

Index

- ACCUSED UNDER 14**
Generally, **4:11**
- ADVERTISING**
Exemptions, **5:21**
Sexual services, **5:24**
- AGREEING OR ARRANGING TO COMMIT OFFENCE VIA TELECOMMUNICATION**
Generally, **4:35**
- ANAL INTERCOURSE**
Constitutionality, **2:39**
Definition, **2:39**
- ASSAULT**
Application of force, **3:2, 3:22**
Circumstances of aggravation, **3:36 to 3:46**
Consent vitiated on policy grounds, **3:18**
Indecent assault
see **INDECENT ASSAULT**
Sexual assault
see **SEXUAL ASSAULT**
Sexual nature of assault, **3:19 to 3:21**
- BAWDY-HOUSE**
Generally, **5:16, 5:26**
- BESTIALITY**
Compelling and inciting, **5:11**
Definition, **5:9**
Elements of offence (2019 onward), **5:9.50**
Privacy, **5:10**
Rationale for offence, **5:8**
- BUGGERY**
Definition, **2:38**
- BUGGERY—Cont'd**
Privacy, **2:38**
- CANADIAN BILL OF RIGHTS**
Generally, **2:28, 2:49**
- CANADIAN CHARTER OF RIGHTS AND FREEDOMS**
Benefit of lesser punishment, **10:22**
Double jeopardy, **10:21**
Equality rights, **2:19, 2:28, 2:29, 2:37, 2:49, 4:19, 5:6, 8:1, 8:10 to 8:21, 8:23, 10:24**
Freedom of association, **5:6**
Freedom of expression, **4:31, 5:26, 8:32**
Freedom of religion, **5:6**
Mandatory minimum sentences, **9:4**
Non-compellability of accused, **8:6**
Presumption of innocence, **4:24, 5:22, 8:31**
Principles of fundamental justice, **2:27 2:28, 2:36, 3:4, 4:10, 4:19, 4:28, 5:5, 5:6, 5:16, 5:26, 6:39, 8:1, 8:4, 8:6, 8:10 to 8:21, 8:23, 8:31, 10:16, 10:23**
Unreasonable search or seizure, **10:23**
- CHILD PORNOGRAPHY**
Defences, **5:31, 5:32**
Definition, **5:28**
Mens rea, **5:30**
Offences, **5:29**
- CHILDREN**
See **CORRUPTING CHILDREN; EVIDENCE, witness; INVITATION TO SEXUAL TOUCHING; LURING VIA**

CHILDREN—Cont'd

TELECOMMUNICATION;
PROSTITUTION, person
under 18; SEXUAL
ASSAULT; SEXUAL
EXPLOITATION; SEXUAL
INTERFERENCE

COMMON-BAWDY HOUSE

See BAWDY-HOUSE

**COMMUNICATING FOR THE
PURPOSE OF
PROSTITUTION**

Communicating in public, **5:19 to
5:26**

Exemptions, **5:21**

COMPLAINANT

Accused, records in possession of
the

admissibility, **8:21.70**

admissible, capable of being,
8:21.50

application, **8:21.30**

constitutionality, **8:21.30**

Ban on publishing identity, **8:32**

Character

see sexual history

Cross-examination, **8:29, 8:31**

Disability, with, **3:47**

Exclusion of public during trial,
8:32

Prior consistent statements

narrative, **6:15**

recent complaint, **6:17, 7:10,
7:11**

recent fabrication, **6:14**

use of prior consistent statements,
6:16

videotaped, **8:22 to 8:28**

Private records

balancing interests, **8:20**

common law procedure for pro-
duction, **8:10 to 8:15**

likely relevance, **8:19**

COMPLAINANT—Cont'd

Private records—Cont'd

production not equivalent to
admissibility, **8:15, 8:21**

statutory procedure for produc-
tion, **8:16 to 8:21**

Records in possession of the
accused re

admissibility, **8:21.70**

admissible, capable of being,
8:21.50

application, **8:21.30**

constitutionality, **8:21.30**

Sexual history

common law rules, **7:12**

former statutory provisions, **7:13,
7:14**

permissible uses of evidence, **8:4**
procedure, **8:6**

prohibited uses of evidence, **8:3**

records in accused's possession,
8:5

Sexual reputation

abrogation of common law rules,
7:13, 8:9

common law rules, **7:12**

evidence of prior sexual activity,
8:9.50

irrelevance and inadmissibility,
8:9

records in accused's possession,
8:5

Support persons in court, **8:30**

Testifying outside court or behind
screen, **8:31**

Video-recorded statements

admissibility, **8:22 to 8:28**

constitutionality, **8:23**

CONSENT

Capacity, to, **3:6**

Meaning of

1983-1992, **3:16**

1992-2018, **3:17**

CORRUPTING CHILDRENGenerally, **4:31****DEFENCE OF ENTRAPMENT**Generally, **4:36****DNA**Forensic uses, **10:2**

