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THE CANADIAN CHARTER OF RIGHTS

McLeod, Takach, Morton, Segal

Release No. 12, December 2024

This resource is a practical working text that will shorten preparation time and be a valuable in-court reference. It deals with the ever expanding effect of the *Charter* on the issues arising in criminal proceedings and the prosecution of statutory offences. Organized conceptually rather than in chronological order by section of the *Charter*, this work pulls together the reported and unreported case law determining the impact of the *Charter* on the legislative provisions, the substantive law and the practice in this area.

This release includes updates to Chapter 5 — Life, Liberty and Security of the Person, Chapter 6 — Search and Seizure, Chapter 9 — Counsel on Arrest or Detention, Chapter 23 — Fundamental Freedoms, Chapter 27 — Other Rights, and Chapter 28 — Remedies — General.

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Highlights:

- **Search and Seizure — The Wording of Section 8 — “unreasonable search or seizure” — Unreasonable** — At the scene of a violent robbery of a home in a rural area, the officer recognized the accused driver as a person who had previously been involved in violent crimes. The officer took the keys to the vehicle while the accused attempted to drive away. The Court of Appeal for Ontario held no breach of s. 8 to have taken place — the officer’s conduct was reasonable and justified as a measure to ensure officer safety: *R. v. Cameron*, 2024 ONCA 231, 2024 CarswellOnt 4434 (Ont. C.A.).
- **Counsel on Arrest or Detention — Other Situations** — The counsel-of-choice did not respond either to the accused’s text-message or to the two voice-messages left by police. The police asked the accused whether there was another lawyer he had wished to call. The accused had no other counsel in mind, and ultimately accepted the police’s offer to contact duty counsel. The accused later indicated his satisfaction with his seven-minute-long consultation with that lawyer. Subsequently, the breathalyzer test was administered almost one hour after the accused’s first attempt to contact his counsel. The Court of Appeal for Ontario held the police to have taken reasonable steps to contact the accused’s counsel of choice, and to have waited a reasonable amount of time for the two to connect. In so doing, the appellate court disagreed with the conclusion drawn by the Summary Conviction Appeals Court of a breach of s. 10(b), which conclusion had been premised upon the police not searching the counsel-of-choice’s website for alternative late-night contact information; the police not asking the accused whether he had any other means to contact his preferred choice; and a finding that the police had “steered” the accused to duty-counsel upon arrival at the police station: *R. v. Edwards*, 2024 ONCA 135, 2024 CarswellOnt 2213 (Ont. C.A.).