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Supreme Court Declines to "Water Down" Curative Proviso

A 6-3 majority of the Supreme Court refused to relax the requirement for applying [s.686\(1\)\(b\)\(iii\)](#) of the *Criminal Code* (the curative proviso) in [R. v. Sarrazin](#), 2011 SCC 54, a case where the trial judge failed to charge the jury on the viable alternative charge of attempted murder. The majority upheld the Court of Appeal order for a retrial of the second degree murder conviction, finding that the burden on the Crown to demonstrate an "overwhelming" case or a "harmless" error of law should not be relaxed. The implications of the decision are discussed in [Erring on the Side of Caution: R. v. Sarrazin](#), posted November 17, 2011 on The Court.

Intoxication and Insanity are Distinct Legal Concepts: SCC

The Supreme Court examines the scope of both the insanity defence and the defence of self-induced intoxication in [R. v. Bouchard-Lebrun](#), 2011 SCC 58, a unanimous decision upholding the [Quebec Court of Appeal finding](#) that a toxic psychosis resulting from the voluntary consumption of drugs is not a "mental disorder" within the meaning of [s.16](#) of the *Criminal Code*. The court dismissed the accused's appeal of his conviction on aggravated assault and assault charges.

New Trial Ordered in Controversial Sexual Assault Case: MBCA

The trial judge erred in conducting his credibility findings on the basis of a credibility contest between the complainant and the accused according to the Court of Appeal in [R. v. Rhodes](#), 2011 MBCA 98, making it unclear whether he had respected the substance of the *W.(D.)* analysis. That error was compounded by the judge's "piecemeal" approach to analyzing the evidence, in which the evidence was assessed on an "event-by-event" basis rather than cumulatively. The cumulative effect of these inadequacies was that the judge "improperly shifted the burden of proof from the Crown to the accused and therefore misapplied the burden of proof beyond a reasonable doubt." The court allowed the accused's conviction appeal and ordered a new trial. A previous [ruling](#) had denied the Women's Legal Education and Action Fund Inc. application for leave to intervene in the case.

Simplifying Breach Hearings: MBCA

In [R. v. Laporte \(R.D.\)](#), 2011 MBCA 96, the Court of Appeal overturned the motion judge's finding that the Crown could not present *viva voce* evidence at a breach of conditional sentence hearing. The court found that [s.742.6\(4\)](#) of the *Criminal Code* does not create a mandatory requirement that the Crown provide documentary evidence for the prosecution of a breach, it simply provides an evidentiary shortcut (para.34). While it is up to the Crown to choose whether to rely on this enabling provision, the court cautioned that "(i)t should not use its discretion to defeat the intention of Parliament that the majority of breach hearings be proven by way of documentary evidence" (para. 36).

Judge Entitled to Reject Joint Sentencing Recommendation: MBCA

The trial judge did not err when he declined to accept the recommendation of Crown and defence counsel and imposed a harsher sentence for aggravated assault against an infant according to the court in [R. v. Wolonciej](#), 2011 MBCA 91. The court reduced the 2 year sentence by 6 months, however, because the judge's reasons showed he misinterpreted the analysis of child abuse cases set out in [R. v. MacDonald \(K.\)](#), 2009 MBCA 36 and emphasized the accused's moral blameworthiness, resulting in an unduly harsh sentence.

In Force Legislation

[Bill C-22](#), *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, came [into force](#) December 8, 2011, requiring internet service providers to notify police when they believe their service is being used to commit a child pornography offence. Details about the new legislation can be found in the [legislative summary](#), in the [press releases and background documents](#), in the [parliamentary speeches](#), and in the Slaw article [Mandatory Reporting of Internet Child Pornography by Persons Who Provide an Internet Service Now Law](#).

Justice Publications

The current issue of [Juristat](#), released December 1, 2011, contains many articles of interest to the justice community, including: [Canadians' perceptions of personal safety and crime, 2009](#); [Homicide in Canada, 2010](#); [Police-reported crime statistics in Canada, 2010](#); and [Trends in the use of remand in Canada](#).

The December 2011 edition of [Voir Dire](#), the CBA National Criminal Justice section newsletter, discusses the [R. v. Nixon](#) and [R. v. E.M.W.](#) cases, includes a [commentary on Bill C-10](#), and provides a link to [10 Reasons to Oppose Bill C-10](#).

Winter CPD: LSM

The Criminal Law Expert Evidence series continues with the program [Arson Evidence](#) on January 12, 2012, from 5:00 to 7:00 p.m. at the Law Society classroom. An arson expert with the Winnipeg Police Service will discuss fire investigation science and methodology and the Arson Strike Force.

Enrolment is limited for the Law Society's upcoming program on [Practical Ethics: Real Problems, Real Solutions](#), which takes place February 28, 2012 (morning and afternoon sessions) at the Law Society classroom. Featuring Canadian lawyer and leading legal ethics instructor Paul Paton and a local panel, this session will teach you what you need to know about ethical practice. [Register](#) soon to take advantage of early bird pricing.

2012 MBA Mid-Winter Meeting

The Manitoba Bar Association's [Mid-Winter Meeting](#) will be held January 19-20, 2012 at the Fort Garry Hotel. The Criminal Law section is co-sponsoring the program **Expert Evidence**, which will deal with how to make the most of experts in civil and criminal trials and before tribunals and parliamentary inquiries. Other programs that may interest criminal law lawyers include:

- Innovative Strategies for Effective Communication;
- Constitutional/Human Rights Law: A Year in Review; and
- Ethical Practice in the Electronic Age - The Use of Social Media.

For further details see the [registration form](#) or [brochure](#).

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