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Supreme Court At Odds on Parameters of Police Search

A divided (4-3) court found a forced entry into a dwelling house by a police tactical team conducting a drug raid to be reasonable in [R. v. Cornell](#), 2010 SCC 31. The majority held that the police had well-grounded concerns that the use of less intrusive methods would pose safety risks to the officers and occupants of the house and might result in the destruction of evidence. The minority view that the accused's *Charter* rights were breached is clear from the opening paragraph of the dissent (para.46), which describes the event in graphic detail. The opposing views are outlined in more detail in a recent article from [The Court](#):

- [R. v. Cornell: Accused Challenges Reasonableness of Search Warrant Execution](#) by Christine Kellowan.

Mistaken Belief No Defence to Luring Charge Absent an Objective Evidentiary Basis: SCC

In [R. v. Levigne](#), 2010 SCC 25 the Supreme Court upheld the internet luring conviction of a 46 year old accused who communicated by computer with an undercover police officer posing as a 13 year old boy. Building on the interpretation of s.172.1 developed in [R. v. Legare](#), 2009 SCC 56, the court finds that an accused's belief that the person was not underage will afford a defence only if the accused took reasonable steps to ascertain the age of the interlocutor, as required by s. 172.1(4). In this case, the evidence was clear that the accused had taken no

steps to ascertain the actual age of the person with whom he was communicating, despite that person's insistence that he was only 13. The following article discusses the case:

- [Internet Sex Crimes: Further Development on the Interpretation on s. 172.1 of the Criminal Code](#) by Christine Kellowan, posted July 19, 2010 on The Court.

Balancing Reviewability and Enforceability: MBCA

The Manitoba Court of Appeal denied the accused's application for release pending determination of his cocaine trafficking conviction appeal in [R. v. Oddleifson \(J.N.\)](#), 2010 MBCA 78. Although the accused had only a minor criminal record and had been on judicial interim release for six years without incident, the court found the circumstances "insufficient to give precedence to the principle of reviewability over the need to respect immediate enforceability of the judgment..." Of particular concern under the public interest component of s. 679(3)(b) was the unchallenged connection between the accused's conduct and organized crime.

Recent Q.B. Decisions

In [R. v. J.J.H.](#), 2010 MBQB 177 the court orders that the accused, who was 14 at the time he murdered his foster mother and sister, be sentenced as a youth to the maximum 7 year sentence without credit for the three years served prior to trial.

In [R. v. Seaman](#), 2010 MBQB 181, a drive over 80 conviction appeal, the court rejects the accused's arguments that his s.11(b) and s.8 *Charter* rights were breached and that his breath samples were not taken "as soon as practicable" after his arrest.

Court Notices

Two recent court notices pertain to criminal law practice:

- [Re: Court of Appeal Rules, Amendment](#) - describes a recent change to the Court of Appeal Criminal Rules; and
- [Re: Criminal Trial Court Scheduling Reform for Winnipeg](#) - describes the new criminal trial court scheduling process implemented by the Court of Queen's Bench effective September 8, 2010. Two new forms are required: [Consent and Acknowledgment of Trial Date\(s\)](#) and [Designation of Counsel](#).

Drug Trafficking Convictions Could Mean Automatic Licence Suspensions

[Bill 7](#), *The Highway Traffic Amendment Act (Suspending Drivers' Licences of Drug Traffickers)*, received Royal Assent on June 17, 2010 and will come into force upon proclamation. The bill adds drug trafficking to the list of Category A offences under s. 264 of *The Highway Traffic Act*. Those convicted of Category A offences receive a driver's licence suspension of one year for a first offence and a longer suspension for any subsequent offence that occurs within ten years.

Questioning Get Tough on Crime Legislation

Leo Singer explores the impact of the federal government's get tough on crime agenda in the article [Law and Order](#), from the July/August edition of the Canadian Bar Association's *National* magazine. Although endorsed by politicians and the public, this comprehensive overhaul of sentencing policy is criticized by many, including criminologists, legal theorists and defence lawyers, who argue it is both costly and ineffective. The [National Criminal Justice section](#) of the Canadian Bar Association has made many representations to government on the proposed legislative changes, including two recent submissions:

- [Bill C-4 Youth Criminal Justice Act Amendments](#) - June 2010;
- [Impaired Driving](#) - May 2010.

Criminal Justice Publications

These recent publications contain useful information for criminal law practitioners:

- [*Solitary Confinement*](#) by Ken Strutin, published August 10, 2010 on [LLRX](#), is a comprehensive guide to current research and thinking about the physical, psychological and legal implications of isolation as punishment, and the policy issues behind continuing this practice in the light of national and international standards and human rights declarations.
- The summer edition of [*Voir Dire*](#), the CBA [National Criminal Justice section](#) newsletter, contains articles on:
 - [*Truth in sentencing: Bill C-25*](#)
 - [*Malicious prosecution suits against Crown attorneys*](#)
 - [*Section 11\(b\): Time for Change?*](#)
 - [*The evolution of aboriginal and treaty rights. and the criminal law: Is there a disconnect?*](#)
- [*Crossing the border with old convictions*](#), a *Lawyers Weekly* article by Rosanna Berardi, discusses the growing problems of Canadians and other foreign nationals being refused entry to the United States due to old criminal convictions. The author notes that seemingly minor offences can become big challenges, especially since the regulations to the Immigration and Nationality Act do not recognize foreign pardons. The bottom line: Criminal defence lawyers must consider the immigration consequences of a criminal conviction and should be able to advise clients whether a conviction qualifies under the petty offence exception.
- [*R. v. Carpenter \(2010\): The BC Court of Appeal Clarifies the Appropriate Standard of Proof for Determining the Admissibility of Similar Fact Evidence*](#) by Cris Best, an article concerning a decision on which the SCC recently denied leave to appeal, posted July 16, 2010 on The Court.

Crown Defence Conference

The Eighth Annual Crown Defence Conference will be held September 16-17, 2010 at the Victoria Inn, Winnipeg. Topics to be addressed include Sexual Tourism and Other War Crimes; Reasonable Suspicion v. Reasonable and Probable Grounds; Grant and Suberu; and YCJA-KGB Statements. Out-of-town speakers include Professor David Paccioco and Peter Kremer, The Hague. For more information or to register contact Heather Reay at 985-8189.

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