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Sentencing Considerations in Multiple Offence Cases: MBCA

In two recent appeals involving "spree" robberies fuelled by drug addictions the Court of Appeal summarizes the approaches to follow in determining and imposing sentence in respect of multiple offences. Following the outlined procedures will, the court hopes, make the process more transparent and allow for proper appellate review of sentences.

In [*R. v. Taylor*](#), 2010 MBCA 103 the court emphasizes the need to impose a sentence for each separate offence regardless of whether the sentence is to be served consecutively or concurrently, and notes that the totality principle applies only when consecutive sentences are imposed. The court dismisses the accused's appeal of his eight year sentence on six robbery related offences.

In [*R. v. Wozny*](#), 2010 MBCA 115 the court rejects the Crown's plea for better direction concerning sentencing on spree offences (para. 43), but goes on to review how the directions the court has given in previous cases should be applied. The court identifies the three factors that must be at the forefront of consideration by a sentencing judge when determining and imposing sentence in respect of multiple offences: whether the sentence will be concurrent, consecutive, or a combination; proportionality and totality; and transparency. (para. 44) The court notes that it is within the discretion of the sentencing judge to impose a concurrent sentence for offences that are separate and distinct if the offences can be seen as forming a single continuous transaction and describes a "crime spree" as follows:

While there has been no uniform definition of what is meant by a crime spree fuelled by or carried out to feed an addiction, it would seem that it is a series of similar and recurring offences which are committed, if not continuously, within a sustained and relatively short period of time, for the purpose of obtaining resources necessary to feed an addiction. (para. 52)

The court rejects as impractical the Crown's suggestion that the judge should inquire into the moral culpability of the offender with respect to each separate offence.

Applying the outlined considerations to the facts the court increases the four year sentence for 17 robberies to seven years.

Legal Aid Funding Policy Challenge Inevitable: MBQB

The decision in [R. v. Grant](#), 2010 MBQB 258 (a *Charter* application in which it was argued that the accused's right to a fair trial on a high profile murder case was compromised by inadequate remuneration of counsel by Legal Aid) is a must-read for criminal lawyers. Although the court declined to review the reasonableness of Legal Aid's policy in the circumstances of this case (the accused was well represented by experienced counsel), it did not shut the door to future applications dealing with the issue. The court said:

... deference may be less necessary where an indigent accused is without counsel and where, given the seriousness and complexity of the prosecution, there is evidence that experienced and competent counsel refuse to accept the certificate because of the conditions attaching to that retainer. In such a case, ss. 7 and 11(d) of the *Charter* may be more clearly engaged as the alleged inadequacy of the conditions of the retainer would arguably inhibit the accused's ability to obtain state-funded counsel and, by extension, imperil his right to a fair trial. (para. 64)

New **Code of Professional Conduct** - Training Session for Defence Counsel

The Benchers have approved a new [Code of Professional Conduct](#) which came into effect on January 1, 2011. The new *Code* provides a clear, concise and updated set of rules by which lawyers will be expected to conduct themselves. All members of the profession will be required to complete some form of training on the *Code* within one year of its implementation. The Law Society will offer training in a number of formats, including in person training, online self-study, and teleseminars.

A special training session for criminal defence counsel will be held May 18, 2011 from 5:00 - 7:00 p.m. at the Law Society.

Submissions on Criminal Law Legislation: CBA

Josh Weinstein presented the CBA's [submission](#) on Bill S-10 (formerly Bill C-15), *An Act to Amend the Controlled Drugs and Substances Act*, to the Standing Senate Committee on Legal and Constitutional Affairs on Oct. 27, 2010. He argued that the complicated system of escalating mandatory minimum sentences for drug-related offences would not be an effective deterrent to crime. This [news release](#) summarizes the CBA's position.

The national Criminal Justice section published its report on [Bill C-5 International Transfer of Offenders Act amendments](#) in November 2010. It argues that the proposed legislation fails to recognize the practical reality that rehabilitating offenders in a manner consistent with Canadian values is key to ensuring safe communities.

Impaired Driving Primer - MBA Mid-Winter Program

At this year's MBA [Mid-Winter meeting](#) Judge Moar, Tim Killeen, Cynthia Devine, and Michael Connor will review the many issues that arise in the complicated area of impaired driving law. The program will take place from 2:00 - 4:00 p.m. on January 21, 2011. Contact the [MBA](#) for further details.

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