Sentencing for Counterfeit Money Offences

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SENTENCING FOR COUNTERFEIT-MONEY OFFENCES

I. Sentencing Principles

This paper will examine sentencing for counterfeiting in Canada.[1] The first section of the paper will deal with general principles of sentencing that are particularly relevant to counterfeit money cases. The second section of the paper will provide a summary of some counterfeiting sentencing decisions in various parts of Canada. While the summaries focus on cases involving counterfeit money, decisions on counterfeit credit and debit cards have also been included as they may provide some assistance.

1. General deterrence

It is settled law that general deterrence is of primary importance in sentencing for counterfeit money offences. There are a number of reasons for this. The first, and perhaps the most important, is that courts have recognized that general deterrence must be emphasized because counterfeiting money is a very serious offence that can endanger a country's economy.[2]

Second counterfeiting is precisely the type of crime that a severe sentence is likely to deter. Counterfeiting money is economically motivated and requires considerable premeditation. The British Columbia Court of Appeal noted this in *R. v. Le*[3]:

> Counterfeiting is an offence for which, in my view, deterrence is a far more important factor than it is for many other offences. It requires premeditation and planning and is driven entirely by greed.[4]

Accordingly, offenders are apt to engage in some degree of risk/reward analysis before committing the crime. By increasing the penalty, the risk is increased and the likelihood

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[2] *R. v. Zezima* (1970-71), 13 Crim. L.Q. 153 (Que. C.A.); *R. v. Bruno*, [1991] O.J. No. 2680 (Gen. Div.); *R. v. Le*, [1993] B.C.J. No. 165 (C.A.) at para. 6; *R. v. Abdullahi*, [1996] O.J. No. 2941 (Prov. Ct.) at para. 8*R. v. Dunn*, [1998] O.J. No. 807 (C.A.) at para. 7; *R. v. Haldane*, [2001] O.J. No. 5161 (Sup. Ct.)

[3] [1993] B.C.J. No. 165 (C.A.) [hereinafter *Le*].

[4] *Le*, *supra*, at para. 6.

of commission is correspondingly decreased. In *R. v. Lacoste* the Quebec Court of Appeal reviewed statistics which showed that persons convicted of counterfeiting sentences were sentenced far more frequently to terms of 6 months or more in prison in other provinces.[5] The court was satisfied that this leniency by Quebec courts had led to counterfeiters operating in much greater numbers in Quebec because of the reduced risk they faced. The court indicated at page 195 that:

> For such an offence [possession of counterfeit money], the Legislature has established a maximum penalty of 14 years. In other words, it considers this crime to be one of the most important and harmful.
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> Judges in general and particularly those in the Province of Quebec, do not appear to attach all the attention they should to the intention expressed so clearly by the Legislature, and impose insignificant sentences which are more of an encouragement to such conduct than a true deterrent.

A third consideration supporting the need for general deterrence is the ease with which the crime can be committed and the difficulty in detecting it. Advances in computer imaging technology and colour copiers have made it relatively easy to counterfeit bank notes. In *R. v. Haldane*[6], Reilly J. stated at paragraphs 17-18:

> Counterfeit money constitutes a very serious threat to the community, from the economy of the community to the economy of the country, particularly now when it can be produced relatively easily, although the government does try to keep one step ahead.
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> I do not think I am known as a judge who takes a particularly tough stance with respect to most property offences, Mr. Haldane, but counterfeit money is one in which I agree with the majority of my colleagues that there must be some significant, generally deterrent, penalty imposed.

In *R. v. Blanchette*[7] the Quebec Court of Appeal agreed that the need for denunciation and deterrence was greater now that technology has made counterfeiting easier:

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[5] *R. v. Lacoste* (1965), 46 C.R. 188 (Que. C.A.) at 195

[6] [2001] O.J. No. 5161 (Sup. Ct.) [hereinafter *Haldane*].

[7] [1998] A.Q. No. 1949 (Que. C.A.) [hereinafter *Blanchette*].

> Il y a lieu de rappeler ici qu'avec la technologie moderne, il est relativement facile pour ceux et celles qui possèdent des compétences en matière de reprographie de contrefaire de la monnaie. À notre avis, les critères de dissuasion et d'exemplarité doivent primer afin de décourager ceux et celles qui pourraient d'aventure se lancer dans cette opération.[8]
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> [Translation: It is important to note that with modern technology it is relatively easy for those who are skilled in reprography to make counterfeit money. In our opinion, the criteria of deterrence and denunciation must come first in order to discourage those who could by chance embark on such an operation.]

The most effective method courts have for controlling counterfeiting is deterring it from being committed in the first place.[9]

a. Prevalence in the community

Courts have repeatedly held that the seriousness of an offence may be compounded by its prevalence in the community.[10] In *R. v. Sigouin* the Quebec Court of Appeal specifically held in a counterfeiting sentencing that the prevalence of the offence in the community was a relevant factor on sentencing.[11] In *R. v. Rachid*[12], Morrison Prov. J. stated:

> [T]he prevalence of the crime in the community is a proper matter for the court to consider in sentencing. In *R. v. Wilmott* it was held that the prevalence of the crime adds to the gravity of the offence and justifies a more serious sentence.

Evidence proving the prevalence of the offence

If the Crown intends to argue that prevalence in the community is an aggravating factor, it must lead evidence of this fact. This is usually done by calling an expert witness. The court noted in *R. v. Cohen*[13] that judges couldn't take judicial notice of the prevalence of

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[8] *Blanchette, supra*, at para. 13.
[9] See also *R. v. Chan*, [1997] O.J. No. 6021 (Gen. Div.); *Haldane, supra*, at para. 17.
[10] *R. v. Adelman*, [1968] 3 C.C.C. 311 (B.C.C.A) at 314; *R. v. Sears* (1978), 39 C.C.C. (2d) 199 (Ont.C.A.) at 200; *R. v. Rohr* (1978), 44 C.C.C. (2d) 353 (Ont.C.A.) at 355; *R. v. Bui* (January 18, 1996, Doc. V102588) (B.C.C.A.) http://www.canlii.org/bc/cas/bcca/1996/1996bcca51.html at para. 4; *R. v. Johnas et al.; R. v. Cardinal* (1982), 2 C.C.C. (3d) 490 (Alta. C.A.) at 493; *R. v. Cook* (1996), 113 Man. R. (2d) 168 (Man. C.A.) at para. 2; and *R. v. Merrill* (1998), 174 Sask. R. 299 (Sask. Q.B.) at para. 11
[11] *R. v. Sigouin*, [1970] C.A. 569 (Que. C.A.)
[12] [1994] O.J. No. 4228 (Prov. Ct.) [hereinafter *Rachid*].
[13] [1993] O.J. No. 4301 (Prov. Ct.) [hereinafter *Cohen*].

the crime in the community so statistical or expert evidence must be called.[14] The same is true if the Crown intends to argue as an aggravating factor that there is a link between the counterfeiter and organized crime. Unless this fact is admitted, both the case law and *Criminal Code* make it clear that on a sentencing hearing the Crown must prove all aggravating factors beyond a reasonable doubt.[15]

It may also be advisable for the Crown to lead evidence on the effect that counterfeiting has on the provincial or national economy. In *Chan*, for example, the Director of Security of the Canadian Banker's Association gave evidence with respect to the cost to Canadian banks (and their customer) of counterfeit credit cards. Bank of Canada officials, and police officers experienced in this area, could readily provide evidence on the growth of counterfeiting and its impact on direct victims and society at large. Expert evidence may not be required, though, because the *Criminal Code* makes it clear that hearsay evidence is admissible. The relevant portions of section 723 are set out below:

> **723. (1)** Before determining the sentence, a court shall give the prosecutor and the offender an opportunity to make submissions with respect to any facts relevant to the sentence to be imposed.
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> **(2)** The court shall hear any relevant evidence presented by the prosecutor or the offender.
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> …
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> **(5)** Hearsay evidence is admissible at sentencing proceedings, but the court may, if the court considers it to be in the best interests of justice, compel a person to testify where the person
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> *(a)* has personal knowledge of the matter;
> *(b)* is reasonably available; and
> *(c)* is a compellable witness.

As a result of these provisions, the Crown could also offer evidence from Bank of Canada officials or experienced police officers in the form of summaries or affidavits pursuant to this provision.

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[14] *Cohen, supra,* at para. 11. See also: *R. v. Petrovic* (1984), 41 C.R. (3d) 275 (Ont. C.A.); *Rachid, supra,* at para. 2.

[15] *Ly, supra*. See also: s.724(3)(e) of the *Criminal Code* codifying *R. v. Gardiner* (1982), 68 C.C.C. (2d) 477 (S.C.C.).

b. Impact of the offence on the community

The statutory objectives of sentencing set forth in s.718 of the *Criminal Code* make it clear that punitive objectives, such as general and specific deterrence and separation from the community, remain importance principles in sentencing. The first three principles in s.718 are set out below:

> **718.** The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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> (*a*) to denounce unlawful conduct;
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> (*b*) to deter the offender and other persons from committing offences;
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> (*c*) to separate offenders from society, where necessary;

The substantial harm that can be caused by counterfeiting operations supports the need for general deterrence. In *R. v. Zezima* the Quebec Court of Appeal observed in 1970 that counterfeiting is a very serious offence where there must be very exceptional circumstances to justify the imposition of only a nominal term of imprisonment.[16] Similarly, Dymond J. stated in *R. v. Bruno*[17] that:

> The major danger of flooding a country with counterfeit money is the danger to the country itself; this is not merely a danger to an individual in society, it varies tremendously from crimes such as robbery or theft and it is much more serious. For that reason, the courts take a very severe view of this offence.

