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CANADIAN CRIMINAL PROCEDURE

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Release No. 63, March 2019

What's New in this Update:

This release features updates to the case law and commentary in the following chapters: 3 (Arrest and Seizure of Property), 4 (Bail), 6 (Trial on Indictment), 8 (Sentencing), 9 (Appeals), and 10 (Extraordinary Remedies).

Highlights:

- **Arrest and Seizure of Property — Search and Seizure — Constitutional Protection against Unreasonable Search and Seizure — Reasonable Expectation of Privacy** — A court order precluded the accused from accessing the home he had shared with his estranged common-law spouse. Having alleged that the accused had child pornography on the family computer, the spouse signed a consent form for the police to take the computer from the shared living space. The police later

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obtained a search warrant and found the child pornography. The accused, facing charges of accessing and possessing child pornography, sought to have this evidence excluded on the basis of violations of his s. 8 Charter rights. The Supreme Court of Canada reasoned that the act of sharing a computer with friends and family did not constitute a waiver of one's Charter protection from state interference with one's privacy. Having found that the accused had a reasonable expectation of privacy in the shared computer, and that the police had no authorization to seize the computer, the Supreme Court held the accused's s. 8 Charter rights to have been infringed by the seizure, and restored his acquittal: *R. v. Reeves*, 2018 SCC 56, 2018 CarswellOnt 20930 (S.C.C.).

- **Sentencing — Victim Surcharge** — In a 7-2 decision, the Supreme Court of Canada declared s. 737 constitutionally invalid and immediately of no force and effect, after having held the victim surcharge to constitute a discrete punishment flowing directly and automatically from conviction. According to the court, the surcharge functions like a fine and aims, among other goals, to further the purpose and principles of sentencing, but constitutes cruel and unusual punishment since its impact and effect potentially creates individualized circumstances grossly disproportionate to what might otherwise be a fit sentence — the court identified four interrelated harms: (1) the disproportionate financial consequences suffered by some offenders; (2) the threat of additional incarceration in the event of default; (3) becoming the target of provincially-endorsed collection efforts; and (4) the de facto indefinite sentence for offenders with no foreseeable abilities to pay: *R. v. Boudreault*, 2018 SCC 58, 2018 CarswellOnt 20975 (S.C.C.).