Orders

appeals, **10:5**

constitutionality

see POST-OFFENCE

ORDERS

previously convicted, **10:6**primary designated offences,
10:3secondary designated offences,
10:4**EVIDENCE**Admissibility, **6:2 to 6:4**Air of reality for defence of
mistaken belief in consent,
2:12

Character

accused, **6:30, 6:32**complainant, **7:12 to 7:14**psychiatric evidence of accused's
character, **6:31**

witness

see credibility

Complainant's private records

balancing interests, **8:20**common law procedure for pro-
duction, **8:10 to 8:15**likely relevance, **8:19**production not equivalent to
admissibility, **8:15, 8:21**statutory procedure for produc-
tion, **8:16 to 8:21**

Complainant's sexual history

common law rules, **7:12**former statutory provisions, **7:13,**
7:14permissible uses of evidence, **8:4**
procedure, **8:6****EVIDENCE—Cont'd**

Complainant's sexual history

—Cont'd

prohibited uses of evidence, **8:3**record's in accused's possession,
8:5

Complainant's sexual reputation

abrogation of common law rules,
7:13, 8:9common law rules, **7:12**irrelevance and inadmissibility,
8:9prior sexual activity, **8:9.50**records in accused's possession,
8:5

Corroboration

abrogation of corroboration
requirements, **7:1, 7:8**definition, **7:6**offences formerly requiring cor-
roboration, **7:2**offences formerly requiring
warning concerning uncor-
roborated evidence, **7:3**rationale for corroboration
requirements, **7:5, 7:9**

Credibility

complainant, **6:27**prior consistent statement, **6:13**
to 6:17prior inconsistent statement, **6:18**
to 6:20Cross-examination of complainant,
8:29, 8:31

Expert evidence

admissibility, **6:21 to 6:26**behaviour of complainant, **6:27**character of accused, **6:31**credibility of complainant, **6:27**prejudicial effect, balancing, **6:26**probative value, balancing, **6:26**properly qualified expert, **6:24**relevance and necessity, **6:22**reliability, **6:25**

EVIDENCE—Cont'd

- Hearsay
 - conduct as hearsay, **6:5**
 - definition, **6:5**
 - implied assertions, **6:5**
 - necessity and reliability in sexual cases, **6:12**
 - principled approach to admission and exclusion of hearsay, **6:8**
 - rationale for exclusion of hearsay, **6:7**
 - videotaped statement by complainant, **8:22 to 8:28**
- Opinion evidence, **6:21 to 6:28**
 - see also expert evidence
- Prior consistent statements
 - narrative, **6:15**
 - recent complaint, **6:17, 7:10, 7:11**
 - recent fabrication, **6:14**
 - use of prior consistent statements, **6:16**
 - videotaped statement by complainant, **8:22 to 8:28**
- Prior inconsistent statements
 - opposing party's witness, **6:20**
 - own witness, **6:19**
 - use of prior inconsistent statements, **6:20**
- Probative value and prejudicial effect, **6:4, 8:4**
- Recent complaint
 - see prior consistent statement
- Records in accused's possession
 - generally, **8:5**
 - complainant, re, **8:21.30 to 8:21.70**
- Relevancy, **6:3**
- Similar facts, **6:32**
- Video-recorded statements
 - admissibility, **8:23 to 8:27**
 - constitutionality, **8:23**
 - use at trial, **8:28**

