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1. New and Proposed Provincial Legislation

[The Gunshot and Stab Wounds Mandatory Reporting Act](#), C.C.S.M. c. G125, came [into force](#) December 1, 2008, requiring health-care facilities to report all gunshot wounds and some stabbings to the police. The new legislation clarifies who needs to report, what information must be reported and when the report must be made.

Manitoba introduced Bill 5, [The Highway Traffic Amendment Act \(Promoting Safer and Healthier Conditions in Motor Vehicles\)](#) on November 27, 2008. The bill amends *The Highway Traffic Act* to prohibit smoking in a vehicle by a person younger than 16, and by anyone else if a person younger than 16 is present. It also prohibits drivers from using a cell phone or similar electronic communication device except

- to make a hands-free telephone call;
- while pulled over and stopped; or
- to communicate with a police, fire or ambulance service in an emergency.

2. Crimes of Domination Severely Punished: SCC

In [R. v. Pritchard](#), 2008 SCC 59, the SCC unanimously dismissed the accused's appeal of his first degree murder conviction under [s.231\(5\)\(e\)](#) of the *Criminal Code* and clarified the import of that section, which elevates certain murders, including those involving forcible confinement, to first degree classification. The court rejected the accused's argument that for the section to apply there must be evidence of unlawful confinement 'independent' of the robbery. Recognizing that s.231(5) "reflects Parliament's sentencing policy to treat murders committed in connection with crimes of domination as particularly blameworthy and deserving of more severe punishment," the court found at para.35 that:

...second degree murder will be elevated to first degree murder where the murder and the predicate offence (in this case unlawful confinement) are linked together both causally and temporally in circumstances that make the entire course of conduct a single transaction.... The temporal-causal connection is established where the unlawful confinement creates a "continuing illegal domination of the victim" that provides the accused with a position of power which he or she chooses to exploit to murder the victim. ... If this is established the fact that along the way other offences are committed is no bar to the application of s. 231(5).

3. Joint Sentencing Recommendation a True Plea Bargain

The Manitoba Court of Appeal recently released its decision in [R. v. Bird](#), 2008 MBCA 138, allowing the appeal by the accused of a sentence of incarceration and replacing it with a conditional sentence as recommended by both Crown and defence counsel. Given serious weaknesses in the Crown's case and the fact that the accused was prepared to acknowledge guilt only if he was to receive a conditional sentence, the court found that counsel had presented a true plea bargain to the judge. In considering when a trial judge can ignore a joint sentencing recommendation the court concluded: "Clear and cogent reasons are required to be expressed by a judge before rejecting a joint recommendation in the nature of a true plea bargain, such as existed in this case."

4. Winter CLEs

Those who missed last month's program concerning the new rules on client identification and verification (in effect December 31, 2008) will have another opportunity to learn about the rules at the repeat program [Know Your Client Rules](#). The program, presented by Barney Christianson, Q.C., takes place at the Law Society on Wednesday, January 7, 2009 from 12:00 noon - 1:30 p.m. Contact the [Law Society](#) for further details or to register.

The Manitoba Bar Association will offer two continuing legal education sessions of interest to criminal lawyers at its annual [Mid-Winter Meeting](#) on January 23, 2009:

- 9:30 - 11:30 a.m. - *Trial Evidence/Process Refresher*, a panel discussion of evidentiary basics at trial, including common objections, documentary evidence and expert evidence; and
- 2:00 - 4:00 p.m. - *Corporations and Criminal Law: Advising, Defending and Avoiding Prosecutions of Corporations and Directors for Commercial Crimes and Regulatory Offences*, a road map to effective representation of clients in such proceedings.

Contact the [Manitoba Bar Association](#) for further details and to register.

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