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Contents

• Case Law Highlights

- [CL 1] Aggravating Factors in Sentencing for Breach of Recognizance
- [CL 2] Antique Firearms are not just Old Guns
- [CL 3] Bad Character in Joint Trials
- [CL 4] Assessing Prejudice for Evidence of Discreditable Conduct
- [CL 5] Bail and Detention Reviews under s. 680
- [CL 6] Exigent Circumstances and s. 11 CDSA
- [CL 7] Constitutional Validity and Appeals in Dangerous Offender Proceedings
- [CL 8] Appellate Intervention in Sentence Appeals
- [CL 9] Restitution Orders and Estate Administration
- [CL 10] The Specifics of Search Authority
- [CL 11] Describing the Place to be Searched
- [CL 12] Interprovincial Consequences as a Sentencing Factor
- [CL 13] The Peaceful Character of the Victim in Self-defence Cases
- [CL 14] The Retrospectivity of s. 380.2

Case Law Highlights

[CL 1] — Aggravating Factors in Sentencing for Breach of Recognizance

The fact that a breach of recognizance occurred in a domestic context and involved prohibited contact with a witness on the eve of trial are aggravating factors in determining a fit sentence for breach of recognizance: *R. v. Allen* (November 10, 2015), Doc. CA 43055, 2015 CarswellBC 3916 (B.C. C.A.)

See, *Tremeeear's Annotated Criminal Code, Criminal Code, s. 718.2, "General Principles"*.

[CL 2] — Antique Firearms are not just Old Guns

To determine whether a firearm is an “antique firearm” under s. 84(1) involves consideration of more than just the year in which the firearm was manufactured. To qualify under the definition, the firearm must also *not* be designed, or re-designed, to discharge rim-fire or centre-fire ammunition: *R. v. Kennedy* (January 4, 2016), Doc. AR 15-30-08331, 2016 CarswellMan 3 (Man. C.A.)

See, *Tremeeear's Annotated Criminal Code, Criminal Code, s. 84, “antique firearm”*.

[CL 3] — Bad Character in Joint Trials

Where one accused in a joint trial leads bad character evidence about a co-accused, instructions to the jury about the prohibited use of the evidence must make it clear that P cannot rely on the bad character evidence to advance its case substantively or even on the issue of credibility: *R. v. Sheriffe* (December 14, 2015), Doc. C56713; C57008, 2015 CarswellOnt 19023 (Ont. C.A.)

See, *Watt's Manual of Criminal Evidence, §32.02, “Jury Instructions on Evidence of Bad Character of Co-accused”*.

See, *Watt's Manual of Criminal Jury Instructions, Final 23-E, “Previous Convictions as Evidence of Disposition (Propensity of Co-accused)”*.

[CL 4] — Assessing Prejudice for Evidence of Discreditable Conduct

Relevant factors to consider in assessing the potential prejudice of evidence of discreditable conduct include, but are not limited to:

- i. the degree of discreditable conduct disclosed by the evidence;
- ii. the extent to which the proposed evidence may support an inference of guilt on the sole basis of bad character;
- iii. the extent to which the evidence may confuse issues; and
- iv. D's ability to respond to the evidence.

R. v. Folker (January 25, 2016), Doc. 14/02, 2016 CarswellNfld 23 (N.L. C.A.)

See, *Watt's Manual of Criminal Evidence, §35.01, “General Principles Governing Evidence of Extrinsic Misconduct”*.

[CL 5] — Bail and Detention Reviews under s. 680

The review conducted by a court of appeal under s. 680 is broad and undertaken without deference to the original decision granting or denying interim release: *R. v. Hahn* (January 18, 2016), Doc. CACR 2664, 2016 CarswellSask 30 (Sask. C.A.)

See, *Tremeeear's Annotated Criminal Code, Criminal Code, s. 680*.

[CL 6] — Exigent Circumstances and s. 11 CDSA

Section 11(7) CDSA does not define “exigent circumstances”. The phrase, as used there, has the same meaning as it does in s. 529.3 of the *Criminal Code* and at common law:

- i. the police have grounds to obtain a s. 11 CDSA search warrant; and
- ii. the police believe, on reasonable grounds, that there is imminent danger that evidence located on the premises will be destroyed or lost if the police do not enter and secure the premises without delay.

R. v. Phoummasak (January 19, 2016), Doc. C59559, 2016 CarswellOnt 576 (Ont. C.A.)

See, Tremeeear's *Annotated Criminal Code*, CDSA, s. CDA 11, "Conditions Precedent for Issuance of Warrant".