EVIDENCE—Cont'd

- Witness
 - child, **6:38, 6:39**
 - oath and affirmation, **6:33**
 - person whose mental capacity is challenged, **6:34 to 6:37**
 - prior consistent statement, **6:13 to 6:17**
 - prior inconsistent statement, **6:18 to 6:20**
- EXPLOITATION, SEXUAL**
 - See **SEXUAL EXPLOITATION**
- GROSS INDECENCY**
 - Consent, **2:32**
 - Constitutionality, **2:35 to 2:37**
 - Definition, **2:31**
 - Mens rea, **2:34**
 - Privacy, **2:33**
 - Rationale for offence, **1:1**
- ILLICIT SEXUAL INTERCOURSE**
 - Generally, **2:49, 5:17**
- INCEST**
 - Actus reus, **5:3**
 - Constitutionality, **5:6**
 - Defence of duress, **5:5**
 - Mens rea, **5:4**
 - Rationale for offence, **5:2**
- INDECENCY**
 - Exposure
 - Generally, **5:44**
 - first mode of commission, indecent act in public, **5:46**
 - indecent act, **5:45**
 - second mode of commission, indecent act with intent, **5:47**
- INDECENT ACTS**
 - Bawdy-house, **5:16**
- INDECENT ASSAULT**
 - Assault element, **2:15**

INDECENT ASSAULT—Cont'd

Consent, **2:16**
 Consent vitiated by fraud, **2:16, 3:10**
 Constitutionality, **2:19**
 Definition, **2:14**
 Fault elements
 see mens rea
 Indecency element, **2:17**
 Mens rea, **2:15**

INDECENT EXPOSURE

Generally, **4:33**

INTERCOURSE WITH FEEBLE-MINDED FEMALE PERSON

Generally, **2:42**

INVITATION TO SEXUAL TOUCHING

Ages of accused and complainant, **4:9, 4:20, 4:21, 4:24**

Consent

exceptions to rule that consent not a defence, **4:20, 4:21**
 accused and complainant close in age, **4:20, 4:21, 4:24**
 existing relationship, **4:23**
 marriage, **4:22**
 mistake of age, **4:27**
 not a defence, **4:19**
 reasonable steps to ascertain age of complainant, **4:26**

Constitutionality, **4:10, 4:19, 4:28**

Definition, **4:3**

Fault elements

 see mens rea; mistake of age

Intoxication, **4:8**

Invites, counsels, or incites, **4:7**

Mens rea, **4:8, 4:25**

Mistake of age, **4:25**

Reasonable steps to ascertain age of complainant, **4:26**

Sexual purpose, **4:6**

Touching, **4:6**

LIVING ON THE AVAILS OF PROSTITUTION

Generally, **5:18, 5:22, 5:26**

LURING VIA TELECOMMUNICATION

Generally, **4:32**

MISTAKE OF FACT

See also INVITATION TO SEXUAL TOUCHING, mistake of age; RAPE, mens rea, mistaken belief in consent; SEXUAL ASSAULT, mens rea, mistaken belief in consent; SEXUAL EXPLOITATION, mistake of age; SEXUAL INTERCOURSE WITH UNDERAGED FEMALE, mens rea; SEXUAL INTERFERENCE, mistake of age

Generally, **3:27**

MISTAKE OF LAW

Generally, **3:27**

OBSCENITY

Constitutionality, **5:34**

Defence of public good, **5:37**

Definition, **5:34**

Mens rea, **5:36**

Offences, **5:35**

OBTAINING SEXUAL SERVICES FOR CONSIDERATION

Generally, **5:19 to 5:25**

PORNOGRAPHY

See PORNOGRAPHY; SEXUALLY EXPLICIT MATERIAL; see OBSCENITY

POST-OFFENCE ORDERS

See also DNA, PROHIBITION ORDERS, REGISTRATION OF SEXUAL OFFENDERS

POST-OFFENCE ORDERS

—Cont'd

- Constitutionality
 - benefit of lesser punishment, **10:22**
 - division of powers, **10:26**
 - freedom from double jeopardy, **10:21**
 - justification, **10:25**
 - nature of post-offence orders, **10:19**
 - principles of fundamental justice, **10:23**
 - unreasonable search, **10:23**

PROCURING

- Generally, **5:17, 5:23**

PROHIBITION ORDERS

- Background, **10:16**
- Constitutionality
 - see POST-OFFENCE ORDERS
- Statutory authority for, **10:17**

PROSTITUTION

- Advertising, **5:24, 5:26**
- Bawdy-house, **5:16, 5:26**
- Communicating, **5:19 to 5:26**
- Definition, **5:14**
- Exemptions, **5:21**
- Living on the avails, **5:18, 5:22, 5:26**
- Obtaining sexual services for consideration, **5:19 to 5:25**
- Person under 18, **5:15**
- Procuring, **5:17, 5:23**
- Receiving a material benefit, **5:22**