In *R. v. Dunn*[18] the Ontario Court of Appeal recognized that counterfeiting schemes can cause significant damage to the entire economy:

> The forgery attempt involved a small amount of money, and the bills produced were of amateur quality. Nonetheless, we are mindful of the fact that forgery is a serious offence involving, in its more sophisticated applications, a threat to national economic stability and other serious concerns where foreign currency is involved.

More recently, in *R. v. Haldane*, Reilly J. stated that:

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[16] *Zezima, supra*
[17] *Bruno, supra*
[18] *Dunn, supra,* at para. 7.

> Counterfeit money constitutes a very serious threat to the community, from the economy of the community to the economy of the country… [19]

2. Custodial sentences

Prior to the creation of conditional sentences in 1996, courts across Canada held that custodial sentences were ordinarily appropriate for counterfeiting because of the seriousness of the offence and the primacy of general deterrence as a sentencing consideration. As indicated earlier, the Quebec Court of Appeal held in *Zezima* that very exceptional circumstances were required to justify the imposition of only a nominal sentence. In *R. v. Berntsen*[20], the British Columbia Court of Appeal held:

> [T]he cases that have been put before us indicate that in relation to counterfeit offences a sentence of imprisonment is usually called for unless there were quite exceptional circumstances.

Morrison Prov. J. echoed this point in *Rachid*: "counterfeiting is a very serious offence and there must be very exceptional conditions in order to justify the imposition of a nominal term of imprisonment". [21]

Even before conditional sentences became available, courts did not always find that custodial sentences were appropriate. However, even after conditional sentences were made available, custodial sentences were still imposed in the clear majority of the cases discussed in the second section of this paper. The cases in which a non-custodial sentence was imposed typically involved a relatively minor offence or a youthful first-time offender.

3. Conditional sentences

Section 742.1 of the Criminal Code provides that a judge may impose a conditional sentence where the court is "satisfied that serving the sentence in the community would

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[19] *Haldane, supra,* at paras. 17-18
[20] [1988] B.C.J. No. 1180 (C.A.).
[21] *Rachid, supra*, at para. 5.

not endanger the safety of the community and would be consistent with the fundamental purposes and principles of sentencing set out in s.718".

It is not clear at this point whether the availability of conditional sentences will cause courts to change their position that actual imprisonment is usually required in counterfeiting offences. The Supreme Court of Canada has confirmed in *Proulx* that danger to the community includes property offences.[22] A counterfeiter may therefore pose a danger to the community such that a conditional sentence would not be appropriate. In addition, in *Proulx* the Court explicitly stated at paragraph 114 that:

> Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases where there are aggravating circumstances, incarceration will generally be the preferable sanction.

Given the need for general deterrence courts may hold that in more serious counterfeiting cases that a conditional sentence would be inconsistent with the fundamental purposes and principles of sentencing. Courts have taken certainly taken the position in major fraud cases that the need for denunciation and general deterrence require incarceration.[23] Courts have also taken the position in fraud cases that incarceration is required to maintain respect for the law when the offender had a high level of moral responsibility for the offence.[24] A high level of moral responsibility can be found where the offence was committed over a substantial period of time, involved numerous pieces of property, and required forethought and planning.[25] Most offenders involved in major counterfeiting cases will likely be found by courts to have a high level of moral responsibility.

Conditional sentences will clearly have some impact on sentencing in counterfeiting cases. Several of the judgments since the 1996 amendments (*Dunn, Dickson, Jacoby,*

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[22] *R. v. Proulx*, [2000] 1 S.C.R. 61.
[23] *R.* v. *Evans*, [2003] N.B.J No. 47 (Q.B.), 2003 NBQB 54; *R*. v. *Williams*, [2003] O.J. NO. 2202 (C.A.), app. for leave refused [2003] S.C.C.A. 450; *R. v. Kuriya* (2002), 252 N.B.R. (2d) 247 (Q.B.), 2002 NBQB 306, aff'd 2003 NBCA 63; *R. v. Black*, [2003] N.S.J. No. 168
[24] *R. v. Ambrose* (2000), A.R. 164 (Alta. C.A.)
[25] *R. v. Atlenhofen*, [2003] A.J. No. 797, 2003 ABQB 485; *R. v. Chow*, [2001] A.J. No. 998 (C.A.), 2001 ABCA 202

Gianoulias, Coman, and *Onose*) that are summarized in the second section of the paper have imposed conditional sentences.

In *Dunn*, for example, the offender was convicted of making counterfeit money, conspiring to make counterfeit money and possession of a machine intended for use in making counterfeit money. The Ontario Court of Appeal substituted a 21 month conditional sentence for the 3 year term of imprisonment imposed by the trial judge. The Court explained its rationale in the following passage:

> The evidence indicates that Mr. Dunn was a follower rather than a leader in this offence. The forgery attempt involved a small amount of money, and the bills produced were of amateur quality…Because [the trial judge's] sentence imposes penitentiary incarceration on this young first offender whose offence – given the nature of the crime of forgery – was amateurish, a sentence of three years represents a substantial and marked departure from the appropriate range of sentence.
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> …
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> We recognize that general deterrence is extremely important in forgery cases, but as cases involving the production of currency go, this offence and this appellant's participation in it, were both at the low end of the scale. In our view, leniency in this case would not lead others to consider that the courts view forgery offences lightly. *If conditional sentences are ever to be granted in forgery cases, this case is one where such a concession should be made*.[26] (Emphasis added)

a. Suggested Conditions

If the Court imposes a conditional sentence, counsel may wish to ask the court to consider the following terms to ensure that the principles of deterrence, denunciation and rehabilitation are met:

- statutory terms
- reside at a specified address
- house arrest
- no contact with other individuals involved in the counterfeiting scheme

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[26] *Dunn, supra*, at paras. 7, 9.

- carry a copy of the conditional sentence order on his/her person and present it to a peace officer upon request for identification
- counselling
- community service
- restitution
- not to use equipment suitable for counterfeiting, including computers, scanners, and printers except when at work - if the work is being done at a business location and not in a private residence

The last condition may be the most meaningful in the context of a counterfeiting manufacturing offence. Essentially, it would deny the offender the possession or use of computer equipment outside work. As working-at-home is relatively common, the condition attempts to make it clear that use while at home is not allowed. If it were, the term would have no real meaning.

4. Aggravating factors

Courts have identified several aggravating factors that are important in counterfeiting cases.

a. Manufacturing the counterfeit

The making of counterfeit money (as with other false documents) is usually treated more severely than possession or distribution. Noble J. stated in *R. v. Dunn*:

> … it is clear that printers of counterfeit money should be dealt with more harshly and more harshly treated in the sentencing process than those who distribute or possess it.[27]

This point was echoed by the British Columbia Court of Appeal in *R. v. Yue*[28] and by the Alberta Provincial Court in *R. v. Christopherson*.[29]

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[27] *R. v. Dunn*, [1996] O.J. No. 1702 (Gen. Div.), varied on other grounds [1998] O.J. No. 807 (C.A.).
[28] [1996] B.C.J. No. 385 (C.A.) at para. 17. See also *R. v. Sonsalla* (1971) C.R.N.S. 99 (Que. C.A.); *R. v. Jones* (1974) 17 C.C.C. (2d) 31 (P.E.I.S.C.).
[29] [2002] A.J. No. 1330 (Prov. Ct.) [hereinafter *Christopherson*] at para. 40.

b. Higher quality counterfeits

Generally the more realistic looking the counterfeit, the more severely the offender will be punished.[30] Realistic counterfeits pose a greater risk of being accepted by unwitting victims and therefore pose a greater risk of consequential harm.

c. Sophisticated scheme

The sophistication of the counterfeiting *scheme* (as opposed to the *product*) can be an aggravating factor. First, a sophisticated scheme requires premeditation, which suggests greater moral culpability. Second, a sophisticated scheme poses a greater chance of success, and thus of consequential harm.[31] Therefore, even if the scheme is foiled before the offender is able to pass any counterfeits, the complexity, ingenuity, or precision of the scheme can be considered an aggravating factor.[32]

d. Substantial quantity of counterfeits

Courts across the country have held that greater quantities generally deserve more severe sentences.[33] The rationale for this is straightforward: the greater the quantity, the greater the risk that individuals will be victimized and the economy undermined.

e. Greater role

Offenders who have a greater role in the offence are viewed as more culpable.[34]

f. Greed as motive

Greed as the motive for the offence is an aggravating factor.[35]

