

HOME ON THE RANGE...

For any crime there is a “range” of customary sentences. But sometimes sentences don’t fall within the range – what then?

Here’s what the Supreme Court of Canada has to say about the perilous landscape outside the range...

Within the range

The sentence is “fit” and proportionate, reflecting sentences imposed on similar offenders in similar circumstances.

Outside the range

The sentence is somewhat above or below the customary range.

If the departure from the range is justified by circumstances specific to the offender or the offence, the sentence is still fit.

The sentence is entitled to deference on appeal. An appellate court cannot intervene unless the sentencing judge also made an error in principle with a real impact on the sentence.

Demonstrably unfit

The sentence is “manifestly unreasonable”: clearly excessive or inadequate. It represents a substantial and marked departure from sentences imposed on similar offenders in similar circumstances.

An appellate court can vary the sentence even if the sentencing judge committed no errors in principle.

However, statutes can create mandatory minimum sentences at this level of unfitness without being unconstitutional.

Contrary to the public interest and capable of bringing the administration of justice into disrepute

The sentence is so unfit it would cause the public to lose confidence in the administration of justice.

Even if the defence and the Crown agree on the sentence, the sentencing judge is entitled to “jump” or “undercut” the joint submission and impose a fit sentence instead.

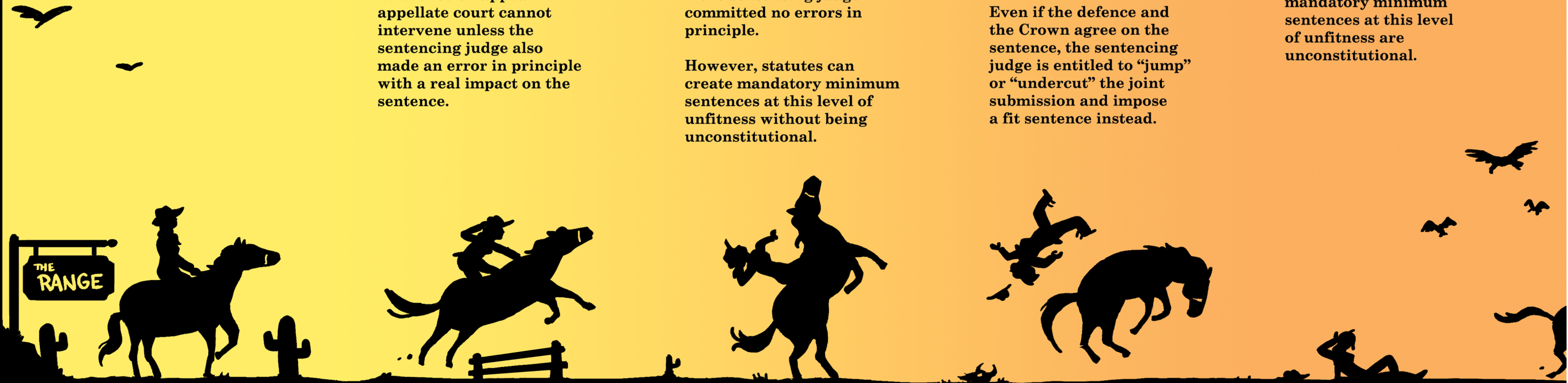
Grossly disproportionate

The sentence is more than just excessive or disproportionate – it is so extreme it would shock the conscience of Canadian society, and violate the *Charter* right against cruel and unusual punishment.

Statutes that create mandatory minimum sentences at this level of unfitness are unconstitutional.

References:
R v Lacasse, 2015 SCC 64
R v Nur, 2015 SCC 15
R v DeSousa, 2012 ONCA 254
R v Nixon, 2011 SCC 34
R v Nasogaluak, 2010 SCC 6
R v Ferguson, 2008 SCC 6
R v Proulx, 2000 SCC 5
R v CAM, 1996 CanLII 230 (SCC)

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