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CRIMINAL PLEADINGS AND PRACTICE IN CANADA

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What's New in this Update:

This release updates case law and commentary in Chapters 1 to 30.

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Highlights:

- The decision to "depart from a *precedent*" of the Supreme Court may *not* be taken *lightly*. This is because *adherence* to precedent furthers *values* such as the "certainty *and* predictability of the law". In some *exceptional circumstances*, a compelling reason will *outweigh* the benefits of following precedent and "justify a departure": *John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6, at **1:72.50**.
- An arresting officer may be *incorrect* as to the "*identity* of the arrestee". This does *not* make the arrest *unlawful*. Instead, the *issue* is the arresting officer "subjectively believed" the person he arrested was the "other person for whom the arrest would be justified" *and* whether that belief was "objectively reasonable": *R. v. Araya*, 2025 ABCA 61, at **5:7**.
- The "particular circumstances of the case" may require that an *amicus curiae* be given an "expanded role" so as to protect the accused's "right to a fair trial". The trial judge retains "wide discretion" to appoint *amicus* with functions that are responsive to the needs of a case. This may include "adversarial functions" where necessary for trial fairness: *R. v. J.C.*, 2025 ONCA 230, at **16:25**.
- The "statutory test" in s. 714.1 of the *Criminal Code* – "videoconference evidence" – *requires* a court to consider "whether it is appropriate to order 'remote testimony' " by having regard to all the circumstances. Courts should "*not* layer additional factors" on top of the "existing statutory criteria" to consider or develop a different and stricter test when there are issues of credibility, *or* in particular types of cases like alleged sexual assaults: *R. v. DMS*, 2025 MBCA 16, at **16:52**.
- *Care* must be taken in assessing the "scope of the admissible evidence" when s. 715.1 statements (*Criminal Code*) are introduced into evidence. Because these statements are taken "outside of court", most often by non-lawyers, questioners may be less concerned with the strict rules of admissibility." Section 715.1 does *not* make admissible evidence that would be inadmissible "were the child testifying in court": *R. v. T.A.*, 2025 ONCA 197, at **16:53**.
- Eyewitness *identification* evidence that tends to "exculpate an accused" is *not* subject to the "full caution" about the *frailties* of this kind of evidence. However, jurors should nonetheless be *cautioned* about the "inherent frailties of eyewitness identification evidence", whether inculpatory or exculpatory, "and" it should be explained that a "cautious approach is necessary" because of those *frailties*. Nonetheless, where eyewitness identification evidence "tends to *exculpate* the accused", the "special warning" typically provided for this type of evidence should be *avoided*: *R. v. Bowcock*, 2025 BCCA 124, at **16:377.50**.
- The "Reid Technique" of interviewing an accused or suspect to obtain a *confession* is *not* "presumptively inadmissible": *R. v. Ordonio*, 2025 ONCA 135, at **16:602**.
- There is "no basis for a distinction" in the standard of persuasion at the "first step" of the rule in *Carter* between offences of conspiracy "and" substantive offences. The "standard of proof beyond reasonable doubt" which applies at the "first stage" of the application of the test in *Carter* for the determination by the trier of fact *also* applies to the determination by the trier of fact of whether in the prosecution of a "substantive offence" the evidence supports the existence of a "common purpose"

amongst the parties to the "substantive offence": *R. v. Cardin*, 2024 QCCA 1567, at **19:52**.

- Where the "miscarriage of justice" argument, on appeal, is grounded in a "perceived unfairness", and *not* actual prejudice, the *test* is more stringent: "When the perceived unfairness of a trial is at issue, 'the appearance of unfairness must be pronounced, such that it would be a serious interference with the administration of justice *and* offend the community's sense of fair play and decency' ". To put it another way, "the appearance of unfairness must be serious enough to taint the administration of justice": *R. v. Vandewater*, 2025 SKCA 8, at **23:38**.
- A "secondary party" to an offence need *not* receive a "new trial" *solely* because the "principal offender" has received a new trial. This is so if there is "no error" in respect of the secondary party. Specifically, s. 23.1 of the *Criminal Code* states that ss. 21 to 23, which are provisions on "party liability", apply to an accused "notwithstanding the fact that the person whom the accused aids or abets, counsels or procures or receives, comforts or assists cannot be convicted of the offence": *R. v. Pan*, 2025 SCC 12, at **23:230**.
- Where *death* occurred as a result of the act or omission, "criminal negligence" is established where the accused "shows wanton or reckless disregard for the lives or safety of other persons". This is evaluated using a "modified objective standard of fault" that asks whether the accused's conduct *departed* from what a "reasonable person in similar circumstances" would have done. The Crown must prove that this *departure* from the *norm* was "marked and substantial": *R. v. King*, 2025 NBCA 12, at **28:1**.

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