Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. *Distribution List*
☐
☐
☐
☐

CRIMINAL PLEADINGS AND PRACTICE IN CANADA

E.G. Ewaschuk, K.C.

Release No. 6, August 2025

What's New in this Update:

This release updates case law and commentary in Chapters 31 to 34.

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

Highlights:

- A "third party spending limit" may *infringe* the "right to vote in s. 3 of the Charter" . This is so if it creates "absolute disproportionality", *or* a "disproportionality that is so marked on its face" that it allows political parties to "drown out the voices of third parties" on political issues from reaching citizens during an entire year of legislative activity. This type of spending limit *cannot* be saved under s. 1 of the Charter as it is *not* justified in a free and democratic society because the law is not minimally impairing: *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc*., 2025 SCC 5, at **31:260**.
- The effect of an "absolute ban" on specific *gathering* limits is to "stifle assembly" aimed at expressing collective opposition to the ban itself. It *contravenes* s. 2(*c*) of the Charter in relation to "peaceful assembly" and is *not* justifiable under s. 1 of the Charter: *Hillier v. Ontario*, 2025 ONCA 259, at **31:352.50**.
- A "lengthy detention" after arrest may require a "new opportunity" for an accused to have a "subsequent consultation with counsel", particularly where the police conducted a "new interrogation" of the accused based on "new information" received by the police: *R. v. Provencher*, 2025 QCCA 505, at **31:898**.
- Where "inmate disciplinary proceedings" *permit* the "imposition of a form of 'true penal consequences' ", the "criminal standard" of proof beyond a reasonable doubt applies. The civil standard of proof on a balance of probabilities, in such circumstances, *contravenes* s. 11(d) of the Charter. The imposition of "disciplinary segregation and loss of earned remission" for an inmate disciplinary offence on a lower standard of proof is *inconsistent* with the *Constitution* and is of "no force or effect": *John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6, at **31:944.**
- Where an *interpreter* is ordered, the trial judge, at the *outset* of the proceedings, should establish a *system* for the "accused to *advise* the court if "any *difficulty* with the interpretation arises". It is *advisable* to use the interpreter to ensure that the accused understands the importance of "alerting the court" about any *deficiency* in interpretation at the "earliest opportunity": *R. v. Chen*, 2025 ONCA 168, at **31:1255**.
- The proper *framework* for considering a "disclosure application" of the Minister's decision to "surrender the fugitive" for *extradition* is through "judicial review principles" of "government decision makers". This is restricted to the *record* of the evidence *or* materials that were "before the decision maker": *United States of America v. Rabang*, 2025 BCCA 7, at **32:81**.
- The *prime directive* in "statutory interpretation" is that, after taking into account all relevant and admissible considerations, the court must adopt an "interpretation that is appropriate". An *appropriate interpretation* is one that can be justified in terms of: (a) its *plausibility*, that is, its compliance with the legislative text; (b) its *efficacy*, that is, its promotion of legislative intent; *and* (c) its *acceptability*, that is, the outcome complies with accepted legal norms - it is reasonable and just: *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at **33:1.50**.
- "Statutory interpretation" is *centered* on the "intent of the legislature at the *time* of enactment" and courts are bound to give effect to that intent. Courts must be careful *not* to "exceed their institutional role" by engag-

ing in "political questions" raised by changes subsequent to enactment, which are better addressed by legislatures. This principle does *not*, however, *prevent* courts from applying statutes to "new *or* evolving circumstances". In the exercise of their legislative authority, enacting legislatures can "use broad or open-textured language" to cover "circumstances that are neither in existence nor in their contemplation": *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at **33:6.50**.

- The "enforcement of legislation" is generally done in the exercise of "executive power by the government" of the "same legislature that enacted the legislation". "Executive power to *enforce* the statutes" of Parliament *and* of the legislatures follows upon the "legislative authority to *enact* those statutes". However, as an *exception* to the general rule, the "provincial" Attorney General *executes*, *i.e.*, prosecutes, offences committed contrary to the "federal" *Criminal Code* as part of the provincial legislative jurisdiction in respect of the "Administration of Justice". In the end, the provincial Attorney General has a "concurrent jurisdiction" with the federal Attorney General in the prosecution even of "federal 'non-Code' offences" by reason of the provincial powers in respect of the "administration of justice", *though* Parliament may "statutorily override" the power of the provincial Attorney General to do so: *R. v. Hauser* and *R. v. Sacobie and Paul*, at **34:15.70**.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages