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### **CRIMINAL PLEADINGS AND PRACTICE IN CANADA**

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**Release No. 5, July 2026**

#### **What's New in this Update:**

This release updates case law and commentary in Chapters 1 to 16.

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### Highlights:

- Section 189(6) of the *Criminal Code* does *not* prevent an *accused lawyer* from invoking the “innocence at stake exception” to a *privilege*. Section 189(6) of the *Criminal Code* does *not* purport to “eliminate common law exceptions” to any *privilege*, including solicitor-client privilege: *R. v. Fox*, 2026 SCC 4, at **4:161**.
- The “ancillary powers doctrine” addresses whether a “particular police power” that “*prima facie* interferes with individual liberty” is *authorized* at common law. The *analysis* proceeds in two stages: *first*, the court asks whether the police action, at issue, falls within the “general scope of a statutory or common law police duty”; *second*, the court asks whether the police action involves a “justifiable exercise of police powers” associated with that duty. At the “second stage”, the court asks whether the police action is “reasonably necessary to fulfill the police duty”: *R. v. Singer*, 2026 SCC 8, at **5:13**.
- 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”: *R. v. Singer*, 2026 SCC 8, at **5:14**.
- The “2026 amendment” to s. 493.11(2)(a) of the *Criminal Code* clarifies that the “principle of restraint” does *not* mandate release of an accused *and* that an accused should *not* be released if their detention is *justified*, including for the “protection and safety of the public”. In other words, s. 493.11(2)(a) does *not* require the accused to be *released* at the earliest opportunity in all situations: *Code*, s. 493.11(2)(a), at **6:17**.
- A judge, justice or court may *not* “name a person as surety” if the person was *convicted* of an indictable offence “within ten years *before* the day on which the release order” is made: *Code*, s. 515(2.11), at **6:46**.
- The accused must “clearly demonstrate” that their “proposed *release plan*” addresses the *risks* posed by the accused as they relate to the *grounds* referred to in s. 515(10) – release onus – of the *Criminal Code*: *Code*, ss. 515(6) and 522(2), at **6:81**.
- Section 577 of the *Criminal Code* does *not* restrict the preferment of a *direct indictment* to the “three situations” referred to in s. 577. Thus, a direct indictment is *also* available in “other situations”, *e.g.*, where the accused has elected to be tried directly in provincial court *without* a preliminary inquiry: *R. v. Abdella*, 2026 ONCA 228, at **11:31**.
- When an accused is “*not* in custody”, there is no “presumption” – only a “default” – that the accused “sit in the prisoner’s box”. Among other things, the fact that the accused is *not* detained will typically signal that they have been deemed *not* to be a risk to the safety of others. The situation is *different* when it comes to “accused who are detained”: *R. v. Allred*, 2026 ONCA 258, at **16:48**.
- Section 12(1) of the *Canada Evidence Act* allows the questioning of “any witness”, including the *accused*, about whether they have been *convicted* of any offence. The provision reflects a “legislative judgment that prior convictions do ‘bear upon the *credibility*’ of a witness”. However, s. 12(1) preserves a trial judge’s *discretion* to *exclude* relevant evidence as to credibility that would result in an “unfair trial”. An accused is entitled

to a *ruling* on their *Corbett* application to *exclude* reference to “prior convictions” at the close of the Crown’s case *before* they decide whether to testify: *R. v. Hussein*, 2026 SCC 2, at **16:122.30**.

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