Publisher's Note

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CANADIAN CRIMINAL PROCEDURE **R.E. Salhany** **Release No. 2022-3, July 2022**

Publisher's Special Release Note 2021

The pages in this work were reissued in November 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the November 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

This release features updates to the case law and commentary in Chapters 3 (Arrest and Seizure of Property), 4 (Bail), 6 (Trial on Indictment), 8 (Sentencing), and 9 (Appeals).

Highlights:

- **Arrest and Seizure of Property — Arrest — Constitutional Rights upon Arrest or Detention — Aspects of the Right to Counsel —** The accused spoke with his lawyer on the telephone, with the call ending in the belief that the police had agreed to allow them to finish their conversation in person at the police station, prior to any further police action. However, the police later denied the lawyer access to the accused, proceeded to interrogate the accused, and elicited an incriminating statement from him. The Supreme Court of Canada found the police conduct in this instance, notwithstanding whether intended or not, to have had the objectively observable effect of undermining the accused's confidence in his counsel and in the legal advice he had obtained – in order to avoid infringement of s. 10(*b*) of the Charter, the accused should have been permitted a second consultation with counsel prior to the interrogation: *R. v. Dussault*, 2022 SCC 16, 2022 CarswellQue 4917 (S.C.C.).

- **Sentencing — Forfeiture — Forfeiture of Proceeds of Crime —** According to the Supreme Court of Canada, the discretion indicated by the word "may" in subs. 462.37(3) applies to the decision whether to impose a fine in lieu of forfeiture and to the valuation of the property to be reflected in the fine — subs. 462.37(3), however, does not provide for the discretion to limit the amount of the fine to merely the profits obtained from the criminal activity. Further, the Supreme Court ruled the accused's ability to pay must not be considered in the determination of the amount of the fine in lieu of forfeiture. Therefore, for the purpose of determining the amount of this fine, the Crown need only show that the accused had possession or control of the property constituting proceeds of crime, and then establish the value of this property: *R. v. Vallières*, 2022 SCC 10, CarswellQue 3519 (S.C.C.).

ProView Developments

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