis method which was the same type of methodology used by Constable Zee and Corporal Brownell. To do this analysis he relied on a number of assumptions one of which was that the EPS photos and drawings supplied to him accurately set out the technical data. Indeed, he said he measured some of the distances he used from EPS or Constable Zee's drawings. From this analysis, Mr. McInnis arrived at a minimum speed of the Crown Victoria at the start of its skid of 136.7 km/hr.

[47] Mr. McInnis also used a second method of calculating the Crown Victorias re-braking speed and impact speed. It was through the use of the Ford download data from the computer data module in the Crown Victoria. This methodology had the distinct benefit of eliminating the necessity of considering any of the variables of the Tempo that one had to consider. It was those variables in particular that could be very subjective. Therefore, the method using the download information has the most appeal. Mr. McInnis testified that in order to calculate impact speed from the data recorder information, all he needed to know was the distance

travelled after impact and the co-efficiency of friction. Additionally, in order to calculate the speed of the Crown Victoria from the data recorder at the start of its skid, he needed the distance travelled while skidding and the co-efficiency of friction prior to impact.

[48] Using the data recorder download method, Mr. McInnis arrived at an impact speed range

for the Crown Victoria of 107 to 112 km/hr. with a mean of 109. For the pre-braking speed, he calculated a minimum range, including something he called “transient braking”, to be 133 to 135 km/hr. with a median range of 140 to 142 km/hr. In calculating these ranges, Mr. McInnis allowed a margin of plus or minus one metre on the skid measurement and used a range of possible co-efficients of friction.

2003 ABQB 756 (CanLII)

[49] I do not accept the “add on” for transient braking. I am not satisfied on the evidence, that the degree of scientific study and discussion, as alluded to by Mr. McInnis, is sufficient to come up with the 3 to 5 km/hr. “add on”. Therefore, disregarding this transient braking factor, Mr. McInnis’s minimum speed for the Crown Victoria at the start of braking would be 130 km/hr.

[50] Mr. McInnis, for both methods, said he used the EPS Team’s skid measurements. He said he thought that both the Crown Victoria’s skid marks were measured and drawn to scale on the police diagram.

[51] Therefore, according to the evidence of three accident reconstruction, the minimum speed the Crown Victoria was travelling at the start of its skid would be anywhere from a high of 142 km/hr. to a low of 130 km/hr.

[52] The problem with these speed figures is that they appear to fly in the face of the evidence of those who were actually witness to the driving of the Crown Victoria.

[53] First, there is Constable Brander’s own evidence. While he did not look at his speedometer, he estimates his speed at 110 km/hr. — but definitely no more than 120 km/hr. His partner, Constable Lavoie estimates their maximum speed was around 100 km/hr. While I recognize neither of these witnesses can be regarded as unbiased, I do believe they were being candid and that these estimates were their honest opinions. Moreover, the other witnesses who testified as to the speed of the Crown Victoria do not use terms or estimates even close to the 130 to 142 km/hr. range. Dwight Roth, who I find to be a very credible witness and well positioned to make observations, estimated the Crown Victoria’s speed to be around 100 km/hr. Kelli Mantai saw the chase and the Crown Victoria and her assumption was that it was going about 70 km/hr. While clearly an under- estimate, it is well below the experts’ range. Ben Parmar estimates the police car passed him at about 80 km/hr. and then sped up but even then, he testified, it was not going a great deal faster than before. Wayne Malarchuk said he was travelling at 65 or 70 km/hr. when the police car passed him at a speed about 15 km/hr. faster. However, his description of what he saw, and in particular his evidence that when he was at the top of the hill the police car was about 2/3 of the way down, suggests that the police car was not going at an extremely fast speed in the expert’s range, otherwise, it would have been much further ahead of Malarchuk by then.