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[30] *Christopherson, supra,* para. 35
[31] *R. v. Wong*, [1993] B.C.J. No. 535 (C.A.) at para. 7.
[32] See *R. v. Abdullahi*, [1996] O.J. No. 2941 (Prov. Ct.) at paras. 3-8; *R. v. Rafuse,* [2004] SKCA 161 at para. 12.
[33] See, for example, *R. v. Jones* (1974), 17 C.C.C. (2d) 31 (P.E.I.S.C.); *Bruno, supra; Rafuse, supra*, at para. 12.
[34] *Dunn, supra,* at para. 7; *Christopherson, supra,* at para. 35; *Coman, supra,* at para. 35.
[35] *Christopherson, supra,* at para. 32; *Onose, supra,* at para. 16

5. Mitigating factors

a. Inferior quality counterfeits

Courts have generally treated offences where the counterfeit is sloppy, amateurish, or otherwise unrealistic as less serious because there is less risk that the counterfeit will be successfully passed. [36]

b. Smaller quantities of counterfeit

Similarly, courts have considered the offence to be less grave when it involves small quantities.[37]

c. Voluntary restitution

Voluntary restitution by the offender is usually treated by the courts as a mitigating factor.[38]

5. Summary of factors

A concise summary of most of the relevant factors was provided in *R. v. Christopherson*[39]:

> My review of the cases leads me to the conclusion that deterrence is an important sentencing objective in counterfeiting offences. The degree of deterrence will vary with the degree of responsibility of the offender involved. Printers of the counterfeit bills and other persons who take a lead role in such counterfeiting operations should be generally sentenced more severely than those who merely distribute. Counterfeiting can have an effect on the local economy and in some cases, involving large operations, upon the economy of the country. The degree of sophistication of the product and prevalence of the distribution are also taken into account.[40]

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[36] *Dunn, supra,* at para. 7; *Haldane, supra*, at para. 19; *R. v. Ismail*, [1994] O.J. 1577 (Prov. Ct.).
[37] *Dunn, supra,* at para. 7
[38] *Cohen, supra*, at para. 13; *Jones, supra*.
[39] *Christopherson*, *supra,* at para. 35.
[40] *Christopherson, supra*, at para. 35.

II. Sentencing cases by region

1. Alberta[41]

R. v. *Wong*, [2005] A.J. 376; 2005 ABPC 72 (CanLII)

1 year for 3 $10 bills concurrent to 9 years for selling a ½ pound of cocaine

Mr. Wong pled guilty to possessing 3 counterfeit $10 bills and 11 drug and weapon offences. Mr. Wong was a commercial trafficker who sold 1½ ounces and then a ½ pound of cocaine to an undercover officer. He had a loaded firearm with him when he was arrested for the ½ pound sale. As a result of two search warrants, the police seized an additional 500 grams of crack cocaine, 330 grams of powder cocaine, some cannabis, 4 loaded handguns with ammunition, and 3 $10 counterfeit bills.

Mr. Wong was 25 and had a lengthy criminal record which included convictions for break, enter and theft, theft, and possession of drugs for the purpose of trafficking. His lengthiest sentence was for 9 months on February 14, 2002 for possession of a Schedule 1 substance for the purpose of trafficking.

The court found the only mitigating circumstances were the early guilty plea and the 111 days spent in pre-trial custody which the judge treated as the equivalent of 7 months. The court imposed 9 years for the sale of the ½ pound of cocaine plus numerous concurrent sentences. A sentence of 1 year concurrent was imposed for the possession of the 3 $10 counterfeit bills.

R. v. Paolinelli, [2004] A.J. No. 1330 (Prov. Ct.), 2004 CanLII 53858 (AB P.C.)

2½ years and 2 months pre-trial custody for making counterfeit US$100,000

Mr. Paolinelli pled guilty to possessing and manufacturing US$100,000 in counterfeit money. He also pled guilty to several other offences including possession of stolen property, uttering a forged document, obstructing a peace officer and impersonation.

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[41] Quicklaw has not reported any sentencing decisions for counterfeiting from Manitoba or Saskatchewan.

Mr. Paolinelli gave a friend some counterfeit $20 bills to bail out another friend. Mr. Paolinelli was questioned by the police after the counterfeit bills were detected by the justice of the peace. Mr. Paolinelli obstructed the officer by giving a false name supported by a forged driver's licence. Mr. Paolinelli was charged and released on bail after the police discovered his identity. The police investigation into the counterfeit money ultimately led to a search warrant on Mr. Paolinelli's home in July of 2004.

The police seized over US$100,000 in counterfeit money at Mr. Paolinelli's home. The money was mainly in $20 and $100 denominations that were in various stages of production. The police also seized computers, scanners, printers and a variety of paraphernalia that had been used to make the counterfeit money. In addition, CDs with images of Canadian $100 bills were seized. These images were of notes that had been identified in Ottawa by the R.C.M.P. lab and labelled inkjet 6. The officers determined that 159 complaints about these counterfeit $100 bills had been recently made in the Calgary area. Numerous pieces of other fake identification and credit cards were found.

Mr. Paolinelli was 23 years old, had a Bachelors in Business Administration and two young children. In 2003, he had received conditional discharges for possession of controlled drugs and property obtained from crime. Later that year he had been fined for failing to appear and mischief. In 2004 he received 90 days for uttering counterfeit money and 30 days consecutive for possession of property obtained from crime.
Both counsel made a joint submission of 30 months in addition to the 2½ months pre-trial custody. Counsel relied primarily on *R. v. Christophersen*, [2002] A.J. No. 1330 (Prov. Ct), 2002 ABPC 173 and the significant savings to the system from the early guilty plea to support their submissions.

The judge accepted the joint submission and imposed a sentence of 2½ years for manufacturing and possession of the counterfeit money. The sentences for the other offences were made concurrent.

R. v. Coman, [2004] A.J. No. 383 (Alta. Prov. Ct.), 2004 ABPC 18

15 months conditional and 4½ months pre-trial for $38,000 in forged debit card offences

Mr. Coman was a member of a sophisticated debit card counterfeiting operation. He pled guilty to the following 5 offences that covered different aspects of the operation:

- possession of computers, blank card and electromagnetic readers used to forge credit cards contrary to s.342.01;
- fraudulent possession of debit card numbers or identification numbers that would enable a person to use a credit card contrary to s.342(3);
- possession of forged credit cards contrary to 342(1)(c);
- fraudulent interception of an automated teller computer system contrary to 342.1(1)(b); and
- possession of cameras designed to commit a s.342.1 offence contrary to 342.2(1).

The offences took place over a 5 day period. The financial institutions suffered an actual loss of about $38,000 and a potential loss of $648,000. The offender, who was 36, was separated and the father of two children. The offender spent four and a half months in pre-trial custody. He had received conditional discharges previously for a domestic assault and for breach of a probation order. The offender had always been steadily employed until a downturn in the catering industry because of SARS.

The court accepted that this was a planned, deliberate crime that was committed for profit. The operation was well-organized and sophisticated and the offender was heavily involved although he was not a directing mind and had no special expertise. The judge was satisfied that in view of the pre-trial custody a conditional sentence of 15 months, with 24-hour house arrest for the first 6 months, adequately met the need for denunciation and deterrence.

R. v. Onose, [2004] A.J. No. 250 (Alta. Prov. Ct.), 2004 ABPC 44

22 months conditional for $38,000 in forged debit card offences

Ms. Onose, a first-time offender, was a member of the same sophisticated debit card counterfeiting as Mr. Coman. She pled guilty to the all of the same offences except for the possession of the cameras. She was not a major player and had no special expertise. She was basically a helper in the commission of the offence. The Crown and defence both submitted that a conditional sentence was appropriate. The court imposed a 22

month conditional sentence. House arrest was imposed for the first 11 months, but the offender was free to leave the house for approved employment.

R. v. Christophersen, [2002] A.J. No. 1330 (Prov. Ct), 2002 ABPC 173

18 months for possession of $1,500 in counterfeit money + instruments for counterfeiting

Mr. Christophersen pled guilty to possession of $1,500 worth of counterfeit $20, $10 and $5 bills and possession of instruments, namely computers and scanners, for use in counterfeiting. The offender ran a relatively sophisticated counterfeiting scheme. He also pled guilty to multiple counts of producing and possessing $9,500 worth of counterfeit cheques, possessing forgery equipment, failure to appear and possession of a loaded firearm.

The offender had a prior criminal record which was not mentioned in the decision. The court observed that these were his first property related offences. The court held that deterrence was an important objective in sentencing. The court noted that the offender produced the false documents in three separate time frames, the crimes were planned, required skill and substantial effort, and he was motivated by greed. The court indicated that one of the accomplices had received a sentence of 3 months simply for possession of the counterfeit money. In view of the 2 months spent in pre-trial custody, the court sentenced the offender to a total of 3 years and 8 months which included:

- 6 months for forging a birth certificate, driver's licence and health card;
- 18 months consecutive for possession of the counterfeit money and the instruments of counterfeiting;
- 2 months consecutive for the failure to appear;
- 8 months consecutive for possession of a counterfeit mark, instruments intended to commit forgery and stolen insurance slips; and
- 1 year consecutive for possession of the loaded firearm.

