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Inspections and Warrants

Edward L. Burlew, L.L.B. CSSA Counsel

The Firearms Act provides that a firearms officer may inspect any premises where there is suspicion of more than 10 guns existing.

Who can do this and how can it be done? Who can enter to inspect? This is a firearms officer only (no other officers or helpers). Under C-68, firearms officers are restricted to designated offices. Not every police officer is a firearms officer. At the present time this should include your local firearms officer who assists in issuing transport permits and registration applications for restricted firearms. In Ontario there are less than 200 such officers. This number may shrink considerably.

The procedure is begun by a firearms officer contacting you to arrange for a date and time to inspect. You are obligated to make the arrangement within a reasonable time. That is when the firearms officer contacts you, you get back to him or her in a reasonable time to set the appointment some time in the future when it is convenient for both of you. Then the officer will attend and inspect your building. If you consent to this, the officer can stay until you revoke consent or until he/she is finished.

Issues that arise are:

1. Is that really a firearms officer contacting you?

How do you know?

A business card and a uniform can be bought or made anywhere. Impersonation and robbery has already occurred in such a guise in Vancouver. You must be sure that the person contacting you is your firearms officer. Do not just give information over a telephone about your guns. This is confidential and private information.

2. Must you consent to the visit?

No, you do not have to! If you refuse to have the firearms officer visit then he/she must obtain a warrant. You can refuse and say that you want notice of any warrant. The firearms officer must prepare an affidavit as to why he/she believe you have 10 or more guns and why he/she must visit to inspect. Most importantly, the firearms officer must serve you personally with the application for the warrant and give you the opportunity to respond in writing and at the hearing. This is not specifically written in C-68 but it is a requirement of fundamental justice principals. There is no risk of you fleeing the jurisdiction, there is no urgency and this is a severe invasion of your privacy. You must be given an opportunity to dispute the warrant application. At the hearing you must argue that this application is a breach of The Charter of Rights, sections 7 & 8. Section 8 provides that a person is not to be subject to unreasonable search and seizure. To any court it should be unreasonable that a person who has committed no offense in the past and who is accused of no offense nor is under suspicion of having committed an offense, be searched. You have obtained your guns legally, you are licensed by F.A.C., carry permits, checked out by the police and RCMP in the past. There is no real reason to have the police invade your home. Your handguns are registered and your long guns do not have to be registered until January 1, 2003. There is no need for the police to enter. Owning guns is legal.

Section 7 of the Charter of Rights states that you are not obligated to incriminate yourself. You have a right to silence. This is absolute. You cannot be conscripted into building a case to be prosecuted against you. C-68 provides that you must let the firearms officer in (and no other officers to assist, no other person either) and he/she may search anywhere a gun or documents about guns may reasonably be hidden. And you must help by



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opening up closed places. This requirement that you open up places, safes, cabinets, walls is contrary to section 7 of the Charter. No case law support this requirement. Pre-C-68, if the police attend at your home with a warrant you do not have to open the door. The police must knock and announce that it is the police with a warrant. You then decide to open the door or not. You are not obligated to open the door, but if you open the door you cannot close it in the officers face. That is obstruction. If the police force your door open they must then maintain security on your home and must fix the door. They have a budget to do this. Once in your house the police can search and open places that are relevant to the warrant. You do not have to help them. You may record, video, or take pictures without obstructing the police. Also you can leave if you are not under arrest. If the police want to keep you at your home they must arrest you. You can call for legal advice.

C-68 seeks to change that. The past cases decided by many judges across Canada and as high as the Supreme Court has struck down similar legislation under other federal and Provincial statutes. If you fight the inspection and search legislation of C-68 it too will fall.

The firearms officer who does inspect your building may find infractions and noncompliance. He/she may just ask you to correct these and then return for double-check or the firearms officer may be under instructions to have no discretion and to lay a criminal charge for the slightest infraction. The police are there to gather evidence against you. Your particular firearms officer may be replaced or may report to a superior officer who may decide to charge you with a criminal offense and seize all your guns, ammunition and other weapons.

Why should you voluntarily be subject to such jeopardy? The Supreme Court of Canada believes you have a right to privacy in your home, your office and your car when it is parked in your driveway. Cherish that right to privacy and fight to maintain it.

Do The Police Need A Warrant To Search For My Firearms?

Generally the answer is yes. The police require a warrant to search your home, place of business or vehicle.

The warrant must state the time, date, place to be searched and the purpose of the search. The warrant must be shown before entry. Always read the warrant to see what it says. If you are in doubt do not give permission to seize or search because that could eliminate the ability to raise problems with a search or seizure. A warrant is not needed if the person in possession of the premises gives consent to enter.

Searches can be made with out warrant of persons, premises, vehicles, and premises other than a dwelling house. The warrantless search powers do not include the power to search a dwelling house. R.V=s are not dwelling houses. The search must be conducted by a peace officer who believes, upon reasonable grounds that an offense has been committed involving prohibited weapons, restricted weapons, firearms or ammunition and there is no time to go before a justice of the peace to obtain a warrant.

If upon review of the warrantless search before a judge, the peace officer did not have enough evidence to obtain a search warrant or, had he tried if there was time for the peace officer to go before a justice of the peace and obtain a warrant, the evidence seized during the warrantless search can be thrown out of court.

Certified gun collectors are another exception where peace officer has the right make periodic inspection. The courts have held that it is constitutional to require a certified gun collector who is so registered under the criminal code to submit to periodic inspections.



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Seizure is different from searching. Typically a seizure requires a warrant as does searching. Peace officers do not need a warrant to seize a restricted weapon if the person in possession cannot right then and there produce the registration certificate. Peace officers do not need a warrant to seize any prohibited weapon or any firearm that a person under 18 cannot then and there to produce a permit to possess. A registered weapon so seized can be immediately retrieved by producing a registration certificate within 14 days of the seizure.

A court order by a court dealing with a family matter that orders the police to assist in the seizure of firearms does not give the police the power to search. A family court order that requires a person to give up possession does not authorize the police to seize or search.

Forfeiture is another step beyond search and seizure. The police who seize weapons must preserve them until there is an order by a court for forfeiture. Forfeiture is not automatic.

EDWARD L. BURLEW, LL.B.

Barrister and Solicitor

16 John Street, Thornhill, Ontario L3T 1X8

MY COMMITMENT IS VIGOROUSLY TO ADVOCATE YOUR LEGAL RIGHT TO BEAR ARMS, TO PROTECT YOUR HERITAGE RIGHTS, TO HOLD TRUE TO THE TRADITIONS OF SPORTSMEN

This advisory was prepared October 1, 1998 and revised Dec. 2007. Information in this advisory is general in nature and should not be acted upon without specific professional advice.