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Text Messaging Afforded the Same Protections as Voice Communications: SCC

In [*R. v. TELUS Communications Co.*](#), 2013 SCC 16, the Supreme Court quashed a general warrant for the production of text messages stored by Telus, finding that "(t)he only practical difference between text messaging and the traditional voice communications is the transmission process" and that the "(t)echnical differences inherent in new technology should not determine the scope of protection afforded to private communications." (para. 5) The court rejected the Crown's argument that retrieving stored messages did not amount to an "interception" and therefore did not require a wiretap authorization. These articles discuss the decision:

- [*Text Messages are "Private Communications" in R v Telus Communications Co.*](#), The Court;
- [*Top court reins in police use of broad warrants*](#), *Lawyers Weekly*.

SCC Varies Sentence to Avoid Collateral Immigration Consequences

The Supreme Court reduced a two year sentence by one day in [R. v. Pham](#), 2013 SCC 15, finding that the sentencing judge was unaware of the collateral immigration consequences of the two year sentence (loss of the right to appeal a removal order) and that reducing the sentence by one day did not take it out of the acceptable range. The court commented that the Court of Appeal was wrong to "refuse the one-day reduction solely on the basis that the appellant had a prior criminal record or that it felt that he had 'abused the hospitality that [had] been afforded to him by Canada'" (para.25). These articles comment on the decision:

- [Immigration consequences can affect sentencing, SCC rules](#), *Canadian Lawyer Legal Feeds*;
- [R. v. Pham: Appellate Court May Vary Reasonable Sentence Where Collateral Consequences Were Not Considered](#), Osler.

Reasonable and Probable Grounds and ASDs: MBCA

The Crown is not required to prove that the screening device used by the police to establish reasonable grounds to make a breathalyzer demand was an approved device according to the Court of Appeal in [R. v. Jacob \(J.A.\)](#), 2013 MBCA 29. Instead of excluding the results because there was no proof that the device was approved, the trial judge should have asked whether the police officer had sufficient grounds to make the breathalyzer demand and whether that subjective belief was reasonable, based on all of the facts and information known to the officer at the time he made the demand.

Robbery Not Always a Serious Personal Injury Offence: MBCA

The court takes a close look at the meaning and use of the word violence in [R. v. Steele \(J.M.\)](#), 2013 MBCA 21, an unsuccessful Crown appeal of a decision denying the Crown's application for a dangerous offender assessment. The appeal court upheld the trial judge's ruling that a threat of violence during a robbery did not amount to "the use or attempted use of violence" required to establish a serious personal injury offence under s. 752 of the *Criminal Code*.

The court concluded that "...some degree of physical action must be part of a threat for it to constitute the "attempted use of violence." That is, there needs to be some indication of imminent apparent danger to a person or some overt act directed towards the actual use of violence against a person for a threat of violence to also constitute the attempted use of violence." In this case, a 39-second drug store robbery in which the accused threatened that he had a gun but did not produce it, the trial judge did not err in finding the violence sufficient to ground the robbery conviction but not to trigger the dangerous/long-term offender assessment.

First Appellate Decision on Warrantless Cell Phone Searches: ONCA

The recent Ontario Court of Appeal decision in [R. v. Fearon](#), 2013 ONCA 106, on warrantless cell phone searches incidental to arrest, has a lot of people talking. The court held that a "cursory" examination of the contents of a non-password protected cell phone which police reasonably believed would contain relevant evidence was permissible. It went on to say, however, that had the cell phone been "password protected or otherwise "locked" to users other than the appellant, it would not have been appropriate to take steps to open the cell phone and examine its contents without first obtaining a search warrant." (para.75). For a sampling of comments on the decision see:

- [What the Ontario Court of Appeal Did and Did Not Say in R v Fearon](#), The Court;
- [Search of Smartphones Incident to Arrest](#), Slaw;
- [Hung up on when police can search a cellphone](#), Lawyers Weekly.

