# R. v. DIMMER,

CCH DRS 1984 P17-886, A.
37 C.R. (3d) 227
**ALBERTA**
**(Q.B.)**

November 23, 1983

*Evidence — Refreshing memory — Witness to motor vehicle accident reporting licence plate number of accused's vehicle — Witness unable to recollect number at testimony but remembering number when shown photograph of vehicle and licence plate — New trial ordered — Actual revival of independent recollection necessary — Highway Traffic Act, R.S.A. 1980, c. H-7, s. 123(a).*

This was an appeal by accused from his conviction for careless driving contrary to s. 123(a) of the Highway Traffic Act. At trial, L, the only witness to the accident was unable to identify the accused as the driver of the vehicle which collided with two parked cars belonging to L. She had made a note of the licence number but failed to bring it with her for the purpose of her testimony. However when she was shown the photograph of a car with the licence plate number she identified the vehicle and the licence number. The accused appealed on the ground that the Crown had improperly used the photographs to refresh the memory of the witness.

**HELD:** The appeal was allowed and a new trial ordered. The trial judge did not consider the fact that the witness did not initially remember the licence number and the manner in which her memory was refreshed. The trial judge must be satisfied that there had been an actual revival of an independent recollection and that the witness was now testifying because she now remembered the number which she saw at the time of the offence, and was not reciting the number she saw in the photograph.