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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. 2, May 2026

What's New in this Update:

This release features updates to Chapter 14 (Criminal Organization Offences), Chapter 15 (Proceeds of Crime Money Laundering), Chapter 16 (Offence-related Property), Chapter 17 (Provincial Legislation to Counter Criminal Organizations), Chapter 18 (Evidentiary Issues in Drug Cases), Chapter 21 Cross-examination of An Analyst) and Chapter 25 (Search and Seizure).

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Highlights:

- Section 462.37(2) of the *Code* and section 16(2) of the *CDSA* are only available to forfeit property if there has first been a finding of guilt at trial. In *Nguyen c. Director of Criminal and Penal Prosecutions*, 2024 QCCA 674, leave to appeal granted 2025 CarswellQue 16, 2025 CarswellQue 17 (S.C.C.), the Quebec Court of Appeal determined that a court does not have jurisdiction to forfeit property under these provisions in circumstances where the proceedings have been stayed for unreasonable delay. We discuss *Nguyen* in Chapter 15, “Proceeds of Crime” and Chapter 16, “Offence-related Property”.
- If an individual wishes, in the context of a civil forfeiture case, to seek the exclusion of evidence on the basis of a violation of their section 8 *Charter* right to be free from unreasonable search and seizure, does the individual need to give evidence that they had a subjective expectation of privacy in the subject matter of the search or can they rely on the theory of the Director in support of forfeiture to establish that fact? In *British Columbia (Director of Civil Forfeiture) v. Norgan*, 2026 BCSC 44, the court held, relying on *R. v. Jones*, 2017 SCC 60, that a party advancing a s. 8 *Charter* claim is entitled to rely on the Director’s theory to establish elements of the claim. *Norgan* is discussed in Chapter 17, “Provincial Legislation to Counter Criminal Organizations”.
- When is lay opinion evidence admissible, and when must such an opinion only come from a properly-qualified expert? This issue can be an extremely difficult one, and arose again in the case of *R. v. Sandhu*, 2025 SKCA 76. We discuss the *Sandhu* decision in Chapter 18, “Evidentiary Issues in Drug Cases.”
- The frailties of identification evidence are well-known, and a leading cause of wrongful convictions. In *R. v. Bigsky*, 2006 SKCA 145, the Saskatchewan Court of Appeal endeavoured to give further advice to trial courts in dealing with identification issues. The case is discussed in Chapter 18, Evidentiary Issues in Drug Cases.”
- Because of the highly invasive nature of strip searches, the Court of Appeal for Ontario, in *R. v. Thompson*, 2025 ONCA 500, held that a detainee should be given another opportunity to speak with a lawyer before being subject to a strip search as an incident of arrest. *Thompson* is discussed in Chapter 25, “Search and Seizure”.
- In *Losse c. R.*, 2026 QCCA 3, the Quebec Court of Appeal held that there was a reasonable expectation of privacy in personal information contained in motel registration cards, notwithstanding the fact that the motel operator was permitted under provincial privacy legislation to disclose the information to law enforcement without the customer’s consent. We discuss *Losse* in Chapter 25, “Search and Seizure”.

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