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SCC Endorses Flexible Approach to Mandatory Minimums

[*R. v. Nasogaluak*](#), 2010 SCC 6 is a noteworthy sentencing decision that "bucks the trend toward tough-on-crime sentences" and endorses a more flexible approach to mandatory minimum sentences. The court confirms that sentencing judges have broad discretion under [s.718](#) of the *Criminal Code* to use sentence reductions to address police misconduct, but in doing so they must respect the mandatory minimums set out in the *Code*. And, despite earlier case law to the contrary ([*R. v. Ferguson*](#), 2008 SCC 6), the court leaves open the possibility that [s.24\(1\)](#) of the *Charter* may be used to override statutory minimums in exceptional cases where there is "some particularly egregious form of misconduct by state agents." (para. 64) The following articles discuss the import of the decision:

[*Top court bucks tough-on-crime trend*](#), *Globe and Mail*, February 19, 2010;

[*Mandatory\(?\) Minimums: R. v. Nasogaluak*](#) by Ahsan Mirza, posted February 22, 2010 on The Court.

Applying **Grant** Analysis: SCC

The Supreme Court restored the accused's conviction on charges of possessing a loaded firearm in [*R. v. Beaulieu*](#), 2010 SCC 7, confirming their conclusion in [*R. v. Grant*](#) that considerable deference is owed to a trial judge's assessment under [s.24\(2\)](#) of the *Charter*. The trial judge had declined to exclude evidence (a concealed gun found by police while they were installing a listening device in the accused's car), even though the search exceeded the scope of judicial authorization and violated [s.8](#) of the *Charter*.

Leave to Appeal Sentence: MBCA

Justice Freedman summarizes the test for granting leave to appeal sentence in [R. v. Amin](#), 2010 MBCA 15. He finds that the applicant failed to meet the threshold test of showing "an arguable case that the judge made an error in principle, or that the length of the sentence is clearly excessive," but grants leave on the additional ground that, in not inviting the accused to speak before imposing sentence, the judge failed to comply with [s. 726](#) of the *Criminal Code*. In support of the latter ground of appeal the accused submitted an affidavit setting out new reasons for his involvement in the offence which he stated he would have told the sentencing judge if he had been given an opportunity to speak. While not determining the admissibility of the affidavit, the court found that it gave the accused an arguable case for a successful appeal under s.726.

Drug Trafficking Sentence: MBQB

[R. v. Basarowich](#), 2010 MBQB 42, a recent sentencing decision involving trafficking and possess firearms charges, reviews the factors to be considered in sentencing serious drug offenders. The judge noted that there were few mitigating factors (the accused appeared to be motivated by greed rather than need) and that deterrence and denunciation were paramount considerations. She imposed a nine year global sentence.

Provincial Court Directive re: In-Person Sentencing

The Provincial Court of Manitoba issued the directive [Prisoner Transport: In-Person Dispositions Where Crown is Seeking a Penitentiary Term](#) on February 26, 2010. It requires that in-custody accused facing significant sentences (two years or more) appear in person for the sentencing.

Questioning DNA Evidence

Ken Strutin's article [DNA Identification Evidence in Criminal Prosecutions](#), published March 7, 2010 on LLRX, highlights and links to recent publications that underscore the need for closer scrutiny and weighing of DNA profiling. It provides an overview of nuclear DNA typing, a sampling of the kinds of discretionary decisions that analysts may confront when interpreting crime scene samples, and a list of current disputes in forensic DNA typing.

Bench & Beer Series

Make sure to attend [Preparation for Criminal Trials in Provincial Court and Queen's Bench](#), the first program in our new Bench & Beer Series for junior lawyers, in which judges, masters and senior practitioners share their insights in an informal, after work setting complete with beer and pizza. The program takes place March 18 from 5:00 to 7:00 p.m.

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