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DRUG OFFENCES IN CANADA FOURTH EDITION Bruce A. MacFarlane, K.C. Robert J. Frater, K.C. Croft Michaelson, K.C. Release No. 3, June 2023
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What's New in this Update:

This release features updates to Chapter 11 (Double Doctoring), Chapter 14 (Criminal Organization Offences), Chapter 15 (Proceeds of Crime Money Laundering), Chapter 25 (Search and Seizure), Chapter 26 (Wiretaps) and Chapter 33 (Drug Variants and Analogues).

Highlights:

- **Mere ownership of a residence and an ability to exclude others will not necessarily suffice to establish a reasonable expectation of privacy:** The Ontario Court of Appeal found, in *R. v. Chow*, 2022 ONCA 555 (Ont. C.A.), that the trial judge and summary conviction appeal judge had both erred in concluding that the accused had a reasonable expectation of privacy where an apartment owned by him but rented to a third party for 10 days through Airbnb was found to have a hidden camera located in an alarm clock on a table facing the bed. We examine the factors that led to this conclusion in c. 25, Search and Seizure, at § § 25:8 and 25:13.

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- **No claim to privacy exists in respect of GPS tracking data found in a rental vehicle’s “infotainment” system where the accused had been in fraudulent possession of the vehicle:** The Ontario Court of Appeal concluded that a privacy claim did not warrant constitutional protection where police sought tracking data that was a good distance away from the more intimately personal end of the privacy spectrum and the accused had come into fraudulent possession of the vehicle. He was effectively a “trespasser” with no legal right to use the car or exclude others from it. We discuss the implications of this decision in c. 25, Search and Seizure, at § 25:13.
- **Do police working undercover invade a reasonable expectation of privacy when they engage in electronic conversations with drug dealers?** Recent decisions from the Alberta and Ontario Courts of Appeal have examined the factors relevant to a privacy claim in respect of text messages. We analyze those decisions and assess their impact in cases where a drug trafficker is communicating with a person who is a stranger to them and turns out to be an undercover police officer. That analysis can be found in c. 25, Search and Seizure, at § 25:13.
- **Strip searches:** The Ontario Court of Appeal has held that extraordinary circumstances may justify a female to assist in restraining a male arrestee during a strip search, and in a separate decision has drawn a marked distinction between a strip search incident to arrest and a custodial strip search, when individuals are entering a prison. The implications of these decisions are examined in c. 25, Search and Seizure, at § 25:28.
- **The Alberta Court of Appeal holds the line on proposed expansion of the “Rule of automatic excision”:** The Alberta Court of Appeal, in *R. v. Love*, rejected the argument that the rule of automatic excision should not just be restricted to information obtained in violation of the Charter but should be extended to any illegally obtained information. In doing so, the court undertook a useful review of the history of the automatic excision rule, its rationale, and the criticisms that have been advanced in relation to it. We review this development c. 25, Search and Seizure, at §§ 25:56 and 25:59 and, especially, in c. 26, Wiretaps, at § 26:16.

ProView Developments

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Foreword

In most fields of endeavour, we can trace generational changes or developments. We call it progress. In the field of space exploration, ever more powerful and sophisticated rockets, Redstone, Saturn, Titan, Delta, Atlas, are developed to boost increasing payloads on their way to the stars. Similarly, medical scientists speak of third and fourth generation antibiotics designed to focus with increasing precision and efficacy on infectious bacteria.

It should be no surprise, then, that this Fourth Edition of MacFarlane's *Drug Offences in Canada* is a "new generation" work, bringing to the reader an exponential expansion and elaboration of the law relating to controlled drugs and substances and their related collateral procedures. When Bruce MacFarlane produced the scholarly First Edition 36 years ago, it seemed a voluminous and comprehensive work. However, the advent of the *Charter of Rights and Freedoms* with its revolutionary case-law impact, and the subsequent steady stream of new and revised federal legislation compelled new generational editions of the work.

This "new generation" Fourth Edition is a complete re-write and reorganization, with six new chapters, internet links, cutting edge analysis and easy to find tables of contents and index for busy practitioners. Its scholarly research and user-friendly roll-out required new writing and editing on a scale that could only be accomplished by a team of authors. Bruce MacFarlane added Robert J. Frater and Croft Michaelson, two very experienced and able lawyers, to his team. Among them, their years of courtroom advocacy, case organization, legal writing, teaching and policy development at the highest levels make them a formidable trio. Their collective experience and scholarship have produced a unique legal tool for all serious practitioners, researchers or academics in the field. They are to be congratulated on collaborating and creating this powerful resource and contributing to our legal learning in such a significant way.

May 2015

Mr. Justice Douglas Rutherford
Superior Court of Justice, Ontario
Ottawa, Canada