



WHEN BORROWING BECOMES STEALING...

How many times has a judge heard an accused person defend himself against a charge of theft by simply alleging, without providing specific details, that he didn't really want to steal the object in question, but only borrow it from the legitimate owner with the intention of eventually returning it? In certain specific instances, the court has given the accused the benefit of reasonable doubt and acquitted him, but in many instances, the accused was convicted of the theft with which he was originally charged.

In order to understand how an act which, at first glance, may appear to be someone simply borrowing an object can, based on the facts, become a criminal offence, it is essential to define the concept of theft under the Canadian *Criminal Code*, a concept that is found, in particular, in section 322. Simply stated, theft is an act in which someone "*fraudulently and without colour of right takes... anything... with intent to deprive, temporarily or absolutely, the owner of it.*" Moreover, within the meaning of the *Criminal Code*, the theft is committed as soon as the object in question is moved.

In practical terms, I will be considered to have committed a theft if I take an object that doesn't belong to me when I do not have a justification authorizing me to have the object in my possession, even if I take it for a very brief period and even if I intend to eventually return it to the owner.

In this context, what does "*without colour of right*" mean? Simply stated, it refers to any legal or legitimate reason authorizing a person to have in their possession an object of which they are not the owner or authorized holder. For example, this will be the case if I ask my neighbour to borrow his ladder and he agrees to lend it to me for the duration of the work on my home. In such a situation, there is an agreement between me and the actual owner, which constitutes a valid reason justifying my possession of the object in question. Using the same example, it is important to note that the mere fact that I do not return the ladder to my neighbour at the end of the agreed upon time will not result in a charge of theft, unless there is fraudulent intent, since the delay in returning the ladder may be explained, for example, by the fact that I simply forgot or that it was impossible for me to return it when agreed.

However, the situation will be entirely different if I go to my neighbour's house and take his ladder without his authorization or knowledge. In such a case, I could be charged with theft.

Similarly, if I borrow an object from its legitimate owner using a false pretext in order to get his consent, when my real intention is not to return the object to him or to return it only when I decide to do so, I will have "*fraudulently*" obtained possession of an object that does not belong to me, which could lead to a charge of theft or fraud, as the case may be.

As we have seen, when borrowing an object, basic prudence suggests that we obtain the prior authorization of the owner and agree with the owner on the terms and conditions of use and return of the object.

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* The information provided in this document is not a legal interpretation.

The masculine gender has been used to designate persons solely in order to simplify the text.