eLaw

Criminal Update

January, 2007 - No. 7

In this issue:

---

1. Clarifying the Hearsay Exceptions: S.C.C.

In *R. v. Khelawon*, 2006 SCC 57, the court reviews and clarifies the law as it relates to principled exceptions to the hearsay rule. The court explicitly states that some of its own comments in *R. v. Starr*, 2000 SCC 40, [2000] 2 S.C.R. 144, should no longer be followed; rather:

> …the court should adopt a more functional approach…and focus on the particular dangers raised by the hearsay evidence sought to be introduced and on those attributes or circumstances relied upon by the proponent to overcome those dangers. In addition, the trial judge must remain mindful of the limited role that he or she plays in determining admissibility - it is crucial to the integrity of the fact-finding process that the question of ultimate reliability not be pre-determined on the admissibility *voir dire*.

---

2. Unreasonable Delay: C.A.

The Court of Appeal in *R. v. George*, 2006 MBCA 150 (CanLII) upholds the lower court's judicial stay of proceedings on the basis that the accused's right to trial within a reasonable time had been violated. The court warns against taking an "overly mathematical" approach in determining whether this right has been violated and repeats the warning it first provided in *R. v. Barkman, R. v. Thiessen*, 2004 MBCA 151 (CanLII):

> During the course of argument by counsel, we were advised that it is not uncommon for trials before the Provincial Court to be scheduled a year to a year and a half in the future, or even longer for accused not in custody. This period of delay, which has now become systemic in nature, is most troubling…It behooves the court, counsel and court officials alike to promptly take measures to alleviate this hazard before it is too late. Above all, it is incumbent on the courts to recognize our responsibility to balance more appropriately the convenience of counsel and others involved in the court process, with the constitutional imperative that a trial must be completed within a reasonable period of time.

---

3. Media Access: C.A.

In *CTV v. R., et al.*, 2006 MBCA 132 (CanLII) the court reaffirms the constitutional right of access to the courts and the openness principle, finding that in order for a party to successfully oppose access, it must provide the court with a sufficient evidentiary foundation to meet the heavy burden of justifying a limitation on this important constitutional right. The decision also contains an interesting review of the application of the concept of judicial notice.

4. Legislative Updates: Street Racing & Money Laundering

In the September Update, we reported on the introduction of Bill C-19, *An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act*. The Act received Royal Assent on December 14, 2006 and has been in force from that time (S.C. 2006, c.14).

In the November Update, we reported on the introduction of 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*. This Act also received Royal Assent on December 14, 2006 but is not yet in force (S.C. 2006, c. 12).

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.