



### In this issue:

1. [Forfeiture Provisions Valid Provincial Legislation: SCC](#)
2. [Privacy Interest Abandoned With Garbage: SCC](#)
3. [Manitoba Decisions](#)
4. [Measuring Crime Severity](#)
5. [Women's Bail Verification and Supervision Program](#)
6. [Year's Top SCC Criminal Cases: MBA CLE](#)

---

### 1. Forfeiture Provisions Valid Provincial Legislation: SCC

In [Chatterjee v. Ontario \(Attorney General\)](#), 2009 SCC 19 the Supreme Court of Canada unanimously upheld the lower court decisions ([2007 ONCA 406](#) and [2005 CanLII 24251 \(ON S.C.\)](#)), finding Ontario's *Civil Remedies Act, 2001*, which authorizes the forfeiture of proceeds of unlawful activity, to be valid provincial legislation. The Attorney General of Ontario was granted forfeiture of money and equipment associated with the illegal drug trade. These items had been seized from Chatterjee, who had never been charged in relation to them. Chatterjee challenged the constitutionality of the forfeiture sections, arguing that they encroach on federal criminal law power. For commentary on the decision see:

- [SCC backs Civil Remedies Act - Defence bar condemns decision](#) and [This is quackers](#), both posted April 27, 2009 on *Law Times*
- [Criminal Law and the Division of Powers: Chatterjee v. Attorney General of Ontario](#) by Rebecca Ross posted April 16, 2009 on The Court

---

### 2. Privacy Interest Abandoned With Garbage: SCC

Placing garbage out for collection where the public can easily access it is "inconsistent with the continued assertion of a constitutionally protected privacy interest" according to the Supreme Court of Canada in [R. v. Patrick](#), 2009 SCC 17. The court rejected the appellant's argument that the police inspection of his garbage amounted to an unreasonable search and seizure contrary to s. 8 of the [Canadian Charter of Rights and Freedoms](#) and that the evidence obtained as a result of the search should be excluded on the basis that its admission would bring the administration of justice into disrepute. The following articles discuss the case:

- [Garbage in, evidence out](#) a *Law Times* editorial from April 20, 2009
- [R. v. Patrick: The Supreme Court Kicks Informational Privacy to the Curb](#) by Matthew Shogilev, posted April 10, 2009 on The Court
- [Case Report - Information about lifestyle abandoned when trashed](#), posted April 10 by Dan Michaluk on his blog All About Information

---

### 3. Manitoba Decisions

The Manitoba Court of Appeal has released several noteworthy criminal decisions in the last

month, including:

- [\*R. v. Woodard\*](#), 2009 MBCA 42 - the court addresses sufficiency of reasons regarding in-trial evidentiary rulings in this conviction/sentence appeal, concluding:

...the authorities establish that the *Barrett* rule...still applies and that the failure to give reasons on an evidentiary ruling (when the same is not required by law or by the duty of procedural fairness) is not fatal in and of itself when the decision is supportable on the evidence or where the basis for the decision is apparent from the circumstances. When it is not, the door to appellate intervention is opened.

The court goes on to add a proviso regarding the duty of procedural fairness:

This duty means that it would be unfair not to provide the reason why a decision was reached when that decision is of significant importance to a party. What is required to fulfill this duty depends on the circumstances of the case. Generally, the more the evidentiary issue to be determined is crucial, pivotal and decisive to a party (as opposed to the issue being of lesser consequence, procedural, discretionary and/or settled), the more difficult it will be to conclude that the duty of procedural fairness does not require reasons. (para.25)

- [\*R. v. Denys \(C.D.\)\*](#), 2009 MBCA 39 - addresses the issue of whether a summary conviction appeal judge's application of the standard of review was a "question of law alone" that could be appealed to the court. The court also notes the clear policy to discourage second-level appeals in the absence of some compelling reason to conclude otherwise.
- [\*R. v. Korski \(C.T.\)\*](#), 2009 MBCA 37 - in dismissing this appeal from a first degree murder conviction the court examines, among other things, the law regarding admission of hearsay and expert evidence, the foundational principles regarding remedies for late disclosure, *Vetrovic* warnings, and agreed statements of fact and the distinction between formal and informal (will say) admissions.
- [\*R. v. MacDonald\*](#), 2009 MBCA 36 - the court concludes that "...as there is no clear consensus in the jurisprudence respecting what an appellate court should do when a sentencing judge commits reviewable error, ...this court can review the trial record "afresh" and impose the sentence that we consider appropriate." (para. 23) The court substituted the original sentence of 3 years (reduced by time served to 18 months) for the conditional sentence imposed at trial.
- [\*R. v. Le\*](#), 2009 MBCA 35 - this case reviews the relevant criteria for judicial interim release of an accused pending determination of the appeal of his first degree murder conviction.

And, criminal practitioners will want to watch for *R. v. Cook*, an important but as yet unreported decision of the Provincial Court of Manitoba. The court follows the reasoning of the Alberta Queen's Bench in [\*R. v. Clark\*](#), 2009 ABQB 215, concluding that the July 2008 amendments to s.258 of the *Criminal Code* (concerning "evidence to the contrary") apply retroactively.

---

#### 4. Measuring Crime Severity

The recently released Statistics Canada report [\*Measuring Crime in Canada: Introducing the Crime Severity Index and Improvements to the Uniform Crime Reporting Survey\*](#) examines how crime is measured in Canada and introduces the Crime Severity Index, a new tool for measuring police-reported crime in Canada. The index tracks changes in the severity of crime, not just volume.

---

#### 5. Women's Bail Verification and Supervision Program

The [\*Elizabeth Fry Society of Manitoba\*](#) has developed a Women's Bail Verification and

Supervision Program to support and educate women charged with offences on their legal rights and obligations. The Bail Program's main functions are to: identify sureties; provide information about an accused person at bail proceedings; assist the court in selecting suitable candidates for bail supervision; and provide supervisory, counselling and referral services for people who are released from custody. For more information contact Elizabeth Treidler, Bail Program Supervisor, at 589-7335, ext 232.

---

## **6. Year's Top SCC Criminal Cases: MBA CLE**

The [Criminal Law section](#) of the Manitoba Bar Association will present the program *Top 5 Supreme Court of Canada Criminal Cases for 2008/2009* on Wednesday, June 3, 2009 at 12:00 noon at the Law Society Classroom, 219 Kennedy Street. Presenter Diana Cameron of the Constitutional Law Branch, Manitoba Justice, will identify and discuss the top five Supreme Court of Canada cases of the past year.

---

[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.*