



# THE UPDATE

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## CHARTER - 7 - DISCLOSURE - MISSING STATEMENTS AND ACCOUNTING RECORDS - STAY OF PROCEEDINGS

**R. v. Moore** - Mar. 30, 2006 ABPC 102 per Lamoureux, PCJ:

Accused charged with theft from employer. Police failed to disclose will-say statements and accounting records. No reason provided to Court for the failure to disclose. Police officer ultimately brought the documents to Court on the day of the stay application.

### **Held: Stay of proceedings.**

“What is striking is that the very documents ... were actually in the possession of the investigating police officer ... it is not correct to conclude that such disclosure on the day of the Application deals with the second aspect of *Stinchcombe* ... the prejudice to the integrity of the judicial system ... The failure to provide such documents until an application is launched for Charter relief surely makes a mockery of *Stinchcombe*”.

**M. Bates** - Defence Counsel

## IMPAIRED DRIVING - CARE OR CONTROL - SLEEPING IN DRIVER'S SEAT - ACQUITTAL ENTERED

**R. v. Cove** - Apr. 11, 2006 ABQB 264 per Park, J:

Appeal from conviction on care or control charge. Impaired accused found asleep in his vehicle. Vehicle was not running, and accused testified as to a number of steps required to start the vehicle and set it in motion. Trial judge found presumption was rebutted, but convicted on basis of actual care or control.

### **Held: Appeal allowed, acquittal.**

“There were a number of steps, which had to be undertaken by Cove, to put the vehicle into motion. None of these acts ... could be done accidentally ... Any one of those steps would require intention .. The facts involved here do not point either by direct evidence to a risk of dangerousness or by a reasonably drawn inference of a risk of dangerousness”. Authorities reviewed.

**J. Bascom** - Defence Counsel

## LURING - 172.1(1)(c) CC - WHAT CROWN MUST PROVE RE: ACCUSED'S LEVEL OF INTENT

**R. v. Legare** - Apr. 3, 2006 ABQB 248 per Agrios, J:

Accused charged with luring a child via a computer – s. 172.1(1)(c) CC. 32 year old accused had explicit sexual conversations with 12 year old complainant through “electronic chat”. Accused and complainant never met, and accused never intended to arrange a meeting.

### **Held: Acquittal.**

Crown must prove an intention to lure the child for the purpose enumerated in s. 172.1(1)(c) – i.e. sexual interference or touching. “The Crown need not prove the accused actually intended to carry out the enumerated secondary offence, but the Crown does need to prove the accused intended to lure the child for that purpose.”

**L. Stevens** - Defence Counsel

**SENTENCE - ROBBERY AND AGGRAVATED ASSAULT - DEBT COLLECTION - 12 MONTHS JAIL**

*R. v. Simpson* - Apr. 6, 2006 ABCA 115 per Russell, Gallant, Read, JA - T Judge: Mitchell, PCJ:

Crown appeal from sentences of 12 months jail plus probation in relation to two accused who pled guilty to robbery and aggravated assault. Offences motivated by desire to collect a \$1000 debt arising from unpaid rent. Vicious beating with a table leg, as well as kicks to the head. Serious lacerations and bruising to the face.

**Held: Appeal dismissed.**

Offences far more serious than “a typical mugging case”. However, trial judge accepted accused’s genuine remorse, positive PSRs and progress in rehabilitation. Sentences were on the low end of the scale, but not unfit.

**W. Raponi, D. Bottos** -  
Defence Counsel

**SENTENCE - SEXUAL INTERFERENCE - INTERCOURSE WITH 13 YEAR OLD - 6 YEARS JAIL**

*R. v. Deck* - Mar. 28, 2006 ABCA 92 per Hunt, Marshall, Watson, JA - T. Judge Adilman, PCJ:

Defence appeal from 6 year sentence imposed for sexual interference. 37 year old accused lured a 13 year old girl (who was low functioning) via the internet. Ultimately, the accused twice had unprotected intercourse with the girl.

**Held: Appeal dismissed.**

Trial judge erred in finding a 4 year starting point applied for sexual interference, given that in the present case the offence was committed by a stranger and there was no breach of trust. However, given the aggravating factors, including the grooming of a vulnerable complainant, the 6 year sentence was not unfit. Authorities reviewed.

**H. Brubaker** - Defence Counsel

**SENTENCE - SHOPLIFTING - LENGTHY RELATED RECORD - 36 MONTHS JAIL EXCESSIVE - TIME SERVED**

*R. v. Ha* - Apr. 3, 2006 ABCA 110 per O’Brien, Sulatycky, Mahoney, JA - T. Judge: Lamoureux, PCJ:

Defence appeal from 18 month jail sentence imposed for shoplifting. Two incidents wherein accused stole Tylenol and a winter jacket. 40 days pre-trial custody. Lengthy related record.

**Held: Appeal allowed, time served.**

“The judge over-emphasized the need for denunciation and deterrence and as a result the sentence is excessive. The sentence is not proportionate to the gravity of the offences and the degree of responsibility ... the sentences are unduly long and harsh.

**N. D’Souza** - Defence Counsel

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