

Publisher's Note

2017 — Release 2

Previous release was 2017-1

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Neuberger

Assessing Dangerousness

This release features updates to the case law and commentary in Chapters 2 (Dangerousness and Risk Prediction in Dangerous Offender Hearings), 3 (Preliminary Considerations), 4 (The Dangerous Offender Regime), and 10 (The 2008 Amendments).

Case Highlights

- **The Dangerous Offender Regime — Making a Dangerous Offender Application — Violent Offences — “Serious Personal Injury Offence”** — The accused pleaded guilty to criminal harassment, several counts of uttering death threats, and several counts of breaching the terms of his probation. The Crown sought a dangerous offender designation and indeterminate sentence. The Court agreed on the issue of his designation but held “[b]y the thinnest of margins” that a sentence of four years (minus available pre-trial detention) followed by a maximum LTSO would provide a reasonable expectation of public protection: *R. v. Francis*, [2017] O.J. No. 2482 (Ont. Ct. Jus.).
- **The Dangerous Offender Regime — Making a Dangerous Offender Application — Violent Offences — Threat** — The accused was convicted of aggravated assault and assault with a weapon. The Crown sought a dangerous

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offender designation, relying on an earlier conviction in 2004 of aggravated assault to assert that the statutory requirement of a “pattern of behavior” had been met. The trial judge agreed, and Mr. Walsh was designated a dangerous offender and given an indeterminate sentence. On appeal the Court acknowledged that two convictions including the predicate offence can constitute a pattern within the meaning of the section, but held that where only two offences are considered the conduct must be “remarkably similar”. The Court held that this requirement had not been met: *R. v. Walsh*, [2017] B.C.J. No. 985 (B.C.C.A.).

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