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MENTAL DISORDER IN CANADIAN CRIMINAL LAW

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Publisher's Release Note

This publication provides practitioners with a quick and easy reference tool, while keeping them up to date with the latest jurisprudential and legislative developments arising under Part XX.1 of the *Criminal Code*. The reader will be given a thorough analysis of all the issues arising under Part XX.1 including an examination of mental disorders, such as automatism, and the not criminally responsible defence (NCR), assessment orders and fitness to stand trial determinations, disposition hearings, fitness dispositions and their review, review board and appeal processes and procedures, and a discussion of mental disorder in a non-NCR context.

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Highlights

This release features revisions to the case law and commentary in chapters 5 (Automatism); 6 (Mental Disorder in A Non-NCR Context.); 7 (Review Boards Powers, Practice and Procedures); 8 (Disposition Hearings); 9 (Section 672.54 NCR and Unfit Dispositions); 10 (Appeals); and 11 (Travel, Interprovincial Transfers, and Extraterritorial Matters).

- **Mental Disorder in a Non-NCR Context – The Uniform Standard for Assessing Claims of Mental Incompetency by Accused Persons – Introduction:** In *R. v. Bharwani*, a five-member panel of the Court of Appeal for Ontario affirmed the use of a single test for purposes of determining all claims of mental incompetence that are raised to challenge the validity of an accused's decision such as the decision to plead guilty or to provide a statement to a person in authority: *R. v. Bharwani*, 2023 ONCA 203, 2023 CarswellOnt 4029 (Ont. C.A.) at paras. 133-138, 153-157, 163-166.
- **Mental Disorder in a Non-NCR Context – The Uniform Standard for Assessing Claims of Mental Incompetency by Accused Persons – Voluntariness of Statements to Persons in Authority:** Psychiatrists conducting a court ordered assessment – even one ordered at the request of the Crown – are not necessarily persons in authority. Whether they are, is subject to a case-specific analysis: *R. v. Bharwani*, 2023 ONCA 203, 2023 CarswellOnt 4029 (Ont. C.A.) at para. 219.
- **Mental Disorder in a Non-NCR Context – The Relevance of Mental Illness to Sentencing – Generally:** A sentencing judge will fall into error by relying on an offender's mental illness as a mitigating factor in the absence of a sufficient evidentiary basis to establish a causal connection between the mental illness and the criminal acts: *R. v. B.M.* 2023 ONCA 224, 2023 CarswellOnt 4498 (Ont. C.A.) at paras. 23-30.

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