RAPE

- Accused under 14 years old, **2:10**
- Consent, **2:4**
- Consent vitiated by fraud, **2:8, 3:10**
- Consent vitiated by threats, **2:6**
- Definition, **2:2 to 2:13**
- Fault elements, subjective, **3:25**
- Intoxication, **2:13**
- Marital exemption, **2:9**

RAPE—Cont'd

- Mens rea
 - air of reality for defence of mistaken belief in consent, **2:12, 3:30**
 - intoxication, **2:13**
 - knowledge of lack of consent, **2:12**
 - mistaken belief in consent, **2:12, 3:26**
 - reckless as to lack of consent, **2:12**
 - wilful blindness to lack of consent, **2:12**
- Mistaken belief, **3:26**
- Mistake of fact, **3:27**
- Mistake of law, **3:27**
- Personation of husband, **2:7**
- Sexual intercourse element, **2:3**

RECEIVING MATERIAL

BENEFIT

- Exemptions, **5:21**
- Sexual services, **5:22**

REGISTRATION OF SEXUAL OFFENDERS

- Appeals, **10:13**
- Application for termination, **10:12**
- Christopher's Law, **10:15**
- Constitutionality
 - see POST-OFFENCE ORDERS
- Designated offences, **10:7 to 10:14**
- Duration of order, **10:9 to 10:11**
- Exemption, **10:10**
- Provincial legislation, **10:15**
- Reporting obligations, **10:14**
- SOIRA
 - offences committed outside Canada, **10:11**
 - purpose, **10:7 to 10:14**
 - retroactive application, **10:10**

SEDUCTION OFFENCES

- Limitation period, **2:48**
- Previously chaste character, **2:45**

SEDUCTION OFFENCES—Cont'd

- Promise of marriage, **2:46**
- Seduction, **2:44**
- Subsequent marriage, **2:47**

SENTENCING

- Aboriginal offenders, **9:12**
- Age of complainant, **9:3**
- Aggravating and mitigating factors, **9:11**
- Aggregate sentences, **9:6**
- Dangerous offenders
 - evidence, **9:19**
 - remand for assessment, **9:18**
 - statutory criteria, **9:16, 9:22**
 - timing of application, **9:20**
- Long-term offenders
 - evidence, **9:16**
 - remand for assessment, **9:18**
 - retrospective application, **9:21**
 - statutory criteria, **9:16, 9:21**
 - timing of application, **9:20**
- Mandatory minimums, **9:4**
- Minimum terms of imprisonment, **9:3**
- Principles
 - proportionality, **9:9**
 - restraint, **9:12**
 - starting points, **9:5**
 - worst offence/worst offender, **9:3**
- Procedure at hearing, **9:13**
- Purposes, **9:8**

SEXUAL ASSAULT

- Accused as party with another, **3:40**
- Actus reus
 - consent, **3:5 to 3:18**
 - capacity, to, **3:6**
 - vitiating by abuse of position of trust, power or authority, **3:12**
 - vitiating by exercise of authority, **3:11**
 - vitiating by force/threats, **3:9**
 - vitiating by fraud, **3:8 to 3:15**

SEXUAL ASSAULT—Cont'd

- Actus reus—Cont'd
 - consent, **3:5 to 3:18**—Cont'd
 - vitiating on policy grounds, **3:18**
 - expressed lack of agreement, **3:14**
 - extreme intoxication, **3:4**
 - voluntariness, **3:3**
 - words of another not consent, **3:13**
- Aggravated sexual assault, **3:41 to 3:45**
- Application of force, **3:2**
- Children
 - consent not a defence, **4:19**
 - exceptions to rule that consent not a defence, **4:20, 4:21**
 - accused and complainant close in age, **4:20, 4:21, 4:24**
 - existing relationship, **4:23**
 - marriage, **4:22**
 - mistake of age, **4:27**
 - reasonable steps to ascertain age of complainant, **4:26**
- Choking and suffocating, **3:40.50**
- Circumstances of aggravation, **3:36 to 3:46**
- Consent
 - see actus reus; mens rea, mistaken belief in consent
- Disability, of persons with, **3:47**
- Extreme intoxication
 - see actus reus
- Fault elements, subjective, **3:25**
- Intoxication
 - see actus reus, extreme intoxication; mens rea
- Mens rea
 - air of reality for defence of mistaken belief in consent, **3:29**
 - application of force, **3:22**
 - circumstances of aggravation, **3:46**