[CL 7] — Constitutional Validity and Appeals in Dangerous Offender Proceedings

A declaration of constitutional invalidity of s. 753(1) is a decision under Part XXIV that may be appealed to the court of appeal by the Attorney General under s. 759(2) of the *Criminal Code*: *R. v. Boutilier* (January 21, 2016), Doc. CA 42891, 2016 CarswellBC 91 (B.C. C.A.)

See, Tremeeear's *Annotated Criminal Code*, *Criminal Code*, s. 759.

[CL 8] — Appellate Intervention in Sentence Appeals

Appellate courts afford great deference to sentencing decisions. An error in principle, a failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention, but only where it appears that the error had an impact on the sentence the trial judge imposed: *R. v. Chukwu* (December 10, 2015), Doc. CACR 2597, 2015 CarswellSask 864 (Sask. C.A.)

See, Tremeeear's *Annotated Criminal Code*, *Criminal Code*, s. 687, "The Standard of Appellate Review: General Principles".

[CL 9] — Restitution Orders and Estate Administration

D's status as the residual beneficiary under V's will does not preclude a sentencing judge from making a restitution order in favour of the estate. Estate administrators will determine what steps, if any, should be taken to enforce the restitution order through the civil process under s. 741(1) and consider the ultimate beneficiary of any proceeds from the enforcement process in that determination: *R. v. Hooyer* (January 19, 2016), Doc. C59492, 2016 CarswellOnt 575 (Ont. C.A.)

See, Tremeeear's *Annotated Criminal Code*, *Criminal Code*, s. 738, "General Principles", s. 741.

[CL 10] — The Specifics of Search Authority

Prior judicial authorization to search a specific location for specific things generally includes a reasonable examination of anything at that location within which the specific things might be found without specific prior authorization to search anything at that location. Personal computers not specifically listed in the warrants require specific search authority: *R. v. Fedan* (January 25, 2016), Doc. CA 42318, 2016 CarswellBC 112 (B.C. C.A.)

See, Tremeeear's *Annotated Criminal Code*, *Criminal Code*, s. 487, "Location of Search: Computers and Other Electronic Devices".

[CL 11] — Describing the Place to be Searched

An adequate description of the place to be searched is a fundamental requirement of a valid search warrant. What constitutes an adequate description will vary with the location to be searched and the circumstances of each case. Street addresses, without more, are inadequate for multi-unit, multi-use buildings: the description must adequately differentiate the units to be searched within the building: *R. v. Ting* (January 20, 2016), Doc. C58999, 2016 CarswellOnt 624 (Ont. C.A.)

See, Tremeeear's *Annotated Criminal Code*, *Criminal Code*, s. 487, "Warrant: s. 487(3)".

[CL 12] — Interprovincial Consequences as a Sentencing Factor

The interprovincial repercussions of an offence — possession of heroin for the purpose of trafficking — is an aggravating factor on sentence: *R. v. Chukwu* (December 10, 2015), Doc. CACR 2597, 2015 CarswellSask 864 (Sask. C.A.)

See, Tremeeear's Annotated Criminal Code, Criminal Code, s. 718.2, "General Principles".

[CL 13] — The Peaceful Character of the Victim in Self-defence Cases

P may adduce evidence of V's peaceful disposition when the evidence is relevant to the defence of self-defence advanced by D. Evidence of V's peaceful disposition may be relevant to determine whether V was the aggressor. P may lead the evidence even if D has not attacked V's character, provided the probative value of the evidence exceeds its prejudicial effect: *R. v. Wiens* (January 26, 2016), Doc. CA 41140, 2016 CarswellBC 128 (B.C. C.A.)

See, Watt's Manual of Criminal Evidence, §33.02, "The Character of Deceased Persons in Homicide Cases: Evidence of Peaceable Character".

See, Watt's Manual of Criminal Jury Instructions, Final 74-B, "Self-defence (General Instruction)".

[CL 14] — The Retrospectivity of s. 380.2

The sanction authorized by s. 380.2 does not apply to frauds committed before the enactment of the section. The section does not operate retrospectively: *R. v. Hooyer* (January 19, 2016), Doc. C59492, 2016 CarswellOnt 575 (Ont. C.A.)

See, Tremeeear's Annotated Criminal Code, Criminal Code, s. 380.2.

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