
DEFENDING SEXUAL OFFENCE CASES 1994 by Michelle K. Fuerst (Scarborough: Carswell, 1993).

This publication is a handy practitioner's tool written in a form unlike any other legal text published in this area. Its novel format lends itself to being "a guide" as opposed to an in-depth consideration of the many principles which arise when defending sexual assault cases. Its checklist approach is refreshing and I expect that we will see publications like this produced in the future in other areas of criminal law.

The author has divided the book into eleven chapters, each representing a specific topic of reference. These topics include: the initial interview, preparation, making a *Seaboyer*¹ application, publication bans, issues arising at trial, the child witness, special rules in cases of sexual offences against children, the defences of consent and mistaken belief in consent, expert witnesses, application of the burden of proof to the issue of credibility, and sentencing. Each chapter includes a relevant checklist and reference to relevant case law. The appendices contain current legislation and previous legislation divided into the offence provisions and procedural and evidentiary provisions. The author is to be complimented for her attempt to cover a great number of areas in such a short publication (113 pages).

The initial paragraphs on the preliminary interview and preparation are extremely brief and probably of most benefit to the junior practitioner.

Her discussion about making a *Seaboyer* application is well-researched and presented in such a fashion that this difficult area can be comprehended in the few pages she devotes to it. Such a checklist will probably find its way into many trial judges trial books in the future.

The author's research and devotion to the topics of publication bans and issues arising at trial are lacking. Numerous issues in this complicated area ought to have been discussed or at least outlined for the reader in chapter five. Rather, the author devotes one page to this topic and makes no reference to the possible issue of similar fact evidence which has become prevalent in these types of cases.

The author devotes two chapters to the child witness and special rules in sexual offences against children. These paragraphs contain reference to recent case authority and are very instructive to both junior and senior practitioners. Fortunately, the author has considered some of the most recent amendments to the *Criminal Code*² and, although providing no discussion about the potential use or abuse of the new provisions, provides some insight into the actual provisions themselves.

Chapter eight considers the defences of consent and mistaken belief in consent from both an academic and practical position. It also discusses when this defence may be available and the requirements to found such a defence.

¹ (1991), 66 C.C.C. (3d) 321 (S.C.C.).

² R.S.C. 1985, c. C-46.

Chapters nine and ten deal with expert witnesses and the application of the burden of proof to the issue of credibility. Although the chapter on expert witnesses appears to be well-researched, the same cannot be said for chapter ten. Several decisions have considered the credibility issue and the author refers to but a few of them with the result being that the chapter at best provides a general overview of the topic rather than becoming specific, particularly when in sexual assault cases it is often the evidence of the complainant and that of the accused, without other corroboration, that the trier of fact must weigh. This is also particularly pertinent given that many sexual assault allegations are dated and the accused's ability to make full answer and defence is impaired by the passage of time.

Finally, the author's chapter on sentencing amounts to a checklist for the very junior practitioner who is preparing his or her first case. She makes reference to no authorities whatsoever and fails to discuss troublesome areas such as starting point, sentence guidelines, sentencing of an accused for an offence committed many decades earlier and determining a fit sentence where long-term psychological harm has resulted to the victim. Remorse and rehabilitation are not considered at all.

In conclusion, this publication is relevant and necessary reading for junior members of the criminal bar and those who have not reviewed the recent amendments to the *Criminal Code* in this area. It is clearly a book that will be of much more interest to practitioners than legal academics.

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