

Counterfeiting Offences - Sentencing Considerations for Prosecutors

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Overview

- Factual basis underlying the plea/finding of guilt.
- Relevant sentencing factors relating to the commission of the offence.
- Evidence on sentencing.
- Sentencing submissions.

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Factual Basis

- ensure factual basis *for the commission of the counterfeiting offence* is fully presented to the Court.
- factual basis provides relevant sentencing factors.

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Proof of Factual Basis

■ Guilty Plea:

- Ensure relevant information is in the Crown brief or inquiries are made of investigating officer *prior* to plea.
- New information must be disclosed to the defence prior to plea.

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Proof of Factual Basis

■ Guilty Plea, cont'd:

- Facts can be entered by:
 - Reading in.
 - Viva voce evidence under oath and subject to cross examination.
 - Agreed statement of fact.
 - Exhibits – including the counterfeit material; photographs; expert report.

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Proof of Factual Basis

■ Trial:

"In determining a sentence, a court may accept as proved any information disclosed at the trial or at the sentence proceedings and any facts agreed on by the prosecutor and the offender."

s. 724(1) of the *Criminal Code*.

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Proof of Factual Basis

■ Jury trial:

- There may be a doubt about the factual basis upon which the verdict is based (i.e. quantity of the counterfeit; role in offence).
- The prosecutor must ensure that submissions are made or evidence is called, if there is any doubt about the factual underpinning of the jury's verdict.

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Proof of Factual Basis

s. 724(2) of the *Criminal Code*

"Where the court is composed of a judge and jury, the court

a) shall accept as proven all of the facts ... that are essential to the jury's verdict of guilty; and

b) may find any other other relevant fact that was disclosed by the evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact"

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Relevant Sentencing Factors

- Motive.
- Quality.
- Quantity.
- Sophistication of scheme.
- Role of the offender.

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Sentencing Factors: Motive

"This was a planned, deliberate crime committed for profit. The crime was committed entirely as a matter of greed and in fact, was committed to permit the accused ... to secure sufficient funds to tour the town of Banff."

R. v. Onose [2004] A.J. No. 250.

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Sentencing Factors: Motive

"The motive for the crimes was greed. The ... crimes had an unlimited profit potential for the accused and his cohorts. Each of the ... crimes would have an effect on the Edmonton economy. Had he not been captured there might have been an effect on the Canadian economy."

R. v. Christopherson [2002] A.J. 1330.

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Sentencing Factors: Quality

A higher quality counterfeit product will generally result in a higher sentence being imposed than if the product is of amateurish quality.

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

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Sentencing Factors: Quantity of Counterfeit

"You were able to and did obtain over a million dollars of counterfeit U.S. bills. This is a very large amount. 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."

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

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Sentencing Factors: Sophistication of Scheme

"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."

R. v. Dunn [1998] O.J. 807 (C.A.).

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Sentencing Factors: Role of the Offender

Courts consider whether the offender was:

- in the **"upper echelons of the organization."**
R. v. Mac [2002] O.J. No. 2197 (C.A.).
- **"a follower rather than a leader."**
R. v. Dunn, supra.
- **"principal actor"** in the offence.
R. v. Christopherson, supra.
- **"heavily involved."**
R. v. Coman [2004] A.J. 283 (Prov. Ct).

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Evidence on Sentencing

Considerations for the Prosecutor:

■ In addition to the factual basis for the *commission of the offence*, are other facts relevant on sentencing?

- Admissibility of other relevant facts.
- Presentation of other relevant facts.
 - Method.
 - Content.

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Other Relevant Facts on Sentencing

1. Status of restitution.
2. Victim impact information.
3. Information from the Bank of Canada.
 - Prevalence of offence.
 - Impact on economy.

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Other Relevant Facts: Status of Restitution

Voluntary restitution by the offender prior to sentencing is a mitigating factor.

R. v. Shandro (1985) A.J. 578 (Alta. C.A.).

Failure to make restitution is a valid consideration on sentencing.

R. v. Rizzetto [2002] N.S.J. No. 489 (N.S.C.A.).

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Admissibility of Evidence on Sentencing

Evidence is admissible on sentencing through use of:

1. Criminal Code provisions on:
 - Victim Impact.
 - Relevant Evidence – s. 723.
2. Common Law.

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Admissibility: Victim Impact

Includes:

- Victim Impact Statements – s. 722.
- *"Other evidence concerning the victim."* – s. 722(3).

