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DRUG OFFENCES IN CANADA FOURTH EDITION Bruce A. MacFarlane, Q.C. Robert J. Frater, Q.C. Croft Michaelson, Q.C. Release No. 6, December 2021
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Publisher's Special Release Note 2021

The pages in this work were reissued in September 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 September 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:

- In *R. v. Grief*, 2021 BCCA 187, the British Columbia Court of Appeal bluntly expressed concern over credibility assessments tainted by improper speculation or stereotypical reasoning. It's an issue that arises in relation to "demeanour evidence". The Ontario Court of Appeal considered similar issues in *R. v. Borel*, 2021 ONCA 16, where it found that a police officer's opinion evidence about the accused's demeanour during an interview was highly prejudicial and should not have been admitted. The two decisions are discussed, amongst others, in a new section in c. 18 ("Evidentiary Issues").
- In *R. v. Kennedy*, 2021 ONCA 378, the Ontario Court of Appeal affirmed the accused's conviction where a police expert explained, at trial, that he had never encountered anyone who had purchased methamphetamine for personal use in quantities of more than 3.5 grams. The expert's opinion that the accused possessed the meth for the purpose of trafficking was grounded in objective facts. (The case is discussed in c. 18).
- Evidence not tendered to prove a live issue or to support a Crown's case, but that merely completes a narrative or establishes context, may be admitted despite not satisfying the strict requirements of relevance. In *R. v. Dinardo*, 2008 SCC 24, though, the court cautioned trial judges to guard against the use of narrative evidence tendered for impermissible purposes or with prejudicial effect that outweighed its probative value. The issues and concerns were placed in sharp relief in the Alberta Court of Appeal's decision in *R. v. Stauth*, 2021 ABCA 88, one that produced three vastly different opinions. The decisions and issues are discussed in a new section in c. 18.)
- The Saskatchewan Court of Appeal's decision in *R. v. John*, 2021 SKCA 83, provides a useful summary of the three recognized types of identification evidence that can be tendered at trial (relying on the British Columbia Court of Appeal's decision in *R. v. Field*, 2018 BCCA 253). In c. 18, new material in this release discusses those cases and *R. v. Murtaza*, 2020 ABCA 158 (confirmed by Supreme Court of Canada at 2021 SCC 4), and the roles of witness identification in court, identification by the trial judge, and videos said to depict the accused.
- This release adds a new discussion in c. 18 about the effect of "confirmation bias" (and "tunnel vision") on identifications (and misidentifications). The discussion draws on well-established cognitive psychology research and Canadian appellate decisions to investigate the effect of confirmation bias on how identification evidence emerges in court, particularly in cases of alleged drug trafficking.
- In *R. v. King*, 2021 ABCA 271, the accused's wife had surreptitiously searched his electronic devices because she suspected him of having an affair. During that search, she discovered images of child pornography that she downloaded onto a USB flash drive and took to the police. The police reviewed the contents of the flash drive and obtained warrants to search and seize the accused's electronic devices. The Alberta Court of Appeal rejected the accused's argument that the police breached his s. 8 *Charter* rights by reviewing the flash drive. The court held that the invasion of the accused's privacy occurred when his wife searched his

devices and downloaded the images. As such, s. 8 of the *Charter* was not engaged where the *Charter* only applies to state action. This case is discussed in c. 25 (“Search and Seizure”).

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 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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