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Sentencing NetLetter™

A weekly current awareness service providing comprehensive coverage of all significant new Canadian common law court decisions on sentencing under the *Criminal Code* and other federal statutes (in English) added recently to Quicklaw™.

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Weekly issues are added every Wednesday.

TOPICS IN THIS ISSUE:

CRIMINAL LAW

Appeals

Evidence

Offences against Person and Reputation

SENTENCING

Fraudulent Transactions Relating to Contracts and Trade

Non-Criminal Code

Offences against Person and Reputation

Offences against Rights of Property

Offences against the Administration of Law and Justice

Sexual Offences, Public Morals, Disorderly Conduct and Nuisances

**** CRIMINAL LAW ****

APPEALS

Courts of Appeal

Criminal law -- Appeals -- From verdict -- Question of fact -- Question of law -- Leave to -- Appeal by Paris and Normand from conviction, and leave to appeal sentence, for possession of, and conspiracy to traffic in, cocaine, dismissed -- The trial judge's decision was supported by the facts, and the sentence was not demonstrably unfit.

R. v. Lajeunesse; [2006] O.J. No. 1445, LSEN/2006-267; Ontario Court of Appeal, K.N. Feldman, R.G. Juriansz and J.L. MacFarland J.J.A., April 12, 2006.

[Top](#)

EVIDENCE

Criminal law -- Evidence -- Hearsay rule -- Exceptions -- Application by the Crown for disposition on a breach of a conditional sentence order allowed and conditional sentence terminated -- Although the officer's evidence was primarily hearsay, pursuant to s. 742.6(9) of the Criminal Code, only a balance of probabilities was required and hearsay was sufficient to establish that proof -- Criminal Code, s. 742.6(9).

R. v. Rahime; [2006] A.J. No. 402, LSEN/2006-268; Alberta Court of Queen's Bench, Watson J., Oral Judgment: February 9, 2006, Filed: April 11, 2006.

[Top](#)

OFFENCES AGAINST PERSON AND REPUTATION

Criminal law -- Offences against person and reputation -- Motor vehicle offences -- Impaired driving or driving over the legal limit -- Breathalyzer or blood sample demand, including refusal -- The accused was convicted of refusing to provide a breath sample and given a \$600 fine and a one-year driving prohibition -- There was nothing in the evidence to suggest that the accused was disabled, confused or in any way misled that the demand was the reason why his Charter right was given and that he was subsequently given the opportunity to speak to a lawyer.

R. v. Gratto; [2005] N.S.J. No. 580, LSEN/2006-269; Nova Scotia Supreme Court, J.G. MacDougall Prov. Ct. J., October 4, 2005.

[Top](#)

** SENTENCING **

FRAUDULENT TRANSACTIONS RELATING TO CONTRACTS AND TRADE

Sentencing -- Fraudulent transactions relating to contracts and trade -- Fraud over \$5,000 -- Sentencing considerations -- Welfare fraud -- The offender wrongly received and used \$87,000 that he received from Human Resources Development Canada -- He claimed that he was not working due to a disability during the period in question but was actually employed as a teacher -- The fraud was perpetrated over 15 years -- The offender received an 18 month conditional sentence, to be served in the community.

R. v. Mousseau; [\[2006\] M.J. No. 128](#), LSEN/2006-270; *Manitoba Court of Queen's Bench, Clearwater J., January 13, 2006.*

Sentencing -- Fraudulent transactions relating to contracts and trade -- Fraud over \$5,000 -- Sentencing considerations -- Aggravating factors -- Deterrence -- General deterrence -- Denunciation -- No criminal record -- Seriousness of offence -- Offence involving breach of trust -- The four offenders were sentenced to terms of imprisonment ranging from two and a half years' to five years' imprisonment for several counts of fraud -- The offenders were all senior employees, officers or trustees of the hospital that they defrauded -- The offender who received the lengthiest sentence was a judge and this was an aggravating factor -- Breach of trust was also an aggravating factor -- The amount defrauded was \$900,000.

