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CRIMINAL TRIAL HANDBOOK

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This release features case law and commentary updates to Chapter 1 (Pre-Trial Review), Chapter 2 (Pre-Arraignment Matters), Chapter 11 (Order of Proof), Chapter 12 (Addresses of Counsel and the Charge to the Jury) and Chapter 15 (Sentencing).

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Highlights

- **Pre-Arraignment Matters—Disclosure by Prosecution—V. Fitness to Stand Trial—Procedure on Trial of an Issue**—The Supreme Court refused to endorse adding an “analytic capacity” to the fitness test. The Court said that the requirement for an accused to be fit to stand trial is codified in s. 2 of the *Code* through the definition of “unfit to stand trial”: *R. v. Bharwani*, 2025 SCC 26, 2025 CarswellOnt 11929, 2025 CarswellOnt 11928, 450 C.C.C. (3d) 143 (S.C.C.).
- **Order of Proof—I. The Case for the Prosecution—Sexual Offences**—The Supreme Court held that sexual inactivity evidence, encompassing evidence that the complainant has not previously engaged in, or prefers not to engage in, any sexual activity, certain types of sexual activity, or sexual activity under particular circumstances, forms part of a complainant’s sexual history and is thus presumptively inadmissible: *R. v. Kinamore*, 2025 SCC 19, 2025 CarswellBC 1704, 2025 CarswellBC 1705, 448 C.C.C. (3d) 427, 3 C.R. (8th) 229 (S.C.C.).
- **Sentencing—I. Purpose and Principles of Sentencing—Generally**—The Supreme Court held that the sentences for historical offences should be properly determined in accordance with the sentencing regimes and societal perspectives that prevail at the time of sentencing: *R. v. Sheppard*, 2025 SCC 29, 2025 CarswellAlta 2231, 2025 CarswellAlta 2230 (S.C.C.).