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**WIRETAPPING AND OTHER ELECTRONIC  
SURVEILLANCE: Law and Procedure**

**Robert W. Hubbard, Peter M. Brauti and Scott K. Fenton**

**Release No. 63, FEBRUARY 2019**

**What's New in this Update:**

This release features updates to the case law and commentary in the following chapters: 2 (Lawful and Consent Interceptions without Judicial Authorization), 3 (The Application), 4 (Special Problems Associated with Wiretap Affidavits), and 6 (Further Problems Associated with Authorizations).

Cases discussed in the commentary include the following:

- **R. v. Reeves, 2018 SCC 56:** The Supreme Court decided that the taking of a jointly used computer with only the consent of one user violated the s. 8 *Charter* rights of the user who had not consented to its taking.

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- **Vice Media Canada Inc., 2018 SCC 53:** The Court reviewed the common law status of journalistic privilege and made some modifications to the *Lessard* threshold.
- **Williams v. R., 2018 NBCA 70:** The trial judge rejected the defence argument that investigative necessity was not established because consent-based authorizations had met with success.
- **R. v. Pilbeam, 2018 MBCA 128:** The Court recognized that the widespread use of tear-away portions in an ITO, that contained confidential information that only the Crown and judge could see, justified placing more confidential information in tear-aways.
- **R. v. Warsame, 2018 ABCA 329:** The court appreciated the hearsay nature of much of the information in an ITO, especially in relation to confidential informant information.
- **R. v. Villaroman, 2018 ABCA 220:** The court accepted that broad computer searches are often necessary to ensure that sought-after evidence is not hidden in files that otherwise may seem irrelevant.
- **R. v. Cuthill, 2018 ABCA 321:** Spousal privilege is only testimonial in nature.

New sections of commentary added with this release include the following:

- 4.7.4A: *Determining Whether Informer Privilege Exists - the First Stage Hearing*;
- 6.4.5: *Common Law Journalistic Privilege*; and
- 6.4.6.1: *Cases Considering the Journalistic Privilege Provisions of the Code*.