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Neuberger
Assessing Dangerousness

This release features updates to the case law and commentary in Chapters 3 (Preliminary Considerations), 4 (The Dangerous Offender Regime), 6 (Evidence in a Part XXIV Hearing), 7 (Treatability), 8 (Long-Term Supervision Legislation in Canada), and 9 (Other Elements: Appeals, Parole, 810 Orders).

Highlights

- **The Dangerous Offender Regime — Introduction — Overview of the New Regime** —The Court of Appeal for Ontario found to be an error a sentencing judge's refusal to consider the future treatment prospects of offenders when deciding whether or not to designate them as a dangerous offender - viewing such a designation is a measure of last resort, one must consider these factors in order to determine whether the Crown has established, beyond a reasonable doubt, a sufficiently likelihood of harmful recidivism and intractability of a violent pattern of conduct: *R. v. Brown*, 2021 ONCA 320, 2021 CarswellOnt 7058 (Ont. C.A.).
- **Treatability — Elements of Treatability — Significance of Treatability Evidence** —The defence, on appeal, argued that the trial judge had erred in rejecting the suggested a sentence of 15-20 years followed by a 10-year long-

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term supervisory order, in favour of an indeterminate sentence, by failing to consider the accused would be “aging out” in respect of the criminal behaviour that preceded and facilitated the sexual offences he had been prone to commit. British Columbia’s Court of Appeal found the judge to have paid careful consideration to both the accused’s risk assessment and treatment prospects, and concluded no error in principle had been committed. Further, in appellate court agreed with trial judge’s inference that the mere speculation that “aging out” would take place, without more, is insufficient to establish treatability or manageability of risk: *R. v. Tremblay*, 2021 BCCA 26 or 36, 2021 CarswellBC 102 (B.C. C.A.).