



# MEDIA STATEMENT

## CRIMINAL JUSTICE BRANCH

October 21, 2015

15-21

### **Crown Files Appeal of Constitutional Ruling and Sentencing Decision**

**Victoria** - The Criminal Justice Branch, Ministry of Justice (the “Branch”), announced today that it has filed an appeal with the Court of Appeal for British Columbia, asking that the Court set aside a constitutional ruling in *R. v. Oud*, 2015 BCSC 1040 and 2015 BCSC 1754. The Branch has further asked that the sentence imposed be increased. The appeal has been filed under Court of Appeal number CA 43170 (Vancouver).

In the *Oud* case, a British Columbia Supreme Court Justice ruled that the mandatory minimum sentence in section 244.2(3)(b) of the *Criminal Code* (recklessly discharging a firearm) violates section 12 of the *Charter of Rights and Freedoms* (the “*Charter*”). The sentencing judge further ruled that to the extent the section is inconsistent with the *Charter*, the infringement cannot be demonstrably justified as a reasonable limit in a free and democratic society. Mr. Oud was sentenced to 4 years imprisonment, less 153 days credit for time served. Crown had sought a sentence of 5 to 7 years less time served.

The Branch has reviewed the constitutional ruling and, in accordance with its policy on appeals into the Court of Appeal, the Branch is satisfied that: (1) the judgment reveals errors of law; (2) a reasonable argument can be made that the constitutional ruling would not necessarily have been the same if the errors were not made; and (3) the public interest requires an appeal.

The Crown has advanced, as additional grounds of appeal, that the sentencing judge failed to give sufficient consideration to the principles of denunciation and deterrence when imposing sentence; and failed to impose a total sentence which was proportionate to the gravity of the offence and the degree of responsibility of the offender. Ultimately, it will be up to the Court of Appeal to determine whether appellate intervention is available and warranted.

A hearing date for the appeal has not yet been set. As this matter is now before the Court of Appeal, the Branch will not comment further on the specifics of the case.

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### ***Branch Vision***

***Courageous, Fair and Efficient – A Prosecution Service that has the Confidence of the Public.***

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