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SEARCH AND SEIZURE LAW IN CANADA

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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.

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This release features updates to the case law and commentary in the following Current Caselaw Digests: 1 (Defining “Search”: The Scope of Section 8), 3 (Searches Incident to Arrest), 4 (Electronic Surveillance), 8 (Firearms and Weapons), 10 (Searches of Special Locations), 11 (Search, Seizure, and Other Constitutional Rights), 16 (Search Warrants), 17 (Execution of Search Warrants), and 19 (Constitutional Remedies).

CASE HIGHLIGHTS

- **Defining “Search”: The Scope of Section 8**—As part of a fraud investigation, the victim company’s third-party payment processor gave police an internet protocol (“IP”) address, which the police used to obtain a production order from an internet service provider for the subscriber-information for two IP-addresses, from which the police learned the identities and addresses of the accused and his father. After further investigation, the police obtained a search warrant for the residence of the accused and his father, where they found instruments of forgery, fraudulent investigation documents, and card data of innocent victims. While executing the warrant, the police cited need to secure the residence before allowing the accused access to counsel. Facing charges of fraud and related offences, the accused brought an application to exclude evidence on the bases of infringements of his *Charter* rights under ss. 8 and 10(b). The judge found only s. 10(b) to have been breached, during the execution of a search warrant of his house, when the police had delayed the accused’s access to counsel. After conducting the relevant balancing analysis, the judge refused to exclude the evidence under s. 24(2) and convicted the accused. The Alberta Court of Appeal dismissed the accused’s appeal, with the majority having found no error underlying the trial judge’s conclusion that the accused had no reasonable expectation of privacy in the IP address given by the third-party payment processor, as an IP address alone reveals neither the core biographical information nor the intimate detail of a person’s lifestyle that the *Charter* protects. Obtaining an IP address, according to the majority of the appellate court, is merely an investigative step of police investigation. The appellate court affirmed the judge’s finding of a breach of s. 10(b), as the Crown had failed to establish circumstances concerning safety or the preservation of evidence to justify the delay of the accused’s access to counsel while executing the warrant to search the accused’s residence, as well as the judge’s decision not to exclude the evidence under s. 24(2) – although delay of access to counsel was serious, the impact in this instance of the delay was found to be minimal and society’s interest in a trial on its merits favoured admissibility of the evidence: *R. v. Bykovets*, 2022 ABCA 208, 2022 CarswellAlta 1454 (Alta. C.A.), reversed 2024 SCC 6, 2024 CarswellAlta 398, 2024 CarswellAlta 399 (S.C.C.).
- **Search Warrants**—The police executed a warrant to search the hotel room occupied by the accused. The accused attempted to flee, but the police caught and arrested him. During the chase, the accused dropped a loaded firearm, and a cellphone with a label bearing his street-name was also found outside the room. A search of the accused revealed traces of fentanyl. The police found, in the hotel room, a bullet proof vest, a BB

gun, gun parts, a weigh scale with what appeared to be traces of fentanyl on it, blue fentanyl in two containers, a cutting agent, a bag containing white pills, several unused dime bags and a hatchet. Charged with drugs and weapons offences, as well as possession of stolen property and breach of court orders, the accused sought to have all the evidence excluded on the basis that the search warrant should not have been issued. The court examined the Information to Obtain (“ITO”), wherein the affiant had relied on information provided by two confidential informants and by one anonymous telephone tip, and on observations made by police conducting surveillance. The informants had proven reliable to the police in the past, and their accounts concerning the accused’s recent possession of a firearm and his drug-dealing from the hotel were consistent with each other, as well as with that of the anonymous tipster. The court found their information compelling by virtue of how recent and specific their accounts had been. Further, as a result of their information, the police observed the accused exhibiting conduct consistent with drug trafficking. The court noted that little was known about the motivations and criminal histories of the informants but found this weakness to their credibility to have been adequately addressed by the significant degree of corroboration of the information provided, as well as its compelling nature. The court also accepted the affiant’s opinion regarding conduct “consistent with drug trafficking” in light of his 20 years’ experience as a police officer and his involvement in many criminal investigations of drugs and violent crimes, but suggested that, even if his opinion were excised from the ITO, the issuing justice would still have had sufficient basis to authorize the search. Thus, having found no infringement of the accused’s s. 8 *Charter* rights, the court dismissed his application: *R. v. Cartmer*, 2022 ONSC 4339, 2022 CarswellOnt 10743 (Ont. S.C.J.).

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