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SEARCH AND SEIZURE LAW IN CANADA Scott C. Hutchison and Michael P. Bury Release No. 4, May 2026
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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: 4 (Electronic Surveillance), 6 (Motor Vehicle Searches), 8 (Firearms and Weapons), 11 (Search, Seizure, and Other Constitutional Rights), 16 (Criminal Search Warrants), 17 (Execution of Search Warrants), 18 (Disposition of Property Seized), and 19 (Constitutional Remedies).

CASE HIGHLIGHTS

- **Motor Vehicle Searches**—While investigating the slaying of a woman, who had been shot by masked gunmen, the police learned she had been engaged to the accused, whom they believed to be a high-level drug trafficker, with past convictions for weapons offences and with drug charges outstanding at the time. A confidential informant advised that the accused knew who had arranged for the killing, believed he was the intended target of the gunmen, and was planning to retaliate against the killers. Doubting that the accused would volunteer his phone and permit them to examine the data therein, the police obtained a general warrant to detain the accused, to search him and the immediate area surrounding him at the time, and to seize the device associated with a particular phone number. Having determined that the safest and most effective way to execute the search would be after having pulled over the accused’s vehicle, the officers ordered the accused out of his vehicle and handcuffed him when he refused to put his hands up to facilitate a pat-down search for weapons and devices. In the vehicle, one of the officers found three cellphones and a shopping bag containing the magazine of a Glock handgun, all of which he seized, securing the phones by putting them in airplane mode and removing their SIM cards. Continuing his search of the vehicle, the officer noticed that the door-locking switch-panel on the driver-side looked as if it had been removed and replaced repeatedly. Past experience informed him that such switch-panels in similar vehicles could be popped off quickly and easily to reveal a void in which one could hide money, drugs or weapons. The officer accessed this space, found two loaded Glock handguns hidden therein, and arrested the accused for firearms possession. The accused successfully brought an application to have the weapons evidence excluded as a remedy for infringement of his s. 8 *Charter* rights. The Crown appealed, which the majority of the Ontario Court of Appeal allowed. Underlying its decision, the appellate court found the applications judge to have erred in finding ambiguity in the wording of the warrant – although the target of the search was one specific device, the warrant featured conditions to be met if more than one device were found, including the search and seizure of all found devices for the limited purpose of identifying the targeted device and the return of the other devices to the detainee. The Court of Appeal also recognized that the issuing justice had left it to the police to determine how and where the warrant was to be executed, and to interpret the “surrounding” and “immediate” area of the detainee accordingly. The appellate court also found the applications judge to have erred in finding the void behind the driver-side door panel to be beyond the immediate or surrounding area of the accused – in light of the accused’s criminal past and the officers’ experience and belief that he would sooner take matters into his

own hands than cooperate with law enforcement, it would not be unreasonable to conclude that the accused would opt to hide his phone rather than to surrender it to police. Having found no violation of the accused's s. 8 *Charter* rights, the Court of Appeal ordered a new trial: *R. v. Bhatti*, 2025 ONCA 697, 2025 CarswellOnt 16897 (Ont. C.A.).

- **Search, Seizure and Other Constitutional Rights**—Two confidential informants advised police that the accused had been selling cocaine on several occasions, and the police obtained a warrant to search the accused's apartment. After the officers announced their presence and entered the apartment, the accused and another person were spotted climbing out a window and fleeing from the scene. Two of the officers chased them and caught the accused, placing him under arrest. After delivering the accused to their fellow officers at the apartment, the officers who chased retraced the path of flight and found a bag containing cocaine and cash. Closer inspection later revealed the accused's fingerprint on the bag. Charged with possession for the purpose of trafficking, the accused made an application on the basis of infringement of his *Charter* rights under ss. 8 and 9. The reviewing court found the confidential sources each to have provided police with information in the past that had helped with securing warrants, arrests and charges, and the versions of events they had aligned. Although one of the sources' information was somewhat dated and of lesser relevance, the other informant fulfilled the requirements of currency and recency, as well as precision of detail. After finding their information had been corroborated by police database inquiries and surveillance, the reviewing court concluded that the Information to Obtain the warrant had been sufficiently grounded whereby an issuing justice could have granted the authorization to search. Turning to the lawfulness of the accused's arrest, however, the court held s. 9 to have been breached – although, in many instances, flight from police may contribute to or comprise an officer's grounds to arrest a person fleeing the scene of a search, in this case the testimony of the arresting officers revealed that their sole grounds for arresting the accused had been the issuance of the search warrant, indicating that they would have arrested the accused in any event. The court held this conflation of grounds underlying the search and those underlying the decision to arrest to be unacceptable and invited the parties to make presentations at a future date regarding remedy: *R v. Richardson*, 2024 NSSC 407, 2024 CarswellNS 1074 (N.S. S.C.).