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Publisher's Note

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McLeod, Takach, Morton, Segal

The Canadian Charter of Rights

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 features updates to the case law and commentary in Chapters 5 (Life, Liberty and Security of the Person), 6 (Search and Seizure), 9 (Counsel on Arrest or Detention), 22 (Interpreter), 25 (Equality Rights), 28 (Remedies - General), and 30 (Conflict with Ordinary Legislation).

Case Law Highlights

- **Search and Seizure: Section 8 — Search with Warrant — The Sufficiency of the Information to Obtain the Search Warrant and the Search Warrant** — Information reported by electronic service providers to the National Centre for Missing and Exploited Children was sent to the RCMP and forwarded local police - this information

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served as the primary basis for the impugned search warrant. The trial judge found s. 8 *Charter* rights to have been breached and excluded the evidence. The Crown successfully appealed, and the validity of the warrant was upheld, after the appellate court found the trial judge to have erred by relying on an unverified report that lacked credibility and reliability: *R. v. Cusick*, 2019 ONCA 524, 2019 CarswellOnt 10067 (Ont. C.A.).

- **Conflict with Ordinary Legislation: Section 52 — “to the extent of the inconsistency, of no force or effect” — Other Federal Legislation — *Corrections and Conditional Release Act*** — British Columbia’s Court of Appeal allowed part of the Attorney General’s appeal of the lower court’s decision to strike down the administrative segregation provisions of the *Corrections and Conditional Release Act* for their failure to confer a right to counsel at segregation review hearings. Although the appellate court agreed that the provisions unjustifiably infringed s. 7 of the *Charter*, it held the lower court to have erred by misattributing inmate discrimination to the legislation itself rather than to maladministration of the legislation. Further, the Court of Appeal deemed the remedy of striking down the impugned provisions to be erroneous, and instead amended the order to reflect the obligation to ensure inmates in segregation receive reasonable opportunity to retain and instruct counsel, and made the declaration that inmates have a constitutional right to be represented by counsel in segregation review hearings: *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228, 2019 CarswellBC 1805 (B.C. C.A.).