R. v. Vuong, [1995] A.J. No. 363 (Prov. Ct.)

18 months in addition to 3 weeks pre-trial for possession of 19 counterfeited credit cards

Mr. Vuong pled guilty to possession of 19 counterfeit credit cards. The offender was 21 and had a previous conviction for drinking and driving. The court was told that 20% of

credit card fraud is caused with counterfeit credit cards. The judge indicated that he was satisfied of the need for deterrence in sentencing because the offence was serious and caused substantial financial losses in Canada and the world. The offender, who had spent 3 weeks in pre-trial custody, was sentenced to a further 18 months imprisonment.

2. British Columbia

R. v. Grozell, [2004] B.C.J. No. 2794, 2004 BCPC 502 (CanLII))

26 months and five months pre-trial custody for possession, uttering and making approximately CDN$950,000 and US$119,000

Mr. Grozell pled guilty to possession, uttering and making counterfeit money. He also pled guilty to several other offences including impersonation, fraudulent use of credit card data and theft from mail.

On November 14th, 2003, Mr. Grozell was arrested by the RCMP in Nanaimo after a lounge employee became suspicious because Mr. Grozell had attempted to pass several bills at the establishment. Mr. Grozell was found in possession of two Canadian counterfeit $100 bills.

On January 28th, 2004, in Regina, Saskatchewan, the accused and his accomplice, Mr. Sadegur, attempted to pass an older looking $100 bill at a local mall. Mr. Grozell was arrested and found to be in possession of a counterfeit $100 bill. The police conducted a search of his hotel room and seized a laptop computer, a printer, an ink-jet printer, $7,500 in uncut Canadian notes, $1,900 in cut Canadian notes, and $1,190 in American cut counterfeit notes. Two teens, hired by Grozell to distribute the counterfeit money, were also found in the room.

Mr. Grozell provided a statement to the Regina police. He said that he and Mr. Sadegur had been traveling across western Canada passing counterfeit money. He admitted to having left Vancouver with $7,000 in counterfeit funds and that during their stay in Edmonton, he and Mr. Sagedur had printed up 20 sheets of $100 bills containing up to three bills per sheet.

On May 4th, 2004, in Hope, Mr. Grozell was pulled over for speeding. A search of the vehicle revealed six $100 counterfeit Canadian bills, two $5 counterfeit Canadian bills, one $20 counterfeit Canadian bill and one $20 American bill rolled up in a black cell phone case, an aluminum case containing several sheets of high quality paper, five uncut sheets with one $10 Canadian bill and two $20 Canadian bills on each sheet, blank printer papers, colour scanner copier and laptop which included sophisticated images of various bank notes, leather water repellent spray, a black ultraviolet light and gold sparkle paper with maple leaf cut-outs.

At the sentencing hearing, Crown argued that making American money was an aggravating circumstance because it amounted to tampering with another nation's currency and economy and because it is harder for merchants in Canada to detect American counterfeit money. The Crown asked the Court to consider a global sentence in the range of three to five years. The defense took the position that a conditional sentence order was appropriate.

The judge accepted the evidence linking the activities of Mr. Grozell to the criminal organization comprised of Mr. Palianali [*R. v. Paolinelli*, [2004] A.J. No. 1330 (Prov. Ct.), 2004 CanLII 53858 (AB P.C.)] and Mr. Wah who were responsible for the distribution of the counterfeit JD series notes from August, 2003 to September, 2004 in Western Canada. The judge did not consider the difficult detention caused by passing counterfeit bills to drug dealers to be a mitigating circumstance.

The judge relied on the affidavit from a Bank of Canada employee and on the sentence imposed on Mr. Palianali.

In conclusion, the judge said:

> [53] Printers of counterfeit bills and other persons who take a lead role in this type of counterfeiting operations usually should be sentenced more severely than those who merely distribute the money. Mr. Grozell is not a mere distributor. He was involved in the printing and

> passing, distributing, and the transportation of the equipment of a very sophisticated, far-reaching, extensive counterfeiting ring. This is a large operation. It can affect a local economy. In some cases these types of offences can affect the economy of a whole country. The degree of sophistication of the product, and I accept that these are sophisticated bills, and the prevalence of the distribution are matters that I have to take into consideration.

R. v. Yue, [1996] B.C.J. No. 385 (B.C.C.A.)

2½ years for possession equipment for forging credit cards + $9,000 property from crime

Mr. Yue, a first-time offender, was convicted by a jury of possession of equipment that was intended to be used to forge credit cards. He was also convicted of possession of $11,000 worth of property obtained through the use of counterfeit credit cards and smuggling this property into Canada. The trial judge sentenced him to 2 years imprisonment for possession of the equipment intended to forge credit cards, 6 months consecutive for the possession of property obtained by crime, and 60 days concurrent for the smuggling offence. The offender appealed on the basis of the disparity between his sentence and that of his accomplice who was fined $1,500. The Court of Appeal noted that the accomplice had surrendered himself and pled guilty before the preliminary. The Court dismissed the appeal noting that an excessively lenient sentence for one offender does not entitle another offender to a similarly lenient sentence.

R. v. Le, [1993] B.C.J. No. 165 (B.C.C.A.)

9 months for possession of $2,400 in counterfeit $100 bills and $1,100 in proceeds

Mr. Le, a first-time offender, was convicted of possession of $2,400 in counterfeit $100 bills and uttering counterfeit money. He also had $1,100 in legitimate bills which indicated to the court that he had victimized 11 to 12 small grocery merchants. The offender was 30 years old and supported his wife and two young children through his employment. The trial judge imposed a sentence of 9 months imprisonment. The Court of Appeal upheld the sentence and indicated at paragraph 7 that:

> Counterfeiting is an offence for which, in my view, deterrence is a far more important factor than it is for many other offences. It requires pre-meditation and planning and is driven entirely by greed.

R. v. Wong, [1993] B.C.J. No. 535 (B.C.C.A.)

6 months for using counterfeit credit cards to obtain $7,700 worth of goods over 4 months

Mr. Wong pled guilty to six counts of using counterfeit credit cards over a four month period to obtain at least $7,700 worth of goods. He also pled guilty to breach of an undertaking and for obstructing justice by threatening a witness. The sentencing judge sentenced the offender to 8 months imprisonment, 2 years probation, and restitution of about $4,200 for the credit card offences. The offender was also sentenced to 4 months consecutive for breach of the undertaking and 3 months consecutive for obstructing justice. The offender appealed. The Court of Appeal dismissed the appeal and held at paragraph 7 that:

> In my opinion, having regard to the very deliberate nature of the credit card offences, the fact that they involved a degree of planning, and the fact that they involved a very sophisticated operation, I do not agree that the eight month sentence imposed by the learned sentencing judge was too high a sentence in all of the circumstances.

R. v. Berntsen, [1988] B.C.J. No. 1180 (B.C.C.A.)

6 months for uttering counterfeit US$20 and possessing 11 other counterfeit notes

Mr. Berntsen, a 25 year old first-time offender, was convicted of uttering a counterfeit US $20 bill. The police found eleven other counterfeit bills on his person. The offender had been steadily employed. The trial judge imposed a sentence of 6 months imprisonment. The Court of Appeal dismissed the appeal and noted that:

> The trial judge in imposing sentence said that this is a most serious offence in any country in the world…
>
> …
>
> The cases that have been put before us indicate that in relation to counterfeit offences a sentence of imprisonment is usually called for unless there were quite exceptional circumstances.

R. v. Locascio, [1988] B.C.J. No. 1658 (County Ct.)

$1,500 fine for possession of $740 in counterfeit money

Mr. Locascio pled guilty to one count of possession of $740 of counterfeit money. The offender's brother took primary responsibility and claimed it was his money that was being passed. The offender had a 6 year old criminal record, which included a theft conviction, from when he was a teenager. The court accepted that the offender had a

reasonable work record and had been caring for his mother. The court sentenced him to a fine of $1,500 fine. The court ordered that the unspecified quantity of authentic money that was found on the offender was to be returned to the businesses he victimized and the balance was to be forfeited to the Crown.

R. v. Leung, [1985] B.C.J. No. 2165 (B.C.C.A.)

2 years for possession of $65,000 in counterfeit cheques + $1,600 in counterfeit money

The three accused pled guilty to possession of $65,000 in counterfeit traveller's cheques and $1,600 worth of counterfeit money. Mr. Chung also pled guilty to eleven counts of uttering $5,500 worth of counterfeit traveller's cheques and one count of using a forged passport. The Crown called evidence to show that the counterfeit money and cheques were of very high quality and came from a larger operation where about $500,000 in counterfeit cheques had been produced. All three were first-time offenders and in their early 20s. In view of the 6 months they spent in pre-trial custody, the Crown suggested an additional 1 year imprisonment. The trial judge sentenced each of the offenders to 8 years for possession of the counterfeit traveller's cheques, and 8 years concurrent for possession of the counterfeit money. Chung was sentenced to an additional 3 years consecutive for uttering and 3 years consecutive for using the false passport. All three appealed.

