



**In this issue:**

1. [Court of Appeal Rule Amendments](#)
  2. [Bodily Samples & Probation Orders: S.C.C.](#)
  3. [YCJA Credit for Time: C.A.](#)
  4. [Amendments: Criminal Code and Money Laundering](#)
  5. [Upcoming CLE](#)
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**1. Court of Appeal Rule Amendments**

The rules of procedure in the Court of Appeal were amended as of October 1, 2006. The amendments were published in [Man. Reg. 177/2006](#) and the updates have been made to the [Court of Appeal Rules, Reg. 555/88 R.](#)

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**2. Bodily Samples & Probation Orders: S.C.C.**

In [R. v. Shoker](#), 2006 SCC 44, the court states that as part of a probation order a judge can order an abstention clause for alcohol or drugs, but cannot order under [s. 732.1\(3\) of the Criminal Code](#) (either as incidental to an abstention clause or as part of the residual "reasonable condition" jurisdiction of a sentencing judge) a condition in a probation order requiring a person on probation to provide a urine or blood sample to enforce an abstention clause as that would violate [s. 8 of the Charter](#). The court said that absent specific legislation authorizing a judge to order provision of urine or blood samples, such probation conditions are unconstitutional under the present legislation. The decision also includes useful comments about both the role of a probation officer and guidelines for determining the basis upon which various conditions of a probation order should be crafted.

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**3. YCJA Credit for Time: C.A.**

The Manitoba Court of Appeal in [R. v. L. \(K.E.J.\)](#), 2006 MBCA 120 (CanLII) considers, *inter alia*, whether proper credit was given by the trial judge for time that the young person accused had spent in detention since the time of arrest. The court agrees with the trial judge that [s. 38\(3\)\(d\) of the Youth Criminal Justice Act](#) requires that the court take into account the period of pre-trial detention and quotes with approval the Ontario Court of Appeal in [R. v. B. \(T.\)](#) (2006) 78 O.R. (3d) 721:

While the trial judge was required to give credit to the appellant for pre-sentence custody, the trial judge has a residuary discretion, within a certain range, to assess the quantum of credit to be given. The amount of the credit will depend on a number of factors. Unless the overall sentence is demonstrably unfit, this court will not interfere with the credit given for pre-sentence custody absent an error in principle, a failure to consider a relevant factor or an over-emphasis of the appropriate factors.

The court goes on to list some of the factors that may be relevant and appropriate for a court to consider.

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#### 4. Amendments: *Criminal Code* and Money Laundering

The federal government introduced the following bills in October:

- [Bill C-25](#) - *An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act* exempts legal counsel or legal firms, when they are providing legal services, from the requirements to report clients' suspicious transactions or attempted suspicious transactions. Lawyers and law firms are also to be exempted from the requirements to alert the Financial Transactions and Reports Analysis Centre (FINTRAC) to their clients' large-cash or other proscribed financial transactions. The amendments also expand the obligations on financial institutions for purposes of proceeds of crime and terrorist financing cases, expand the power of FINTRAC to disclose financial information received from financial institutions to police and intelligence agencies, authorize the sharing of information by customs with foreign governments relating to currency movements, and authorize the CRA to share information with police and intelligence agencies about charities suspected of being involved in terrorist financing.
- [Bill C-26](#) - *An Act to amend the Criminal Code (criminal interest rate)* amends the criminal interest rate provisions of the *Criminal Code* ([s. 347](#)) to deal with high interest payday loans and to give provincial governments more powers to regulate the industry within their province.
- [Bill C-27](#) - *An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace)* amends certain procedural provisions relating to the dangerous and long term offender provisions of the *Criminal Code* including the creation of a presumption that someone is a dangerous offender after a 3rd conviction resulting in a sentence of more than 2 years for a serious violent or sexual offence unless the offender proves otherwise to the court's satisfaction. The Act also amends the peace bond provisions of the *Criminal Code* allowing for lengthier monitoring of persons at large in the community with a history of serious violent or sexual criminal activity and also clarifies the possible conditions that may be ordered by the court.

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#### 5. Upcoming CLE

A CLE program entitled *Ethical Dilemmas for the Criminal Lawyer* will be presented at The Law Society on November 28, 2006. The program is chaired by Jeff Gindin and features panellists His Honour Judge Glenn Joyal, Allan Fineblit, Q.C., and Rod Garson. [Click here](#) for further details and to register.

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