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MACFARLANE'S DRUG OFFENCES IN CANADA
FOURTH EDITION

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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 18 (Evidentiary Issues in Drug Cases), Chapter 24 (Police Informer Privilege), Chapter 25 (Search and Seizure), Chapter 26 (Wiretaps), Chapter 30 (Mistake of Fact) and Chapter 31 (De Minimis Non Curat Lex).

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Highlights:

- What makes evidence "relevant" in a criminal case? The Supreme Court chose to give extensive guidance on this subject in *Edmonton (Police Service) v. McKee*, 2026 SCC 24. We discuss that case in chapter 18, Evidentiary Issues. The Supreme Court also dealt with the relevance of character evidence in *R. v. Hussein*, 2026 SCC 2, and in so doing, tweaked the rules governing the Crown's cross-examination of accused on their criminal records. That case is also discussed in chapter 18.
- Evidence concerning the perpetrator of an offence usually falls into one of two categories: recognition evidence or identification evidence. Is there a third category, so-called "resemblance" evidence? The Ontario Court of Appeal discussed this interesting issue in *R. v. Fitzpatrick*, 2026 ONCA 262, and we look at that case in chapter 18.
- Solicitor-client privilege is firmly protected in Canadian law, such that it is close to absolute. But is there an "innocence at stake" exception, as there is for another near-absolute privilege, the police informer privilege? The Supreme Court of Canada had to examine that issue in *R. v. Fox*, 2026 SCC 4, and we look at the issue in chapter 24, Police Informer Privilege.
- In *R. v. Singer*, 2026 SCC 8, the issue was whether the implied licence to knock authorizes police investigating an impaired driving complaint to enter a private driveway to converse with and observe the occupant of a vehicle. The trial judge had said it does, but the Saskatchewan Court of Appeal said it does not. The Supreme Court of Canada settled the debate, holding that the implied licence doctrine authorizes police on legitimate business, including a "*bona fide* investigative inquiry", to approach a private dwelling to communicate with an occupant. We discuss this important decision in c. 25, Search and Seizure.
- The ancillary police powers doctrine as articulated in the Waterfield test remains an important source of lawful authority for police searches in urgent situations. In *Lafrenière c. R.*, 2026 QCCA 604, the Quebec Court of Appeal found that the ancillary police powers doctrine provided the police, who were confronted with an urgent situation, the lawful authority to compel a cellphone provider to produce the subscriber's location data. We discuss *Lafrenière* in c. 25, Search and Seizure.
- Is a warrant invalid if it fails to set out a date and time for execution? The Quebec Court of Appeal, in *Cyr-Larivière c. R.*, 2026 QCCA 325, said "no". We discuss *Cyr-Larivière* in c. 25, Search and Seizure.
- Appellate courts have held that occupants of multi-unit buildings may, in some circumstances, have a reasonable expectation of privacy in the common areas of the building. In what may be the low-water mark for finding a reasonable expectation of privacy in a common area, the Ontario Court of Appeal held, in *R. v. Lye*, 2026 ONCA 188, that the appellant had a reasonable expectation of privacy in the underground parking garage of a 12-storey condominium because access to the garage was controlled. *Lye* is discussed in c. 25, Search and Seizure.
- What may happen if a monitor fails to follow the terms set out in an authorization to intercept communications? In *R. v. Fox*, 2026 SCC 4, the Supreme Court was confronted with a situation where a police monitor

negligently failed to adhere to a minimization clause that was intended to protect solicitor-client privilege. The court held that this was a very serious breach requiring exclusion of the evidence. Fox is reviewed in c. 26, Wiretaps.

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