The Court of Appeal indicated that the offenders were not particularly sophisticated, but they had made a significant contribution to the larger scheme. Notwithstanding this, the Court of Appeal held the original sentences were excessive and reduced the sentences to 2 years imprisonment for possession of the counterfeit traveller's cheques and 2 years concurrent for possession of the counterfeit money. Chung's sentence was reduced to an additional 1 year concurrent for the uttering counts and 3 months consecutive for the use of the forged passport.

R. v. Magisano, [1978] B.C.J. No. 104 (C.A.)

4 years + 6 months pre-trial for conspiring to possess US$1¼ million counterfeit money

Mr. Magisano pled guilty to one count of conspiring to possess US $1,250,000 in counterfeit money. The offender was a distributor rather than a producer. The offender's

only record was for possession of a firearm. He had acquired the firearm in the U.S. and it was seized at the border after he declared it to Customs. He had spent 6 months in pre-trial custody. The sentencing judge imposed a sentence of 7 years. An accomplice, who spent no time in pre-trial custody, was sentenced to 4 years. The accomplice's sentence appeal was dismissed before Mr. Magisano's appeal was heard. The Court of Appeal held that the trial court erred when it viewed Mr. Magisano as being significantly more involved than his accomplice and reduced his sentence to 4 years imprisonment.

3. Maritimes

R v. Dickson, [1999] N.B.J. No. 643 (Q.B.)

6 month conditional sentencing for possessing two counterfeit $5 bills

Mr. Dickson pled guilty to making and possessing two counterfeit $5 bills on one indictment. He had made the notes with a photocopier. The offender also pled guilty to using credit card data to obtain services from the credit card issuer, using a credit card knowing it had been obtained by an offence and defrauding a gas bar on a second indictment. Approximately $7,000 had been misappropriated in relation to these offences. The offender was 20 years old and had no adult criminal record. As a young offender he had been convicted for impaired driving and for fraudulently obtaining video gambling machines worth under $5,000. The offender was addicted to video gambling machines. The pre-sentence report was very favourable. The offender had been a good student, an avid athlete and had completed 1 year of university. The offender was employed at the time of the sentencing and living with his brother. There was a joint submission for a conditional sentence. The court imposed a 6 month conditional sentence for the counterfeiting offences and a consecutive 12 month conditional sentence for the credit card and fraud offences. In addition, the court imposed a year of probation with 200 hours community service.

R. v. Ly, [1992] N.J. No. 354 (Nfld. C.A.)

4 years for possessing and using counterfeit credit cards

Mr. Ly pled guilty to fourteen counts of possessing and using counterfeit credit cards. In addition, the Crown led evidence which linked the offender and the manufacture of counterfeit credit cards to an organized crime network. The Crown also led evidence to show that credit card fraud caused $35 million in annual losses in Canada and $350 million worldwide. The offender had an unspecified criminal record. The Crown argued that that the gravity of the crime transcended the individual acts and should be treated as part of a larger criminal enterprise. The trial judge accepted that this was a serious aggravating factor and imposed a sentence of 4 years imprisonment in addition to 4 months pre-trial custody. The Court of Appeal agreed and affirmed the sentence.

R. v. Jones (1974), 17 C.C.C. (2d) 31 (P.E.I.C.A.)

6 months for uttering a counterfeit $100 bill

Mr. Jones pled guilty to uttering a counterfeit $100 bill. The first-time offender had a favourable pre-sentence report. The Crown suggested a sentence of 6 months. The trial court sentenced the offender to 2 years imprisonment. The Court of Criminal Appeal held that this sentence was unfit because it was out of line with sentences in similar cases and reduced the sentence to 6 months.

4. Ontario

R. v. *Caporale*, [2005] O.J. No. 1509, 2005 CanLII 19764 (ON. C.J.)

3 years and 4 months and 1 year pre-trial custody for making $1.2 million in notes

Mr. Caporale pled guilty to five counts of making $1.2 million dollars in counterfeit bank-notes between November 2003 and February 2004. Either through an accomplice, or directly, Caporale made the following sales of counterfeit bank-notes to an undercover officer:

- $7,500 in counterfeit $100 notes for $1,900;
- $100,000 in counterfeit $100 notes for $20,000;
- $100,000 in counterfeit $100 notes for $18,000; and
- $500,000 in counterfeit $100 notes for $14,000.

The last sale was to have been for a total of $750,000 in counterfeit $100 and $50 notes. Caporale delivered $500,000 and said he would complete the rest soon, but the police decided to arrest him at that point. The officer complained about the appearance of planchettes after an early sale. Caporale promised to fix their pigmentation so they would not react to ultraviolet light. Caporale claimed he had had spent a year perfecting the counterfeit $100 notes and had perfected a fake Optical Security Device as well. Caporale also claimed that he could counterfeit older US notes, but the newer US notes were difficult to produce.

A search warrant resulted in an additional $568,000 in counterfeit notes being seized. Together with the earlier purchases, Caporale manufactured approximately $1.2 million in counterfeit notes.

Mr. Caporale was 28 years of age, single and had no dependents. The sentencing transcript makes it clear that he was sentenced to 2 years for making counterfeit money on November 27, 2001. As a result, these offences were committed while on parole. Caporale also used some of the equipment used to commit the earlier offences in these offences. Only his earlier conviction for making counterfeit money offence is detailed in the transcript. Readers may be interested in his complete record, which was filed on the sentencing, and is set out below:

1994	B+E	Probation 24 months
(Youth)	Possession of property from crime	$1,000 restitution
1996	Possession of property from crime	S.S + 2 years probation
1999	Production of scheduled substance	18 months concurrent
	PFTP of trafficking	
	Possession of property from crime	
2001	Making counterfeit money	2 years

The court indicated that the paramount principle in sentencing Mr. Caporale was deterrence as the offences were motivated solely by greed. The court indicated that a sentence of 5½ years was appropriate in view of the fact that the offences were sophisticated and Mr. Caporale had been previously convicted for a similar offence The court imposed a sentence of 3½ years in view of the 1 year pre-trial custody.

R. v. Gianoulias, [2002] O.J. No. 5545 (Ont. Sup. Ct.)

16 month conditional sentence– presumption of incarceration for breach

Mr. Gianoulias was found guilty by a jury of two counterfeiting offences. The court imposed a 16 month conditional sentence. The court later terminated the conditional sentence after finding that the offender breached the conditional sentence by failing to complete the required community service. The court noted that the presumption in *Proulx* was that breaches should result in imprisonment and incarcerated the offender for the remainder of the sentence.

R. v. Haldane, [2001] O.J. No. 5161 (Sup. Ct.); [2002] O.J. No. 4173 [Ont. C.A.]

2½ years – substantial record - manufacturing 17 counterfeit $20 bank notes

Mr. Haldane was convicted of making 17 counterfeit $20 bank notes and possession of forgery tools. The offender was 50 years old and had a substantial history of petty offences most of which had resulted in short jail sentences. The offender estimated that he had spent about 5 years in custody in addition to the dozens of fines and probation orders he had received. The trial judge noted the need for deterrence and stated at paragraphs 17-18:

> Counterfeit money constitutes a very serious threat to the community, from the economy of the community to the economy of the country, particularly now when it can be produced relatively easily, although the government does try to keep one step ahead.
>
> I do not think I am known as a judge who takes a particularly tough stance with respect to most property offences, Mr. Haldane, but counterfeit money is one in which I agree with the majority of my colleagues that there must be some significant, generally deterrent, penalty imposed.

The trial judge imposed 30 months imprisonment. The offender's conviction appeal was dismissed by the Court of Appeal.

R. v. Weber, [2001] O.J. No. 6103 (Ontario Court of Justice), 2001 CanLII 24366 (ON C.J.), appeal dismissed 2003 CanLII 28579 (ON C.A.)

5 years – manufacturing $3.5 million in counterfeit $100 bank notes

Mr. Weber pled guilty to one count of making over $3.5 million in counterfeit $100 bank-notes contrary to s.449 and two counts of uttering a total of 26 counterfeit $100 bills contrary to s.452(a). He also pled guilty to several counts related to possession of property obtained by crime, uttering forged documents, and breaching terms of his bail and a conditional sentence he was serving.

Mr. Weber was 22 years old when he was convicted in 1987 of uttering and possession of forgery instruments. He had used a computer to create false cheques which he had cashed at various places. Mr. Weber was sentenced to 8 months concurrent on each offence.

In 1999 Mr. Weber was charged with cultivating and making counterfeit $20 bills (for which he later pled guilty to possession and was fined $3,000). On April 13, 2000 he pled guilty to the cultivation of marijuana charge and the court imposed an 18 month conditional sentence. The sentence required him to stay at his parent's house except in specific circumstances. While serving this sentence, he breached this requirement and a similar term in his earlier bail release when he knowingly uttered five forged $50 gift certificates. In addition, Mr. Weber uttered 20 counterfeit $100 bills as part payment for $2,700 tire rims. Mr. Weber uttered a further 5 counterfeit $100 bills to purchase a computer printer. After it was discovered that these bills were counterfeit, Mr. Weber was arrested and released on bail again.

