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**1. Quid Pro Quo for a Confession: S.C.C.**

The Supreme Court in [R. v. Spencer](#), 2007 SCC 11 addresses the issue of the voluntariness of a confession. The accused confessed to 18 robberies after asking for more lenient treatment for his girlfriend and being permitted visits with her. He was denied visits with his girlfriend until he provided a partial confession. The court considered whether the hope of leniency for the accused's girlfriend and the promise of a visit with her rendered the statement inadmissible.

The Supreme Court of Canada examined the strength of the inducement and the *quid pro quo* aspect of the confession:

A promise renders a statement involuntary only if the quid pro quo provides a strong enough inducement to raise a reasonable doubt about whether the will of the suspect was overborne. Accordingly, while a quid pro quo is an important factor in establishing the existence of a threat or promise, it is not by itself determinative. It is the strength of the inducement, having regard to the particular individual and his or her circumstances, that is to be considered in the overall contextual analysis into the voluntariness of the accused's statement.

The Supreme Court of Canada followed the test for admissibility set out in [R. v. Oickle](#), 2000 S.C.C. 38 (CanLII) and rejected the test set out in [R. v. Paternak](#) 1995 CanLII 6245 (AB C.A.) on the grounds that *Paternak* overstated the test in *Oickle* in failing to make reference to the *quid pro quo* or to the reasonable doubt standard.

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**2. Charge to Jury and Calling the Court's Witnesses: C.A.**

In [R. v. Prince](#), 2007 MBCA 15 (CanLII), the court discusses the obligation of trial judges to explain to the juries not only the law on the difference between murder and manslaughter but also to draw to the jury's attention the key facts that would relate to the resolution of the issue of intent. As well, in *obiter*, the court comments on the factors a court ought to consider prior to calling its own witnesses. In this case, the court was met with a request by both counsel to call witnesses. The Court of Appeal commented that:

...the principle that a judge should only rarely call a witness is still applicable. Even upon the joint request of counsel, a judge ought not to call a witness, in my opinion, unless she is satisfied:

1. that the evidence will not otherwise be adduced;

2. that the evidence is admissible; and
  3. that the evidence is important, perhaps essential, to a material issue in the case and to ensure that justice is done.
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### **3. Recusal of Crown: Q.B.**

The court in [R. v. Kinal](#), 2007 MBQB 26 (CanLII) considers a motion by the accused for recusal of the Crown in a situation where an affidavit sworn by a Crown was before the court and the credibility of the deponent was likely to be challenged by cross-examination. The court confirms the general rule that a lawyer cannot be both lawyer and witness in the same case and finds that it applies to the Crown and that outside counsel must be engaged to act on the motion to dismiss for delay in order to "protect and preserve the unique role of the legal profession."

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### **4. Communicating for What Purposes?**

The accused in [R. v. Baumgarthuber](#), 2006 CanLII 45735 (MB P.C.) was charged under [s. 213 \(1\) \(c\)](#) of the Criminal Code that he "did communicate with another person for the purposes of engaging in prostitution." The court considers whether the charge has been properly drafted, so that it accurately reflects the conduct of the accused, and finds that "the accused was communicating for the purpose of obtaining the sexual services of a prostitute. That is what he should have been charged with. There is no evidence that he was communicating for the purpose of engaging in prostitution." The court goes on to consider whether the charge should be amended to conform to the evidence and finds that to do so in this case would result in an injustice.

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### **5. Point in Time Searches of Federal Laws**

[Federal statutes](#) are now searchable online with a new "point-in-time" feature. Previously, the federal statute website would delete repealed provisions when amendments were made. For a detailed description of this feature, see The Law Society of Saskatchewan's [March 2007 Benchers' Digest](#) (at page 6.)

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### **6. Drugs, Dogs, Noses and The Supreme Court of Canada**

The Manitoba Bar Association's Constitutional and Human Rights Section is presenting the CLE program, [Drugs, Dogs, Noses and The Supreme Court of Canada](#) in The Law Society of Manitoba classroom at 12:00 p.m. on Friday, April 27, 2007. For details and to register, please contact the [MBA](#).

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