

Criminal Law Update

Prepared For: Legal Education Society of Alberta

Update 2011

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For Presentation In:

Edmonton – May 19, 2011

Calgary – May 26, 2011

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This paper will summarize some of the more significant changes to the criminal law over the past few years, both in legislation and case law.

SENTENCING

The federal government has been extremely active in relation to sentencing reform as part of its “law and order” agenda, while the Alberta Court of Appeal has made waves in an important case that sets out to reboot sentencing in this province.

Pre-Trial Detention Credit

On Feb. 22, 2010 s. 719(3) of the Criminal Code came into effect, limiting credit for any pre-trial/disposition detention to a maximum of one day credit for each one day of detention. Part of the *Truth in Sentencing* bill, the provision was implemented to address a perception that inmates were “playing” the system to reap the routine 2 for 1 or, occasionally, even 3 for 1 credit that judges were providing for pre-trial detention. This judicial practice was a recognition of harsh conditions within the nation's remand centres. Sub-section (3.1) does permit, where “circumstances warrant” the judge to increase the credit to 1.5 to 1.

Conditional Sentences

Conditional sentence availability has been methodically excised from the *Criminal Code* beginning in 2005 when minimum jail sentences were imposed for child sexual offences, effectively removing conditional sentences as an option for these offences.

On November 30, 2007 s. 742.1 of the **Code** was amended to exclude conditional sentences for “serious personal injury offences” as defined by section 752, as well as terrorism or criminal organization offences prosecuted by way of indictment and punishable by a sentence of 10 years jail or more. “Serious personal injury” offences are defined in s. 752 as,

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of

another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

So in addition to removing conditional sentences as an option for the remainder of sexual offences, (ii) appears to have removed it as an option for offences such as dangerous or impaired driving causing bodily harm or death.

On the horizon but not passed prior to the most recent dissolution of Parliament we can expect (in the event of a Conservative led government) the resurrection of C-42, an amendment which would eliminate “serious personal injury offences” as a criteria, replacing it with a general provision banning conditional sentences for any offence for which a 14 year maximum sentence exists, a lengthy list of drug and weapon offences prosecuted by indictment for which the maximum sentence is at least 10 years, all the existing excluded offence plus a few more. In total, over 30 new offences would be ineligible (including major property crimes involving breaches of trust) for conditional sentences. The expression “death by a thousand cuts” comes to mind.

Minimum Sentences

Impaired Driving (in force July 2, 2008):

- 1st offence, minimum penalty increased from \$600 to \$1000.
- 2nd offence, minimum penalty increased from 14 days in jail to 30 days.
- 3rd offence, minimum penalty increased from 90 days in jail to 120 days.

Gun Offences (in force May 1, 2008):

- 5 years for a 1st offence and 7 years on a second or subsequent offence for eight specified offences (attempted murder, discharging a firearm with intent, sexual assault with a weapon, aggravated sexual assault, kidnapping, hostage taking, robbery and extortion) involving the actual use of firearms, when the offence is gang-related, or if a restricted or prohibited firearm such as a handgun is used.