SEXUAL OFFENCES IN CANADIAN LAW

SEXUAL ASSAULT—Cont'd

- Mens rea—Cont'd
 - intoxication, **3:4, 3:33**
 - mistaken belief in consent, **3:26, 3:28, 3:29**
 - mistake of fact as to identity, **3:34**
 - reasonable steps to ascertain consent, **3:26, 3:32**
 - sexual nature of assault, **3:35**
- Mistaken belief, **3:26**
- Mistake of fact, **3:27**
- Mistake of law, **3:27**
- Murder while committing, **9:3**
- Rationale for offence, **1:1, 3:1**
- Sado-masochism, **3:18**
- Sexual assault causing bodily harm, **3:37**
- Sexual assault threatening bodily harm, **3:39**
- Sexual assault with a weapon, **3:38**
- Sexual nature of assault, **3:19 to 3:21, 3:35**

SEXUAL EXPLOITATION

- Abuse of position, **4:17**
- Age of complainant, **4:9**
- Consent
 - exceptions to rule that consent not a defence, **4:20, 4:21**
 - accused and complainant close in age, **4:20, 4:21, 4:24**
 - existing relationship, **4:23**
 - marriage, **4:22**
 - mistake of age, **4:27**
 - not a defence, **4:19**
 - reasonable steps to ascertain age of complainant, **4:26**
- Constitutionality, **4:10, 4:19, 4:28**
- Definition, **4:4**
- Exploitation, **4:12 to 4:17**
- Exploitative relationship, **4:15**
- Fault elements
 - see mens rea
- Intoxication, **4:8**

SEXUAL EXPLOITATION

—Cont'd

- Mens rea, **4:6 to 4:11, 4:16, 4:25**
- Mistake of age, **4:25**
- Position of trust or authority, **4:13**
- Reasonable steps to ascertain age of complainant, **4:26**
- Relationship of dependency, **4:14**
- Sexual purpose, **4:6**
- Touching, **4:6**

SEXUAL INTERCOURSE WITH UNDERAGED FEMALE

- Actus reus, **2:21 to 2:26**
 - Age of accused, **2:25**
 - Complainant between 14 and 16
 - blaming complainant, **2:24**
 - consent not a defence, **2:26**
 - constitutionality, **2:28, 2:29**
 - mens rea, **2:26**
 - previously chaste character of complainant, **2:22, 2:23**
 - Complainant under 14
 - consent not a defence, **2:26**
 - constitutionality, **2:27, 2:29**
 - mens rea, **2:27**
 - Fault elements
 - see mens rea
 - Gender of accused, **2:25**
 - Mens rea
 - where complainant between 14 and 16, **2:28**
 - where complainant under 14, **2:27**
 - Previously chaste character of complainant
 - burden of proof, **2:23**
 - definition, **2:22**
- ### SEXUAL INTERFERENCE
- Ages of accused and complainant, **4:9, 4:20**
 - Consent
 - exceptions to rule that consent not a defence, **4:20, 4:21**
 - accused and complainant close in age, **4:20, 4:21, 4:24**

SEXUAL INTERFERENCE**—Cont'd**

- Consent—Cont'd
 - exceptions to rule that consent not a defence, **4:20, 4:21**
 - Cont'd
 - existing relationship, **4:23**
 - marriage, **4:22**
 - mistake of age, and, **4:27**
 - not a defence, **4:19**
 - reasonable steps to ascertain age of complainant, **4:26**
- Constitutionality, **4:10, 4:19, 4:28**
- Definition, **4:2**
- Fault elements
 - see mens rea
- Intoxication, **4:8**
- Mens rea, **4:6 to 4:11, 4:25**
- Mistake of age, **4:25**
- Reasonable steps to ascertain age of complainant, **4:26**
- Sexual purpose, **4:6**
- Touching, **4:6**

SEXUALLY EXPLICIT MATERIAL

- Making available to a child, **4:34**

STATUTORY RAPE

- See **SEXUAL INTERCOURSE WITH UNDERAGED FEMALE**

VOYEURISM

- Generally, **5:38**
- Branches of, three, **5:40**
- Common elements, **5:39**
- Consent, distribution without, **5:42**
- Defences, **5:43**
- Definitions, **5:39**
- Distribution of intimate images, **5:42**
- Exceptions, **5:43**
- Offences related to, **5:38 to 5:43**
- Possession of recordings, **5:41**
- Publication of recordings, **5:41**