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Sexual Offences in Canadian Law

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What's New in this Update:

New Subsection 273.1(1.2) — Updates to the commentary in Chapter 3 (Sexual Assault) focus on the arguably unclear effect the 2018 introduction of this *Criminal Code* provision and the possible interpretations, ranging from redundancy to potential breach of *Charter* rights. Subsection 273.1(1.2) provides that “[t]he question of whether no consent is obtained under [s. 265(3) or 273.1(2) or (3)] is a question of law”. New commentary suggests the best interpretation to be a reinforcement of the general principle that findings of consent or mistaken belief in consent could not be made in the listed circumstances where, legally, no consent could be made.

Records in the Accused's Possession — Under a new heading of commentary in Chapter 8 (Rules Protecting the Complainant), discussion

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concentrates on s. 278.92 involving records relating to a complainant in possession or control of the accused, and how such records could be admissible as evidence: “For the most part, s. 287.92(3) repeats the factors listed in s. 276(2), but there is nothing in s. 276(2) that corresponds directly to s. 278.92(3)(c) [i.e., the factor to be considered re society’s interest in encouraging the quest for treatment on the parts of sexual offence complainants]”.