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McWILLIAMS' CANADIAN CRIMINAL EVIDENCE Fifth Edition

Hon. S. Casey Hill, David M. Tanovich and Louis P. Strezos
Release No. 1, March 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.

The release features updates to Chapters 6, "The Collateral Fact Rule", 8, "The Voluntary Confessions Rule", 12, "Expert Opinion Evidence", and 22, "Assisted Evidence: Language Interpretation; Intermediaries".

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What's New in this Update:

- **THE VOLUNTARY CONFESSIONS RULE—THE LEGAL STANDARD: VOLUNTARINESS—The Relevant Factors—Operating Mind**—As noted in *R. v. Tessier*, “the operating mind doctrine requires the Crown to show that the accused possessed the limited cognitive ability to understand what they were saying and to comprehend that the statement might be used as evidence in criminal proceedings”. Examples of conditions that could potentially impact on a suspect’s operating mind include shock; intoxication; and hypnosis. Another relevant factor is whether language prevents the accused from understanding the caution. As the Ontario Court of Appeal held in *Lapointe*, “[e]vidence that an accused might not have understood the caution due to a language disability is merely one of the factors to be considered in this context: *Boudreau v. The King* (1949), 94 C.C.C. 1 at p. 8, [1949] 3 D.L.R. 81, 7 C.r. 427 at p. 435”: *r. v. Lapointe* (1983), 9 C.C.C. (3d) 366 at p. 376 (Ont. C.A.), affd 35 C.C.C. (3d) 287 (S.C.C.). The “default assumption in the cases is that, absent a cognitive impairment, an operating mind exists”: *r. v. Tessier*, 2022 SCC 35, at para. 52.
- **—REAL AND DEMONSTRATIVE EVIDENCE—REAL EVIDENCE—Prosecution Disclosure/Preservation**The prosecution’s duty to disclose “gives rise to an obligation to preserve relevant evidence” in the custody of government agencies. While this duty usually focuses on the police, its scope extends to other state actors such as a pathologist: *r. c. Delisle*, 2023 QCCA 1096 at para. 100, appl’n for leave to appeal to S.C.C. filed 2023 CarswellQue 17477.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages