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2016

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Wayne K. Gorman
Provincial Court of Newfoundland and Labrador

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Gorman, Wayne K., "A Review of Decisions Rendered by the Supreme Court of Canada in Criminal Matters—January 1 to October 31, 2016" (2016). *Court Review: The Journal of the American Judges Association*. 554.
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A Review of Decisions Rendered by the Supreme Court of Canada in Criminal Matters—January 1 to October 31, 2016

Wayne K. Gorman

It is not every year that the Supreme Court of Canada reverses itself. However, as will be seen, this year it did.[1]

In this column I am going to review the decisions rendered by the Supreme Court of Canada in 2016 that involve criminal matters. The decisions are reviewed based on categories.

In 2016, the Supreme Court of Canada considered a multitude of issues involving criminal law, including defences, evidence, and sentencing. The Court also considered the application of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, to various criminal-law provisions and procedures. Interestingly, the Supreme Court reversed itself and set new guidelines for the right to be "tried within a reasonable time," as guaranteed by section 11(b) of the *Charter*.[2]

Let us start with the Supreme Court's consideration in 2016 of criminal offences.

OFFENCES

BESTIALITY

Section 160 of the *Criminal Code of Canada*, R.S.C. 1985, sets out the offence of bestiality. However, it does not define the elements of the offence.

In *R. v. D.L.W.*,[3] the Supreme Court concluded that the offence of bestiality requires proof of penetration. The Court held that the offence requires proof of "sexual intercourse between a human and an animal":

> The term "bestiality" has a well-established legal meaning and refers to sexual intercourse between a human and an animal. Penetration has always been understood to be an essential element of bestiality. Parliament adopted that term without adding a definition of it and the legislative history and evolution of the relevant provisions show no intent to depart from the well-understood legal meaning of the term. Moreover, the courts should not, by development of the common law, broaden the scope of liability for this offence, as the trial judge did. Any expansion of criminal liability for this offence is within Parliament's exclusive domain. In short, this case falls within *Stephen's* first category: our *Code* assumes the continuing existence of the common law definition of this crime.[4]

INFANTICIDE

Section 233 of the *Criminal Code* defines the offence of infanticide. The section refers to a requirement that the mind of a mother who kills her newly born child be "disturbed."

In *R. v. Borowiec*,[5] the Supreme Court held that the word "disturbed" in section 233 means "mentally agitated," "mentally unstable," or "mental discomposure."[6] The Court described the nature of the offence in the following manner:

> Infanticide, which is defined in s. 233 of the *Criminal Code*, is a form of culpable homicide and applies in the narrow set of circumstances where (1) a mother, by a wilful act or omission, kills her newborn child (under one year of age, as defined by the *Criminal Code, s.* 2) and, (2) at the time of the act or omission, the mother's mind is "disturbed" either because she is not fully recovered from the effects of giving birth or by reason of the effect of lactation: *B. (L.)*, [2011 ONCA 153,] at para. 58.[7]

Footnotes

1. In addition, in another 2016 decision, *R. v. K.R.J.*, 2016 SCC 31, 2016 CarswellBC 1999 (Can.), the Supreme Court decided to "restate" the constitutional formulation it had developed in *R. v. Rodgers*, 2006 SCC 15, [2006] 1 S.C.R. 554 (Can.), in relation to section 11(i) of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982* ("Any person charged with an offence has the right . . . if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.").
2. *See* R. v. Jordan, 2016 SCC 27, 2016 CarswellBC 1864 (Can.).
3. 2016 SCC 22, 2016 CarswellBC 1552 (Can.), decided June 9, 2016.
4. *Id.* ¶ 19.
5. 2016 SCC 11, 2016 CarswellAlta 502 (Can.), decided March 24, 2016.
6. *Id.* ¶ 35.
7. *Id.* ¶ 13.

The Supreme Court concluded that the disturbance "must be present at the time of the act or omission causing the 'newly-born' child's death and the act or omission must occur at a time when the accused is not fully recovered from the effects of giving birth or of lactation."[8]

PARTIES TO AN OFFENCE: AIDING AND ABETTING

Section 21(1) of the *Criminal Code* makes a person a party to an offence if they aide or abet another person in committing an offence.

