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### 1. Supreme Court Expands *Stinchcombe* Duty to Disclose

The Supreme Court of Canada released its unanimous decision in [R. v. McNeil](#), 2009 SCC 3 on January 16, 2009, clarifying uncertainties in the production of police disciplinary records and criminal investigation files relating to third party accused. The following articles discuss the import of the expanded duty to disclose and the modification to the [O'Connor](#) procedure:

- [R. v. McNeil: Handing Over Records of Police Misconduct](#) by Kevin Tilley, published January 19, 2009 on [The Court](#)
- [McNeil: The duty to disclose police misconduct records](#) by Jakki Warkentin, published January 22, 2009 on The Court
- [Case Report - SCC broadens scope of Crown's "first party" disclosure duty and more](#) by Dan Michaluk, posted January 25, 2009 on [All About Information](#)
- [Crown disclosure expanded for criminal cases](#) by Cristin Schmitz posted January 30, 2009 on The Lawyers Weekly

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### 2. No Simple Formula for *Vetrovec* Warning: S.C.C.

The Supreme Court dismissed the appeals in companion cases [R. v. Khela](#), 2009 SCC 4 and [R. v. Smith](#), 2009 SCC 5, upholding the sufficiency of the trial judge's *Vetrovec* warning in both cases. Justice Fish reaffirms the four elements of a proper warning with respect to unsavoury witnesses in *Khela*, but goes on to hold that "no single formula can be expected to produce an appropriate instruction for every foreseeable - let alone unforeseeable - situation at trial" (para.14, *Khela*) and that "trial judges have significant discretion to craft the instruction in accordance with the circumstances of the trial." (para.16, *Smith*)

See [Cautioning the Jury About Unsavoury Witnesses: the \*Vetrovec\* Warning](#) by Solomon Lam published January 28, 2009 on [The Court](#) for further details.

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### 3. Hells Angel Appeal Dismissed: Man.C.A.

In [R. v. Grant \(I.M.\)](#), 2009 MBCA 9 the Manitoba Court of Appeal dismissed the conviction and sentence appeals of the accused, a full patch member of the Hells Angels who was convicted of trafficking and extortion offences following a sting operation. The court dismissed the conviction

appeal on all grounds, rejecting the accused's arguments respecting [ss.7 and 11\(d\) Charter](#) breaches, abuse of process, [Vetrovec](#) warning, a mistrial motion and jury instructions. The 15-year sentence total was upheld, as was the order that the time to pay the [s.462.37](#) fine would run from pronouncement rather than on release from custody. The court's analysis on all issues is instructive, but most helpful is its systematic review of the proper approach to sentencing in cases involving consecutive sentences for multiple offences (see para.98).

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#### **4. Law on Mandatory Publication Bans in Bail Hearings Changed: Ont.C.A.**

The Ontario Court of Appeal considered the constitutionality of [s. 517](#) of the *Criminal Code* in [Toronto Star Newspapers Ltd. v. Canada](#), 2009 ONCA 59, holding by a 3-2 majority that while the section infringes s.2(b) of the *Charter*, if it was read down such that the imposition of a mandatory publication ban was limited to situations where a future jury trial was possible, the provision could be saved under s. 1 of the *Charter*. Regina Lee reviews the different perspectives on this issue in [Limiting the Imposition of Mandatory Publication Bans in Bail Hearings: Toronto Star Newspapers Ltd. v. Canada](#), posted February 2, 2009 on [The Court](#). She concludes that, given the lack of consensus in the court decisions to date, a legislative change is unlikely until the Supreme Court of Canada has had its say.

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#### **5. Métis Rights Clarified: Man.P.C.**

In [R. v. Goodon](#), 2008 MBPC 59, the court found s.19 of [The Wildlife Act](#) to be of no force and effect against the accused, a Métis person within s. 35(2) of the [Constitution Act](#), who had an aboriginal right to hunt for food in the Turtle Mountain area. The charge of unlawful possession of wildlife was accordingly dismissed. The decision clarifies some questions concerning Métis rights first raised by the decision in [R. v. Powley](#), 2003 SCC 43 and, as noted in the following commentary, has broader implications for governments and developers involved in natural resource development.

See [Manitoba Hunting Case Sheds Light on Métis Rights](#) by Shawn Denstedt and JoAnn Jamieson published January 14, 2009 on Osler Update.

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#### **6. Neuroscience and the Criminal Law**

The application of forensic neuroscience to the criminal law has been debated in several recent publications. The article [Neurolaw and Criminal Justice](#), published December 28, 2008 on [LLRX.com](#), contains basic information on the science and technology involved in cognitive research and provides links to online materials on this topic. Author Ken Strutin, a defence attorney and law librarian, has published extensively on criminal law topics. Previously published [articles](#) are archived on the LLRX site.

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#### **7. Intensive Trial Advocacy Workshop**

Register early for this popular limited enrolment skills workshop which takes place April 15-18, 2009 at the Lakeview Resort in Gimli, Manitoba. Presented in partnership with The Advocates' Society, this year's workshop features a new case file focusing on trial advocacy from start to finish. [Contact Legal Studies](#) for further information and to register.

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