

## Sentencing: Principles and Practice Review

By: Craig Bottomley

I write this for the defence lawyers. I know none of you has ever lost a trial. I know that not one of you has ever pled a client guilty. You saw this book advertised and thought, "Sentencing, what's that?"

It may happen, however, that your string of unmitigated successes might one day hit a speed bump. It has happened to me. In fact, on a day on which I had pled a client guilty to possessing a bit too much cocaine, I walked into my office and found a copy of this book sitting on my desk with a reminder that I had agreed to write a review. It then occurred to me that I would actually have to read the book. No matter the calibre of the authors, reading a book on sentencing is a daunting task. It just so happened that during the course of my plea negotiations that morning, an interesting issue arose about the commencement of sentence when my client was already serving a sentence (that one wasn't my fault). I thought it would be a good test of the book to see if it held the answer. It did. On page 416.

On the way to finding the answer to my question, I went through the index and an interesting thing happened. I kept finding gems and diverting down sideroads. I ended up spending four hours reading section after section. I learned a lot. Ms. Robitaille and Ms. Winocur have done the impossible and turned the forlorn topic of sentencing into a page turner. This book is academically sound and, perhaps more importantly, full of solid practical advice for the criminal law practitioner.

For instance, the authors approach the minefield of dangerous offenders on serious academic footing and analyze not only the history of the Supreme Court's decision in *R v Lyons*, but also look to where litigation in this area is headed under *R v Boutilier*. In the same chapter, however, there is practical advice on how to assert the position that the accused should have a role in selecting the psychiatrist to do the assessment and point to case law supporting the idea that a failure to have the accused involved in the selection of the expert can impinge a meaningful right to silence.

Similarly, the chapter on the *Canadian Charter of Rights and Freedoms* as it relates to sentencing is robust and addresses issues under sections 7 and 11 as well as cruel and unusual punishment. The authors take a historic view of the jurisprudence and rightfully assess the reluctance of the Supreme Court to expand sentencing protections at sentencing under the *Charter*. Helpfully, however, the book goes on to address remedies at the sentencing stage for breaches that might not otherwise result in any form of satisfaction for the accused. The book strikes a fine balance and presents the law (especially the jurisprudence flowing from *Nasogaluak*) evenly between the Crown and the defence.

In an era in which successive governments have, by turn, introduced mandatory minimum sentences, or refused to repeal them, it falls to criminal lawyers to seek to strike down unconstitutional laws. It is a steep climb. Fortunately, the authors have provided a succinct roadmap to addressing section 1 of the *Charter* and speak to the importance of creating the right record before tilting at the *Oakes* test.

If there is a theme to this book, it is the combination of focused legal analysis combined with practical advice. The book is intuitively organized and easy to use. Each time I turn to it, I find the answer to the question plaguing me.

*Sentencing* also brings in experts who have contributed to chapters on dangerous offender hearings, Indigenous sentencing, youth sentencing, and appeals. The benefit of their collective wisdom accrues to the reader's benefit. This is, perhaps, most evident in the chapter on the collateral consequences of sentencing where the authors address issues of immigration, civil, and family law consequences. As criminal lawyers, we are specialists in our own field, but few of us can keep straight the exact immigration consequences of a guilty plea to serious criminality and the impact of pre-sentence custody on a client who is not yet a citizen. This chapter addresses these issues and does so in a straightforward and easily accessible fashion.

The authors recognize that the impact of a sentence does not end once it is imposed. In thorough fashion, the book goes on to address issues that will confront the criminal lawyer who gets retained after the sentencing. Beyond simply dealing with the appeal process, which they do, the authors go so far as to address record suspensions, procedure before the Parole Board, and even the Royal Prerogative of Mercy. It goes without saying, perhaps, that the authors of this book have been extraordinarily thorough.

There is no stage of the criminal justice process with a more direct impact on your client than sentencing. Those armed with this book will be in the best position to minimize the impact of sentence and make a positive impression on the court.