[54] To summarize, there is no doubt that Constable Brander was driving faster than the speed limit. However, I am uneasy with the expert reconstruction evidence specifying its minimum speed. If it was travelling at 130 to 142 km/hr. I would have expected the witnesses to have expressed an opinion closer to that sort of speed — even by saying something like “way over a

100" or similar words. Instead, all except Constable Brander himself, estimate a speed of 100 or a lesser figure.

[55] This leads me to question the accuracy of the reconstructions; not on the basis of their formula or methods, but rather, on the basis of the accuracy of the scene measurements and interpretation of the roadway evidence itself. It is this evidence which is the foundation, the cornerstone, of the reconstructionists calculations. If it is wrong or inaccurate, the opinions of the reconstructionists will be inaccurate.

[56] I have doubts about the measurements and the scene interpretation. These doubts arise because of all of the evidence I have heard concerning mistakes and mis-measurements that have occurred generally in this investigation. For example, I note that:

1. Constable Zee made a gross error in measuring the elevation differential between the dip and the intersection — 2.65 metres instead of 6.05 metres.

2. The initial measurement team forgot to measure the NE quadrant of the intersection.

3. As a result of those missing measurements, Constable Matheson was sent out later to measure them. He made incomplete notes of what he did and, incredibly, could not even remember at trial who it was who assisted him in taking these measurements. Moreover, they appear to have been in error, having regard to the overlay diagram.

4. Given the differences apparent on the overlay diagram, some of the measurements taken by the initial measurement team must have been wrong.

5. Constable Monpetit, who conducted the drag test at the scene on the day of the accident, obtained the strange result of a .87 co-efficient of friction which everyone seems to agree was wrong but no one explained how such a gross error could happen.

6. Constable Zee, although he was able to recall from memory that the total length of the skid mark he measured was 37 metres, and who personally identified and marked the beginning of the incipient skid with chalk, can give no breakdown or even estimate as to how much of that skid mark was made up of incipient skid.

7. The measurement team only measured one of the two skid marks.

8. Until Constable Zee arrived at the scene of the accident at about 11:45 am. and ordered that traffic be re-routed at 124th St., it is clear that some traffic proceeded through the collision scene. Several witnesses who testified, including the gravel truck operator, indicated that they had driven eastbound through the

2003 ABQB 756 (CanLII)

intersection. It is reasonable to assume from the evidence that others did as well. Many emergency vehicles were on scene, including fire trucks, ambulances and police. Hoses were layed down and fires put out. Thus, I have a real concern that the roadway evidence was contaminated or disturbed resulting in a misinterpretation of it.

9. Mr. McInnis testified that there has always been a question as to where the point of impact between the two vehicles was.

10. Only two points in the “J” mark were measured, rather than the 3 or 4 which would have given a proper idea of its shape.

11. Constable Zee’s interpretation of the scene road evidence lead him to conclude that the Tempo could not have commenced its turn from a stop but rather had been proceeding at about 36 km/hr. Yet, Mr. Roth testified that he was stopped directly behind the intersection, also intending to make a left turn. He said the Tempo was stopped, forward of the stop line, waiting for traffic to clear. He said that it was stopped for about 10 seconds before commencing its left turn. I have earlier found Mr. Roth to be a credible witness and someone who was in an excellent position to observe this fact. His wife Catherine, who also testified, confirms that evidence. I accept his evidence and find that Mr. Ramirez was stopped in the intersection, forward of the stop line before commencing his turn. This finding is diametrically opposed to Constable Zee’s opinion in this regard.

2003 ABQB 756 (CanLII)

[57] Mr. Hak in argument, fairly pointed out a number of errors that were made in the investigation of this accident. However, he also forcefully argued that none of the proven mistakes or errors, in the final analysis affect the critical areas necessary to calculate the minimum speed of the Crown Victoria — particularly if one relies on the computer data download method. While that may be so, the skid mark measurement is crucial to and the basis for all the calculations. The measurement of the “J” mark is also important. Constable Zee’s interpretation of the roadway evidence is important as well. In order to accept the reconstructionists’ evidence as to the speeds, I must have confidence that the root information that they must depend on — specifically the critical measurements — is accurate. The various errors that were made, only some of which I have outlined above, adversely affect my confidence in the accuracy of those critical measurements. This unease is compounded by the inconsistent evidenced of those present, whose evidence I have discussed earlier.