R. v. Stymiest; [\[2006\] N.B.J. No. 141](#), LSEN/2006-271; *New Brunswick Court of Queen's Bench - Trial Division, S.J. McNally J., March 31, 2006.*

[Top](#)

NON-CRIMINAL CODE

Sentencing -- Non-Criminal Code -- Controlled drugs and substances -- Possession for the purpose of trafficking -- Other substances -- Sentencing considerations -- Time already served -- Pre-sentence report -- Criminal record -- Lengthy -- Addicts -- Drugs -- Seriousness of offence -- The accused was found guilty of possession of crack cocaine for the purposes of trafficking and was given a two-year sentence, less credit for time served, yielding a resulting sentence of 21 months -- The accused was also given a lifetime weapons prohibition -- The court took into account an unfavourable presentence report, the seriousness of the offence given the nature of the drug and the amounts found in the accused's possession, and the accused's lengthy prior record.

R. v. D.D.F.; [\[2006\] O.J. No. 1291](#), LSEN/2006-272; *Ontario Superior Court of Justice, B.J. Wein J., March 3, 2006.*

Sentencing -- Non-Criminal Code -- Young Offenders/Youth Criminal Justice Act -- Particular sanctions -- Young persons -- Closed or secure custody -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- Time already served -- Guilty plea -- Criminal record -- Lengthy -- Remorse -- Seriousness of offence -- Age of accused -- The two young offenders pleaded guilty to six counts of robbery and were given adult sentences of eight years' imprisonment.

R. v. A.J.O.; [\[2005\] O.J. No. 5942](#), LSEN/2006-273; *Ontario Superior Court of Justice, D.W.E. Salmers J., November 17, 2005.*

[Top](#)

OFFENCES AGAINST PERSON AND REPUTATION

Courts of Appeal

Sentencing -- Offences against person and reputation -- Assaults -- Assault -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Sentencing considerations -- Mitigating factors -- Guilty plea -- Appeal from consecutive sentences of two months for assaulting a prison guard and three months for weapon possession, both of which occurred as a result of the same incident, allowed -- Sentence varied so that the two sentences would run concurrent to one another -- The two sentences, having arisen out of the same transaction, should run concurrent to each other -
- The guilty plea should have been taken into account in mitigation as it resulted in a saving of time and expense, and the appellant should have been given some credit for not trying to lie his way out of the offence, or give a version of events that minimized his guilt.

R. v. Downey; [\[2006\] A.J. No. 389](#), LSEN/2006-274; *Alberta Court of Appeal, O'Brien J.A. and Sulatycky and Mahoney JJ. (ad hoc)*, Oral judgment: March 28, 2006, Filed: April 11, 2006.

Sentencing -- Offences against person and reputation -- Assaults -- Aggravated assault -- Particular sanctions -- Imprisonment -- Probation -- Sentencing considerations -- Denunciation -- Rehabilitation -- Pre-sentence report -- No criminal record -- Guilty plea -- Remorse -- Seriousness of offence -- Co-operation with authorities -- Character evidence -- Employment -- Appeal by Crown from sentence imposed for robbery and aggravated assault -- Although the term of imprisonment was at the low end of the scale, the sentences were not demonstrably unfit -
- Criminal Code, s. 268.

R. v. Simpson; [\[2006\] A.J. No. 390](#), LSEN/2006-275; *Alberta Court of Appeal, Russell J.A. and Gallant and Read JJ. (ad hoc)*, Oral judgment: March 21, 2006, Filed: April 6, 2006.

Sentencing -- Offences against person and reputation -- Homicide -- Manslaughter -- Particular sanctions -- Imprisonment -- Parole ineligibility -- Sentencing considerations -- Rehabilitation -- Risk of re-offending -- Criminal record -- Sexual offences against children -- Health (incl. mental health) -- Seriousness of offence -- Appeal by CW from conviction and sentence for manslaughter and sexual interference dismissed -- Despite the victim consuming drugs on her own, CW provided the drugs and contributed substantially to her consumption of them -- Although the sentence might have been severe, it was justified based on CW's criminal record and lack of rehabilitation.

