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Emergency Wiretap Legislation Unconstitutional: SCC

The court found [s.184.4](#) of the *Criminal Code* (authorizing warrantless wiretaps) unconstitutional in [R. v. Tse](#), 2012 SCC 16, but suspended the declaration of invalidity for 12 months to allow the government to redraft a constitutionally compliant provision. The court acknowledged Parliament's power to craft narrow emergency wiretap authority for exigent circumstances, but found the lack of a mechanism to permit oversight of the police use of the s.184.4 power to violate s.8 of the *Charter*. Of particular concern, said the court, was that the section "does not require that notice be given to persons whose private communications have been intercepted" (para.11). These articles comment on the decision:

- [Supreme Court of Canada Wiretap Decision Signals Need for Changes to C-30](#), Michael Geist;
- [Supreme Court wiretapping decision laudable](#), *Globe and Mail*.

Gladue Revisited: SCC

The two long-term offender appeals in [R. v. Ipeelee](#), 2012 SCC 13 give the Supreme Court the "opportunity to revisit and reaffirm the judgment...in [R. v. Gladue](#), [1999] 1 S.C.R. 688" (para.1). Both cases involved Aboriginal offenders with lengthy criminal records who had been sentenced to three years in prison for breaching conditions in long-term supervision orders relating to drug and alcohol use. The court starts by reviewing the general principles of sentencing and making sense of the direction in s.718.2(e) of the *Code* that all available sanctions other than imprisonment should be considered, "with particular attention to the circumstances of aboriginal offenders." It identifies some of the errors made by the courts in applying s.718.2(e) and concludes by stressing that failure to apply the *Gladue* principles in every case involving Aboriginal offenders (including LTSO breaches) constitutes an error justifying appellate intervention. The court found Ipeelee's three year sentence to be unduly harsh and substituted a one year sentence designed to denounce the conduct but still encourage rehabilitation. The article [R. v. Ipeelee: Correction, Conviction and Culture](#), from The Court, discusses the decision.

Kociuk Appeal Dismissed: SCC

The Supreme Court [dismissed](#) the appeal of the decision in [R. v. Kociuk \(R.J.\)](#), 2011 MBCA 85, an unsuccessful appeal from a first degree murder conviction on a 20-year-old murder/sexual assault cold case revived by DNA evidence. The Supreme Court agreed with the majority decision that the trial judge had not erred by failing to put to the jury speculative fact scenarios which, if believed, would raise a reasonable doubt regarding an element of an offence. The [factums](#), [summary](#) and [webcast](#) of the hearing are posted on the SCC website.

Trial Courts Better Equipped to Hear Bail: MBCA

The principal purpose of [s. 679\(7.1\)](#) of the *Criminal Code* (giving a judge of the Court of Appeal jurisdiction to consider judicial interim release issues) is to bridge a temporal gap between the order for the new trial and the accused's first appearance in the trial court. It does not remove a trial court's jurisdiction under [s. 515](#) or [s. 522](#) of the *Code*, and the trial court is the more appropriate forum to control judicial interim release questions when the matter is no longer pending in the appeal court according to the court in [R. v. Geddes \(J.G.J.\)](#), 2012 MBCA 31.

The Principles at Play in Reincarcerating After a Period of Release: MBCA

The court stayed the execution of an otherwise proper sentence in [R. v. Sinclair](#), 2012 MBCA 24, finding that it would be "counter-productive to sacrifice the gains that have been achieved in terms of rehabilitation to 'foster the principles of denunciation and general deterrence by means of incarceration'" in the circumstances (para. 24). The accused, who was convicted of manslaughter in 2008, served 16½ months of his six-year sentence before his conviction was overturned on appeal. By the time the Supreme Court restored the conviction 2½ years later the accused had demonstrated successful rehabilitation, which he argued would be compromised if the court did not stay the unserved portion of his original sentence.

Common Bawdy-House Provisions Unconstitutional: ONCA

The Ontario Court of Appeal decision in [Canada \(Attorney General\) v. Bedford](#), 2012 ONCA 186, striking down the common bawdy-house provisions of the *Criminal Code* but suspending the declaration of invalidity for 12 months, has polarized opinion and will likely be appealed. These articles discuss the decision:

- [Amici Curiae: The Prostitution Challenge at the OCA and Trayvon Martin](#), The Court;
- [Pimps, Brothels and Hookers, Oh My!](#), Slaw.