[58] The speed of the Crown Victoria is a critical element in these charges. In the final analysis, I cannot say with any confidence that the Crown Victoria was travelling at a minimum speed of 130 km/hr. at the time its brakes were applied. Rather, I rely on the evidence of Constable Brander, which is closer to that of the other witnesses who gave estimates of speed. In the result I find that Constable Brander was travelling at somewhere in the range of 110 to 120 km/hr.

2003 ABQB 756 (CanLII)

**LAW**

[59] The charges against Constable Brander are grounded in criminal negligence — one count of criminal negligence causing death and three counts of criminal negligence causing bodily harm. Criminal negligence is defined in s.219(1) of the *Criminal Code* R.C. 1985, c.C-46. A person is criminally negligent where he does something, or omits to do something, that is his duty imposed by law to do, and shows a wanton or reckless disregard for the lives or safety of other persons. There must be a marked departure from the standard of a reasonable person.

[60] Dangerous driving causing death and dangerous driving causing bodily harm are included offences to the more serious offences of criminal negligence causing death and criminal negligence causing bodily harm. Section 249(1) of the *Criminal Code* states that a person who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place where the motor vehicle is being operated and the amount of actual or reasonably anticipated traffic at that place, commits the offence of dangerous driving.

[61] The impugned conduct in driving cases, can be placed on a continuum. At the lowest end, you have driving that may be characterized as civilly negligent but not an infraction of the *Traffic Safety Act* R.S.A. 2000, c.T-6 or a crime under the *Criminal Code.* Next, there is negligent driving which shows a degree of carelessness or inattention such as to be characterized as the infraction of careless driving under the provincial *Traffic Safety Act*. Next, there is driving which is so negligent as to constitute a marked departure from the standard of a reasonable person and, thus, constitute the offence of dangerous driving. And finally, at the highest end of the continuum, is the type of driving which shows a wanton or reckless disregard for the lives and safety of other persons and, thus, constitutes the offence of criminal negligence.

[62] Both the offences of criminal negligence and dangerous driving mandate the use of an objective standard to measure the mental element of the offence.

[63] The Supreme Court of Canada has dealt definitively with the test for dangerous driving in the case of ***Regina v. Hundal*** (1993), 79 C.C.C.(3rd) 97. There, the Court mandated a “modified objective test” to determine if the accused’s driving was dangerous as contemplated in the Criminal Code offence. Cory, J., speaking on behalf of the majority, said:

At page 106:

> Thus, it is clear that the basis of liability for dangerous driving is negligence. The question to be asked is not what the accused subjectively intended but rather whether, viewed objectively, the accused exercised the appropriate standard of care.

At pp.106-107:

> Although an objective test must be applied to the offence of dangerous driving, it will remain open to the accused to raise a reasonable doubt that a reasonable person would have been aware of the risks in the accused's conduct. The test must be applied with some measure of flexibility. That is to say the objective test should not be applied in a vacuum but rather in the context of the events surrounding the incident.

At p.107, quoting McIntyre J. in ***R. v. Tutton*** (1989), 48 C.C.C. (3d) 129 (S.C.C.):

> Events occur within the framework of other events and actions and when deciding on the nature of the questioned conduct, surrounding circumstances must be considered.

At page 108:

> In summary, the *mens rea* for the offence of dangerous driving should be assessed objectively but in the context of all the events surrounding the incident. That approach will satisfy the dictates both of common sense and fairness.

At page 108:

> It follows then that a trier of fact may convict if satisfied beyond a reasonable doubt that, viewed objectively, the accused was, in the words of the section, driving in a manner that was "dangerous to the public, having regard to all the circumstances, including the nature, condition and use of such place and the amount of traffic that at the time is or might reasonably be expected to be on such place". In making the assessment, the trier of fact should be satisfied that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in the accused's situation.