The counterfeit $100 bills passed by Mr. Weber were identified by the RCMP laboratory in Ottawa as being a unique type of counterfeit that had been showing up regularly in commerce. As a result, an extensive investigation was launched into Mr. Weber's activities. This investigation showed that Mr. Weber had been purchasing large quantities of masking film, air brush extenders, tinting paint, computers, and high quality printing paper. Ultimately a search warrant was executed on the residence where Weber and his accomplices were making counterfeit $100 bills. A total of $233,900 in counterfeit $100 bills were seized along with supplies that could have been used to generate several thousand more. The RCMP lab in Ottawa created a report which showed that a total of 35,787 unique Weber counterfeit $100 bank-notes with a face value of $3.5 million had been passed in Canada. The report, which showed when the bills were passed and in which province, was filed as an exhibit. In addition, a victim impact statement from the Bank of Canada was filed.

In submissions on sentencing, the defence conceded that general deterrence should be paramount in view of the fact that offence of making counterfeit money was sophisticated, substantial, required planning, and had a significant impact on the economy. The defence suggested a total sentence of 5 years imprisonment in view of the early guilty plea.

The Crown noted that the statement from the Bank of Canada showed that counterfeiting was increasing. The Bank statement also indicated that counterfeiting in general, and the Weber $100 note in particular, had a significant impact on the economy. The Crown indicated that more businesses refused to accept $100 bills because of their concerns about counterfeiting. However, the Crown agreed that the guilty plea was significant and also suggested 5 years imprisonment.

The court accepted the joint submission and imposed a sentence of five years imprisonment on the charge of making counterfeit money in addition to the two months pre-trial custody the offender had already served. Various concurrent terms were

imposed for the other offences. The court noted that this was a highly sophisticated and profitable offence and the sentence would have been higher but for the guilty plea.

R. v. Irvine, [2000] O.J. No. 3226 (Sup. Ct.)

1 year concurrent to B+E for uttering four $50 + possessing five $50 counterfeit notes

Ms. Irvine broke into a house and stole some coins and jewellery. While waiting disposition for this offence, the offender uttered 4 counterfeit $50 bank notes and had another 5 counterfeit $50 notes in her possession. The offender was 29 and the mother of a child who was being cared for by relatives. The offender had a lengthy criminal record, a long history of drug abuse and only marginal prospects for rehabilitation. The offender had spent 6 weeks in pre-trial custody. The trial judge accepted a joint submission and imposed a sentence of 2 years on the break and enter offence and 1 year concurrent on the counterfeiting offences.

R. v. Mankoo, [2000] O.J. No. 934 (C.A.)

23½ months for courier transporting $300,000 counterfeit cheques + equipment

Mr. Mankoo pled guilty to possession of more than $300,000 worth of counterfeit traveller's cheques, forged identification and embossing plates capable of producing more counterfeit cheques and international passports. The offender was caught at the border. The court accepted that he was a courier for a counterfeiting operation. The court observed that he had a prior criminal record (which was not described) and was on probation at the time of the offence. The court rejected the offender's request for a conditional sentence and imposed 23½ months imprisonment. The Court of Appeal upheld the sentence.

R. v. Dunn, [1998] O.J. No. 807 (C.A.)

21 months conditional for follower in amateurish making counterfeit money offences

Mr. Dunn was convicted of making counterfeit money, possession of counterfeiting equipment and conspiring to make counterfeit U.S. money. The offenders leased a photocopier and used it at Mr. Dunn's business to make the counterfeit money. Mr. Dunn was described as a follower rather than a leader in the commission of the offence. The

amount of money produced was described as being a small amount. The first-time offender was 22 when the offences were committed. His pre-sentence report was favourable. After he was charged, the offender started dating a teacher who he subsequently married. The trial judge found that the offender was sincerely remorseful and specific deterrence was not an important factor. Nevertheless, the trial judge sentenced the offender to concurrent terms of 30 months imprisonment.

The offender spent 19 days in the local jail and in the penitentiary before being released on bail pending appeal. While on bail, he obtained a job and started attending a community college. The Court held that it was an error to impose a penitentiary sentence on a first offender who was no danger to the community for being the follower in a relatively minor and amateurish offence. The Court imposed a 21 month conditional sentence.

R. v. Chan, [1997] O.J. No. 6021 (Gen. Div.) *sub nom R. v. Chan, Mac, and Wong*; varied [2002] O.J. No. 2179 (Ont.C.A.)

6 months for making counterfeit credit card scheme due to lengthy time case on appeal

Mr. Mac was convicted of five counts of possession of instruments adapted and intended to be used as forgery tools. The tools, which included blank white cards, embossing and encoding machines, computer and significant paraphernalia, were all intended to make counterfeit credit cards. The counterfeiting scheme was relatively sophisticated and the trial judge accepted that it could be characterized as "a credit card factory". The trial judge found that the extent of Mac's role in the counterfeiting operation was unclear. The Crown led evidence that the losses in 1994 from counterfeit credit cards was $36 million dollars. The court accepted without hearing evidence on the point that ultimately this cost would be borne by credit card users.

Mr. Mac's employer, Michael Lao, had pled guilty earlier and been sentenced to 4 years and 8 months. The trial court found this sentence to be of little assistance because Lao had a record and his sentence was made concurrent to a 9 year sentence that he was already serving for trafficking in heroin.

Mr. Mac was a first-time offender, a mature man, and had a family. The trial judge decided that a conditional sentence was not appropriate and imposed a sentence of 11 months imprisonment with 1 year probation.

Mr. Mac appealed his conviction. The Court of Appeal accepted his argument that "adapted" in s.369(b) meant the instrument had to have been altered or modified to be used as a forgery tool. As there was no evidence of this, the Court overturned his conviction.[42] The Supreme Court of Canada held that "adapted" in s.369(b) simply means "suitable for" and restored Mr. Mac's conviction.[43]

The case was then remitted for sentencing to the Court of Appeal. The Court noted that ordinarily they would not interfere with the sentence imposed by the trial judge. However, in view of the fact that Mr. Mac had spent 5 years on bail, the Court lowered his sentence of imprisonment to 6 months.

R. v. Abdullahi, [1996] O.J. No. 2941 (Prov. Ct.)

6 months for possession of counterfeit stamp and uttering forged document with stamp

Mr. Abdullahi, a first-time offender, pled guilty to possession of a counterfeit customs stamp, uttering a forged document namely a document with the fake customs stamp, escaping lawful custody, and another count which was not described in the judgment but was for importing khat. The court accepted that the offender used the counterfeit stamp for himself. The trial judge noted that the accuracy of the counterfeit stamp and the sophistication of the offender's scheme to smuggle contraband through customs were aggravating factors. The offender had spent 4½ months in pre-trial custody. The trial judge accepted that the offender was of good character and a productive member of society. However, the court indicated that general deterrence was particularly important with respect to the counterfeit customs stamp. The court imposed the following sentence:

- 5 months imprisonment for possession of the counterfeit stamp (in addition to the 4 ½ months spent in pre-trial custody that was credited to this count);
- 1 month consecutive for uttering;

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[42] *R. v. Mac* (2001), 152 C.C.C. (3d) 1 (Ont.C.A.)
[43] *R. v. Mac* (2002), 163 C.C.C. (3d) 1 (S.C.C.)

- 1 month consecutive for escaping custody; and
- 2 months consecutive for the count for which the charge was not mentioned.

R. v. Kiss, [1995] O.J. No. 5002, upheld, [1996] O.J. No. 2052 (Ont. C.A.), 1996 CanLII 4703 (ON C.A.)
7 years for conspiring to manufacture and utter US$6.5 million and possessing US$3 million
Mr. Kiss and Mr. Sulug pled guilty to charges of conspiring to manufacture and utter US$6½ million dollars counterfeit bank notes and possession of US$3 million in counterfeit bank notes. A total of US$3½ million in counterfeit notes had been passed in 20 countries over a period of three to four years in addition to the US$3 million seized from their possession. Kiss also pled guilty to possessing equipment for manufacturing counterfeit money. Sulug also pled guilty to possessing a loaded semi-automatic handgun for which he did not have a certificate.

The US$3 million was the largest seizure of counterfeit U.S. money outside of the U.S. and the largest seizure of counterfeit money in Canada. The operation was described as more sophisticated than usual and with a fairly extensive distribution network. The counterfeits were above average in quality.

Kiss was 54 years old, a first-time offender, married and had grown children. He testified that he had been a printer all of his professional life. As a result of a business downturn, he agreed to print counterfeit bills at the instance of another person in 1990.

Sulug was 34 years old, a first-time offender and single. Sulug described himself as a financial consultant who had been attempting to assist Kiss with his financial problems and ended up helping to distribute the counterfeit money.

The court indicated that it was clear from Canadian, American, and U.K. cases that general deterrence was the major factor in sentencing. The court noted that:

> The crime of counterfeiting, particularly in US dollars, strikes not only at the heart of the economy of the nation whose money is being

> duplicated, but at the economy of all those countries where the money is passed. Ultimately it strikes at the heart of the world economy. The sentences, from my review of the cases, are such that there must be an assurance sent to the international community, in addition to others of like-minded nature, that these are matters that will be dealt with very severely.

The court stated that the second most important principle of sentencing was specific deterrence, but it had little relevance in this case. The last factor the court considered was rehabilitation. The court noted that case law made it clear that rehabilitation was of minimal importance in this kind of case.