Crown Appeals James Sentence

The Crown is appealing the controversial two-year sentence in [R. v. James](#), 2012 MBPC 31, arguing that the judge erred in assessing the significance of prior sexual assault sentences and in applying the totality principle. A copy of the Crown's notice of appeal is attached to the [CBC report](#) on the appeal. As noted in this [blog post](#) from The Court, the decision has been widely commented on in the press and has sparked a debate about sentencing practices in the Canadian judicial system.

Legislative Update

[Bill C-10](#), the *Justice for Victims of Terrorism Act*, received royal assent March 13, 2012, despite [considerable opposition](#) and concern that it will "increase strains on a justice system already at the breaking point." ([10 Reasons to Oppose Bill C-10](#), CBA). The controversial omnibus legislation increases sentences for drug and sex offenders, reduces the use of conditional sentences like house arrest, allows for higher young offender penalties, makes it harder to get pardons, gives victims more say in parole applications, and allows victims of terrorism to sue.

[Bill C-19](#), *An Act to amend the Criminal Code and the Firearms Act*, received royal assent and came into force April 5, 2012, removing the requirement to register firearms that are neither prohibited nor restricted. It also provides for the destruction of existing records that relate to the registration of such firearms.

Mental Health Court

Manitoba's new [Mental Health Court](#) will begin sitting May 10, 2012 in Courtroom 408, 408 York Avenue. Each Thursday afternoon the court will hear matters where the accused's involvement between the criminal justice system results from mental health issues. The process, which may take 18 to 24 months from referral to disposition, is described in the court notice and will be discussed at an information session to be held May 1, 2012, at 9:00 a.m. in room 413, 408 York Avenue. The *Legal Feeds* article, [Manitoba launches mental-health court](#), sets out the views of various stakeholders on the initiative.

Bail Assessment, Support and Supervision Program

The John Howard Society has published materials on its [Bail Assessment, Support and Supervision Program](#) which may interest criminal lawyers. The materials include a summary of the program, the criteria for admitting, and a copy of the referral form.

Criminal Law Publications

The CBA's National Criminal Justice section submission [Bill C-26 - Criminal Code Amendments \(citizen's arrest and the defences of property and persons\)](#) supports the [Bill 26](#) initiative to reform and simplify the law on defence of self, others and property, but proposes amendments to the bill to maintain the subjective element in self-defence and to curtail proposed amendments to expand citizens' powers of arrest.

The March 2012 issue of [Criminological Highlights](#) summarizes the criminological research on eight current topics, including whether stiff fines stop people from drinking and driving, what can be done to increase the accuracy of eye witness identifications, and how a reduction in US prison rates was achieved.

The latest CBA National Criminal Justice section newsletter, [Voir Dire](#), contains articles on [Ineffective assistance of counsel](#), [Righting wrongful convictions](#), [Designating counsel](#), and [Section 24\(2\) and R. v. Côté](#).

[Photo radar under the gun](#) - this *Lawyers Weekly* article discusses [R. v. Miller](#), 2012 MBQB 62, the Q.B. decision acquitting a Manitoba driver appealing a photo radar conviction.

CPD: LSM

[Criminal Defence Advocacy Skills Workshop](#) - The second instalment of this popular program is already sold out, but you can put your name on a [waiting list](#) to be notified if a space becomes available before November 3, 2012. It will cover preparing and presenting cross-examinations and delivering closing statements.

Several CPD sessions will be offered at the Northern Bar Association's [annual meeting](#) on June 8, 2012. You can [register](#) for the full day or to attend the morning (Civility in the Profession and Organizing Your File for Effective Courtroom Presentation) or afternoon (*KGB* / Khelawon Applications) presentations.

Improving the Justice System: MBA

The [Criminal Justice section](#) of the Manitoba Bar Association invites criminal lawyers to an open forum with Irene Hamilton, Director of Justice Innovation, who has been tasked with finding solutions to streamline processes within the justice system while ensuring it remains fair and effective. The meeting will take place May 2, 2012, from 12:00 noon to 1:30 p.m. at the Law Society classroom. The section is also gathering information about the state of our justice system and invites lawyers to submit their stories [online](#).

National Criminal Law Program

The Federation of Law Societies' 39th annual [National Criminal Law Program](#) will take place July 9-13, 2012 in Victoria, B.C. Among the broad list of topics to be covered: privilege, cross-examination, hearsay evidence, expert opinion, and ethical issues. The Hon. Justice Richard Saull will present at panels on Foundation Principles and Cross-Examination and Prior Statements. Check the [brochure](#) and [registration form](#) for further information.

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