[64] McLachlin J. (as she then was) added further observations on the modified objective test. She said:

At page 109:

> On the other hand, the fault may lie in the accused's negligence or inadvertence**.** In this case an objective test applies; the question is not what was in the accused's mind but the absence of the mental state of care. This want of due care is inferred from conduct of the accused. If that conduct evinces a want of care judged by the standard of a reasonable person in similar circumstances, the necessary fault is established.

2003 ABQB 756 (CanLII)

At page 110:

> It follows that a dangerous or repugnant act, coupled with want of care representing a marked departure from the standard of a reasonable person in all the circumstances, may constitute a criminal offence.

2003 ABQB 756 (CanLII)

[65] In ***Regina v. Creighton*** (1993), 83 C.C.C.(3d) 346 the Supreme Court of Canada re-iterated that the question of guilt cannot be determined in a factual vacuum. It emphasised that while the legal duty of the accused is not particularized by his personal characteristics (short of incapacity), it is particularized in application by the nature of the activity and the circumstances surrounding the accused's failure to take the requisite care. The question is what the reasonably prudent person would have done in all of the circumstances. The applied standard of care may vary with the activity in question and the circumstances in the particular case.

[66] There are four cases which have applied the principle in ***Hundal*** which I have found particularly helpful. The first is ***Regina v. Blackwell*** (1994), 3 M.V.R.(3d) 161 (Ont. C.A.), leave to appeal to S.C.C. refused, 5 M.V.R. (3d) 323n. In that case, the accused police officer was responding to an emergency call. He was travelling at a high rate of speed on a major roadway in the city and collided broadside with a vehicle entering an intersection from the accused's left, on a green light. The police officer had turned off his siren just before the intersection in order to hear a radio message. He was unsure of where he was going. He was distracted. He completely missed seeing the red light facing him. Nor did he appreciate that the reason why the vehicle ahead of him had come to a stop was in response to the red light. The trial judge acquitted the police officer of criminal negligence causing death but convicted him of dangerous driving saying:

> At the time you were reacting and doing instinctively what a careful driver should do in making a lane change in normal circumstances, but your circumstances were not normal. You were going at least 50% faster than anybody else on the road. Obviously no one was going to be overtaking you and attempting to pass on the right. You failed to appreciate that. You failed to adapt to it, and you failed to understand that in the circumstances, driving at the speed you were, your entire attention had to be focussed not only in front of you but far in front of you so that you could react to circumstances that could occur and that would pose a danger.

[67] The Ontario Court of Appeal upheld that conviction, observing at page 162:

> It is our view that, read as a whole, the reasons of the trial judge merely reflect his conclusion that a police officer who engages in the activity described in the evidence is held to an elevated standard of care consistent with the conditions of his inherently more dangerous driving conduct.

[68] The only other case I have found dealing with the offence of dangerous driving by a

police officer who is acting in the course of his duties, is that of ***Regina c. Markovic*** (1997), 17 C.R. (5th) 371 (C.A. de Que.). In that case, the police officer was proceeding at a rate of speed in excess of 90 km/hr. on a downtown Montreal street in response to an emergency call. The emergency lights on his vehicle were activated and the siren was in klaxon mode and sounded one or two times before entering the intersection in question. The intersection was of two busy urban streets and it was a school zone area. The accident occurred around 3:40 just as school was getting out. The intersection was controlled by traffic lights. They were red for the police car. There were a number of buses parked at the corners of the intersection which obstructed the accused's view. The accused did not slow down as he entered the intersection and did not check the colour of the lights and apparently did not appreciate that they were red for him. He struck and killed a pedestrian. The trial judge convicted him of dangerous driving causing death. The Quebec Court of Appeal upheld the conviction. The case supports the proposition, that when a police officer responds to an emergency, he has a responsibility and must assume responsibility for what he does and what is under his control. His conduct will be reasonable where he takes reasonable measures to avoid risks.

