

Publisher's Note

2019 — Release 3
Previous release was 2019-2

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Canadian Sentencing Digest

QUANTUM SERVICE

This release brings you a wealth of new case law digests covering a wide range of offences. The following are of particular interest and importance:

Case Law Highlights

- **Offences against the Criminal Code — Offences against the Person and Reputation — Manslaughter** — In the midst of a tumultuous domestic relationship, the accused and the deceased engaged in an argument, wherein the accused had used one hand to defend himself against the deceased's knife, and the other hand to apply pressure to the deceased's neck. During this struggle, they fell to the floor and deceased ultimately stopped breathing. The accused buried the deceased's remains in the basement and devised an elaborate ruse to deflect suspicion away from himself. Over two years had passed before a Mr. Big investigation led to the apprehension of the accused for the killing. Though he was found guilty of manslaughter, the sentencing judge noted that the accused had earlier offered to plead guilty to this charge, and also that he had no criminal record. The Crown appealed the sentence of five years' incarceration for manslaughter and two consecutive years for interfering with human remains. The Court of Appeal found that the accused had

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continued to apply force to the deceased's neck after her loss of consciousness and cessation of breathing. Further, the appellate court viewed to be aggravating both the act of domestic violence and the cold and calculated cover-up. As well, the Court of Appeal found the manner with which the deceased's remains had been dealt to be egregious. Consequently, the appellate court held the sentencing judge to have applied ranges that were too low, and replaced the unfit sentences with seven years' incarceration for manslaughter plus three consecutive years for interference with human remains: *R. v. Shyback*, 2018 ABCA 331, 2018 CarswellAlta 2287 (Alta. C.A.).

- **Offences against the Criminal Code — Offences against the Person and Reputation — Flight from Peace Officer** — Rather than pull his vehicle over in a routine traffic stop, the accused accelerated, hit the police vehicle, gave a brief chase, crashed, fled on foot, and, after apprehension, threatened at least twice to have his gang kill the police. He also later failed to comply with a curfew condition of his release on bail. The sentencing judge initially determined a sentence of a year to be proper, but, since the accused would then be deported without the right of appeal, imposed a total sentence of four months and twenty-five days for the flight, the threats and the breach of recognizance. The Crown successfully appealed the sentence. The Court of Appeal found the sentencing judge to have erred by imposing a sentence that was not proportionate to the gravity of the offences and the responsibility of the offender — the accused had a lengthy criminal record, was on probation after a prior period of incarceration, and created a danger in a residential neighbourhood by deliberately striking the police vehicle and fleeing. Having found the accused's moral culpability to be high, and guided by the paramount principles of deterrence and denunciation, the appellate court adjusted the sentences to ten months for flight, two consecutive months for the threats, and one consecutive month for the breach of recognizance: *R. v. Yare*, 2018 MBCA 114, 2018 CarswellMan 486 (Man. C.A.).
- **Offences against the Criminal Code — Offences against the Person and Reputation — Assault Causing Bodily Harm** — The accused committed a brutal assault on his fellow hockey player, leaving the latter with severe injuries. The sentencing judge granted a conditional discharge, imposed three years' probation that included an order for 240 hours of community service, and ordered the accused to donate \$4,000 to a designated charity. The Crown appealed in order to seek an intermittent sentence of 30-60 days. The Court of Appeal noted that appellate intervention was limited — the sentencing judge had taken into account all relevant mitigating and aggravating factors, and, despite the accused

having benefitted from a lenient sentence, the sentence imposed did not warrant intervention. The appellate court further viewed that the sentence sought by the Crown not to have been substantially different than the one imposed by the sentencing judge. Consequently, the Court of Appeal dismissed the Crown's appeal: *R. c. Mailhot*, 2018 QCCA 1772, 2018 CarswellQue 9427 (Que. C.A.).

- **Offences against the Criminal Code — Fraudulent Transactions relating to Contract and Trade — Fraud: Over \$5,000** — While working for a non-profit organization as a bookkeeper, the accused defrauded it of at least \$200,000 over a period of two years, by forging cheques issued to herself. As a consequence of this fraud, the organization, which had been providing a wide range of social services to the community for over thirty years, was forced to close due to impecuniosity. The Crown and defence agreed to a four-year period of incarceration and a full restitution order, but the sentencing judge imposed an additional year of incarceration to this. The accused appealed, arguing that she could not pay restitution. The Court of Appeal dismissed the appeal — in breach of trust thefts, restitution may remain appropriate even if the likelihood of repayment were minimal, since it would both deny the accused the fruits of her crime and empower the non-profit organization with the ability to seek recovery of its losses. The appellate court also held an order for full restitution to be within the sentencing judge's discretion. With respect to the joint sentencing submission, the Court of Appeal noted that the principles involved in upholding joint submissions need not be engaged, since agreement between the Crown and defence had only been reached after the trial had been completed and the accused had been found guilty of fraud over \$5,000: *R. v. Dunkers*, 2018 BCCA 363, 2018 CarswellBC 2565 (B.C. C.A.).