

Publisher's Note

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Search and Seizure Law in Canada

This publication provides comprehensive coverage of search and seizure law, an essential element of both the criminal process and regulatory regimes. The effect of the Charter protection against unreasonable search and seizure is examined. Individual chapters examine various types of searches including electronic surveillance, administrative and regulatory searches, motor vehicle searches, firearms and weapon searches and mail searches. Detailed coverage is provided of the execution of search warrants, solicitor-client privilege, the disposition of seized property and Charter remedies including the exclusion of evidence.

This release features updates to the case law and commentary in Chapters 1 (Defining "Search"), 2 (Defining "Seizure"), 3 (Search Incident to Arrest), 5 (Administrative and Regulatory Searches), 7 (Consent Searches), 8 (Firearms and Weapons), 11 (Search, Seizure and Other Constitutional Rights), 16 (Criminal Search Warrants), and 19 (Constitutional Remedies). The Words & Phrases section has also been updated.

CASE HIGHLIGHTS

- **Defining "Seizure"** — 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 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

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interference with one's privacy — to hold no seizure had taken place, within the meaning of the Charter, would have the undesired effect of permitting consenting parties to waive the privacy rights of others. 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 CSC 56, 2018 SCC 56, 2018 CarswellOnt 20930, 2018 CarswellOnt 20931, 367 C.C.C. (3d) 129, 50 C.R. (7th) 357, 427 D.L.R. (4th) 579, [2018] A.C.S. No. 56, [2018] S.C.J. No. 56 (S.C.C.).

- **Search Incident to Arrest** — The police received information that the accused and his girlfriend were selling narcotics from their car. They conducted surveillance and took part in an undercover purchase of drugs. After arresting the couple, the police conducted strip searches at the police station, and found the girlfriend to have hidden an ounce of cocaine. The police then obtained a warrant to search the accused's apartment where they found 1400 grams of cocaine. The trial judge found none of the accused's Charter rights to have been infringed, and admitted the evidence even though the strip-search had violated the girlfriend's s. 8 rights. The Court of Appeal for Ontario dismissed the accused's appeal, having found the police had had sufficient bases to arrest the accused and to obtain the search warrant: *R. v. Lee*, 2018 ONCA 1067, 2018 CarswellOnt 21599 (Ont. C.A.).
- **Criminal Search Warrants** — Informers confidentially advised police that the accused had been dealing drugs. With some corroboration, the police prepared an Information to Obtain (ITO) based on this information and obtained a search warrant. The accused alleged that the ITO was not sufficient to support issuance of the warrant, but the Court of Appeal for Ontario disagreed. The appellate court found sufficient credible and reliable evidence had founded reasonable and probable grounds to believe both that an offence had been committed and that evidence of the offence would be found at the specified time and place of the search. Underlying the warrant, the appellate court further found that the information provided by the confidential sources had been solidly corroborated, and consequently refused to interfere with the decision of the reviewing judge: *R. v. Edwards-Cyrus*, 2018 ONCA 1066, 2018 CarswellOnt 21544 (Ont. C.A.).