

Publisher's Note

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Search and Seizure Law in Canada

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.

This release features updates to the case law and commentary in the following chapters: 1 (Defining "Search"), 3 (Search incident to Arrest), 6 (Motor Vehicle Searches), 8 (Firearms and Weapons), 10 (Searches of Special Locations: Lawyers' Offices, Media Organizations and Other Places), 11 (Search, Seizure and Other Constitutional Rights), 16 (Criminal Search Warrants), 17 (Execution of Search Warrants), 18 (Disposition of Seized Property), and 19 (Constitutional Remedies).

CASE HIGHLIGHTS

- **Search incident to Arrest** — Responding to a tip that the accused was travelling by train with a grey suitcase that smelled of marijuana, the police detained her for a drug investigation. The sniffer dogs found a grey suitcase in the baggage car, but the suitcase had no ownership information. The police nevertheless arrested the accused and searched her. The search yielded a luggage ticket and a key for a suitcase, and a search of the suitcase yielded 20 half-pound bags of marijuana. At trial, the accused unsuccessfully challenged the admissibility of the seized evidence on the basis of a breach of her s. 8 Charter rights. Manitoba's Court of Appeal held

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there to have been a breach, since the police had minimal evidence connecting the accused to the suitcase and therefore lacked the reasonable grounds to believe they belonged together — the arrest was therefore unlawful. The appellate court, however, held the admission of the evidence would not bring the administration of justice into disrepute, and would have a minimal impact on the accused's privacy rights. The Court of Appeal thus refused to exclude the evidence under subs. 24(2) of the Charter: *R. v. Molnar*, 2018 MBCA 61, 2018 CarswellMan 209 (Man. C.A.)

- **Motor Vehicle Searches** — The police officer pulled the accused over after having clocked him on radar at 116 km/hr in a 110 km/hr zone. The licence plate check also revealed the vehicle's connection with a driving prohibition. The officer noticed that the accused's face was sweaty and that his hands were shaking. The officer also saw a billfold of cash wrapped in an elastic band in the centre console of the vehicle. Although checks revealed that the accused was not the subject of the driving prohibition, they showed he had been convicted of marijuana cultivation and arrested in a marijuana trafficking investigation. The officer detained the accused to conduct a drug investigation, and a sniffer dog found 50 lbs. of marijuana, worth between \$90,000 and \$140,000, in the trunk. Saskatchewan's Court of Appeal dismissed the accused's appeal, after having found no error relating to the trial judge's application of the reasonable suspicion standard — contrary to the arguments of the accused, the trial judge was not required to consider the absence of several other factors to arrive at a totality of the circumstances. Further, according to the appellate court, the officer's observations were cogent and amounted to more than general suspicion that made the detention lawful: *R. v. Duong*, 2018 SKCA 25, 2018 CarswellSask 244 (Sask. C.A.)