2003 ABQB 756 (CanLII)

[69] In ***Regina v. Stogdale*** (1995), 104 C.C.C. (3d) 44 (Ont.C.A.), leave to appeal to S.C.C. refused, 106 C.C.C. (3d) vi, the accused captain of the Canadian Coast Guard ship "The Griffon" appealed his conviction for dangerous operation of a vessel causing death. The ship was proceeding at full speed, in conditions of reduced visibility due to fog, and without the fog horn sounding, when it collided with and sunk a fishing boat. Three men on the fishing boat were killed. In allowing the appeal and setting aside the conviction, the Ontario Court of Appeal referred to McIntyre J.'s decision in ***Tutton*** as well as the ***Hundal*** case and made the following observations:

At page 60:

> As noted earlier, the trial judge expressly found "that the decisions with regard to the speed of 'The Griffon', the nature of the lookout and the sounding of the fog whistle are all matters of judgment". The trial judge, however, did not, perhaps because he could not, make any findings as to what the standard of care was, nor did he specify any accepted benchmark against which the appellant's conduct could be measured.
>
> Rather than making a determination as to the accepted standard and comparing the appellant's conduct with that standard, the trial judge simply reassessed the appellant's judgment and found that he (the trial judge) would have exercised his judgment in a different manner.

At page 62:

> The evidence of the Crown's expert, Meek, was that it was safe to proceed at full speed with half a mile of visibility under the conditions prevailing on "The Griffon" that afternoon ... These were the conditions the appellant

believed to be prevailing when he went below...

. . .

There is no basis for believing that the appellant did not honestly believe that the visibility at 12:55 p.m. was one-half mile. Nor is there any basis for finding that he was unreasonable in arriving at that conclusion. He may have been wrong, but based upon his experience, that was his assessment.

That assessment is, to use the words of McIntyre J. in *Tutton***,** one of the “surrounding circumstances (which) must be considered”. If that assessment had been accurate and visibility had been one-half mile, then, as I understand the evidence, no witness would have required the sounding of the foghorn or the reduction of speed. In other words, the operation of the vessel at full speed without sounding the foghorn would not have been dangerous, given the other conditions respecting radar and a lookout. In my view, the appellant’s assessment of visibility, while it may have been wrong, was not unreasonable and, that being so, the mental element of the offence required by law does not exist.

[70] I confess I find it difficult to reconcile some of these considerations in ***Stogdale*** with the comments in ***Creighton.*** However, ***Stogdale*** does seem to serve at least as the Ontario Court of Appeal’s interpretation of what can be considered within the context of “surrounding circumstances”.

[71] Finally, in perhaps a similar vein to ***Stogdale***, there is the case of ***Regina v. Lane*** (2001), 156 C.C.C. (3d) 545 where the British Columbia Court of Appeal upheld the acquittal of a highway maintenance sweeper truck driver of charges of dangerous operation of a vehicle causing death and bodily injury. In that case, the accused was operating a sweeper truck on the high speed Coquihalla Highway. He created a large dust cloud in doing so which obscured the visibility of drivers coming up from behind. An overtaking driver, Mr. Akselson, travelling more than 20 km/hr. over the 110 km/hr. speed limit, ran into the back of the sweeper in the cloud of dust. Another car then also ran into the back of the sweeper truck. This sweeping was being done without the benefit of any warning signs or traffic control, contrary to the obligation of the accused’s employer under the maintenance contract as well as the Ministry of Highway’s traffic control manual. The observations of the trial judge, quoted in the appeal decision, are of interest:

At page 552:

. . . I have concluded that while lack of any traffic control was likely the principal cause of the collision and the death of Mr. Akselson and the injuries suffered by Ms. Kikuchi and Mr. Koch, it is only relevant to the consideration of the guilt or innocence of Mr. Lane to the extent that it exacerbated the risk which a sweeper operation posed to users of the public [highway] that day. [Emph asis

2003 ABQB 756 (CanLII)

added.]