In *R. v. Knapczyk*,[9] the Supreme Court adopted as correct the following comments made by the Alberta Court of Appeal:

> On the correct application of the legal principles to the facts found by the trial judge, it is an inescapable conclusion that the respondents aided and abetted the offence of trafficking through distribution. Their acts prevented or hindered interference with the accomplishment of a criminal act. In this way, the respondents provided assistance and encouragement to Mr. Caines in the commission of the offence of trafficking. There is a clear link between the respondents' acts and the commission of the offence.[10]

PROCEDURE

COMPETENCY OF COUNSEL

In *R. v. Meer*,[11] the Supreme Court reiterated the test it had set out in *R. v. G.D.B.*[12] for the setting aside of a conviction based upon alleged incompetence of defence counsel: "To succeed in setting aside a trial verdict on the basis of the ineffective assistance of counsel, the appellant must show 'first, that counsel's acts or omissions constituted incompetence and second, that a miscarriage of justice resulted.'"[13]

SENTENCING

PRE-SENTENCE CUSTODY

Section 719(3) of the *Criminal Code* allows a sentencing judge to "take in account" (or "credit") an offender for any time spent by the offender in pre-sentence custody. However, section 719(3.1) prohibits a sentencing judge from providing a credit for pre-sentence custody greater than one day for each day in pre-sentence custody if the offender was in custody because bail was denied "primarily because of a previous conviction of the accused."

In *R. v. Safarzadeh-Markhali*,[14] the Supreme Court held that this provision violated section 7 of the *Charter* [the "right to life, liberty and security . . . in accordance with the principles of fundamental justice"] because it was overbroad:

> I conclude that the portion of the *Truth in Sentencing Act* challenged in this appeal—the denial of any enhanced credit for pre-sentence custody to persons to whom bail is denied primarily because of a prior conviction—violates s. 7 of the *Charter* for another reason: it is overbroad. Laws that curtail liberty in a way that is arbitrary, overbroad or grossly disproportionate do not conform to the principles of fundamental justice: *Bedford v. Canada (Attorney General)*, 2013 SCC 72, [2013] 3 S.C.R. 1101 (S.C.C.), at para. 105. Mr. Safarzadeh-Markhali contends that the challenged provision violates all three of these principles. For the reasons that follow, I conclude that the challenged law is unconstitutionally overbroad, because its effect is to deprive some persons of liberty for reasons unrelated to its purpose. This conclusion makes it unnecessary to address whether the law is arbitrary or grossly disproportionate.[15]

JOINT SUBMISSIONS

In *R. v. Anthony-Cook*,[16] the Supreme Court of Canada considered joint submissions. In this case the accused pleaded guilty to the offence of manslaughter. Counsel presented a joint submission seeking the imposition of a period of 18 months' imprisonment. The trial judge rejected the submission and imposed a period of two years', less a day, imprisonment, followed by three years of probation.[17] The accused appealed. His appeal was dismissed by the British Columbia Court of Appeal. He appealed to the Supreme Court of Canada.

The Supreme Court allowed the appeal and imposed a period of 18 months' imprisonment. It set aside the probation order. The Supreme Court concluded that the sentence jointly submitted should have been imposed.

The Court held that, in assessing a joint submission, a Canadian sentencing judge must adopt a "public interest test." The Court described the test in the following manner:

> Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
>
> In *Druken*, at para. 29, the court held that a joint sub-

8. *Id.* ¶ 35.
9. 2016 SCC 10, 2016 CarswellAlta 504 (Can.), decided March 23, 2016.
10. Id. ¶ 1 [quoting the Court of Appeal's decision, R. v. Alcantara, 2015 ABCA 258, 2015 CarswellAlta 1475, ¶ 15 (Can. Alta.)].
11. 2016 SCC 5, 2016 CarswellAlta 78 (Can.), decided January 22, 2016.
12. 2000 SCC 22, [2000] 1 S.C.R. 520 (Can.).
13. *Meer*, 2016 SCC 5, ¶ 2.
14. 2016 SCC 14, 2016 CarswellOnt 5652 (Can.), decided April 15, 2016.
15. *Id.* ¶ 22.
16. 2016 SCC 43, decided October 21, 2016.
17. In Canada, a sentence of less than two years' imprisonment can be served in a provincial institution rather than a federal institution.

mission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19 (CanLII), at para. 56, when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.[18]

THE CHARTER OF RIGHTS AND FREEDOMS

SECTION 7

Section 7 of the *Charter* states: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

In *R. v. Cawthorne*,[19] a member of the Canadian Armed Forces was charged with an offence. He was acquitted, and the Minister of National Defence, as authorized by the *National Defence Act*, launched an appeal to the Supreme Court of Canada. The accused applied to quash the appeal, arguing that the principles of fundamental justice were breached on the basis that the Minister being a member of the Cabinet was not independent from political influence in making prosecutorial decisions.

