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### SEXUAL OFFENCES IN CANADIAN LAW

By: Hamish C. Stewart  
Release No. 1, April 2024

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

This release features updates to case law and commentary in Chapter 6 (General Rules of Evidence) and Chapter 9 (Sentencing).

#### Highlights

● **General Rules of Evidence — Hearsay — Interaction of Necessity and Reliability** — After recognizing that the case law may cast the impression of an inverse relationship between necessity and reliability as criteria for hearsay evidence, the Supreme Court of Canada rejected the notion that an increase in necessity translates to more flexibility in the degree of reliability that must be established — rather, in each instance, there is a threshold of reliability that must be met, which threshold will depend on the particular facts of the particular case: *R. v. Furey*, 2022 CarswellNfld 372, 2022 SCC 52 (S.C.C.).

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● **General Rules of Evidence — Expert Evidence — Use of Expert Opinion Evidence in Sexual Cases — Credibility of Complainant** — The Crown counsel led evidence from an expert that was admissible on the issue of the developmentally-delayed complainants' capacity to consent, but asked no questions regarding their credibility. Later, the Crown counsel invited the jury to use the expert's testimony for the purpose of bolstering the credibility of the complainants. The Court of Appeal for Ontario ordered a new trial, after holding that the Crown's invitation was impermissible and that the trial judge should have remedied this by giving the jury a limiting instruction: *R. v. D.M.*, 2022 CarswellOnt 7478, 2022 ONCA 429 (Ont. C.A.).

### **ProView Developments**

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