



Edmonton defence lawyer Shirish Chotalia: Case reaffirms "that 'fundamental justice' and 'fair hearing' should be and are the central issues in a criminal trial."

Unsworn videotaped evidence in kids' sex assault cases violates Charter: Alta. judge

By Don Brillinger

EDMONTON—In what could be an important decision, a Court of Queen's Bench judge here has struck down as unconstitutional the *Criminal Code* section that lets the Crown admit the unsworn, videotaped evidence of a child sex assault complainant at trial.

Section 643.1 (s. 715.1 under the

newly revised *Criminal Code*) says that in proceedings involving a sex assault complainant under 18 years of age, "a videotape made within a reasonable time after the alleged offence, in which the complainant describes the acts complained of, is admissible in evidence if the complainant adopts the contents of the videotape while testifying."

But in *R. v. Thompson*, Mr. Justice John Mackenzie said s. 643.1 clearly offends two important provisions in the Charter of Rights and Freedoms:

□ the s. 7 fundamental justice guarantee; and,

□ the s. 11(d) right of an accused "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

"Simply put," he said, "the general rule is that unsworn evidence is not available to convict an accused person."

And while there are some exceptions to this rule, the judge said s. 643.1 lacks the "safeguards" that apply to the few circumstances in which unsworn evidence may be admitted in court.

"Just to simply say that all that is necessary for a witness to say, 'My unsworn evidence of three months ago, or my unsworn statement of three months ago, which is recorded on a video camera, is true,' goes very,

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