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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"), 2 (Defining "Seizure"), 3 (Search Incident to Arrest), 4 (Electronic Surveillance), 5 (Administrative and Regulatory Searches), 6 (Motor Vehicle Searches), 7 (Consent Searches), 8 (Firearms and Weapons), 10 (Searches of Special Locations), 11 (Search, Seizure and Other Constitutional Rights), and 19 (Constitutional Remedies).

CASE HIGHLIGHTS

- **Consent Searches—**A woman receiving cancer treatments co-resided with the accused in exchange for housekeeping services in his apartment near the hospital. While cleaning the apartment, she discovered a loaded firearm in a bag in the accused's closet. She brought it to the landlord, who notified the police. Upon arrival, the woman advised that the accused was not home, and that she had returned the firearm to the closet. The police removed the ammunition from the firearm and seized them and obtained a tele-warrant. The accused was later arrested and charged on eight counts of possession of a loaded prohibited firearm and one count of possession of methamphetamine. He challenged the warrantless entry, and sought exclusion of the evidence, as well as the statement he had made following his arrest. The court found the woman, as a co-resident, to have had the authority to consent to entry by the police into the apartment. Further, the court found the accused's objectively reasonable expectation of privacy to have been attenuated by his agreement to have the woman maintain the home as a condition of her residency there. Finally, the court found the police to have been authorized to seize the weapon without a warrant for the sake of officer and public safety. The court also found the arrest of the accused to have been lawful, and the incriminating out-of-court statement obtained afterwards to have been given freely and voluntarily. The court thereby dismissed the accused's application to exclude the evidence: *R. c. Hennigar*, 2024 QCCQ 4849, 2024 CarswellQue 15746 (C.Q.).
- **Constitutional Remedies—**In response to a tip from a confidential informant concerning a person with a loaded handgun in a public place, the police found and observed the accused at a bus station. They detained him and, for safety, conducted a pat-down search of his person, which involved removal of a satchel he was wearing. In the satchel, the police found the weapon and ammunition. Convicted and sentenced for firearms possession, the accused appealed with claims of errors made by the trial judge in finding no breaches of his *Charter* rights under ss. 8 and 9, in ruling to admit the evidence under s. 24(2) despite having found s. 10(b) to have been violated, and in considering the confidential tip to be an aggravating factor underlying the sentence imposed. The Court of Appeal affirmed that the investigative detention was lawful – the absence of a basis to assess the credibility of the confidential informant sufficiently countered the strength of the compelling quality of the tip and the corroboration furnished by police observation to meet the reasonable suspicion standard. Further, the appellate court affirmed that the search of the accused's satchel was a lawful incident of the investigative detention – although the satchel was removed in order to facilitate the pat-down search of the accused's person, it had been worn by the accused in the time preceding the detention. With respect to the

s. 24(2) decision to admit the firearms evidence, the Court of Appeal found the trial judge to have erred in considering the discoverability of the evidence when assessing the seriousness of the s. 10(b) breach, but held that a heightening of its seriousness would not have outweighed the conclusions reached concerning the impact to the accused's protected interests, where discoverability had been appropriately considered, and the interest of society for adjudication on the merits of this case. Finally, the appellate court found the judge to have erred in considering the informant's tip as an aggravating factor but, in light of the sentence imposed having fallen at the low end of the range for conviction of a loaded firearm in a public place, it dismissed the appeal of sentence, in addition to the appeal of conviction: *R. v. Buffong*, 2024 ONCA 660, 2024 CarswellOnt 13305 (Ont. C.A.).