

Understanding Section 8: Search, Seizure and the Canadian Constitution

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Since April 17, 1982 when the *Charter of Rights and Freedoms* was proclaimed Canadian courts have developed certain principles pertaining to the nature of the Section 8 right to be secure against unreasonable search and seizure. This book effectively reviews and ultimately crystallizes those principles in a "reader friendly" manner that will prove valuable to any practitioner making or refuting a Section 8 Application.

The authors adopt a problem-solving approach to the issues surrounding searches and seizures. First, they discuss the fundamental principles of a Section 8 claim. After identifying the general principles applicable to all searches, they then address any exceptions to the general rules and the rationale for those exceptions.

They do not waste the reader's time with many esoteric dissenting opinions (sometimes the favorite pastime of those dwelling in the less practical world of academia), preferring instead to focus on accurate statements of the law of search and seizure up to the moment of publication. And, with one minor exception, likely a result of a last-minute attempt to make the book as up-to-date as possible, they accomplish this goal. At pages 68-73 the authors discuss the Supreme Court of Canada's 2004 decision in *R. v. Tessling*, but at page 82 the authors speculate on the possibility the Supreme Court of Canada might uphold the Court of Appeal for Ontario's decision in that same case. The authors, of course, had earlier referred to the Supreme Court's thundering rejection of the Court of Appeal's decision. But, the mistake is minor and does not detract from the currency of the book.

In 303 pages the book covers such diverse topics as what constitutes a search or a seizure, the various levels of one's reasonable expectation of privacy, how the courts determine reasonableness, important findings on reasonable and probable grounds and claims of privilege. The book draws important distinctions between challenging searches with and without a warrant. And, it provides a chapter on the remedies for unreasonable search and seizure.

Finally, the book concludes with a series of appendices analyzing a variety of statutory search powers. In helpful summary fashion the scope of the search authority and special requirements needing to be met are provided. The

appendices outline the requirements of conventional search warrants pursuant to section 487 of the *Criminal Code*, exigent circumstances under section 487.11, telewarrants, general warrants, tracking devices, dial number recorders, telephone records, wiretap authorizations, special wiretap rules related to criminal organizations and terrorism offences, consent authorizations and a variety of other unique statutory search powers.

Like most areas of law, the jurisprudence of search and seizure law ebbs and flows and develops with time. Despite the ever-changing terrain, however, certain basic principles abide in Canada since the earliest *Charter* interpretations. This book provides an up-to-date analysis of those principles. To this end, the authors have presented a valuable resource to the Canadian practitioner. It will likely remain valuable despite the inevitable changes still to be carved by our courts.

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