

# **A Practical Guide to Search Warrants**

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*Life, Liberty, and the Pursuit of Proceeds*

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## A PRACTICAL GUIDE TO SEARCH WARRANTS

### GENERAL SEARCH PRINCIPLES

A search is an examination by an agent of the state which constitutes an intrusion upon an individual's reasonable expectation of privacy.

*R. v. Evans* (1996), 104 C.C.C. (3d) 23 (S.C.C.)

A seizure is the taking of something from an individual by an agent of the state without the individual's permission.

*R. v. Dymont* (1988), 45 C.C.C. (3d) 244 (S.C.C.)

A seizure is a non-consensual taking by state officials of an item in which the citizen has a reasonable expectation of privacy.

*R. v. Borden* (1994), 92 C.C.C. (3d) 404 (S.C.C.)

### GENERAL PRIVACY PRINCIPLES

Privacy - the right to be left alone: The individual's right to minimal interference by the state. The more your involvement in public activities, the more subject you are to state intrusion i.e. video surveillance cameras in public areas.

The standard is whether the individual had a reasonable expectation of privacy.

A warrant will be required where someone has “a reasonable expectation of privacy” in the place proposed to be searched or things proposed to be inspected.

*Hunter v. Southam* (1984) 14 C.C.C. (3d) 97 (S.C.C.)

A warrantless search is *prima facie* unreasonable.

*Hunter*, supra.

Charter - a s.8 assessment of whether the public’s interest in being left alone by the state gives way to the state to intrude in the advancement of law enforcement.

*Hunter*, supra.

Privacy is a continuum - whether an individual has a reasonable expectation of privacy involves a review of a number of factors including, but not restricted to, the following:

- place (park bench, dwelling house, your body)
- possession or control of the property or place searched
- ownership of the property or place
- historical use of the property or item
- ability to regulate access, including the right to admit or exclude others from the place.
- custodian: professional/personal relationship (i.e. lawyer records)
- privacy legislation (i.e. health records)