In Force Legislation

[Bill C-55](#) received royal assent on March 27, 2013. The legislation addresses the lack of accountability measures in [s.184.4](#) of the *Criminal Code* (the SCC found the section invalid in [R v. Tse](#)) by adding new privacy safeguards for wiretaps in situations of imminent harm. See the [legislative summary](#) and [backgrounder](#) for more detailed information on the changes.

The [Justice for Victims of Terrorism Act](#), S.C. 2012, c. 1, s. 2 (s. 2 of [Bill C-10](#), the *Safe Streets and Communities Act*, SC 2012, c. 1) came into force March 13, 2012. Among other things, it allows victims of terrorism to sue both terrorists and supporting foreign states in Canadian courts. For further details see the [legislative summary](#) and this [post](#) from The Stream.

Recommended Reading

Papers and powerpoints from the 2012 Annual Crown Defence Conference are available for download on the [conference website](#), including Debra Parkes' paper on [Ipeelee](#), Justice Hill's paper on [Unreasonable Delay](#), and Justice Cromwell's paper on [Changing Charter Rights](#).

[The Supreme Court of Canada clarifies the law of informer privilege in R v Named Person B](#) - This article from The Court discusses the decision in [R. v. Named Person B](#), 2013 SCC 9, that an implied promise of confidentiality arose in circumstances where an informant was transferred by the police force which originally promised him confidentiality to a provincial force which failed to clarify his informer status during their five year relationship.

[Smoked by Mandatory Minimums](#) - Slaw contributor Edward Prutschi argues that mandatory minimum sentences for tobacco smuggling (set out in the recently introduced [Bill-16](#), the *Tackling Contraband Tobacco Act*) are absurd.

Statistics on the number and nature of complaints received by the Law Enforcement Review Agency in 2011 can be found in its 26th [Annual Report](#). This [press release](#) summarizes the report findings.

[Delhi lawyers ignore 'cab-rank' rule](#) - The author of this *Lawyers Weekly* article criticizes lawyers who have refused to defend the men charged in the Delhi bus gang-rape case, saying they are abrogating a responsibility that underpins the justice system.

Upcoming CPD: LSM

[Dealing with Difficult People: Leading Edge Communication Skills for Lawyers](#) - Learn proven strategies for dealing with the difficult people in your life at this day long program on May 1, 2013. Instructor Simon D'Arcy, a Senior Associate with Frank Sanitate Associates, has extensive experience in leadership and communication training.

[Criminal Defence Advocacy Skills Workshop - Dealing with Impaired Driving & Police Witnesses](#) - This popular workshop on case preparation and trial strategies in impaired driving cases is currently full, but a wait list is being maintained. It takes place from 9:00 a.m. to 4:00 p.m. on May 4, 2013.

[Bail Applications & Conditions on Release](#) - This practical session on current trends and practice suggestions for bail applications will be held May 22, 2013, from 5:00 to 6:30 p.m. at the Law Society classroom. [Register](#) now to ensure your spot.

[Evidence For Trial Lawyers](#) and [Revisiting Younger's 10 Commandments - An Update of Irving Younger's Classic Rules for Cross-Examination](#) - Steve Easton, an American trial lawyer and award winning teacher, builds his advocacy programs on the original Irving Younger presentation but adds his own advice and updates. These all-day programs take place on May 28 and 29, 2013 at the Law Society classroom. [Register](#) soon to take advantage of early bird, multiple registration, or student discounts.

[Time Mastery for Lawyers](#) and [Time Mastery for Support Staff](#) - Effective time management is a skill both lawyers and support staff strive to master. The Law Society is once again bringing in Frank Sanitate for two full-day workshops on this topic on June 11 and 12, 2013. [Register](#) on or before May 10, 2013 to take advantage of the early bird rate.

National Criminal Law Program

The Federation of Law Societies' 40th annual [National Criminal Law Program](#) will be held July 8-12, 2013 in Ottawa, Ontario. The conference theme is "Substantive Criminal Law, Advocacy, and the Administration of Justice." Download the complete [conference schedule](#), [program faculty list](#), and [registration form](#) for further information.

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