Also at page 552:

> Similarly, while the excessive speed at which Mr. Akselson was travelling was likely a significant contributing cause of the collision and a factor to be considered in whatever civil proceedings may arise from these events, it is of significance in these criminal proceedings against Mr. Lane only to the extent that it is relevant to the assessment of the reasonable expectations which Mr. Lane might have with respect to the use of the highway by the travelling public and the extent to which such reasonable expectations impact upon the reasonableness of his own actions that day. [Emphasis added.]

[72] Also of interest are the B.C. Court of Appeal's comments at p.558. At para.23, the Court, after quoting McLachlin J. in ***Creighton***, says: "I take it that she is saying that generally the objective standard will be the applicable standard but that some allowances may be made in some cases for individual perceptions." And later at paragraph 25 states:

> It seems to me that all the learned trial judge was saying in that particular passage was that the respondent may have, to a degree, been influenced in his perceptions of the situation by the standards that were generally applicable to work operations in that area. However, in my view, he was not using that as the applicable standard but was simply saying that that was a factor to be considered in assessing the case before him. [Emphasis added.]

**ISSUES**

[73] The facts, law and arguments of counsel raise the following issues for my determination:

(a) Was Constable Brander operating his motor vehicle in a criminally negligent manner?

(b) If not, was he operating it in a manner that was dangerous to the public in all the circumstances?

(c) If the answer to either of the above is "yes", did his driving cause the injuries and death alleged in the indictment.

**ANALYSIS**

**(a) Was Constable Brander operating his motor vehicle in a criminally negligent manner?**

2003 ABQB 756 (CanLII)

[74] As I have said earlier, criminal negligence requires a wanton and reckless disregard for the lives and safety of others. As noted by the Quebec Court of Appeal in ***Regina v. Palin*** (1999), 135 C.C.C. (3d) 119 (Que. C.A.); leave to appeal to the S.C.C. refused 234 N.R.196, in order to convict an accused for criminal negligence in the operation of a motor vehicle, an accused's departure from the standard of care of a reasonable person must be more marked in both the external circumstances and the mental element, than in dangerous operation cases.

2003 ABQB 756 (CanLII)

[75] The words "wanton" and "reckless" connote a complete disregard for the almost certain consequences of one's actions.

[76] The evidence in this case far from satisfies me that Constable Brander's driving on the day in question meets the test of criminal negligence. I find that he was not operating his vehicle in a criminally negligent manner on the day in question.

[77] The more difficult question is whether Constable Brander's driving constitutes the included offence of dangerous operation of a motor vehicle pursuant to s.249(1)(a) of the *Criminal Code*.

**(b) Was Constable Brander operating his vehicle in a manner that was dangerous to the public having regard to all the circumstances?**

[78] It must be remembered that the offence of dangerous driving involves an examination of the driving having regard to all the circumstances. The *Criminal Code* names some of the circumstances to be considered: the nature, condition and use of the place where the driving occurs as well as the amount of traffic there, actual or expected. That list of circumstances is not exhaustive. As the cases earlier referred to suggest, other circumstances can be considered. They can include the skill of the driver and the purpose of the driving. The driving cannot be assessed in a vacuum.

[79] In this case, Constable Brander had observed two vehicles stunting and racing. Their manner of driving was a risk to others. Constable Brander had a duty to stop them. This was not a situation of trying to stop a driver in order to issue a ticket to meet some sort of traffic ticket quota. Racing is a dangerous high risk activity which poses real and significant probability of harm to others. As Hill J. pointed out in ***Regina v. Menezes*** (2002), 50 C.R. (5th) 343 (Ont. Sup. Ct. Just.) at paragraph 101 [adopting the words of an American judge in another case]:

> The taking of unreasonable risks during a race is to be expected and is clearly foreseeable. The end result is that the race is an act which creates a situation of unreasonable risk and a high probability of death or great bodily harm to another. Racing participants demonstrate conscious disregard for the safety of the public and a willingness to take known chances of perpetrating an injury.

