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<p>CRIMINAL PRACTICE MANUAL A Practical Guide to Handling Criminal Cases Release No. 9, November 2024</p>
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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 updates to Chapter 1 Commission of the Alleged Offence, Chapter 2 Investigation: Rights and Powers, Chapter 3 The Trial Process — From Investigation to Trial and Chapter 4 Evidence.

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Case Law Highlights

- **Commission of the Alleged Offence—Elements of the Offence: The Act and Fault Requirements—The Act—Causation—Constitutional Considerations:** The Supreme Court of Canada revisited the legal principles concerning the intervening act defence and gang attacks. The Majority for the Supreme Court of Canada found that the overall test for legal causation for manslaughter was whether the accused's unlawful acts were a significant contributing cause of death. In cases where an intervening act was said to have broken the chain of causation between the accused's acts and the victim's death, asking whether the intervening act was reasonably foreseeable, or was an independent factor, could be helpful analytical aids, however, the overall significant contributing cause test was the legal standard. With respect to the reasonable foreseeability analytical aid, the Majority found, there was no requirement that a specific subsequent attack be reasonably foreseeable. It was sufficient if the general nature of the intervening act and risk of non-trivial harm were objectively foreseeable at the time of the dangerous and unlawful acts. Furthermore, it was held that the reasonable foreseeability inquiry asks whether the intervening acts and harm that actually transpired, flowed reasonably from the conduct of the accused. Some degree of specificity about the nature of the intervening act must have been reasonably foreseeable but there was no requirement for objective foreseeability of the precise future consequences of the accused's conduct. It was determined that the act of a co-participant in a group assault could trigger the application of the intervening act doctrine. There was no single test or measure for determining whether a particular act had broken the chain of causation: *R. v. Lozada*, 2024 CSC 18, 2024 SCC 18, 2024 CarswellOnt 7262 (S.C.C.).
- **Investigation: Rights and Powers—Powers of the State—Power of Search or Seizure—The Section 8 Protection—The Privacy Interest:** As part of an investigation, police mounted a pole camera outside of the accused's home, which captured the movement of people and vehicles in and out of the home and any activities taking place in front of the home. As a general proposition, it could be true that pole camera surveillance could give rise to an objective expectation of privacy over the subject matter of the recording within the s. 8 Charter analysis, based on duration, scope and nature of its surveillance, and the basis for its placement or other contextual or technological factors. The general proposition stemmed from a broad and functional view of the subject matter of such recording, which could potentially capture infor-

mation about an accused's comings and goings as well as who they associated with and what activities they took part in. The Court found that if there was any expectation of privacy by the accused over the public space in front of the house captured by the pole camera, it was highly diminished and did not constitute a search for the purposes of s. 8 of the *Charter*: *R. v. Hoang*, 2024 ONCA 361, 2024 CarswellOnt 6761 (Ont. C.A.).

- **Evidence—Miscellaneous Issues—Post-Offence Conduct (Consciousness of Guilt)—The Complainants Prior Sexual History: Section 276—How to: Introduce Evidence of Prior Sexual History:** The Supreme Court of Canada revisited the question considered in *Goldfinch* and expanded on the proper and impermissible uses of evidence of prior sexual activity between the complainant and the accused, particularly in the context of a long-term relationship. In this case, the complainant, who was the accused's spouse, testified that she and the accused separated weeks before the alleged sexual assault by the accused against the complainant. The Majority of the Court found the prior sexual activity evidence had no permissible purpose for context or credibility and the trial judge did not err in finding the evidence would invoke the twin-myth reasoning. The proposed evidence held little relevance to context or challenging the complainant's credibility given that the fact of the prior sexual relationship was uncontested and admitted. It was not inconsistent for the complainant to state that the marriage was over and there was consensual sexual activity after the separation. In reviewing the trial judge's initial ruling under s. 276 of the *Criminal Code*, an appellate court was to consider only the evidence that was before the trial judge at the time of the determination on admissibility. Where the evolution of a witness' testimony at trial resulted in a material change in circumstances, the trial judge could revisit the earlier s. 276 ruling. Even if the evidence had some relevance to context or credibility, the trial judge did not err in weighing its probative value against its prejudicial effect: *R. v. T.W.W.*, 2024 CSC 19, 2024 SCC 19, 2024 CarswellBC 1463 (S.C.C.).