



UNIFORM LAW CONFERENCE OF CANADA

WORKING GROUP ON SECTION 672.26 AND RELATED SECTIONS OF THE *CRIMINAL CODE* (JURIES AND FITNESS HEARINGS)

STATUS REPORT

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Presented to the Criminal Section

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[1] At the 2021 virtual meeting of the Uniform Law Conference of Canada (ULCCA), the Criminal Section passed a resolution at the request of Ontario (ON2021-03):

It is recommended that the Criminal Section of the ULCC strike a working group to review section 672.26 (and related sections) of the *Criminal Code* for possible legislative reform as to how the issue of fitness should be tried when an accused person has elected trial by judge and jury. (Carried as amended 29-0-0)

[2] The Working Group (WG) has met virtually since its establishment in late 2021. In the 2023-2024 year, group meetings lapsed owing to unexpected absences and members changing employment. At the ULCC meeting in August 2024, the delegates extended the group's mandate and to assist with identifying interested counsel to join the group this fall. Several members joined and meetings resumed on a monthly basis in September 2024, led by the provincial co-chair and the new federal co-chair. The members have built upon the earlier work of the group and studied the ramifications of removing the jury from the determination of fitness and any lesser amendment that could remedy the problems identified such as how the legislative scheme may prejudice the defendant by requiring the jury to hear the evidence at a fitness hearing, as well as how the scheme creates or contributes to inefficiencies in the Superior Court of Justice. The group has arrived at consensus on several key questions related to the application of the *Criminal Code* fitness regime to a person who has elected (or is deemed to have elected) trial by judge and jury. The WG is currently drafting its final report.

[3] On July 25, 2025, the SCC released its ruling in the case of *R. v. Bharwani* 2025 SCC 26. The case addresses critical aspects of mental disorder law, including the determination of legal fitness, which is the central focus of this group. Given the significance of this case, WG members will need to conduct additional meetings to discuss its potential impact on the work of the WG and on the draft Final Report.

[4] Between September 2025 and July 2026, multiple members of the WG were not in a position to meet or otherwise advance the drafting of the Final Report due to other professional responsibilities. The co-Chairs anticipate holding additional meetings to discuss the SCC's decision in *Bharwani* and to finalize the draft report and recommendations in fall 2026 and winter 2027.

[5] The WG now aims to table a final report in spring 2027.

[6] It is recommended that the working group continue its study of this issue and report back to the Criminal Section at the annual meeting in 2027.