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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Reasons for Sentence
Before the Honourable Judge Chen
November 16, 2006

REGINA

v

CHUI LAU

Counsel for the Crown

L. Dumbrell

Counsel for the Defence

N. Neaman

[1] **THE COURT:** I will accede to the joint submission. I rarely depart from a joint submission, but let me say this. We are still in the Crown's case, so I did not hear any evidence from Mr. Lau. However, I heard a lot of submissions from Mr. Lau; applications for adjournments, submissions at voir dices. I have some concern as to Mr. Lau's credibility and character.

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[2] This was not a small operation. Between these two Informations, there were nearly a thousand infringing DVDs, in which copyright existed, that were offered for sale. People, customers, members of the public, who went into his store, could get these infringing copies of DVD movies. They were not sold to people that he knew intimately, they were sold to the people who were doing the undercover operation. There were a combination of 50,000 blank DVDs and CDs in his possession. There are 76 counts on one Information, seven counts on the other Information. Each of those counts involved a different title, so there are a large number of titles involved. How many copies Mr. Lau sold of each title, no one knows.

[3] This is theft. Mr. Neaman is correct; it is a widespread practice and because of that, some people perhaps may not look at it as one would regard theft of other items. But the concept of intellectual property is a very important one in our society. Intellectual property protects creativity. It protects original ideas and creates property out of those ideas, enabling people who come up with those ideas to be rewarded for being able to originate and create. That concept is very important to the evolution and progress of our society. Indeed, what differentiates a progressive society or

a society with a higher standard of living from other societies is the level of original thinking, creativity, inventiveness. There is a societal interest involved here which, in my view, is very important. In my view, this kind of theft constitutes a very serious offence, more serious than a theft of some other material item or property because it strikes at the heart of what differentiates a progressive, creative society from one that is not.

[4] I am concerned that Mr. Lau has a prior offence for which he was sentenced to pay a fine of \$1,000 per count for six counts in March 2004 for the same offence, selling or renting an infringing copyright under the *Copyright Act*. It is true that one of these Informations was not sworn until after that conviction, but involved offences that predated that conviction. I acknowledge that. However, the other Information containing the 76 counts, for which you have pled guilty of the same offence, occurred after this conviction. You say you did not make a lot of money, but you went back and continued doing it.

[5] You are very fortunate that your counsel has been able to secure a joint submission with respect to sentencing on your behalf. Had they not done so, I would have considered much more serious penalty for you. As Mr. Neaman says, this is a

widespread practice. You got caught. But it is exactly that kind of situation that calls out for general deterrence. Some kind of message needs to be sent to the community that this is a serious offence.

[6] I am very concerned at your attitude. When I gave you an opportunity to address the Court, you said this all happened because you had a conflict with a manager of the mall. Mr. Lau, this all came about because you indulged in criminal behaviour.

[7] I can assure you that if you come before me again on such an offence, even if it is a joint submission, I would not consider a sentence as lenient as this one because clearly you were not deterred on the last occasion.

[8] I sentence you to pay a fine of \$5,000. Notwithstanding my scepticism as to your financial situation, based on the fact that you are an investor client when you came here and would have had to disclose substantial assets to qualify for that status, I will give you one year to pay. You will pay this fine of \$5,000 on or before November the 16th, 2007.

[9] In addition, I sentence you to a 12-month custodial sentence. I will accede to the joint submission that it be served in the community. Hopefully you will not do this

again. I do have some concerns, but since it is a joint submission, I will accede to it this time. Based solely on your counsel's submissions and those of Crown, I will be satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing.

[10] I order that you serve this sentence of 12 months in the community subject to your complying with the conditions of this order, which are keep; the peace and be of good behaviour, appear before the Court when required to do so by the Court, report to a conditional supervisor today and thereafter as and when and in the manner directed by the supervisor, remain within the Province of British Columbia unless written permission to go outside the province is obtained from the supervisor, provide the supervisor with your current residential address and contact telephone numbers and not change that residential address or those contact telephone numbers without the prior written consent of your supervisor, comply with the terms of a curfew requiring you to remain in your residence between the hours of 11:00 p.m. and 7:00 a.m. seven days per week for the entire period covered by this order, attend to the door and answer to the telephone should

your supervisor or any peace officer telephone or attend at your residence for the purpose of monitoring this curfew.

[11] In addition, I order that all DVDs and CDs that were seized will be forfeited to the Crown.

[12] MS. DUMBRELL: Thank you, Your Honour. I do have forfeiture orders in that regard for each Information separately. I've shown them to my friend and I would ask that Your Honour sign those.

[13] THE COURT: Before you go, Mr. Lau, let me tell you this. This 12-month conditional sentence is not probation, it is a custodial sentence. You are allowed to serve that custodial sentence in the community subject to your compliance with every term of this order. The most important term of that order is to keep the peace and be of good behaviour. That means not to commit any further offences.

[14] If you should breach any term of this order, the first option for the Court, and the first option that I would consider, would be to have you spend the rest of this conditional sentence order in a jail, in a real jail, until it is finished. Do you understand that?

[15] THE ACCUSED: I do.

[16] THE COURT: All right.

(SENTENCE CONCLUDED)