
MEMO

To: You (counsel for the Respondent Craig)

From: Senior Partner

Date: September 22, 2009

Re: *R. v. Judy Ann Craig*

We have been retained by Judy Ann Craig to respond to the Crown's appeal of the Supreme Court of Canada's decision in *Craig v. The Queen* 2009 SCC 23 to the Supreme Moot Court of Dalhousie. I need you to write the factum and argue the appeal for me.

The appellant's factum is due on October 22, 2009. Counsel for the Crown will provide you with a copy of their factum, so that we'll have an opportunity to respond to it in our factum. I recommend that you begin researching and writing our factum before you receive the appellant's factum – you can always revise your draft to address any additional issues the appellant raises that you didn't anticipate.

Our factum is due on Thursday, October 29, 2009 between 9:00 a.m. – 11:00 a.m. in Room 207.

The appeal will be heard during the week of January 25-28, 2010. I am scheduled to be out of town for discoveries that week. You will need to check the Court's docket to determine the exact date and time of the appeal.

I've summarized the facts of the case below as found by the trial judge and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

Facts

Our client pleaded guilty to one count of producing marijuana contrary to s.7(1) of the *Controlled Drugs and Substances Act* (CDSA). She ran a grow-op out of her North

Vancouver home that grossed more than \$100,000 per year. It was her only source of income for many years. She sold drugs to various clients, including friends with AIDS, and hired employees to help her with the operation.

Police seized 186 marijuana plants in her basement and on the main floor. They estimated the value of the crop at \$87,500 per year when sold by the pound. Ms. Craig disputed this estimate. She testified at her sentencing that the drugs were worth \$31,875. Also seized were packaging, scales, \$22,275 in Canadian cash, \$787 in U.S dollars, \$2,390 in traveller's cheques, score sheets documenting marijuana sales from her car, and a container with a pound of marijuana packaged in ounce, quarter-pound, and half-pound bags. Police estimated the value of a pound of packaged marijuana found in her car at \$15,000, which Ms. Craig did not challenge.

Ms. Craig had run the grow-op since 1998. She has never used drugs herself. The operation included industrial lighting, ventilation, and irrigation systems. Ms. Craig did not steal electricity to maintain the grow-op, and had no weapons in the home. She also used the home as her residence, and lived there alone.

At the time of sentencing, Ms. Craig was 54 years old, divorced, had no dependents, and no previous criminal record. She had a university education and had worked in real estate. After her divorce, she was left depressed and without employment. She was an exceptional gardener and her garden had been featured in a regional magazine. She began the grow operation at the suggestion of a friend.

The North Vancouver home that housed the grow-op was worth \$460,000 at the time of sentencing, with \$119,000 remaining on the mortgage. A second home in Richmond that Ms. Craig inherited from her parents was worth about the same, with \$135,000 remaining on the mortgage.

The Canada Revenue Agency reassessed Ms. Craig as owing \$250,000 in unpaid taxes relating to her marijuana earnings back to 1998. She disputes this amount, which was secured with a lien on her North Vancouver home and the home in Richmond, B.C. that she'd inherited from her parents. We expect Ms. Craig's tax issues will take many years to resolve. Neither home was purchased with proceeds of crime, but both homes were maintained with profits from the grow-op.

Provincial Court Judge Gedy, J. sentenced Ms. Craig to a 12 month conditional sentence, a fine of \$100,000, and a victim fine surcharge of \$15,000, but declined to order forfeiture of the North Vancouver home.

Both parties appealed the sentence. The B.C. Court of Appeal unanimously upheld the conditional sentence but set aside the fine and victim fine surcharge. Instead, they ordered forfeiture of Ms. Craig's North Vancouver home.

Ms. Craig appealed further to the Supreme Court of Canada. The Supreme Court of Canada allowed the appeal and set aside the forfeiture order. The Crown had not sought reinstatement of the fine, so it was not reinstated. Ms. Craig had already served the 12 month conditional sentence.

The Supreme Court of Canada split on two issues: first, whether the decision to order forfeiture should be considered in crafting a fit sentence, or independent from it; and second, whether partial forfeiture is available under s.19.1 of the *CDSA*. Separate majorities concluded that forfeiture should be considered independently from sentencing and that partial forfeiture is possible under s.19.1 of the *CDSA*.

We were very pleased with the outcome at the SCC, which eliminated both the fine imposed by the trial judge and the forfeiture order imposed by the Court of Appeal. The Crown has appealed to the Supreme Moot Court of Dalhousie on the basis that s.19.1 of the *CDSA* does not permit a partial order of forfeiture. Further, they argue that while the majority at the Supreme Court of Canada was correct that forfeiture orders should be considered independently from the sentencing process, they erred in failing to reinstate the Court of Appeal's forfeiture order in this case.

Our client is extremely concerned that a loss at the Supreme Moot Court of Dalhousie could result in reinstatement of the \$100,000 fine imposed by the trial judge or the forfeiture order imposed by the Court of Appeal. We must do everything we can to avoid these outcomes.

We have cross-appealed on the issue of whether a forfeiture order can be considered when arriving at a fit sentence. For convenience, we've agreed with the Crown to refer to the Crown as the appellant and to Ms. Craig as the respondent throughout the proceeding, notwithstanding her cross-appeal.

On the first issue, we will argue that any decision to order forfeiture must be considered globally in crafting a fit sentence. This is particularly so where the forfeiture is punitive, as it would be for our client. Our position on the second issue in the appeal is that an order for partial forfeiture is permitted under the *CDSA*. Finally, we will argue that the trial judge and SCC were both correct that the circumstances do not warrant forfeiture in Ms. Craig's case.

First Issue:

1. Should any forfeiture order be considered when arriving at a fit sentence?

Second Issue:

2(a) Does s.19.1 of the *Controlled Drugs and Substances Act* allow for an order of partial forfeiture of real property?

2(b) Should forfeiture have been ordered in this case?

Sources

You will want to look at the Supreme Court of Canada decision at 2009 SCC 23. The Court of Appeal decision is available at 2007 BCCA 234. The trial judge's decision is available at 2005 CarswellBC 3685; [2005] B.C.J. No. 3238.

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to five cases on each issue (including the cases mentioned above), any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources (such as journal articles.) Lower court decisions in this matter do not count towards the five-case limit.