



# THE UPDATE

Issue #10 September 2, 2005

## BAIL - BAIL PENDING APPEAL - "FRIVOLOUS" APPEAL - BAIL DENIED

*R. v. Garcia* - July 18, 2005 Alta.  
C.A. per Berger, J.A.:

Application for bail pending appeal from conviction on charges including unlawful confinement and sexual assault. Primary ground of appeal being the alleged inadequacy of judge's Reasons as per *Sheppard* [2002] 1 S.C.C. 869.

### Held: Bail denied.

"The trial judge did not run afoul of ... *Sheppard* ... The trial judge ... was alive to *W.D.* [1991] 1 S.C.R. 742. He cautioned himself in that regard. He referred to the inconsistencies in the testimony of the complainant, but concluded that she was a credible witness whose testimony could be relied upon". Frivolous appeal.

**G. Stranway** - Defence Counsel

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## CHARTER - 11(B) - DELAY - 47 MONTHS - DELAY DUE TO REMOVAL OF DEFENCE COUNSEL BECAUSE OF CONFLICT - NO STAY

*R. v. Polo* - July 7, 2005 Alta. Q.B.  
per Clackson, J.:

*Askov* stay application. Drug related offences. 47 month total delay. Large portion of delay caused by Crown application to remove defence counsel due to conflict. Defence had met with a Crown witness, and may have discussed the identity of the informant. Crown removal application successful.

### Held: Stay application denied.

Defence counsel was in a potential conflict, and given his refusal to withdraw, the Crown was duty bound to bring the removal application. Only 3.5 months of total 47 month delay solely attributable to the Crown.

**M. Bolton** - Defence Counsel

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## SENTENCE - MISCHIEF - ACCUSED SET SMALL FIRE AT GAS STATION - 9 MONTHS JAIL

*R. v. Turtle* - June 30, 2005 Alta.  
Prov. Ct. per McDonald, P.C.J.:

Accused pled guilty to drive while disqualified and mischief. Originally charged with arson. While at a gas station, accused lit a small puddle of gasoline on fire. Fire put out quickly by others. Previous mischief conviction.

### Held: 10 months jail.

9 months imposed in relation to mischief. "It goes without saying that the fire at the gas station caused a dangerous situation ... Had the fire ignited the vapours from the pump there could have been a major explosion".

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**SENTENCE - DRUGS - IMPORTING COCAINE - 12 YEARS JAIL**

*R. v. Overacker* - July 13, 2005  
Alta. C.A. per O’Leary, J.A.;  
Brooker and Martin, J. - Trial  
Judge: Hogan, P.C.J.:

Crown appeal from 8 year jail sentence imposed after accused pled guilty to importing cocaine. 30 year old accused with no record who acted as a courier, found in possession of 152 pounds of pure cocaine crossing into Canada from the USA. Cooperative with police, and provided information that led to arrest of an individual higher in the organization. Early guilty plea.

**Held: Appeal allowed. 12 year jail sentence imposed.**

Deterrence and denunciation paramount: *Cirone* (1989), 43 C.C.C. (3d) 228 (Alta. C.A.). “The importation of highly addictive drugs like cocaine in such large quantities has a significantly harmful effect on society and must be discouraged”.

**J. Kelly** - Defence Counsel



**SENTENCE - SEXUAL ASSAULT - 13 YEAR OLD COMPLAINT LURED VIA INTERNET - CSO IMPOSED**

*R. v. Pritchard* - July 14, 2005  
Alta. C.A. per Fraser, C.J.A.,  
Cairns and Brooker, J. - Trial  
Judge: LeGrandeur, P.C.J.:

Crown appeal from 30 month probationary sentence imposed after accused pled guilty to sexual assault. 19 year old accused had intercourse with 13 year old girl that he met via internet.

**Held: Appeal allowed. 2 year CSO imposed.**

Actual jail sentence in range of 14-18 months would have been appropriate but for accused being “well into” psychiatric treatment. Deterrence and denunciation paramount. “Using the Internet to lure a child into sexual activity is, unfortunately, an emerging concern in today’s society. The Courts must do what they can to try to protect child victims from this predatory conduct”.

**I. Hess** - Defence Counsel



**YOUTHS - SENTENCE - 39(1)(B) YCJA - CUSTODIAL SENTENCES**

*R. v. B.A.O* - July 8, 2005  
Alta.Prov. Ct. per Ho, P.C.J.:

Accused pled guilty to being unlawfully at large, contrary to s. 145(1)(b) C.C.. Issue as to whether custodial sentence available under s. 39(1)(b) YCJA. Accused previously convicted of breaching non-custodial sentences.

**Held: Custodial sentence available.**

“Section 39(1)(b) is not ambiguous. It clearly enables the court to impose a custodial sentence where the young person has failed to comply with past non-custodial sentences, if such a custodial sentence would otherwise be appropriate under the Act. The above interpretation does not result in double jeopardy to the accused.”

**K. McGowan** - Defence Counsel



*Anderson Dawson Knisely Stevens & Shaigec*  
Suite 300, 9924-106 Street, Edmonton, Alberta, T5K 1C4  
Tel: (780)424-9058 Fax: (780) 425-0172  
[www.adkscrimlaw.com](http://www.adkscrimlaw.com)