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DRUG OFFENCES IN CANADA FOURTH EDITION Bruce A. MacFarlane, K.C. Robert J. Frater, K.C. Croft Michaelson, K.C. Release No. 3, June 2024
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What's New in this Update:

This release features updates to Chapter 35 (Sentencing under the CDSA and the Cannabis Act), Chapter 36 (General Sentencing Principles and Pardons) and Chapter 37 (Ministerial Exemptions).

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Highlights:

- Four courts of appeal- Nova Scotia, Alberta, Ontario and British Columbia- looked at the emerging issue of whether special considerations apply to the sentencing of black offenders. The cases – R. v. Wournell, 2023 NSCA 53 (N.S. C.A.); R. v. R.B.W., 2023 NSCA 58 (N.S. C.A.), leave to appeal refused His Majesty the King v. R.B.W., 2024 CarswellNS 175 (S.C.C.); R. v. Pierre, 2023 ABCA 300 (Alta. C.A.); R. v. Morris, 2023 ONCA 816 (Ont. C.A.); and R. v. Desmond, 2023 BCCA 442 (B.C. C.A.) – are considered in chapter 35.
- One of the fundamental principles of sentencing described in Section 718.1 of the Criminal Code is that a sentence “must be proportionate to the gravity of the offence and the degree of responsibility of the offender.” Sentencing hearings thus require consideration of each offender’s moral blameworthiness. In chapter 35, we look at R. v. C.K., 2023 BCCA 468 (B.C. C.A.), where the Court set out a helpful list of factors relevant to consideration of an offender’s moral blameworthiness.
- Sentencing courts are often asked by the Crown to consider the “jump” principle, meaning that since the offender had not been deterred by previous sentences, it may be necessary to “jump” those previous sentences. In chapter 35 we examine several cases where courts have had to decide when it is necessary to “jump,” and when it isn’t: R. v. Bertrand Marchand, 2023 SCC 26 (S.C.C.) (in relation to an offender who has committed the same offence again); R. v. Simeunovich, 2023 ONCA 562 (Ont. C.A.) (driver who had repeatedly been caught driving without a valid licence); R. v. Wrice, 2024 NSCA 3 (N.S. C.A.), (rejecting idea that “jumping” was necessary for this offender).
- It is well-settled that an offender’s apparent lack of remorse cannot be considered an aggravating factor in sentencing, but is it completely irrelevant? In R. v. Harry, 2023 BCCA 448 (B.C. C.A.), the British Columbia Court of Appeal considered the nuanced ways in which lack of remorse may be relevant. We look at this case in chapter 35.
- The legalization of cannabis was preceded by several years of litigation in which individuals or groups sought to gain access to cannabis for medical purposes. The strategy enjoyed significant success. Could psilocybin be the next controlled substance that leverages litigation for broader access? In chapter 37, we look at the case of Toth v. Canada (Health and Addictions), 2023 FC 1283 (F.C.), where Toth and others sought to get access to psilocybin but the government refused their requests.

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