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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 27 to 29.

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Highlights:

- An "important distinction" exists between a motorist driving in an impaired condition who is involved in an accident, *and* a motorist driving in an impaired condition whose impaired driving ability (as evidenced by driving conduct, *or* failure to react or to make a certain judgment) comprises a "contributing cause" beyond the *de minimis* range to the victim's bodily harm or death: *R. v. Bakko*, 2024 ABCA 2, at **27:10**.
- In respect of "murder", *two* forms of "express intent" appear to be available. *Direct intention* exists if a person's "direct purpose" in acting is to kill another person. *Oblique intention* exists if a person decides "to carry out some 'other purpose' in the *knowledge* that killing is *virtually certain* to result". In the latter situation, the intention to kill is *oblique* because, although the person does *not* desire the death of the victim, they have accepted that the death of the victim is a "virtually certain consequence" of their act: *R. v. Aziga*, 2023 ONCA 12, at **27:39**.
- Where the trier(s) of fact *reject* the accused's "claim of self-defence", the trier(s) must nonetheless *also* consider the "same evidence" surrounding the claim of self-defence *before* determining the issue of whether the accused had the requisite intent to murder the deceased *and* the additional issue of whether the murder was *also* planned and deliberate. This is to avoid a "compartmentalization of the evidence" on "separate issues": *R. v. Harris*, 2023 ABCA 90, at **27:39**.
- A person's "state of mind" may be *deduced* by considering what the "natural consequences of the person's actions" are. The more likely, as a matter of common human experience, the consequence is to flow from the action, the stronger is the inference that the person intended that consequence: *R. v. Firlotte*, 2023 ONCA 854, at **27:43**.
- Where "multiple accused" are involved in the killing of the deceased, the trial judge must instruct the jury that the "conduct of the non-killer accused" could constitute "active participation in the killing" for the purposes of s. 231(5)(e) — kidnapping and unlawful confinement — *only*, if "at the time that accused engaged in that conduct", the accused had the *mens rea* for second degree murder under s. 21(1)(a) or s. 21(1)(b), or s. 21(2) of the *Criminal Code*: *R. v. Cargioli*, 2023 ONCA 612, at **27:89**.
- The offence of dangerous driving is "*not* proved" by showing *only* that the accused drove in a "manner that was dangerous" to the public. Instead, the Crown must prove that the accused's objectively dangerous conduct was *accompanied* by the "required *mens rea*". Specifically, the Crown must prove that the manner of driving amounted to a "marked departure" from the standard of care that a reasonable person would observe in the accused's circumstances. The trier of fact must identify how and in what way the *departure* from the standard goes *markedly* "beyond mere carelessness". Nonetheless, the "requisite *mens rea*" may be *inferred* from "driving found to be objectively dangerous": *R. v. Heth-Klems*, 2023 BCCA 246, at **28:27**.
- Proof that an accused *knew* of the *terms* of a court order *and* "intentionally committed an act in public" that factually contravenes the order is not sufficient to establish the *mens rea* for "criminal contempt". The Crown must *also* show that the public contravention was "calculated to 'lessen societal respect' for the courts". This latter component of the *mens rea* requirement is proved through *evidence* that the accused

intended, knew *or* was reckless "as to the fact that their 'public disobedience' would tend to *depreciate* the authority of the court": *Trans Mountain Pipeline ULC v. Mivasair*, 2023 BCCA 299, at **29:5**.

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