

## Publisher's Note

2018 — Release 9

Previous release was 2018–8

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# Criminal Practice Manual

This manual will assist the criminal law practitioner, whether defence counsel, Crown counsel, judge or law enforcement officer, with a quick understanding and approach to frequently encountered problems. Topics covered include statutory interpretation, investigation, rights and powers; the trial process—from investigation to trial; evidence, legislative compliance with the Constitution, and appeals.

This release features valuable updates to the case law and commentary in Chapters 1 (Commission of Alleged Offence), 2 (Investigation: Rights and Powers), 3 (The Trial Process — From Investigation to Trial), and 4 (Evidence).

### Case Law Highlights

- **Commission of the Alleged Offence — Mental Disorder — Not Criminally Responsible — Principles—Advancing a s. 16 Defence:** An accused who has the capacity to know that society regards his actions as morally wrong and proceeds to commit those acts cannot be said to lack the capacity to know right from wrong. As a result, he is not NCR, even if he believed that he had no choice but to act, or that his acts were justified. However, an accused who, through the distorted lens of his mental illness, sees his conduct as justified, not only according to his own view, but also according to the norms of society, lacks the capacity to know that his act is wrong. That accused has an NCR defence. Similarly, an accused who, on account of mental disorder, lacks the capacity to assess the wrongness of his conduct against societal norms lacks the capacity to know his act is wrong and is entitled to an NCR defence. *R. v. Oommen*, 1994 CarswellAlta 121, 1994 CarswellAlta 745, EYB 1994-66953, [1994] 2 S.C.R. 507, 91 C.C.C. (3d) 8, 30 C.R. (4th) 195, 19 Alta. L.R. (3d) 305, [1994] 7 W.W.R. 49, 168 N.R. 200, 155 A.R. 190, 73 W.A.C. 190, [1994] S.C.J. No. 60 (S.C.C.); and *R. v. Dobson*, 2018 CarswellOnt 10342, 2018 ONCA 589 (Ont. C.A.).
- **Investigation: Rights and Powers — Powers of the State — Power of Search or Seizure — The Section 8 Challenge: Attacking a Search or Seizure on the Basis of its Execution:** The Supreme Court most recently declined to decide whether the failure

to comply with requirements of sections 489.1 and 490 of the *Criminal Code* can result in a section 8 *Charter* breach in *R. v. Paterson*, 2017 CarswellBC 687, 2017 CarswellBC 688, 2017 SCC 15, [2017] 1 S.C.R. 202, 347 C.C.C. (3d) 280, 35 C.R. (7th) 229, 409 D.L.R. (4th) 420, 379 C.R.R. (2d) 81, [2017] S.C.J. No. 15 (S.C.C.). The Alberta Court of Appeal found that as there was no such prior judicial authorization for the officer's initial seizure of the computer, compliance with section 489.1 becomes particularly important. Therefore, the investigating officer's failure to comply with section 489.1, and the resulting failure to obtain judicial authorization to detain the computer, rendered the seizure of the device unlawful, and therefore violated section 8 of the *Charter*: *R. v. Villaroman*, 2018 CarswellAlta 1188, 2018 ABCA 220, 72 Alta. L.R. (6th) 1 (Alta. C.A.).

- **The Trial Process — From Investigation to Trial — In Which Court Will It Be Tried? — Language of the Accused:** Failure of the accused to invoke or assert the right to the assistance of an interpreter who was available at trial was not determinative. It was apparent that the trial judge did not have a “solid grasp” of the critical evidence because he was unable to comprehend what the witnesses were saying. The accused's right to a fair trial includes a right to have the trier of fact understand what he says. That the accused apparently considered himself capable of making himself understood in English was not relevant and did not constitute a waiver of his s. 14 *Charter* right. What was relevant was that the trial judge was not able to understand what the accused said. The Court concluded that the trial judge's failure to address his inability to understand the accused breached s. 14 of the *Charter* and rendered the trial unfair: *R. v. Mitroi*, 2018 CarswellBC 1467, 2018 BCCA 236, 362 C.C.C. (3d) 374 (B.C.C.A.).

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