[80] I am satisfied that the reasonable way for a police officer to stop these racers was to catch up to them — at least to get close enough to them to obtain their licence numbers. To catch up to

these racers, Constable Brander had to extricate himself from the vehicles that surrounded the police vehicle, and he would have to accelerate.

[81] I think it can rightly be said that pursuing these racing vehicles was a risky activity. That is probably true whenever a police officer attempts any sort of pursuit or travel in excess of the speed limit. Indeed, that may be so depending on the circumstances, even if one does not exceed the speed limit. However, it seems to me that the real issue here is whether Constable Brander engaged in that risky activity with the requisite degree of care. Or, to put it somewhat differently, did Constable Brander's manner of driving in these circumstances constitute a "marked departure" from the standard of a reasonable person in those same circumstances. A person in those same circumstances would be a police officer.

[82] The evidence is clear that Constable Brander did not activate his emergency equipment as he began the pursuit. I use the word "pursuit" for convenience. (I do not use it in the technical sense that the EPS uses the word "pursuit" which has a special meaning and procedures attached to it.) He gave an explanation for why he did not do so. That explanation was confirmed by Sgt. Daley's evidence. I conclude, therefore, that it was not unreasonable, in these circumstances, for Constable Brander to have not put on his emergency equipment when he began the pursuit. In other words, I am satisfied that a reasonable police officer in these circumstances, would not have started out the pursuit with his emergency equipment activated because he would not want to precipitate a chase and he would not want traffic around him to stop or react inappropriately.

[83] According to the evidence, once the traffic lights at 127th Street changed to green, Constable Brander moved through the traffic surrounding him, in a careful and prudent manner. He passed vehicles at speeds 10 or 15 km/hr. above the speed limit, changing lanes from time to time to get around vehicles blocking him. He did not accelerate to any sort of a high speed until he was free of the traffic and the road ahead of him was clear. That is the point where, in my opinion, a police officer could reasonably attempt to accelerate in order to attempt to close the distance between him and the racing vehicles ahead.

[84] The speed Constable Brander attained at this point was high — somewhere between 110 and 120 km/hr. However, the circumstances at that point were that he had a virtually open road ahead, road conditions were good, it was daylight, the weather was not a problem, and this was an open area in an industrial type of setting.

[85] Constable Brander, unlike the constables in the ***Blackwell*** and ***Markovic*** cases, was keenly aware of what was going on around him. He was aware of the intersection ahead of him at 121st Street. He was keeping a close lookout. He saw the light that was facing him at this intersection was green. He had the right-of-way. He saw the white Tempo as he approached the intersection at high speed. He recognized the potential risk it posed in that it was in the left turn lane and obviously intended to turn left when it was safe to do so. This is the potential risk that any vehicle which intends to turn left across the path of an approaching vehicle poses at an open and unprotected intersection. Constable Brander responded to that potential risk. I accept his evidence that he took his foot off the accelerator and placed it over the brake — ready to react if

2003 ABQB 756 (CanLII)

necessary. He also began to move to the middle through travel lane. These measures all demonstrate that Constable Brander was keeping a proper lookout, was well aware of the situation and the potential risk, and had responded to the situation.

[86] On the evidence before me, I am satisfied that Constable Brander had the right-of-way as he approached and entered the intersection of 121st Street. While he saw the Tempo and knew that it intended to turn left, he was, as was any reasonable person, entitled, in the absence of knowledge to the contrary, to assume that the driver of the Tempo would not attempt to turn left until he could do so safely. Constable Brander could see the Tempo as he proceeded up towards the intersection from the bottom of the dip and he or any one in his position, could reasonably expect that the Crown Victoria could be seen by the driver of the Tempo.