R. v. C.W.; [\[2006\] O.J. No. 1392](#), LSEN/2006-276; *Ontario Court of Appeal, E.E. Gillese, R.A. Blair and H.S. LaForme J.J.A.*, April 11, 2006.

Other courts

Sentencing -- Offences against person and reputation -- Assaults -- Assault -- Particular sanctions -- Imprisonment -- Sentencing considerations -- Aggravating factors -- Mitigating factors -- Deterrence -- Denunciation -- Risk of re-offending -- Protection of the public -- Submissions -- Submissions by Crown -- Submissions by accused and counsel for accused -- Victim impact statements -- Pre-sentence report -- Criminal record -- Related -- Guilty plea -- Remorse -- Family background -- The accused received a global sentence of two years imprisonment for assault, theft under personation and fraud -- Court found his related criminal record and possible recidivism were aggravating factors, and his drug habit, family background, and guilty plea were mitigating factors.

R. v. Chahine; [2005] A.J. No. 1946, LSEN/2006-277; Alberta Provincial Court, Pepler Prov. Ct. J., December 5, 2005.

Sentencing -- Offences against person and reputation -- Assaults -- Assault causing bodily harm -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Consecutive sentences -- Prohibition orders -- Firearms -- DNA sample -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- Totality principle -- Criminal record -- Lengthy -- Unrelated -- Breach of recognizance -- Seriousness of offence -- Family obligations -- Character evidence -- Employment -- Narwal given a global sentence of 15 years and two months imprisonment for kidnapping, unlawful confinement, extortion, assault causing bodily harm, and possession of a dangerous weapon -- Court found his criminal record, the seriousness of the offences, his role in the offences, and the fact they were against three different persons on three separate occasions, warranted a sentence on the high-end of the scale.

R. v. Narwal; [2006] B.C.J. No. 770, LSEN/2006-278; British Columbia Supreme Court, Stromberg-Stein J., Oral judgment: March 30, 2006, Released: April 11, 2006.

Sentencing -- Offences against person and reputation -- Kidnapping, hostage taking and abduction -- Kidnapping -- Forcible confinement -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Consecutive sentences -- Prohibition orders -- Firearms -- DNA sample -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- Totality principle -- Criminal record -- Lengthy -- Unrelated -- Breach of recognizance -- Seriousness of offence -- Family obligations -- Character evidence -- Employment -- Narwal given a global sentence of 15 years and two months imprisonment for kidnapping, unlawful confinement, extortion, assault causing bodily harm, and possession of a dangerous weapon -- Court found his criminal record, the seriousness of the offences, his role in the offences, and the fact they were against three different persons on three separate occasions, warranted a sentence on the high-end of the scale.

R. v. Narwal; [\[2006\] B.C.J. No. 770](#), LSEN/2006-279; *British Columbia Supreme Court, Stromberg-Stein J., Oral judgment: March 30, 2006, Released: April 11, 2006.*

Sentencing -- Offences against person and reputation -- Harassment and threatening -- Uttering threat to cause death or serious bodily harm -- Particular sanctions -- Imprisonment -- Intermittent -- Probation -- Sentencing considerations -- Mitigating factors -- Criminal record -- Lengthy -- Guilty plea -- Sentencing of accused convicted of uttering threats and mischief -- Accused sentenced to ten days consecutive on each of the threat charges -- On mischief charge, the accused was fined \$350 -- Accused was permitted to serve sentence intermittently -- Sentence reduced to reflect travel to institution remote from jurisdiction.

R. v. Walker; [\[2006\] O.J. No. 1359](#), LSEN/2006-280; *Ontario Court of Justice, B.J. Frazer J., February 8, 2006.*

[Top](#)

OFFENCES AGAINST RIGHTS OF PROPERTY

Courts of Appeal

Sentencing -- Offences against rights of property -- Robbery and extortion -- Robbery -- Particular sanctions -- Imprisonment -- Probation -- Sentencing considerations -- Denunciation -- Rehabilitation -- Pre-sentence report -- No criminal record -- Guilty plea -- Remorse -- Seriousness of offence -- Co-operation with authorities -- Character evidence -- Employment -- Appeal by Crown from sentence imposed for robbery and aggravated assault -- Although the term of imprisonment was at the low end of the scale, the sentences were not demonstrably unfit -- Criminal Code, s. 344(b).

