

Publisher's Note

2018 — Release 3

Previous release was 2018-2

From Your Library:	
<input type="checkbox"/>	_____

Barrett

Balancing Charter Interests — Victims' Rights and Third Party Remedies

This groundbreaking work examines the rights of victims and other third parties within the criminal justice system, including the rights of media, interest groups and the families of victims. It goes well beyond the *Charter* to provide a review of the statutory provisions and case law at various stages of the criminal process.

This release features updates to the case law and commentary in Chapters 4 (Sentencing Issues) and 5 (Other Hearings).

Release Highlights

- **Sentencing Issues — Compensation and Restitution — What Can be Claimed?** — The Nova Scotia Court of Appeal set aside a restitution order of \$97,000 on the basis that no actual loss had been established — although the accused pleaded guilty to having uttered forged documents for the purpose of obtaining government grants in an attempt to avoid the need for applying for funds in the future, the trial judge erred by basing the order on projects that the

THOMSON REUTERS CANADA

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

Email CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

province might have otherwise funded, rather than on the minimal losses the province had actually suffered: *R. v. Kelly*, 2018 NSCA 24, 2018 CarswellNS 166 (N.S. C.A.).

- **Sentencing Issues — Sex Offender Registry — Constitutionality of Registry** — The accused’s convictions involved three counts of sexual assault involving acts of touching the same complainant on the same day. The accused attacked the mandatory lifetime order since it hinges on Crown discretion — specifically, the Crown had allegedly chosen to pursue three charges for the accused’s impugned conduct, while someone charged with a single count of a more serious sexual assault would have received a shorter reporting obligation. The Court of Appeal for Ontario rejected this argument. According to the appellate court, the plurality of the convictions established the accused as one with an enhanced risk of re-offending, which warrants the lifetime registration and aligns with the purpose of the *Criminal Code*’s subs. 490.013(2.1) — the seriousness of the underlying offence and the moral culpability of the offender are not so tied to the legislative purpose. The Court of Appeal also dismissed the attack on prosecutorial discretion — that some offenders may escape lifetime registration as a result of prosecutorial discretion does not translate to overbreadth that infringes the s. 7 *Charter* rights of those caught by the provision: *R. v. Long*, 2018 ONCA 282, 2018 CarswellOnt 4286 (Ont. C.A.).