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ADMISSIBILITY OF STATEMENTS

The Honourable René J. Marin
Release No. 2, September 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

This release updates Chapters 3 (Statements by Young Persons), 5 (The Right to Retain and Instruct Counsel), and 8 (Determining Voluntariness).

Highlights:

The Right to retain and Instruct Counsel — Belittling or Denigrating Counsel's Advice — The Supreme Court of Canada, in *R. v. Dussault*, 2022 SCC 16, 2022 CarswellQue 4917 (S.C.C.), found undermining conduct by the police that was neither belittling nor denigrating nevertheless to have neutralized the exercise of an accused's right to counsel under s. 10(b) of the *Charter*, resulting in infringement.

The Right to retain and Instruct Counsel — “Knock and Announce Rule” — The Ontario Court of Appeal in *R. v. Pileggi*, 2021 ONCA 4, was asked to exclude evidence obtained following police questioning without giving the accused his right to counsel. The police executed a search warrant for drugs and entered a private residence without first knocking; cocaine was found. The accused was found and handcuffed while the house was cleared for purposes of safety and preservation of evidence, resulting in the police not informing him of his right to counsel until seven minutes later.

Determining Voluntariness — All Factors Explored When Determining Voluntariness — In *R. v. Sanclemente*, 2021 ONCA 906, 2021 CarswellOnt 19244 (Ont. C.A.), one of two complainants alleged sexual assault had taken place at the accused's home during a purchase and sale of cocaine. This complaint prompted the police to embark upon an investigation into the accused's drug trafficking. An undercover sting resulted in the arrest of the accused for trafficking and possession of proceeds of crime, and a reading of his right to counsel, to which the accused responded with a wish to speak with duty counsel. Aware of the concurrent investigation into the allegations of sexual assault, the drug-investigating officers made the accused available for questioning by officers of the Sex Crimes Unit (“SCU”).

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, Table of Statutes 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