



In this issue:

1. [Credit for Pre-trial Detention: C.A.](#)
2. [Impending Impaired Driving Amendments](#)
3. [Amendments re: Firearms Offences](#)
4. [Anti-Terrorism Act Provisions Struck Down: ON. S.C.J.](#)

1. Credit for Pre-trial Detention: C.A.

In [R. v. L. \(K.E.J.\)](#) 2006 MBCA 120, a young person, sentenced to a period of custody and supervision, went AWOL from the custodial facility approximately 28 days prior to the commencement of the "community supervision" portion of the sentence. The young person was then charged with, *inter alia*, being unlawfully at large. At sentencing, the crown argued that the youth should not receive any credit for any of his pre-trial detention because he was effectively serving out the unexpired portion of the remainder of his sentence, including the community supervision, but the sentencing judge held that [s.38\(3\)\(d\) of the Youth Criminal Justice Act](#) requires the court to take into account any pre-trial detention spent in custody for the offences, and is not restricted to time spent "solely" as a result of the offences. The Court of Appeal agreed and held that:

We understand the Crown's argument that there is a gap in the legislation so that the young person cannot be ordered to remain in custody to serve the community supervision portion of the sentence. The gap in the legislation should be remedied by Parliament if they so choose. It should not be used to prevent the court from taking into account pre-trial detention as it is required to do.

2. Impending Impaired Driving Amendments

[Bill C-32](#), *An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts* amends the *Criminal Code* to:

- create an offence of operating a motor vehicle while in possession of a controlled substance;
- authorize specially trained peace officers to conduct tests to determine whether a person is impaired by a drug or a combination of alcohol and a drug;
- authorize the taking of bodily fluids to test for the presence of alcohol or a drug;
- create an offence of operating a motor vehicle with a concentration of alcohol in the blood that exceeds 80 mg of alcohol in 100 ml of blood and causing bodily harm or death to another person;
- clarify what evidence a person accused of driving with a concentration of alcohol in the blood that exceeds 80 mg of alcohol in 100 ml of blood can introduce to raise a doubt;
- create an offence of refusing to provide a breath sample when the accused knows or ought to know that the operation of a motor vehicle by the accused caused an accident resulting in bodily harm to another person or death; and
- increase the penalties for impaired driving.

The Bill also makes consequential amendments to other Acts. It received First Reading on November 21, 2006.

3. Amendments re: Firearms Offences

[Bill C-35](#), *An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)* "amends the *Criminal Code* to provide that the accused will be required to demonstrate, when charged with certain serious offences involving firearms or other regulated weapons, that pre-trial detention is not justified in their case and to introduce additional factors relating to firearm offences that the courts must take into account in deciding whether an accused should be released or detained pending trial." The Bill received First Reading on November 23, 2006.

4. Anti-Terrorism Act Provisions Struck Down: ON. S.C.J.

The Ontario Supreme Court of Justice in *R. v. Khawaja* [2006] O.J. No. 4245 (Q.L.) considers a constitutional challenge to provisions of the *Anti-Terrorism Act*, S.C. 2001, c. C-41 (now contained in Part II.1 of the *Criminal Code*). In *Khawaja*, the court dismissed the motion to declare the parts of the legislation unconstitutional, except with respect to part of the definition of "terrorist activity" in [s. 83.01\(1\)\(b\)\(i\)\(A\) of the Criminal Code](#), the "motive provision" which criminalizes acts undertaken for "political, religious or ideological objective or cause." The court held that this provision is a violation of s.2 of the [Charter](#) that cannot be justified under s.1 of the *Charter*. As a remedy, the "motive provision" was severed out of the definition of terrorist activity, leaving the remaining part of the definition in force and as a result, in prosecutions under Part II.1 of the *Criminal Code*, the Crown does not have to prove the motive behind a terrorist activity.

[Go to the eLaw Archive](#)

The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.