The Supreme Court held that "a prosecutor—whether it be an Attorney General, a Crown prosecutor, or some other public official exercising a prosecutorial function—has a constitutional obligation to act independently of partisan concerns and other improper motives."[20] However, the Court stated that "partisan" is not "broadly synonymous with 'political.'"[21]

The Court concluded that Parliament's "conferral of authority over appeals in the military justice system on the Minister does not violate s. 7 of the *Charter*."[22] The Supreme Court indicated that the Minister of Defence, "like the Attorney General or other public officials with a prosecutorial function, is entitled to a strong presumption that he exercises prosecutorial discretion independently of partisan concerns. The mere fact of the Minister's membership in Cabinet does not displace that presumption."[23]

SECTION 8

Section 8 of the *Charter* prohibits "unreasonable" searches or seizures.

In *R. v. Saeed*,[24] the Supreme Court held that the taking of a penile swab from a suspect did not violate section 8 of the *Charter* because it constituted a valid search incidental to arrest, and, thus, any DNA evidence obtained from the swabbing was admissible:

> [W]hile a penile swab constitutes a significant intrusion on the privacy interests of the accused, the police may nonetheless take a swab incident to arrest if they have reasonable grounds to believe that the search will reveal and preserve evidence of the offence for which the accused was arrested, and the swab is conducted in a reasonable manner.[25]

However, the Supreme Court set out "a number of factors to guide police in conducting penile swabs incident to arrest reasonably":

1. The penile swab should, as a general rule, be conducted at the police station;
2. The swab should be conducted in a manner that ensures the health and safety of all involved;
3. The swab should be authorized by a police officer acting in a supervisory capacity;
4. The accused should be informed shortly before the swab of the nature of the procedure for taking the swab, the purpose of taking the swab, and the authority of the police to require the swab;
5. The accused should be given the option of removing his clothing and taking the swab himself, and if he does not choose this option, the swab should be taken or directed by a trained officer or medical professional, with the minimum of force necessary;
6. The police officer(s) carrying out the penile swab should be of the same gender as the individual being swabbed, unless the circumstances compel otherwise;
7. There should be no more police officers involved in the swab than are reasonably necessary in the circumstances;
8. The swab should be carried out in a private area such that no one other than the individuals engaged in the swab can observe it;
9. The swab should be conducted as quickly as possible and in a way that ensures that the person is not com-

18. 2016 SCC 43, ¶¶ 32-34.
19. 2016 SCC 32, 2016 CarswellNat 3179 (Can.), decided July 22, 2016.
20. *Id.* ¶ 24.
21. *Id.* ¶ 27.
22. *Id.* ¶ 33.
23. *Id.* ¶ 32.
24. 2016 SCC 24, 2016 CarswellAlta 1145 (Can.), decided June 23, 2016.
25. *Id.* ¶ 6.

pletely undressed at any one time; and

10. A proper record should be kept of the reasons for and the manner in which the swabbing was conducted.[26]

SECTION 11(I)

Section 11(i) of the *Charter* states that if the punishment for an offence is varied after a person commits an offence but before sentencing, the person is entitled to "the benefit of the lesser punishment."

