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1. New Criminal Property Forfeiture Legislation

[The Criminal Property Forfeiture Amendment Act](#), S.M. 2008, c. 16 came into effect Dec.15, 2008. The amendments to Manitoba's [Criminal Property Forfeiture Act](#) will allow the province to seize, freeze and sell property ordered forfeited by the courts. Under [s.3](#) of the Act the director may apply to the court for an order forfeiting property that is the proceeds or an instrument of unlawful activity to the government, which can sell, donate or destroy the property. [Section 18](#) of the Act establishes a fund for the proceeds from the sale of forfeited property which, among other things, can be used to compensate direct victims of the unlawful activity.

2. Supreme Court Notices

The Supreme Court of Canada has recently issued two [Notices to the Profession](#) which are relevant to criminal law practitioners:

- A November 2008 notice entitled [Consent Orders for the Appointment of Counsel](#) outlines a simplified procedure for obtaining an order assigning counsel to an accused under [s. 694.1](#) of the *Criminal Code*, R.S.C. 1985, c. C-46. The procedure requires the consent of the Crown, which must be filed with the letter explaining why legal assistance is necessary.
- A December 2008 notice, [Filing of Electronic Documents](#), indicates that parties are now required to file electronic versions of notices of appeal, factums, records and books of authorities, which will be accessible during hearings. The format of these documents must follow the [Guidelines for Printed and Electronic Versions of Appeal Documents](#). Parties must still file the printed version of the documents prepared according to the requirements of the Rules of the court.

3. Court of Appeal Notice Re: Criminal Judgments

The Manitoba Court of Appeal issued a [Notice Re: Criminal Judgments](#) on December 10, 2008, revising the procedure with respect to the release of criminal reserved judgments set out in the November 8, 2005 [Notice](#).

4. Conditional Sentence Inappropriate for Multiple Robberies: CA

The Manitoba Court of Appeal released its unanimous decision in [R. v. Lagimodiere](#), 2008 MBCA 137 on December 4, 2008, allowing a Crown appeal from a conditional sentence of two years less a day and increasing the sentence to a period of 36 months in jail for a series of nine robberies, three attempted robberies and four breaches of court orders while on bail on the robbery charges. The court found that:

In the absence of exceptional circumstances (not present here), a sentence permitting consideration of a conditional sentence - that is to say, one not exceeding two years less a day - is inappropriate for multiple offences of robbery, where the sentencing objectives of denunciation and deterrence are especially pressing.

The case also highlights the interplay between conditional sentences and credit for time spent in pre-sentence custody and contains some pointed comments regarding the proper approach in light of the mandatory two stage sentencing process set out by the Supreme Court of Canada in [R. v. Fice](#), 2005 SCC 32 and [R. v. Proulx](#), 2000 SCC 5.

5. New Trial Ordered on Attempted Murder Charge: CA

In [R. v. Coutu et al.](#), 2008 MBCA 151, the Manitoba Court of Appeal dismissed the conviction and sentence appeals of two appellants and ordered a new trial with respect to the third appellant. The case deals with a number of issues, including identification evidence, provision of transcripts to juries, the defence of drunkenness, and jury charges. In allowing the conviction appeal of the third appellant the court commented as follows on the issue of charging the jury where the identification evidence is weak:

In this case, where there was no in-court identification by the eyewitnesses, their prior out-of-court identification became especially significant. Equally, weaknesses in that prior identification became significant, and they should have been drawn to the jury's attention by the judge. (para. 179)

The absence of reference to other evidence...would not be sufficient by itself to constitute the charge legally deficient, bearing in mind the functional approach that is to be taken. The judge need not make reference to all the evidence, and he referred to a considerable portion of it. But, when considered in light of the frail identification of Hornbrook, that evidence, or at least part of it, should have been drawn to the jury's attention. (para. 182)

6. Mid-Winter Reminder

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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