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Admissibility: Victim Impact

"... the court shall consider any statement ... of a victim of the offence describing the harm done to, or the loss suffered by the victim arising from the commission of the offence."

s. 722(1) of the *Criminal Code*.

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Admissibility: Victim Impact

A victim is:

"a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence."

s. 722(4)(a) of the *Criminal Code*.

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Admissibility: Victim Impact

The recipient of the counterfeit is a victim under the definition in s. 722(4)(a).

Important to ensure that information from the recipient of the counterfeit is not overlooked in sentencing for counterfeit offences.

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Admissibility: Victim Impact

Unresolved issues:

1. Is the Bank of Canada a "victim" pursuant to s. 722?

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Admissibility: Victim Impact

2. If the Bank is a "*victim*", is evidence about prevalence or impact of the offence, "*harm done to or loss suffered by the victim arising from the commission of the offence?*"

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Admissibility: Victim Impact

3. Even if the Bank is not a "*victim*", could the Court consider evidence on prevalence and impact of the offence under s. 722(3) of the *Criminal Code*?

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Admissibility: Victim Impact

Whether or not a statement has been filed, the Court may consider:

"... any other evidence concerning **any victim** of the offence for the purpose of determining sentence."

s. 722(3) of the *Criminal Code*.

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Admissibility: Victim Impact

Even though there are real issues with respect to admissibility of evidence on prevalence and impact of the offence as "*victim impact*" information, such evidence is admissible under s. 723(2) of the *Criminal Code* and/or common law.

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Admissibility: Relevant Evidence

The Court *shall* give the prosecutor and the offender an opportunity to make submissions with respect to **relevant facts**, before sentence is imposed.

s. 723(1) of the *Criminal Code*.

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Admissibility: Relevant Evidence

"The court shall hear any relevant evidence presented by the prosecutor or the offender."

s.723(2) of the *Criminal Code*.

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Admissibility: Relevant Evidence

Information about the prevalence of the offence and its impact is relevant and admissible:

- **at common law:**

R. v. Adelman [1968] 3 C.C.C. 311 (B.C.C.A.); *R. v. Landry* (1981) 61 C.C.C. (2d) 317 (N.S.C.A.).

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Admissibility: Relevant Evidence

- **Under s. 718 of the *Criminal Code* in relation to:**

- Deterrence
- Rehabilitation
- Reparations
- Responsibility

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Presentation of the Evidence

- Hearsay – s. 723(5) of the *Criminal Code*.
- Consent of the prosecutor and the defence – s. 724(1) of the *Criminal Code*.
- Calling evidence – ss. 723(2), 724(3) of the *Criminal Code*.

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Presentation of Evidence

Possible Avenues:

- Filing, reading or presentation in “*any other manner*” of victim impact statement. – s. 722.
- Viva voce evidence:
 - Witness from the Bank of Canada/police officer.
- Affidavit evidence:
 - Employee of the Bank of Canada/police officer.
- Material from the Bank of Canada website.

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Content of the Information

- Contextual/background information on the Bank of Canada
- Information on impact:
 - Undermines confidence in bank notes
 - Refusal to accept certain bank notes
 - Increased costs

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Content of the Information

- Information on prevalence:
 - By region, across Canada
 - Statistics
 - Charts

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Contextual/background Information

- Role of the Bank of Canada
 - to promote economic and financial welfare

- Responsibilities
 - conducting monetary policy
 - issue bank notes

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Statistics

Number of Counterfeits passed:

2002:
208,430 counterfeits passed.

2003:
443,231 counterfeits passed.

More than 100% increase in number of notes.

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Statistics

Value of Notes passed:

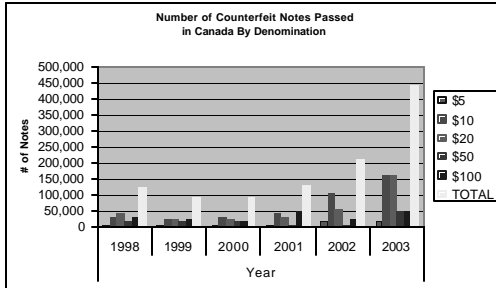
2002:
\$4.8 million in counterfeits passed .

2003:
\$12.6 million in counterfeits passed.

250% increase in value of notes passed.

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Charts



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Sentencing Submissions

- Effective use of evidence
 - Facts relating to commission of offence
 - Victim, impact, statistics, charts

- Effective use of case law
 - Aggravating/mitigating factors
 - Principles of sentencing
 - Type and range of sentence
 - Includes conditions if conditional sentence imposed

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