R. v. Simpson; [\[2006\] A.J. No. 390](#), LSEN/2006-281; *Alberta Court of Appeal, Russell J.A. and Gallant and Read JJ. (ad hoc), Oral judgment: March 21, 2006, Filed: April 6, 2006.*

Other courts

Sentencing -- Offences against rights of property -- Theft and offences resembling theft -- Theft under \$5,000 (previously \$1,000) -- Having in possession -- Possession of property obtained by crime over \$5,000 -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Sentencing considerations -- Deterrence -- Specific deterrence -- Criminal record -- Lengthy -- Related -- Guilty plea -- Family obligations -- Offender given six months' imprisonment for mischief, theft under \$5,000 and possession of property over \$5,000 obtained through crime.

R. v. Giroux; [\[2006\] A.J. No. 384](#), LSEN/2006-282; Alberta Provincial Court, Mitchell Prov. Ct. J., January 18, 2006.

Sentencing -- Offences against rights property -- Theft and offences resembling theft -- Theft under \$5,000 (previously \$1,000) -- Offences in relation to credit cards -- Forgery and offences resembling forgery -- Forgery or uttering false documents -- Particular sanctions -- Imprisonment -- Sentencing considerations -- Aggravating factors -- Mitigating factors -- Deterrence -- Denunciation -- Risk of re-offending -- Protection of the public -- Submissions -- Submissions by Crown -- Submissions by accused and counsel for accused -- Victim impact statements -- Pre-sentence report -- Criminal record -- Related -- Guilty plea -- Remorse -- Family background -- The accused was sentenced to a global sentence of two years imprisonment for assault, theft under, personation and fraud -- Court found his related criminal record and possible recidivism were aggravating factors, and his drug habit, family background, and guilty plea were mitigating factors.

R. v. Chahine; [\[2005\] A.J. No. 1946](#), LSEN/2006-283; Alberta Provincial Court, Pepler Prov. Ct. J., December 5, 2005.

Sentencing -- Offences against rights of property -- Forgery and offences resembling forgery -- Fraudulent transactions relating to contracts and trade -- Fraud over \$5,000 -- Particular sanctions -- Discharge -- Conditional discharge -- Sentencing considerations -- No criminal record -- Guilty plea -- Loss of status -- The 50-year-old accused pleaded guilty to fraud and tendering forged documents, and was given a conditional discharge -- The court considered the fact that restitution had already been made of the \$70,000, that the accused pleaded guilty and that this was his first offence, and the stigma the accused had suffered in his small community.

R. v. Carvell; [\[2005\] O.J. No. 5923](#), LSEN/2006-284; Ontario Court of Justice, J.A. Fontana J., December 14, 2005.

Sentencing -- Offences against rights of property -- Robbery and extortion -- Robbery -- Particular sanctions -- Young persons -- Closed or secure custody -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- Time already served -- Guilty plea -- Criminal record -- Lengthy -- Remorse -- Seriousness of offence -- Age of accused -- The two young offenders pleaded guilty to six counts of robbery and were given adult sentences of eight years' imprisonment.

R. v. A.J.O.; [\[2005\] O.J. No. 5942](#), LSEN/2006-285; Ontario Superior Court of Justice, D.W.E. Salmers J., November 17, 2005.

[Top](#)

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE

Sentencing -- Offences against the administration of law and justice -- Misleading justice -- Public mischief -- Particular sanctions -- Imprisonment -- Concurrent sentences -- Sentencing considerations -- Deterrence -- Specific deterrence -- Criminal record -- Lengthy -- Related -- Guilty plea -- Family obligations -- Offender given six months' imprisonment for mischief, theft under \$5,000 and possession of property over \$5,000 obtained through crime.

R. v. Giroux; [\[2006\] A.J. No. 384](#), LSEN/2006-286; Alberta Provincial Court, Mitchell Prov. Ct. J., January 18, 2006.