[87] It might be argued that Constable Brander should have activated his emergency lights or siren as he was coming out of the dip and saw the Tempo in the left turn lane. However, the evidence demonstrates that for Constable Brander to do so in this particular police car would require him to take one hand off the steering wheel, turn his body to the right, and reach back to the switches on the panel in the console somewhat behind him. To do so might well have jeopardized his control of his vehicle. Moreover, the evidence is that at that same point in time, Constable Brander was aware that Constable Lavoie was “referencing” (ie. placing his hands on) those same emergency switches and indeed, the understanding reached earlier that morning between them was that Constable Lavoie would operate the emergency equipment if it became necessary. Given those circumstances, I cannot conclude that a reasonable police officer driving in those circumstances would have activated the emergency equipment at that point in time. Accordingly, I cannot conclude that Constable Brander was unreasonable in not activating the emergency equipment at the point where he saw the Tempo as he was coming out of the dip.

[88] Finally, the evidence satisfies me that, as soon as the Tempo commenced its turn, Constable Brander did all that anyone could reasonably do to try and avoid the collision.

[89] However, as I dissect Constable Brander’s driving between 127th Street and 121st Street, there is one point where the emergency equipment could and should have been activated. I am satisfied that a reasonable police officer in these circumstances would, having regard to his speed and the fact that he was in an unmarked police car, have activated or told his partner to activate, the emergency equipment <u>at the point in time after the road ahead was clear and he was beginning his significant acceleration as he headed down into the dip</u>. At that point, he could do so easily and with minimal risk of loss of control. He would have kept it activated at least until he had cleared the intersection which he knew was ahead. He would do so as a precautionary measure to alert any persons who might be at the intersection that he was coming. He could, if he wished to reduce the chance of precipitating a chase, turned the emergency equipment off once he had cleared the intersection. Constable Brander did not do this. In my opinion, Constable Brander’s failure to activate the emergency equipment at this point was negligent.

[90] In the final analysis, I conclude that Constable Brander’s manner of operating the Crown Victoria was negligent only in the particular manner I have just described. It was, thus, a

2003 ABQB 756 (CanLII)

departure from the standard of driving of a reasonable police officer in these circumstances. Constable Brander made an error in judgment. However, I am not convinced that such a departure can be described as a "marked" departure such as is required by the law in order to elevate Constable Brander's negligent driving to the level of the crime of dangerous driving.

[91] In circumstances such as this, we need to remember that police officers are often placed in positions where they have to make quick and spontaneous decisions in the course of their duties. Sometimes they may make the wrong decision. Sometimes their decision may, because of other events or circumstances beyond their control, turn out wrong. Sometimes, they may do something with the best of intentions, but negligently.

[92] They may be wrong. They may even be negligent. But as McLachlin J. said in ***Creighton***, the law does not lightly brand a person as a criminal.

[93] This accident was tragic and devastating to those involved. Giovanni's life was lost. Jonathan was terribly injured. Mr. Ramirez and Gloria Ramirez were also physically injured and have suffered untold anguish from the loss of Giovanni and the injuries to Jonathan. It is natural in such circumstances as these that the injured parties and their family want retribution for their loss. But it must be remembered that this trial, like any criminal trial, must be focused on whether the accused is guilty of the crime with which he has been charged — not on the loss or harm suffered by the Ramirez family. I want the Ramirez family to understand that their loss is not forgotten by the Court. However, their losses and the determination of legal responsibility for them are properly the subject of the civil proceedings which have been commenced; not this criminal trial.

**CONCLUSION**

[94] I find Constable Brander not guilty on all counts.

HEARD on the 20th, 21st, 22nd, 23rd, 26th and 27th days of May and on the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th, 12th, 16th, 17th, 18th, 24th, 25th and 26th days of June, 2003.

**DATED** at Edmonton, Alberta this 4th day of September, 2003.

____________________________

**J.C.Q.B.A.**

2003 ABQB 756 (CanLII)