

CRIMINAL LAW JOURNAL

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CALL FOR PAPERS – THEMATIC ISSUE: CRIMINAL LAW AND TERRORISM 329

EDITORIAL

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ARTICLES

Criminal law practice: Defending Aboriginal people – *David Ross*

Traditional Aboriginal people hold fast to many of the old ways. They are also still a great influence on semi-traditional Aboriginals. This article deals with defending such people when they are charged with crimes. The cases are often heard in bush courts, but have been heard even in the Supreme Court, depending on the offence. A defence lawyer must know of traditional culture and how it came about, including family relationships, sacred objects, and dreaming tracks. Further essentials may include how to take instructions, asking questions of Aboriginal witnesses in court, the role of field officers, whether one should call the client to give evidence, the application of defences, and, on a plea of guilty, how traditional punishment may arise and its effect on sentence. 332

The relevance of confiscation to sentencing and its limitations – *Roger Douglas*

This article examines the circumstances in which confiscation orders can be taken into account in sentencing, and the relevance of sentence to such orders. It compares the approaches taken by courts in the absence of relevant legislation with legislative approaches and concludes that, while both judicial and legislative responses vary somewhat by jurisdiction, courts are more inclined than legislatures to regard confiscation orders as potentially relevant, insofar as they involve the actual forfeiture of property or the actual payment of sums ordered pursuant to pecuniary penalty orders. While arguing that the legislative approach is difficult to reconcile with principle, the article concludes that the incoherence which surrounds this area of law partly reflects more general strains within sentencing law, as well as political disillusionment with traditional criminal justice procedures in general, and with courts in particular. 345

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Recent developments in Canadian criminal law – *Gerry Ferguson* and *Benjamin L Berger*

This year's review covers a number of substantive, procedural and evidentiary developments. Substantive law developments include jurisprudence on the distinction between strict and absolute liability, the defence of officially induced error, the law of indecency, and the relevance of culture to the defence of provocation. Procedural developments include jurisprudence on the relative obligations and duties of judge and jury, and the further expansion of common law police powers. Recent developments in evidence include judicial discussion of the continuing evolution of the principled approach to hearsay, the restriction of the common law confessions rule, and the use of evidence obtained by hypnosis. 369

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