In *R. v. K.R.J.*,[27] the Supreme Court considered whether provisions in the *Criminal Code* that allow a judge to prohibit an offender who committed a sexual offence from having contact with young persons (section 161(1)(c)) or using the Internet (section 161(1)(d)) applied to sentencing for an offence committed before their enactment. The Court decided to "restate" the definition of "punishment" it had formulated in *R. v. Rodgers*[28]:

> Thus, I would restate the test for punishment as follows in order to carve out a clearer and more meaningful role for the consideration of the impact of a sanction: a measure constitutes punishment if (1) it is a consequence of conviction that forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence, and either (2) it is imposed in furtherance of the purpose and principles of sentencing, or (3) it has a significant impact on an offender's liberty or security interests.[29]

The Supreme Court held that both provisions violated section 11(i) of the *Charter* because they "are a consequence of conviction, imposed in furtherance of the purpose and principles of sentencing, and they can have a significant impact on the liberty and security of offenders."[30] However, the Court found section 161(1)(d) to be constitutional because it constituted a reasonable limit "prescribed by law" that "can be demonstrably justified in a free and democratic society" in compliance with section one of the *Charter*.[31]

SECTION 11(B)

Section 11(b) of the *Charter* indicates that any "person charged with an offence has the right . . . to be tried within a reasonable time."

In *R. v. Jordan*,[32] the accused was charged with an offence in December 2008. His trial ended in February 2013. He applied for a stay of proceedings to be entered pursuant to section 11(b) of the *Charter* due to the delay.

The Supreme Court entered a stay of proceedings. In doing so, the Court indicated that it was rejecting the framework for section 11(b) that it had set out in *R. v. Morin*[33] (a balancing of factors). In its place, the Supreme Court created a new framework, which involves "a presumptive ceiling" beyond which delay from the date of the laying of the charge to the actual or anticipated end of the trial will be "presumed to be unreasonable," unless "exceptional circumstances" justify the time period involved. The Court held that the presumptive ceiling is 18 months for cases tried in the provincial court and 30 months for cases tried in the superior court (or cases tried in the provincial court after a preliminary inquiry). Delay attributable to or waived by the accused will not count towards the presumptive ceiling.[34]

In *R. v. Williamson*,[35] the accused was charged with a sexual offence in January 2009. His trial ended in December 2011. Applying the new framework it set out in *Jordan*, the Supreme Court entered a stay of proceedings. It held that "although this is a close case, the transitional exceptional circumstance does not apply and, therefore, the delay is unreasonable."[36]

In *R. v. Vassel*,[37] the accused was jointly charged with six other individuals. It took over three years to proceed to trial. The accused applied for a stay of proceedings, arguing that his right to be tried within a reasonable period of time as protected by section 11(b) of the *Charter* was breached. The Supreme Court entered a stay of proceedings. It held that "a more proactive stance on the Crown's part was required":

> In fulfilling its obligation to bring all accused to trial within a reasonable time, the Crown cannot close its eyes to the circumstances of an accused who has done everything possible to move the matter along, only to be held hostage by his or her co-accused and the inability of the system to provide earlier dates. That, unfortunately, is what occurred here.[38]

SECTION 12

Section 12 of the *Canadian Charter of Rights and Freedoms* prohibits "cruel and unusual treatment or punishment."

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26. *Id.* ¶ 78; *see* Don Stuart, *Saeed: A Pragmatic, Limited Police Power to Take Penile Swabs Without a Warrant*, 29 CRIM. REP. (7th) 51 (2016).
27. 2016 SCC 31, 2016 CarswellBC 1999 (Can.), decided July 21, 2016.
28. 2006 SCC 15, [2006] 1 S.C.R. 554 (Can.).
29. *K.R.J.*, 2016 SCC 31, ¶ 41. It is interesting to compare this decision with *Welch v. United States*, 136 S. Ct. 2476 (2016). In *Welch*, the Supreme Court of the United States, in considering whether constitutional decisions applied on a retroactive basis, adopted an approach based on procedural versus substantive decisions.
30. *K.R.J.*, 2016 SCC 31, ¶ 57.
31. Section one of the *Charter* indicates that it "guarantees the rights and freedoms set out" subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."
32. 2016 SCC 27, 2016 CarswellBC 1864 (Can.), decided July 8, 2016.
33. [1992] 1 S.C.R. 771 (Can.).
34. *See Jordan*, 2016 SCC 27, ¶ 105.
35. 2016 SCC 28, 2016 CarswellOnt 10704 (Can.), decided July 8, 2016.
36. *See id.* ¶ 25-30.
37. 2016 SCC 26, 2016 CarswellAlta 1213 (Can.), decided June 30, 2016.
38. *Id.* ¶ 7.

