



Letters to nowhere: When do good character letters aggravate a sentence?

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It is common at sentencing hearings for the defence to secure letters from third parties attesting to the accused's good character; so common, in fact, that our sentencing database rangefindr.ca has a tag allowing users to filter cases where such letters were filed to see their effect on the range of sentence:

The screenshot shows the 'rangefindr sentencing research' interface. On the left is a navigation menu with categories like 'Offences', 'Accused', 'Accused's pre-sentence behaviour', etc. The 'Accused' category is active. The main area displays a grid of filter options, each with a checkbox. Under the 'Record' sub-category, the 'Letters of support' checkbox is checked. Other filters include 'Aboriginal', 'Financial difficulties', 'Phallometric/Psychometric testing performed', 'Addiction', 'Homeless', 'Injured due to offence', 'Insight into conduct', 'No insight', 'Insight', 'Judge or other court officer', 'Lawyer', 'Amenable to counselling', 'Likely to benefit from treatment in custody', 'Loss of employment', 'Loss of professional licence', 'Mental disorder', 'Sexual offences', 'Police officer/Peace officer', 'Poor physical health', 'Terminal condition', 'Pre-sentence report', 'Positive', and 'Negative'.



The defence went above and beyond in [R v Lavigne](#), 2015 ONCA 915, filing “78 very impressive character reference letters” in an attempt to mitigate the sentence for sexual exploitation by a teacher against her 17-year-old student. (More facts are available in the [media reports](#).) One imagines the climax of *Miracle on 34th Street* in which a parade of postmen deposit sack after sack of letters onto the bench of Judge Henry X. Harper.

Unlike Judge Harper, Flynn J was unimpressed: he held the letters “cement the very qualities that allow this kind of crime to happen. They show the position of trust and authority in spades.” On appeal, the defence argued Flynn J had erred by “discounting and completely inversing” the weight that should have been given to the letters. The Ontario Court of Appeal disagreed, giving no reasons on the point other than “We see no error.”

This puts defence counsel in a tough spot: demonstrating the accused’s good character is a no-brainer for most sentencing advocacy. But establishing that the accused was a well-trusted member of the community may backfire if the accused abused that very trust in the commission of the offence.

This is similar to the effect of good character evidence in sentencing for business frauds. In [R v Drabinsky](#), 2011 ONCA 582, leave to appeal denied [2012 CanLII 16927](#) (SCC), the Ontario Court of Appeal said this (at para. 167):

[. . .] individuals who perpetrate frauds like these are usually seen in the community as solid, responsible and law-abiding citizens. Often, they suffer personal and financial ruin as a result of the exposure of

their frauds. Those factors cannot, however, alone justify any departure from the range. The offender's prior good character and standing in the community are to some extent the tools by which they commit and sustain frauds over lengthy time periods.

The same reasoning has some appeal where the offence is sexual exploitation, which requires the Crown to prove a position of trust or authority toward the victim, or an exploitative relationship of dependency. If that position or relationship truly stemmed from a person's good standing in the community it is unlikely emphasizing that standing will mitigate the sentence. On the other hand, there is a difference between the public perception of one's social standing and evidence of actual good character that suggests a potential for rehabilitation.

Cases like *R v Lavigne* show that defence counsel must cautiously consider the potential impact of good character letters, make sure any letters address the accused's actual character rather than his or her social standing, and research carefully how such letters have been treated in the past by judges imposing sentence for the same offence.