

Publisher's Note

Case Law Developments and Commentary Updates

This edition incorporates a wealth of new annotations and commentary updates based on recent and significant case law, including the following decisions of the Supreme Court of Canada:

R. v. Archambault (2024) — Despite the 2019 amendment that restricted the availability of preliminary inquiries to offences punishable by a maximum sentence of 14 or more years, the former s. 535 continues to apply to those charged prior to September 19, 2019, with offences featuring ten-year maximums as well as to those who had allegedly committed such offences prior to that date.

R. v. B.E.M. (2023) — Personal anecdotes have no place in closing addresses and are fundamentally at odds with the role of the prosecutor.

R. c. Brunelle (2024) — Where the accused alleges prejudice to the integrity of the justice system as a cumulative effect of *Charter* infringements amounting to abusive conduct and tainted proceedings, the court should first examine each alleged infringement before considering them altogether as a whole to decide whether the threshold for establishing abuse of process has been met.

R. v. Bykovets (2024) — Since an IP address may expose an intensely private array of information, including intimate details of the lifestyle and personal choices of its user, a police request for an IP address constitutes a search under s. 8 of the *Charter*.

R. v. Hodgson (2024) — The fault element in manslaughter is not concerned so much with what the accused knew or intended at the time of the underlying, objectively dangerous, unlawful act — rather, it lies in the accused's failure to direct his or her mind to a risk that a reasonable person would appreciate.

R. v. Johnson (2023) — In order for the accused to be found guilty for aiding a planned and deliberate murder, the Crown must prove that the accused knew the principal had intended to kill the victim in a planned and deliberate way.

R. v. Kruk (2024) — Although s. 276 prohibits the use of prior sexual history to support either twin myth, it does not follow that every inference drawn from such evidence will be prejudicial — with proper screening, such evidence may still be used, for example, to resolve inconsistencies between the testimonies of the complainant and the accused concerning their relationship.

R. v. Lozada (2024) — Where an intervening act is said to have broken the chain of causation between the accused's unlawful conduct and the victim's death, asking whether the intervening act was reasonably foreseeable could be helpful, but the legal test remains: Whether the accused's conduct was a significant contributing cause of death.

R. v. Tayo Tompouba (2024) — The first appearance judge has an informational duty under s. 530(3) to ensure the accused is advised of his or her fundamental right to be tried in the official language of choice and of the time limit in which to make this choice — the judge must take necessary steps to remove even the slightest doubt of the accused's understanding, and the failure to do so would constitute an error of law of significant prejudice to the accused that may require an order for a new trial.

R. v. T.W.W. (2024) — Whereas decisions on the relevance of s. 276 evidence are reviewable on a standard of correctness, decisions on the admissibility of such evidence, being highly fact-specific and contextual, tend to be subject to deference — A court reviewing an admissibility decision must only consider the evidence before the trial judge at the time of that ruling.

R. v. Wolfe (2024) — Subsection 320.24(4) does not authorize the imposition of driving prohibitions for convictions of criminal negligence causing death or causing bodily harm.

R. v. Zacharias (2023) — Where the grounds for arrest were based on evidence later found to have been obtained unlawfully, the court must excise that evidence from the factual matrix to determine whether police had reasonable and probable grounds for the arrest without it.

Canada (Attorney General) v. Power (2024) — The state does not have absolute immunity from liability for damages stemming from the enactment of unconstitutional legislation that infringes *Charter* rights.

Legislative Developments

The *2026 Annotated Tremear's Criminal Code* reflects the following legislative developments that occurred since publication of the last edition. Amendments not in force as of **May 23, 2025**, appear in the work as shaded text.

[1] Effective April 8, 2025, *An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)*, S.C. 2024, c. 22 ("former Bill S-205"), came into force.

[2] Effective March 6, 2025, *An Act to amend the Criminal Code, to make consequential amendments to other Acts and to repeal a regulation (miscarriage of justice reviews)*, S.C. 2024, c. 33 ("former Bill C-40") came into force.

[3] By order of the Governor in Council, SI/2024-25, registered on June 19, 2024, the amendments introduced by the *Budget Implementation Act, 2023*, No. 1, S.C. 2023, c. 26, ss. 610 to 612, came into force on January 1, 2025.

[4] On November 27, 2024, *An Act to amend the Interpretation Act and to make related amendments to other Acts*, S.C. 2024, c. 30 ("former Bill S-13"), received Royal Assent.

[5] On October 10, 2024, *An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material)*, S.C. 2024, c. 23 ("former Bill C-291"), received Royal Assent, with its

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amendments to the *Criminal Code* to come into force October 10, 2025.

[6] By order of the Governor in Council, SI/2024-27, registered on July 3, 2024, the amendments introduced by *An Act to amend certain Acts and to make certain consequential amendments (firearms)*, S.C. 2023, c. 32, were brought into force on September 1, 2024.

[7] On June 20, 2024, the *Budget Implementation Act, 2024, No. 1*, S.C. 2024, c. 17 (former Bill C-69), received Royal Assent, with many of its amendments to the *Criminal Code* and the *Controlled Drugs and Substances Act* having come into force between that date and January 1, 2025.

[8] On June 20, 2024, the *Fall Economic Statement Implementation Act, 2023*, S.C. 2024, c. 15 (former Bill C-59), received Royal Assent, and its amendments to the *Criminal Code* were brought into force between that date and September 18, 2024.

[9] On June 20, 2024, the *Countering Foreign Interference Act*, S.C. 2024, c. 16 (former Bill C-70), received Royal Assent, with its amendments to the *Criminal Code* and the *Canada Evidence Act* having come into force between that date and August 19, 2024.

[10] On June 5, 2024, Schedule I to the *Controlled Drugs and Substances Act* were amended by Order, SOR/2024-98, s. 1. As well, effective September 3, 2024, section 2 of this Order amended Schedule VI to this Act.