Kiss was sentenced to 7 years on the conspiracy charge and 4 years concurrent on the possession of counterfeit and possession of equipment for counterfeiting. Sulug was sentenced to 5 years on the conspiracy charge and 4 years concurrent on the possession of counterfeit money.

The Court of Appeal for Ontario upheld the sentences notwithstanding factual errors made by the judge and indicated:

> We are, however of the view that the sentences imposed, having regard to the magnitude of the conspiracy (to manufacture in (*sic*) utter three million dollars U.S.) fully justified the sentences imposed. Clearly they were within the fit range.

R. v. Ismail, [1994] O.J. No. 1577 (Prov. Ct.)

Suspended sentence - first-time offender using forged credit card to obtain $3,500 in goods

Mr. Ismail, a first-time offender, pled guilty to using a forged credit card to obtain just over $3,500 in merchandise. The forged card was of remarkably amateurish quality. The Crown suggested that altered cards are connected to organized crime and cause millions of dollars of loss annually. The court noted there was no evidence to support this suggestion, but common sense indicated it was correct. Mr. Ismail was 20 years old, cooperative with the police and had good prospects for rehabilitation. In addition he was fully employed and planned to upgrade his education. The court imposed a suspended

sentence with 3 years probation. The probation included an order for 250 hours of community service and full restitution.

R. v. Rachid, [1994] O.J. No. 4228 (Ont. Ct. Jus.(Prov.Div.))

5 months for uttering and possession of 18 counterfeit US$20 bills

Mr. Rachid, a first-time offender, was convicted of uttering an unspecified amount of counterfeit money and possessing 18 counterfeit US$20 bills. The Crown led evidence that counterfeiting was prevalent in the Niagara Falls community. Relying on *R. v. Wilmott*[44] as authority the court noted that the prevalence of the crime, although only one factor to consider, added to the gravity of the offence and justified a more serious sentence. The court agreed with *R. v. Zezima* that counterfeiting was a very serious offence and there should be exceptional circumstances to justify only a nominal prison term.[45] The court found no exceptional circumstances and sentenced the offender to 5 months imprisonment and 12 months probation.

R. v. Cohen, [1993] O.J. No. 4301 (Ont. Ct. Jus.(Prov.Div.))

$1000 fine + 3 days pre-trial for first-time offender uttering US$100 bill

Mr. Cohen pled guilty to uttering a counterfeit US $100 bill. The offender was 39, had attended university and at one point was a successful businessman. There was no indication whether he had a criminal record. The court was satisfied that the need for specific deterrence was satisfied by the 3 or 4 days he spent in pre-trial custody. The court found the need for general deterrence was satisfied by a $1,000 fine and probation for 30 days.

R. v. Bruno, [1991] O.J. No. 2680 (Gen. Div.)

2½ years for first-time offender who possessed US$1 million counterfeit notes

Mr. Bruno, a 37 year old first-time offender, pled guilty to possession of over US $1,000,000 in counterfeit money. The evidence indicated that he was a middleman and

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[44] *R. v. Wilmott*, [1967] 1 C.C.C. 171 (Ont. C.A.) at 179
[45] *R. v. Zezima* (1970-71), 13 Crim. L.Q. 153 (Que. C.A.)

not the manufacturer. The trial judge found that the offender, who had two children, was sincerely remorseful. The court indicated:

> The major danger of flooding a country with counterfeit money is the danger to the country itself; this is not merely a danger to an individual in society, it varies tremendously from crimes such as robbery or theft and it is much more serious. For that reason the courts take a very severe view of this offence.

The court cited the importance of general deterrence in cases of this nature and imposed a sentence of 30 months imprisonment.

R. v. Martin (unreported – June 2, 1989 – Doc. No. Niagara North 751/88) (Dist. Ct.)

18 months for making $24,000 counterfeit money

Mr. Martin pled guilty to making $24,000 worth of counterfeit money that was seized from his home. The offender had one prior conviction for impaired driving. His pre-sentence report was favourable. The court noted the importance of general deterrence and sentenced the offender to 18 months imprisonment to be followed by one year of probation.

R. v. Kelly and Lauzon (1979), 48 C.C.C. (2d) 560 (Ont. C.A.)

9 months – offer to sell US$25,000, selling US$4,000 + possession of US$4,100

Mr. Kelly and Lauzon, both first-time offenders, were convicted of conspiring to utter counterfeit US $100 bills. Lauzon agreed to sell an undercover officer US $25,000 for $5,000 in Canadian money. Ultimately, Kelly only had US $4,000 because his supplier had not delivered the balance. Kelly agreed to sell this for $1,050 in Canadian currency. After Kelly was arrested, 41 counterfeit US $100 notes were seized from him. There was no indication that either of the offenders was responsible for producing the counterfeit money. Both had excellent work records. The trial judge sentenced Lauzon to 3 months imprisonment and Kelly to 9 months imprisonment. The Court of Appeal noted the offence was serious and dismissed their sentence appeals.

R. v. D.S., [1975] O.J. No. 1051 (C.A.)

30 days for uttering counterfeit money

The accused pled guilty to uttering counterfeit money. The trial judge imposed a sentenced of 8 months determinate and 6 months indeterminate. The Court of Appeal noted that the offender was 17, had an excellent work record, minimal involvement in the offence, and had served 30 days in custody before being granted bail pending appeal. In view of these circumstances, the Court reduced the sentence to time served and 12 months probation.

R. v. Twitchin (1970-71), 13 Crim. L.Q. 295 (Ont. C.A.)

1 year for possession of 24 counterfeit $10 bills

Mr. Twitchin, a 23 year old first-time offender, pled guilty to possessing 24 counterfeit $10 bills. The offender had a favourable pre-sentence report. The trial court imposed a sentence of 2 years less a day. The Court of Appeal indicated the sentence should be lowered to 1 year imprisonment and 1 year probation because of the favourable pre-sentence report and the officer's evidence that the offence was committed on the spur of the moment.

R. v. Robertson, [1969] O.J. No. 668 (C.A.)

8 years – conspiracy to utter unspecified amount of counterfeit money

Mr. Robertson pled guilty to conspiracy to utter counterfeit money. The offender was 38 and had a significant criminal record mostly for break, enter and thefts which dated back to 1951. This was first currency crime. The trial judge sentenced him to 12 years imprisonment. The Court of Appeal held that an offence of this nature warranted a heavy term of imprisonment, but felt that 12 years was excessive and reduced the sentence to 8 years imprisonment.

5. Québec

R. v. Blanchette, [1998] A.Q. No. 1949 (C.A.); *R. c. Desrochers*, [1998] A.Q. No. 934 (Que. Ct.)

3 years – making + possession of $998,000 worth of counterfeit $20 bills

Mr. Desrochers and Ms. Blanchette pled guilty to making counterfeit $20 bills with a photocopier and possessing $998,000 worth of incomplete counterfeit bills. Mr. Desrochers had a prior criminal record and was the operating mind behind the offence. He was sentenced to 3 years imprisonment concurrent for each count. Ms. Blanchette had no prior record and was not the principal instigator. Nevertheless, the trial judge also sentenced her to 3 years imprisonment.

The Quebec Court of Appeal dismissed the sentence appeals and noted at paragraph 13 of the *Blanchette* decision that the need for denunciation and deterrence was greater now that technology had made counterfeiting easier:

> Il y a lieu de rappeler ici qu'avec la technologie moderne, il est relativement facile pour ceux et celles qui possèdent des compétences en matière de reprographie de contrefaire de la monnaie. À notre avis, les critères de dissuasion et d'exemplarité doivent primer afin de décourager ceux et celles qui pourraient d'aventure se lancer dans cette opération.
>
> [Translation: It is important to note that with modern technology it is relatively easy for those who are skilled in reprography to make counterfeit money. In our opinion, the criteria of deterrence and denunciation must come first in order to discourage those who could by chance embark on such an operation.]

R. v. Sonsalla (1970), 15 C.R.N.S. 99 (Que. C.A.)

4 years – possession of ¼ million of counterfeit US$10 bills + instruments

Mr. Sonsalla pled guilty to possession of 24,100 counterfeit US$10 bank notes and possession of instruments intended for use in making counterfeit money. The 38 year old first-time offender had a family and positive prospects for rehabilitation. The offender had been a printer for 3 years at the time of the offence. The pre-sentence report indicated that the offence had been committed because of the offender's precarious financial condition. The trial judge indicated that counterfeit money constitutes a danger to the public and sentenced him to 1 year concurrent for each charge. The Crown appealed on the basis that producers of counterfeit money should be sentenced more severely. The

Court of Appeal agreed and after carefully reviewing its earlier decision in *Lacoste* indicated at page 105 that:

> Taking into account the circumstances of the instance case, I am of the opinion that a sentence of one year is inadequate, and does not constitute the deterrent which in my view is needed to preclude those who, lured by the prospect of gain, might be tempted to follow Sonsalla's example. For these reasons I would allow the appeal, quash the sentence of one year imposed upon the appellant, and impose concurrent sentences of four years in the penitentiary with respect to each charge.