In *R. v. Lloyd*,[39] the accused was convicted of the offence of possession of a controlled substance for the purpose of trafficking. Because of a prior conviction for a similar offence, he was subject to a mandatory minimum sentence of one year of imprisonment, pursuant to section 5(3)(a)(i)(D) of the *Controlled Drugs and Substances Act*.

The Supreme Court of Canada concluded the mandatory minimum sentence of one year of imprisonment violated section 12 of the *Charter* on the basis that it "'casts its net over a wide range of potential conduct'. . . . As a result, it catches not only the serious drug trafficking that is its proper aim, but conduct that is much less blameworthy. This renders it constitutionally vulnerable."[40]

DEFENCES

ALIBI

In *R. v. Laliberté*,[41] the Supreme Court held that when the defence of alibi is raised, a trial judge "must specify" in her or his instruction to the jury that "the fabrication of an alibi supports an inference of *consciousness* of guilt, but no more than that."[42] The Court also held that there must be other evidence "independent of the finding that the alibi is false on the basis of which a reasonable jury could conclude that the alibi was deliberately fabricated and that the accused was involved in that attempt to mislead the jury."[43]

EVIDENCE

ACCESS TO DOCUMENTS IN THE POSSESSION OF A THIRD PARTY

In *World Bank Group v. Wallace*,[44] the accused were charged with the offence of bribing foreign public officials. The accused sought access to records in the possession of investigators of the World Bank. The Supreme Court dismissed the application, holding that "[t]he World Bank Group's immunities cover the records sought and its personnel, and they have not been waived. Moreover, the records [of an independent unit within the World Bank Group] were not disclosable under Canadian law."[45]

CIRCUMSTANTIAL EVIDENCE

In *R. v. Villaroman*,[46] the Supreme Court considered the law in relation to circumstantial evidence.

The Supreme Court held that in "assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts . . . . Requiring proven facts to support explanations other than guilt wrongly puts an obligation on an accused to prove facts and is contrary to the rule that whether there is a reasonable doubt is assessed by considering all of the evidence. The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt."[47]

The Court held when a trial judge assesses circumstantial evidence, she or he must consider "'other plausible theor[ies]' . . . inconsistent with guilt":

> When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt . . . . I agree with the appellant that the Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused"*: R. v. Bagshaw* (1971), [1972] S.C.R. 2 (S.C.C.), at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.[48]

CONCLUSION

As we have seen, the Supreme Court of Canada considered a number of issues in 2016 related to criminal law and procedure. This included the defence of alibi (*R. v. Laliberté*) and parties to an offence (*R. v. Knapczyk*).

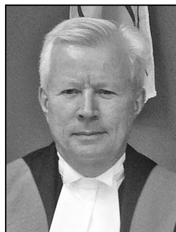
In the realm of offences, the Supreme Court considered the offences of bestiality (*R. v. D.L.W.*) and infanticide (*R. v. Borowiec*).

39. 2016 SCC 13, 2016 CarswellBC 959 (Can.), decided April 15, 2016.
40. *Id.* ¶ 27.
41. 2016 SCC 17, 2016 CarswellQue 3436 (Can.), decided May 3, 2016.
42. *Id.* ¶ 3.
43. *Id.* ¶ 4.
44. 2016 SCC 15, 2016 CarswellOnt 6580 (Can.), decided April 29, 2016.
45. *Id.* ¶ 148.
46. 2016 SCC 33, 2016 CarswellAlta 1411 (Can.), decided July 29, 2016.
47. *Id.* ¶ 35.
48. *Id.* ¶ 37. In *The Queen v. Baden-Clay*, [2016] HCA 35 (Austl.), decided August 31, 2016, the High Court of Australia considered a similar issue. It explained its view of the difference between a "reasonable inference" and "conjecture" in the following manner (at paragraph 47):

    > For an inference to be reasonable, it "must rest upon something more than *mere conjecture*. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence" (emphasis added). Further, "in considering a circumstantial case, *all of the circumstances* established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence" (emphasis added). The evidence is not to be looked at in a piecemeal fashion, at trial or on appeal.

In the constitutional context, the Court declared a minimum mandatory sentence unconstitutional (*R. v. Lloyd*) and considered the role of the prosecutor (*R. v. Cawthorne*).

