Legal Education Society of Alberta

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Impaired Driving

Calgary, Alberta **Edmonton, Alberta**

Chair

Ian Savage
Savage Oykhman Law
Calgary, Alberta

Faculty

The Honourable Judge Robert Shaigec
Provincial Court of Alberta
(Criminal Division)
Edmonton, Alberta

Marlo MacGregor
Alberta Crown Prosecution Service
(Team Lead, Criminal Driving Unit)
Calgary, Alberta

Timothy Foster QC
Foster Iovanelli Beyak Kothari
Calgary, Alberta

Melissa Kostiuk
Alberta Crown Prosecution Service
Calgary, Alberta

Katherin Beyak
Foster Iovanelli Beyak Kothari
Calgary, Alberta

Steve Smith
Gunn Law Group
Edmonton, Alberta

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Charter Notices and *Voir Dires*

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Prepared by:

Judge R. Shaigec

Provincial Court of Alberta, Criminal Division

Legal Education Society of Alberta

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THE CHARTER IS SILENT ON PROCEDURE

Section 24 of the Charter is silent as to what procedure is to be followed. However, "… the Charter was not enacted in a vacuum. It was created to form … a very important part … of the Canadian legal system and, accordingly, must fit into that system": *R v Mills*, [1986] 1 SCR 863 at 956-957.

Therefore, the approach to be adopted should be consistent with both "… the ordinary flow of a criminal trial" and with "the purpose" of section 24(2) of the Charter: *R v Dwernychuk*, 1992 ABCA 316 at para 9 (*Dwernychuk)*.

Regarding "the purpose" of section 24, the words of the section "capture its purpose: to maintain the good repute of the administration of justice": *R v Grant*, [2009] 2 SCR 353 at para 67.

PURPOSIVE APPROACH

With respect to the procedure to be followed in relation to section 24 Charter applications, a "purposive approach" should be adopted, focusing on "[t]he purpose of s. 24 [which] is to provide a remedy for an infringement of a … right or freedom and thus to breathe life into the substantive right or freedom": *Dwernychuk* at par 10.

Any procedure adopted should "reflect a 'liberal' and a 'generous' approach (*Hunter v Southam*, [1984] 2 SCR 145 …) one that will render more effective the right in issue … and will enhance the repute of the administration of justice": *Dwernychuk* at para 11.

EXERCISE OF DISCRETION

A trial judge has wide discretion to adopt a Charter *voir dire* procedure that accords with the purposive approach to be employed, and that fits the facts of each individual case.

As the Ontario Court of Appeal stated in *R v Loveman*, 1992 CanLII 2830 at 3: "A trial judge must control the trial proceedings so as to ensure fairness to all concerned and preserve the integrity of the trial process."

Trial fairness, and the integrity of the trial process, are concepts that include both "due process" and the "obvious public interest in expeditious trials": *Dwernychuk* at para 9.

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