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MENTAL DISORDER IN CANADIAN CRIMINAL LAW

Joan Barrett

Release No. 2, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in November 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the November 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This publication provides practitioners with a quick and easy reference tool, while keeping them up to date with the latest jurisprudential and legislative developments arising under Part XX.1 of the *Criminal Code*. The reader will be given a thorough analysis of all the issues arising under Part XX.1 including an examination of mental disorders, such as automatism, and the not criminally responsible defence (NCR), assessment orders and fitness to stand trial determinations, disposition hearings, fitness dispositions and their review, review board and appeal processes and procedures, and a discussion of mental disorder in a non-NCR context.

This release features revisions to the case law and commentary in chapters 6 (Mental Disorder in a Non-NCR Context); 7 (Review Boards: Powers, Practice and Procedures); 8 (Disposition Hearings); 9 (Section 672.54: NCR and Unfit Dispositions); 10 (Appeals).

Highlights

- The NCR Defence – Procedural Issues – Procedure for Consent NCR Findings: Where the accused is represented and appeals from a consent NCR verdict on the basis that they were not fully informed, the framework used is that for assessing claims of ineffective assistance of counsel. The defence must establish that trial counsel’s ineffectiveness resulted in a miscarriage of justice. *R. v. D.L.B.*, 2022 BCCA 15, 2022 CarswellBC 93 (B.C.C.A.) at para. 68.
- Mental Disorder in a Non-NCR Context – The Relevance of Mental Illness to Bail: Treatment can be included in the terms of release on bail if the bail justice is satisfied that it is necessary to address the grounds in s. 515(10) that would otherwise warrant detention, is minimally intrusive, is not contrary to the *Charter* or other legislation, and the accused is likely able to comply. *R. v. R.S.*, 2021 ONSC 6732, 2021 CarswellOnt 14222 (Ont. S.C.J.) at paras. 61, 70-71.

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