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1. Outstanding Charges on Sentencing: S.C.C.

[R. v. Angelillo](#), 2006 SCC 55 is an important case on sentencing procedure under [s. 725](#) of the *Criminal Code*. In limited circumstances, a sentencing court can consider a pending charge on sentencing. First, the pending charge has to be relevant, for example, to rebut a claim that the conduct being sentenced on was isolated or that the offender is a good candidate for rehabilitation. Second, the court must not lose sight that it is sentencing on conduct that the person has been convicted of, not that for which he is awaiting trial. Third, if the accused disputes the post-offence conduct, the Crown must prove the facts beyond a reasonable doubt. In this context, the majority makes a general comment with respect to the presumption of innocence:

The presumption does not constitute a general exclusionary rule of evidence that precludes the admission of all extrinsic evidence relevant to sentencing for the offence in issue on the basis that it might establish the commission of another offence. This does not mean that the offender has no procedural protection where extrinsic evidence is concerned. There are a number of other principles that assure the offender's right to a fair trial.

2. S.C.C. Grants Leave: Right to Silence and Evidence of Breach

The Supreme Court of Canada has just granted leave to appeal in two cases from the British Columbia Court of Appeal:

- [R. v. Singh](#), 2006 BCCA 281 (CanLII) - Did the police breach his right to silence by continuing to question the accused after he asserted his right to silence?
 - [R. v. McIvor](#), 2006 BCCA 343 (CanLII) - Whether a report from a conditional sentence supervisor supports a finding of a breach of conditional sentence if it doesn't contain a signed witness statement from a person with first-hand knowledge of the circumstances of the alleged breach?
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3. Deemed Convictions Under HTA

Recent amendments to [The Highway Traffic Act](#) that we reported on in the [May 2006](#) issue of this Update were proclaimed on December 16, 2006 (except s. 2 of the amending legislation which has not yet been proclaimed.) The effect of the new [s. 264\(1.4\)](#) is that a person who pleads or is found guilty of Category A or B offences as defined in [s. 264\(1\)](#) of that Act and receives a conditional or absolute discharge is deemed to have been convicted of the offence for the purposes of [s. 264](#) (relating to automatic suspensions.)

4. Words of Wisdom from Justice Rothstein

The [December 14, 2006 issue](#) of Eugene Meehan, Q.C.'s SCC LawLetter includes comments from Justice Marshall Rothstein as part of a presentation on the theme of "Anatomy of Failure" in litigation. The comments, as summarized by Mr. Meehan, are humorous and worth review by every litigator.

5. Thanks to eLaw Volunteers

Thank you to the volunteers who help in providing the content for the *eLaw Criminal Law Update* each month: Kathy Bueti, Mary Goska, Sarah Inness, Chris Mainella, Rehka Malaviya and Baerbel Langner Pennell. If you're interested in becoming an eLaw volunteer, please contact Karen Dyck, Competence Counsel by phone at 942-5571 or by email to: kdyck@lawsociety.mb.ca.

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