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McWILLIAMS' CANADIAN CRIMINAL EVIDENCE
Fifth Edition
Hon. S. Casey Hill, David M. Tanovich and Louis P. Strezos
Release No. 5, December 2024

McWilliams' Canadian Criminal Evidence, Fifth Edition, is the most comprehensive source in Canada for the law of criminal evidence. The authors trace the developments of the law of criminal evidence and identify the key elements of a modern principled approach. The work features analyses from judicial, academic and practitioner's perspectives and includes contributions from both Canadian and international experts.

This release features substantial updates to Chapter 5, "Exclusionary Discretion" and Chapter 15, "The Principle Against Self-Incrimination".

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Highlights:

- **The Exclusionary Rules—The Principle Against Self-Incrimination—Testimonial Compulsion—Accused's Non-compellability—**In *R. v. J.J.*, 2022 SCC 28, Chief Justice Wagner and Justice Moldaver, writing for the majority, determined that the complainant private record screening regime in ss. 278.92-278.94 of the *Criminal Code* does not infringe ss. 7, 11(c), or 11(d) of the Charter. Any concerns related to self-incrimination due to defence disclosure of complainant records in the accused's possession can be addressed through ss. 7 and 11(d) analyses about full answer and trial fairness. Testimonial compulsion concerns would fall under s. 11(c) but do not apply in the circumstances because accused individuals are not compelled to submit an affidavit and undergo cross-examination. An accused's right to a fair trial is not absolute and does not guarantee the most favourable trial conceivable. The right to make full answer will only be violated if the accused is prevented from proffering relevant and material evidence whose probative value is not exceeded by its prejudicial effect. The admissibility threshold in s. 278.92(2) contains an appropriate vetting mechanism for determining potential prejudice and does not infringe ss. 7 or 11(d). Section 278.93 only requires that an accused file an application particularizing the evidence they seek to adduce and its relevance to the proceeding, which is harmonious with legislative intent behind protecting complainants' highly private records in sexual offence trials and affording privacy and dignity to them too. Placing a legal requirement on the accused to identify the evidence at issue and its case relevance is not a disguised form of self-incrimination and is not tantamount to revealing the entire defence theory. Further, the accused's guilt or innocence is not implicated by the record screening regime, which exists to decide the admissibility of highly private records sought to be adduced by the accused.
- **Pre-Trial Proceedings—Bail Hearings—Introduction; The Onus and Standard of Proof—**Pre-trial detention conditions can be considered in the determination of parole ineligibility assuming the statutory minimum sentence is maintained and the factors in s. 745.4 of the *Criminal Code* are considered. See *R. v. Lamba*, 2024 ONCA 778, at para. 25.
- **Expert Opinion Evidence— Provisional Admissibility Criteria— Logical Relevance—**While expert evidence will almost always have the effect of increasing or diminishing the credibility of a witness, if the expert evidence does not make one version of events more probable than another it is irrelevant and inadmissible: *R. v. Dodgson*, 2024 ABCA 289.

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