

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. <i>Distribution List</i>
☐
☐
☐
☐

CRIMINAL PLEADINGS AND PRACTICE IN CANADA

E.G. Ewaschuk, K.C.

Release No. 7, September 2026

What's New in this Update:

This release updates case law and commentary in Chapters 17 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

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights:

- The partial defence of *provocation* does *not* look to what an accused “subjectively believes constitutes a threat”. Instead, the *focus* is on whether “the sudden actions of the victim provoked the accused” to act on the sudden *and* in the heat of passion. With *self-defence*, the accused must “subjectively believe, on reasonable grounds”, that force is being used against them *and* take action for the *purpose* of defending against that threat: *R. v. Herman*, 2026 SKCA 57, at **21:148.50**.
- As a general rule, conviction “and” sentence *appeals* are “heard together”. However, this rule is *not* absolute and appeals may be *bifurcated* where there are “compelling reasons” to do so. A “sentence appeal” may be heard *first* if there are “significant delays” in perfecting the conviction appeal, often where an appellant is self-represented, *or* by delays appearing to be “indeterminate”. Additionally, a “sentence appeal” may be heard *first* if the Crown appeal against sentence will likely be unsuccessful *merely* “by reason of delay”: *R. v. D.P.R.*, 2026 ONCA 101, at **25:2.50**.
- “*Factors* typically taken into account” in applying the “interests of justice” test to the question of “whether to reincarcerate” following a *re-sentencing* on appeal include: (1) the passage of time since the arrest and whether the offender has served their original sentence, either entirely *or* in part; (2) the extent to which incarceration will adversely affect the stability of the offender’s current circumstances and “ultimate rehabilitation”; (3) whether the offender has been compliant with the conditions of their release and the extent to which they have been law-abiding since conviction; and (4) whether the principles of “denunciation and deterrence” can be adequately served “without reincarceration”: *R. v. Kleykens*, 2020 NSCA 49 at **25:36**.
- Interpreting a Charter provision requires “something other” than the rules of statutory construction. The task of expounding a constitution is crucially *different* from that of construing a statute. The constitution must be *responsive* to “new social, political, and historical realities” as they emerge. Long before the advent of the Charter, the interpretation of Canadian “constitutional provisions” had been given a purposive and generous approach which describes constitutional provisions as “a living tree capable of growth and expansion within its natural limits”: *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, at **31:2**.
- A judicial *discretionary power* stands to be exercised “according to the rules of reason and justice”, *not* according to public or private opinion. It must *not* be arbitrary, vague, and fanciful, but legal and regular. *Judicial discretion* is “very wide, but it must be exercised *judicially*, according to the ‘rules of reason and justice’, and *not* arbitrarily or capriciously or according to public or private opinion”. This view of the restraint on the judicial exercise of discretion is well-settled: *J.D. Irving, Limited et al. v. Wolastoqey Nation*, 2025 NBCA 129, at **31:160**.
- The common law recognizes an *implied licence* for “all members of the public”, including *police*, to approach the “door of a residence” and knock. Under the “implied licence doctrine”, a police officer who has lawful business with the “occupant of a dwelling” may proceed from the street to the door of a house to communicate with the occupant. However, the implied licence *ends* at the “door of the dwelling. So long as the police officer is “lawfully present”, the “use any of their senses” of sight, hearing, or smell is not a search. The implied licence *authorizes* communica-

tion with the occupant, “even if it puts evidence of an offence in plain view”. However, police action *exceeding* the conditions of the implied licence to approach and knock may constitute a “search”: *R. v. Singer*, 2026 SCC 8, at **31:749**.

- Section 577 of the *Criminal Code* authorizes the “preferment of a direct indictment” on the personal consent in writing of the Attorney General or the Deputy “in the case of a prosecution conducted by the Attorney General or one in which the Attorney General intervenes”. This may be done “even if” the accused has *not* yet been given the opportunity to request a preliminary inquiry, a preliminary inquiry is underway or a preliminary inquiry has resulted in the discharge of the accused. There is “no basis” in the *Criminal Code* or the Charter to conclude that an accused’s “election to be tried in the provincial court” *extinguishes* the Attorney General’s power to prefer a direct indictment under s. 577: *R. v. Abdella*, 2026 ONCA 228, at **31:985.60**.
- The *purpose* of s. 24(2) of the Charter is “to maintain the good repute of the administration of justice”, which “embraces maintaining the rule of law *and* upholding Charter rights in the justice system as a whole”. The phrase “bring the administration of justice into disrepute” must be “understood in the long-term sense of maintaining the integrity of, and public confidence in, the justice system”. The *analysis* under s. 24(2) starts from the *premise* that a Charter breach has already damaged the administration of justice *and* “seeks to ensure that evidence obtained through that breach does *not* do ‘further damage’ to the repute of the justice system”. The focus of s. 24(2) is societal, targeting systemic concerns “rather than” punishing the police or compensating the accused: *R. v. Fox*, 2026 SCC 4, at **31:1521.50**.
- A *reconciliation* of Aboriginal “and” non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the *Constitution Act, 1982*. Accordingly, reconciliation is a “balancing process” that does “*not* involve the “subordination of all other public rights’ to Aboriginal rights”: *J.D. Irving, Limited et al. v. Wolastoqey Nation*, 2025 NBCA 129, at **31:1598**.

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