R. v. Boisvert (1970-71), 13 Crim. L.Q. 153 (Que. C.A.)

1 week for uttering a counterfeit $10 bill

Mr. Boisvert pled guilty to uttering a counterfeit $10 bill and conspiring to utter counterfeit money. The trial judge sentenced him to 1 week of imprisonment and $100 fine. The Court of Appeal dismissed the appeal. The Court indicated it was reluctant to send the offender back to jail because Mr. Boisvert was now gainfully employed after the Crown's unjustifiable delay of a year in having the appeal heard.

R. v. Zezima (1970-71), 13 Crim. L.Q. 153 (Que. C.A.)

6 months for possession of 56 counterfeit $10 bills

Mr. Zezima, a first-time offender, pled guilty to possession of 56 counterfeit $10 bills. The trial judge sentenced him to a $1,000 fine and 2 years probation. The Court of Appeal indicated that counterfeiting is a very serious offence and there must be very exceptional circumstances to justify the imposition of a nominal term of imprisonment. The Court of Appeal increased the sentence to 6 months imprisonment.

R. v. Lacoste (1965), 46 C.R. 188 (Que. C.A.)

2 years + 3 months pre -trial – possession of 6,400 counterfeit $5 bills

Mr. Lacoste was convicted of possession of 6,400 counterfeit $5 bank notes. The trial judge sentenced the first-time offender to 3 months imprisonment. The Crown provided statistics on the appeal which showed that in other provinces 2/3 or more of sentences

were for more than 6 months while in Quebec only 22% were for more than six months. The Court indicated that it would have imposed 5 years, but for the fact the printer received 5 years and another person convicted of possession 3 years. The Court increased the sentence to 2 years imprisonment in addition to the 3 months served and indicated at pages 194-195 that:

> For such an offence, the Legislature has established a maximum penalty of 14 years. In other words, it considers this crime to be one of the most important and harmful.
>
> Judges in general and particularly those in the Province of Quebec, do not appear to attach all the attention they should to the intention expressed so clearly by the Legislature, and impose insignificant sentences which are more of an encouragement to such conduct than a true deterrent.
>
> …
>
> The consequences of this lenient approach were inevitable, and have worked to the detriment of our province; distributors of counterfeit money operate in much greater numbers in Quebec, because I suppose, of the greater tolerance on the part of our judges, and because of the reduced risk run by criminals in the event of detection.
>
> Hence, during the years 1958 to 1963, 492 criminals were convicted of possession of counterfeit bills in Quebec, whereas during the same period, the number in Ontario was only 117.
>
> In the last three years, moreover, the quantity of counterfeit bills seized was 51,000 in Quebec, and only 11,000 in Ontario.

6. Saskatchewan

R. v. *Grant*, 2005 CanLII 24605 (SK P.C.)

18 months for making and uttering under a $1,000 in counterfeit money

Mr. Grant pled guilty to making counterfeit money; uttering counterfeit money and possession of under 30 grams of cannabis. Grant and two accomplices traveled from Ontario to Saskatchewan with a computer that they used to make counterfeit bills as they traveled. Grant was recruited with the promise that he would have all the cannabis he could smoke and his travel expenses. The three entered into establishments along the way to purchase items with fake notes so they could receive real notes as change. Grant and his accomplices were arrested after uttering a counterfeit note at a store. The officers

found the computer, gold foil and related paraphernalia the three had been using. One of the accomplices was holding the group's stash of $700 in counterfeit $20s and $100s.

Mr. Grant was a 30 years old carpenter with a common-law spouse and three young children. Mr. Grant was also on bail for making and uttering counterfeit money during a similar operation earlier in the year. Mr. Grant had an extensive record which is not described in detail in the transcript. A copy of his record shows that as a youth he was sentenced several times to open custody for robbery, B&Es, and possession of stolen property. As an adult he received 1 month for possession of a scheduled drug, personation and breach of recognizance in the winter of 2003. Then in the fall of 2003 he received 6 months (in addition to 6 months pre-trial custody) for an extortion and a further 18 months for fail to attend court and theft.

The Crown and the defence made a joint submission for 18 months incarceration. The court imposed 18 months for making the counterfeit money, 3 months concurrent for uttering and 30 days concurrent for the possession of the cannabis. The judge noted that this was a reasonable sentence given the offender's record which included a previous sentence that amounted to 18 months for extortion.

R. v. Rafuse, [2004] S.J. 737, 2004 SKCA 161

6 months + 3½ months pre-trial – possession of 5 counterfeit $100 notes

Mr. Rafuse pled guilty to possessing five $100 counterfeit bank notes and fraudulently impersonating another person. The trial judge sentenced him to 12 months for the possession offence and 6 months consecutive for the impersonation in addition to 3½ months pre-trial custody. The Court of Appeal lowered the sentence for the possession of counterfeit money to 6 months, but did not vary the sentence for the impersonation.

Mr. Rafuse was a passenger in a car stopped by the R.C.M.P. During a consent search, the officers discovered 5 counterfeit $100 bills in Mr. Rafuse's wallet. The counterfeit bills were of good quality. Several of the bills were examined in an earlier stop by

R.C.M.P. officers who mistakenly thought they were genuine. Mr. Rafuse gave a false name on arrest, but his real identity was discovered after he was fingerprinted.

Mr. Rafuse was 21 years old, had a grade 12 education and had worked at a variety of automotive jobs. He had accumulated approximately 20 convictions starting when he was a young offender. His record was mainly for thefts, a couple of assaults, driving offences, breach of recognizance and being unlawfully at large. Mr. Rafuse was on probation at the time of the offence. He had no dependents.

The Crown noted that in 2003 counterfeiting had become the sixth most common offence in Canada, that its incidence rate had increased by 72% from the previous year, and that twice as many counterfeits were detected in circulation compared to the previous year. The Crown argued that the seriousness of the offence was compounded by its increased prevalence in the community.[46] The Crown also argued that counterfeiting caused a substantial loss to consumers and retailers and a loss of public confidence in bank notes. The Crown argued that in these circumstances the need for deterrence and denunciation for counterfeiting offences required a penitentiary sentence.[47]

The Court of Appeal held that the case law supported a sentence in the range of six months to two years less a day. The Court indicated sentences exceeding this range were rare and usually involved cases where greater quantities of counterfeit money and sophisticated operations were involved. The Court viewed the offender's involvement as being at the lower end of the scale because he was in possession of a relatively small amount of counterfeit money and there was nothing to link him to the money's production. In view of this, and because it was unclear whether the trial judge took the pre-trial custody into account, the Court lowered the sentence for the counterfeiting offence to six months. The Court did not vary the sentence for the impersonation.

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[46] *R. v. Adelman,* [1968] 3 C.C.C. 311 (B.C.C.A); *R. v. Sears* (1978), 39 C.C.C. (2d) 199 (Ont.C.A.); *R. v. Cardinal* (1982), 2 C.C.C. (3d) 490 (Alta. C.A.); *R. v. Merrill (M.P.),* [1991] O.J. No. 2680 (Gen. Div)
[47] *R. v. Bruno,* [1991] O.J. No. 2680 (Gen. Div.); *R. v. Le,* [1993] B.C.J. No. 165 (C.A.)

R. v. Lussier,[2004] S.J. No.807 (Sask. Prov. Ct.), 2004 CanLII 52845 (SK PC)

6 months + 3 weeks pre-trial - possession + uttering small quantity US$100 bills+ cheques

Mr. Lussier pled guilty to possessing two counterfeit US$100 bank notes, two counterfeit US$100 travelers cheques, and uttering a counterfeit US$100 bank note. He also pled guilty to breaching a recognizance by failing to keep the peace.

Mr. Lussier travelled from Alberta to Saskatchewan to pass the counterfeit bills. On June 17, 2004 a clerk refused to accept one of the US$100 bills because he suspected it was counterfeit. After Mr. Lussier left, the clerk then called the police. The police located Mr. Lussier trying to pass the counterfeit bill at another nearby business. The police arrested Mr. Lussier and found one other counterfeit US$100 bill and two fake US$100 traveller's cheques in his possession. The Crown indicated there was one other person involved in the scheme, but no further information was provided about that person. The Crown also indicated one counterfeit bill had been passed successfully in town.

Mr. Lussier was on bail having been released on a recognizance in Calgary on January 12, 2004 for several charges including assault with a weapon and break and enter. Mr. Lussier had been convicted 35 times, mainly for property offences, since 1993. His most recent conviction had been in August 2003 when he received a 90 day jail sentence and an unspecified period of probation. Mr. Lussier advised the judge he had a child who was living in Montreal, had been working as a drywaller, and was a cocaine addict.

The Crown noted that this was a planned offence that deliberately preyed on vulnerable businesses. The Crown suggested that, even with the early guilty plea, a sentence of 6 months, in addition to the 3 weeks spent in pre-trial custody, was appropriate in view of the seriousness of the offence and the need for individual deterrence.

The court indicated that it had been considering a penitentiary sentence, but imposed 6 months concurrent for the counterfeiting offences in addition to the pre-trial custody because of the Crown's position. The court imposed a month to be served consecutively for the breach of recognizance charge.