Criminal law - Offences against the administration of law and justice -- Breach of recognizance or probation -- The allegation that the accused had breached his conditional sentence order by leaving his parents' home was dismissed -- The accused had a reasonable excuse in that he was asked to leave the home by his parents.

R. v. Tree; [\[2006\] N.S.J. No. 126](#), LSEN/2006-287; Nova Scotia Provincial Court, C.F. MacDonald Prov. Ct. J., March 20, 2006.

[Top](#)

SEXUAL OFFENCES, PUBLIC MORALS, DISORDERLY CONDUCT AND NUISANCES

Courts of Appeal

Sentencing -- Sexual offences, public morals, disorderly conduct and nuisances -- Sexual offences -- Sexual interference -- Particular sanctions -- Imprisonment -- Parole ineligibility -- Sentencing considerations -- Rehabilitation -- Risk of re-offending -- Criminal record -- Sexual offences against children -- Health (incl. mental health) -- Seriousness of offence -- Appeal by CW from conviction and sentence for manslaughter and sexual interference dismissed -- Despite the victim consuming drugs on her own, CW provided the drugs and contributed substantially to her consumption of them -- Although the sentence might have been severe, it was justified based on CW's criminal record and lack of rehabilitation.

R. v. C.W.; [\[2006\] O.J. No. 1392](#), LSEN/2006-288; Ontario Court of Appeal, E.E. Gillese, R.A. Blair and H.S. LaForme J.J.A., April 11, 2006.

Sentencing -- Sexual offences, public morals, disorderly conduct and nuisances -- Sexual offences -- Sexual assault -- Sentencing considerations -- Denunciation --

Appeal by accused from sentence of two years less one day's imprisonment for sexual assaults dismissed -- Judge did not overemphasize denunciation.

R. v. Hackett; [\[2006\] O.J. No. 1388](#), LSEN/2006-289; *Ontario Court of Appeal, E.E. Gillese, R.A. Blair and H.S. LaForme JJ.A.*, April 10, 2006.

Other courts

Sentencing -- Sexual offences, public morals, disorderly conduct and nuisances -- Offences tending to corrupt morals -- Child pornography -- Particular sanctions -- Probation -- Conditions -- Victim fine surcharge -- Conditional sentence -- DNA sample -- Sentencing considerations -- Deterrence -- Denunciation -- Risk of re-offending -- Submissions -- Joint submissions -- Pre-sentence report -- No criminal record -- Health (incl. mental health) -- Character evidence -- Education -- Offender given thirteen month conditional sentence, followed by twelve months' probation, for possession of child pornography -- Criminal Code, s. 163.1(4).

R. v. Tylek; [\[2006\] A.J. No. 391](#), LSEN/2006-290; *Alberta Provincial Court, Fradsham Prov. Ct. J.*, March 17, 2006.

Sentencing -- Sexual offences, public morals, disorderly conduct and nuisances -- Sexual offences -- Sexual exploitation -- Particular sanctions -- Discharge -- Conditional discharge -- DNA Sample -- Miscellaneous sanctions -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- Seriousness of offence -- The accused, who was convicted of sexual exploitation, was given a 30 month sentence, which the court felt would balance the need for deterrence and denunciation with the provision of treatment and rehabilitation of the accused, which were a real factor and possibility -- The accused was ordered to register under the Sex Offender Information Registration Act.

R. v. W.E.G.; [\[2006\] B.C.J. No. 822](#), LSEN/2006-291; *British Columbia Provincial Court (Criminal Division), Cowling Prov. Ct. J.*, March 13, 2006.

Sentencing -- Sexual offences, public morals, disorderly conduct and nuisances -- Sexual interference -- Sentencing considerations -- Sexual offences against children - - Offence involving breach of trust -- No criminal record -- The offender was sentenced to 15 months' imprisonment for sexually assaulting his stepdaughter over a period of 13 years -- The assaults consisted of sexual touching.

R. v. M.J.M.; [\[2006\] N.B.J. No. 144](#), LSEN/2006-292; *New Brunswick Court of Queen's Bench - Trial Division, W.T. Grant J.*, February 6, 2006.

[Top](#)



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