

## Publisher's Note

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<b>DRUG OFFENCES IN CANADA FOURTH EDITION</b> Bruce A. MacFarlane, K.C. Robert J. Frater, K.C. Croft Michaelson, K.C. Release No. 6, December 2024
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### What's New in this Update:

This release features updates to Chapter 16 (Offence-related Property), Chapter 17 (Provincial Legislation to Counter Criminal Organizations), Chapter 27 (Entrapment), Chapter 28 (Police Stings and Other Aggressive Investigative Strategies), Chapter 36 (General Sentencing Principles and Pardons), Chapter 37 (Ministerial Exemptions) and Chapter 38 (Medical Cannabis).

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## Highlights:

- **A finding of entrapment must be anchored on an agreement to sell a specific drug listed in the CDSA.** A general agreement to sell “drugs” or “product” is insufficient. This means that the trial judge will need to review not just the words used by the police during the call but also the meaning and context of those words through a “contextualized, individualized and fact-driven inquiry” to sustain the stay application. We examine these requirements in c. 27, “Entrapment”, at section 27:13.70.
- **Is notice required for further detention if it would compromise an on-going investigation?** If the Crown wishes to make application for further detention of seized property under s. 490(2) of the *Criminal Code*, the text of s. 490(2)(a) states that the application must be made “after three clear days’ notice” to the person from whom the thing was seized. What if anything can be done when providing the required notice would compromise an on-going investigation? We review the applicable authorities and suggest a possible solution in s. 16:8, Offence-Related Property.
- **Severing *Charter* applications from civil forfeiture proceedings:** Courts in British Columbia continue to develop the law concerning severance of *Charter* applications from civil forfeiture proceedings. We discuss the recent case of *British Columbia (Director of Civil Forfeiture) v. Norgan*, 2024 BCSC 953 (B.C. S.C.) in s. 17:13, Provincial Legislation to Counter Criminal Organizations.
- **Can police deception amount to an abuse of process in an entrapment context?** Mr. Bigs are premised on lies and deception and in general will not anchor a finding of abuse of process unless the deception would shock the community or clearly jeopardize fair trial requirements. We discuss this proposition in the context of a recent decision from Alberta in § 28:21, Police Stings.
- **Rejection of joint sentencing submissions:** The case law concerning a trial judge’s rejection of joint submissions has proven to be a minefield. The British Columbia Court of Appeal has attempted to re-articulate the relevant principles in *R. v. Huston*, 2024 BCCA 179 (B.C. C.A.). We discuss the case law generally, and this case in particular, in Chapter 36 “Sentencing under the CDSA and the Cannabis Act”.
- **Medical cannabis – beyond criminal law:** We continue to monitor the case law concerning drug use in fields beyond criminal law. In *Quong v Lafarge Canada Inc.*, 2024 ABKB 340 (Alta. K.B.), the court looked at the employment law consequences for an individual who had an accident at work and was found to have THC in his system. The case will be of interest to employers who have, or are considering, employee drug use policies. The case is discussed in Chapter 38, “Medical Cannabis”.

## ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work

- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages