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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. 5, November 2024
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What's New in this Update:

This release features updates to Chapter 18 (Evidentiary Issues in Drug Cases), Chapter 19 (The Certificate of Analysis), Chapter 24 (Police Informer Privilege), Chapter 25 (Search and Seizure) and Chapter 35 (Sentencing under the CDSA and the Cannabis Act).

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Highlights:

- **Does a plea of “nolo contendere”, prominent in American criminal law, exist in Canada?**—The Quebec Court of Appeal held in *Smith c. R.*, 2024 QCCA 424 that a formal plea of *nolo contendere*, literally “I am unwilling to contest”, is not available under our procedural law. The court did, however, discuss the proper way to proceed in a Canadian court when an accused wishes to admit the Crown’s case while still preserving the defence’s right to appeal a *Charter* decision made by the trial judge. *Smith* is reviewed in Chapter 25, Search and Seizure.
- **What happens when the police deliberately refrain from seeking an extension to an expired order allowing them to detain the seizures?** —In *R. v. Gill*, 2024 BCCA 63 (B.C. C.A.), police obtained a warrant to search the accused’s residence and found a large number of cellphones as well as a video surveillance device. When their authority to detain the seizures expired, they continued to hold the seizures, deliberately refraining from seeking an extension. Six years later, the police searched one of the cell phones and found, to their surprise, that it contained an audio recording of the offence taking place. The trial judge excluded the evidence, and the BCCA agreed. We discuss *Gill* in Chapter 25, “Search and Seizure”, at section 25:13.
- **Is there a reasonable expectation of privacy in respect of an Internet Protocol (“IP”) address?**—The SCC held, in a majority decision (5:4), that a reasonable expectation of privacy extends to an IP address: *R. v. Bykovets*, 2024 SCC 6 (S.C.C.). We discuss this decision, and its implications, in Chapter 25, Search and Seizure, section 25:13.
- **The landscape in sentencing Indigenous offenders is changing dramatically**—For example, in *R. v. Cope*, 2024 NSCA 59 (N.S. C.A.), the Nova Scotia Court of Appeal considered at some length the role sentencing circles may play in sentencing. We examine this case in Chapter 35, Sentencing under the CDSA and the Cannabis Act.
- **Resolving the clash between informer privilege and the open-court principle**—In *Société Radio-Canada c. Personne désignée*, 2024 SCC 21 (S.C.C.), the court considered the clash between two sacred principles: the open court principle and informer privilege. We examine how the court resolved this tension in Chapter 24, Police Informer Privilege.

ProView Developments

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