Finally, it is difficult to predict over the course of a year which decision rendered by a Supreme Court will have the most significant long-term effect. For the Supreme Court of Canada in 2016, I would choose the Court's decision in *Jordan*. Not only did the Supreme Court take the exceptional step of reversing itself, it set out a framework that might lead to many criminal charges being stayed.[49]



Wayne Gorman is a judge of the Provincial Court of Newfoundland and Labrador. His blog (Keeping Up is Hard to Do: A Trial Judge's Reading Blog) can be found on the web page of the Canadian Association of Provincial Court Judges. He also writes a regular column (Of Particular Interest to Provincial Court Judges) for the Canadian Provincial Judges' Journal. *Judge Gorman's work has been widely published. Comments or suggestions to Judge Gorman may be sent to wgorman@provincial.court.nl.ca.*

49. As of October 31, 2016, in applying *Jordan*, stays of proceedings have been entered by Canadian trial judges in *R. v. Huard*, 2016 QCCA 1701 (Can. Que.); *R. v. Boisvert*, 2016 QCCQ 11068, 2016 CarswellQue 9973 (Can. Que.); *R. v. Keller*, 2016 SKQB 319, 2016 CarswellSask 641 (Can. Sask.); *R. v. Reynolds*, 2016 ONCJ 606, 2016 CarswellOnt 16239 (Can. Ont.); *R. v. Sachro*, 2016 ONCJ 570, 2016 CarswellOnt 14692 (Can. Ont.); *R. v. Dass*, 2016 BCSC 1701, 2016 CarswellBC 2590 (Can. B.C.); *R. v. Apostol*, 2016 NSSC 241, 2016 CarswellNS 744 (Can. N.S.); *R. v. Mastronardi*, 2016 BCSC 1289, 2016 CarswellBC 1948 (Can. B.C.); *R. v. Allison*, 2016 NSSC 192, 2016 CarswellNC 626 (Can. N.S.); *R. v. Korzh*, 2016 ONSC 4745, 2016 CarswellOnt 11986 (Can. Ont.); *R. v. Zammit*, 2016 ONSC 5098, 2016 CarswellOnt 12711 (Can. Ont.); *R. v. Edan*, 2016 ONCJ 493, 2016 CarswellOnt 12953 (Can. Ont.); *R. v. Dunphy*, 2016 NSSC 224, 2016 CarswellNS 722 (Can. N.S.), *R. v. Tran*, 2016 ONCJ 528, 2016 CarswellOnt 13730 (Can. Ont.); *R. v. Lam*, 2016 ABQB 489, 2016 CarswellAlta 1647 (Can. Alta.); *R. v. Beausoleil*, 2016 QCCQ 8914, 2016 CarswellQue 8182 (Can. Que.). They have been refused in *R. v. Smythe*, 2016 ONCJ 620, 2016 CarswellOnt 16467 (Can. Ont.); *R. v. Park*, 2016 SKPC 137, 2016 CarswellSask 664 (Can. Sask.); *R. v. Ramsay*, 2016 ONCJ 569, 2016 CarswellOnt 14580; *R. v. Kopalasingam*, 2016 ONCJ 486, 2016 CarswellOnt 12682 (Can. Ont.); *R. v. Swaminathan*, 2016 ONSC 4913, 2016 CarswellOnt 12558 (Can. Ont.); *R. v. Gandhi*, 2016 ONSC 5612, 2016 CarswellOnt 13863 (Can. Ont.); *R. v. Fauolo*, 2016 ABPC 192, 2016 CarswellAlta 1674 (Can. Alta.); *R. v. Da Silva*, 2016 ONCJ 480, 2016 CarswellOnt 12578 (Can. Ont.); *R. v. Kennedy*, 2016 ONSC 4654, 2016 CarswellOnt 13204 (Can. Ont.); *R. v. Howe*, 2016 NSSC 184, 2016 CarswellNS 618 (Can. N.S.); *R. v. Ly*, 2016 ONCJ 545, 2016 CarswellOnt 13928 (Can. Ont.); and *R. v. Curry*, 2016 BCSC 1435, 2016 CarswellBC 2152 (Can. B.C.).