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1. Administrative Court Proceedings: P.C.

The Provincial Court is holding an administrative court sitting on the 2nd and 4th Monday of each month at 2:00 p.m. in Courtroom 401. See the July 17, 2006 [notice](#) from Chief Judge Wyant for complete information.

2. General Deterrence and the YCJA: S.C.C.

The Supreme Court of Canada, in [R. v. B.W.P.; R. v. B.V.N.](#), 2006 SCC. 27, upholds the decision of the Manitoba Court of Appeal in [R. v. P. \(B.W.\)](#), 2006 MBCA 110, and finds that general deterrence is not a basis for imposing a sanction under the [Youth Criminal Justice Act](#). The court goes on to decide in *R. v. B.W.P.* that for the offence of manslaughter, a judge imposing a youth sentence is not required under [s. 42\(2\)\(o\)](#) of the YCJA to impose a sentence of 2/3 custody and 1/3 supervision and may impose a lesser period of custody if it sees fit.

3. Defence of Property: C.A.

The issue of "whether defence of property under [s. 41 of the Criminal Code](#) (the *Code*) can justify aggravated assault which involved the use of a knife" is considered by the Court of Appeal in [R. v. McKay](#), 2006 MBCA 83. In finding that the accused was not justified in his intentional use of a weapon to remove a trespasser, the court relies upon the decision in [R. v. Gunning](#), 2005 SCC 27 which sets out the elements of the s. 41(1) defence

4. Plea Bargain Reinstated: C.A.

In [R. v. Lamirande](#), 2006 MBCA 71, the court considers in what circumstances a sentencing judge is justified in departing from a joint recommendation on sentence reached as part of a plea bargain and reinstates the plea bargain, finding that:

In a true plea bargain such as presented here, a sentencing judge who intends to reject the joint recommendation is obliged to give clear and, as importantly, cogent reasons for such rejection.... Failure to give cogent reasons would constitute, in my opinion, an error in principle. The more substantial the *quid pro quo* inherent in the bargain, the more weight should be given to an appropriate joint recommendation

5. Pending *Criminal Code* Amendments

A number of amendments to the *Criminal Code* received first reading in Parliament in June:

- [Bill C-18](#) - contains several important features which will expand police powers: (a) it creates an offence of failing to appear for a DNA sample; (b) adds the offences of attempted murder and conspiracy to commit murder to the retroactive provisions of current DNA databank legislation; (c) streamlines procedures as to the destruction of DNA samples; (d) allows information in the DNA databank to be used for any criminal investigation; and (e) clarifies procedures as to how information on DNA databank can be shared with foreign law enforcement.
- [Bill C-19](#) - creates a new criminal offence of "street racing" and creates five different versions of the offence with differing penalties referencing existing offences of criminal negligence and dangerous driving. The punishments for this type of vehicle offence are also increased from existing legislation. The legislation also provides for an escalating scale of mandatory driving prohibitions for those convicted of "street racing."
- [Bill C-22](#) - increases the age of consent to non-exploitive sexual activity from 14 to 16 years. A statutory exception for persons "close in age" allows an accused to raise the issue of consent to non-exploitive sexual activity with a 14-15 year old so long as they are not more than 5 years older than the complainant and not in a position of trust. Another transitory exception covers those greater than 5 years older than the complainant if they are married to or are in equivalent relationships with the complainant at the time Bill C-22 comes into force. Accused falling into that transitory category can also raise the issue of consent to non-exploitive sexual activity with 14-15 years old. The existing age of consent to exploitive sexual activity remains at 18 years.
- [Bill C-23](#) - an omnibus bill that creates several changes, including: (a) more liberal rules for proving service of documents outside of the province; (b) wider powers to order and enforce no contact orders against accused persons while in custody and against sentenced prisoners; (c) re-definition of several offences relating to betting and possession of break in instruments; (d) changes to alcohol ignition interlock legislation; (e) allowance for consecutive motor vehicle prohibition orders; (f) more liberal rules for execution of out of province search warrants; (g) ensuring accused are advised of their language rights before the courts; (h) clarification of certain procedural issues relating to language rights in criminal proceedings; (i) clarification of certain procedural issues related to jury selection; (j) clarification of certain appeal procedures; (k) greater obligations on courts to explain probation orders, fine orders and conditional sentence orders to offenders; and (l) maximum fines for summary conviction offences are raised from \$2000 to \$10000.

6. Crown Defence Conference: September 28 & 29

The 4th annual Crown Defence Conference will take place on September 28 and 29 at the Holiday Inn Winnipeg Airport West at 2520 Portage Avenue. For further information, [click here](#).

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