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No Warrant, No Entry

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Introduction:

The law presumes all searches and seizures to be a breach of the Charter of Rights and Freedoms, Section 8 which says:

"Everyone has the right to be secure against unreasonable search or seizure."

The search and seizures will be upheld by a court only if the police have acted in strict compliance with the provisions of the Criminal Code as interpreted by the courts.

When arrested the accused can be searched for evidence and for weapons. This is done to preserve evidence and for safety. If a person is arrested outside his home then the police cannot enter his home without a warrant. If a person runs into his home and the police are in hot pursuit then the police can follow him/her into the home and arrest. Then they may do a limited search of the person and the area.

If a person is arrested with a vehicle then the police may move the vehicle for safety and shall inventory the contents that are in sight. They cannot rip the car apart without a warrant and there must be reasonable grounds to believe evidence of an offense will be found.

The Power of the Police to investigate: Just because a firearm is involved there is not a total loss of rights. The police have to follow guidelines and be accountable. Firstly the police must be accountable to you the citizen. You have rights and it is your primary job to protect your rights. You cannot do that if no one told you what your rights are.

The Charter of Rights and Freedoms tells you in section 8: "You have the right to be free from unreasonable search and seizure". What is "unreasonable"? The Criminal Code provisions have from time to time been found to be unreasonable by the Supreme Court of Canada (*R. v Feeney*).

The first step in "what is unreasonable grounds" to believe an offense has been committed. First the police must know that the law was broken. This eliminates random checks and routine stops and inspections. To arbitrarily stop any citizen and say "I am searching you to find out if you possibly broke the law" is the epitome of unreasonable search. The police cannot stop you and search your car or enter your home without knowing a law was broken and then having some real factual link to you and the broken law.

When you are stopped ask: "Why?" The officer must tell you why. "I am doing a routine check" is not right or sufficient reason to stop you. Why does the officer believe you do not have a driver's license or insurance or a seat belt? He has no reason unless he knew of a real fact before he stopped you. Show him your license, insurance or buckled belt. Do not let him search the car. He will be looking inside for evidence of an offense. Keep your guns out of sight. He will be smelling for drugs or alcohol and if he "smells" either then he may arrest you for that and conduct a "search incident to arrest". But first he must have reasonable grounds to arrest. Police cannot go fishing or even deep trolling to find evidence without pre-existing reasonable grounds.

Your home is your castle. You have a right to privacy in your dwelling. That can be a house, trailer, tent, log cabin, place of business, vehicle you sleep in, vehicle parked on your property. The police cannot enter upon the land or into any structure without a warrant. The only exception is where there are "exigible grounds". "No warrant, No



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entry" is a mantra you must remember. Exigible grounds is a fancy work for facts of hot pursuit from off your property onto them or outside your dwelling and into it, or if the officer believes that you may run away or destroy the evidence he/she is after. Otherwise without that the officer must obtain a warrant.

The warrant must be specific as to who can enter, the time, place and what is to be searched for.

You do not have to help the officer search. That would breach section 7 of the Charter of Rights and Freedoms. C-68 says you must assist a firearms officer but that may be infringement of the Charter of Rights and Freedoms and it needs judicial review of such a power.

Consent Searches:

Any person can at any time consent to the police searching themselves or any place. The question is why would you do that?

Looking at the consent to search it must be a free choice free from any threats or inducements. The police cannot threaten or induce the person to give consent. The circumstances must always be reviewed.

Also the court has to be clear as to who can give the consent to the police searching another person's house. Any owner of a property can consent to a search. The title of the property is important.

The police will try to say you gave consent where they can reasonably believe you consent. The mere act of inviting the police into your house, office, vehicle is an implied consent. The police will start to search. If the police spot something offensive you will be arrested and then the search incident to arrest will begin. The point is to not ask the police to come in. Stand out in the rain and snow, with the neighbours watching and with your door closed.

The scope of consent is also important. If you clearly say "search me" that is your person, not your house. A consensual search of a garage is not the whole house. But how is this documented? By writing. Do not let the police make all the notes; you can do that too.

Consent can be withdrawn. Tell the police to leave; the consent is over. They have to leave unless they have at that time found evidence of an offense and arrest you. Then they can continue with a search incident to arrest.

If the police come in on consent and "find nothing" or leave but really may have found "reasonable grounds" then they can use the evidence they saw to bolster the application to a judge for a search warrant. They can do that now or later; they can wait.

The Routine Stop and Search:

This does not exist. The police cannot detain you without grounds. Period! That is a fundamental freedom. If you are stopped, the police must tell you why. If there is no evidence of an offense then you can keep going. If you are driving you have to show license, registration and insurance but you can do that without exiting the car or opening the window. On a RIDE check, you must stop and be checked but that is a short stop.

Be sure though that the police will be giving the car a once-over with their eyes.



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Police Power To Enter:

Criminal Code, Section 101(01)

No warrant, if not a dwelling house, where a police officer believes on reasonable grounds that an offense is being or has been committed with respect to firearms or ammunition AND that evidence is likely to be found on a person or in a vehicle or any place other than a dwelling house AND by reason of exigent circumstances it is not practical to obtain a warrant THEN the police officer may search without warrant that person, vehicle or place.

Note all of the pre-conditions:

1. reasonable grounds, not a hope or suspicion, not fishing;
2. not a dwelling house, ie house, apartment, tent, motorhome;
3. evidence is likely to be found;
4. exigent circumstances - hot pursuit;
5. not practical to get a warrant - there are now telewarrants.

Criminal Code, Section 103

A peace officer can apply to a justice for a warrant to seize all firearms, ammunition and explosives from a person where there are reasonable grounds to believe that "it is not desirable in the interests of safety of that person, or of any other person, that that person possess or have custody or control of firearms, ammunition or explosives".

Where these same conditions exist but it is impractical to obtain a warrant due to immediate danger, then the police can seize without a warrant.

This is used for suicide attempts, standoffs and Mental Health Act applications where the person is to be committed for 72 hours of mandatory psychiatric examination.

Again the police must immediately apply to the court after the warrant. Section 103(3.1) states that the POL/PAL, registration permit, carry permits are automatically revoked.

This section is also used to dispose of the firearms, ammunition or explosives. No court can order forfeiture or destruction without use of this section. The procedure for a disposition hearing is set out. The police must apply to the court within 30 days of the seizure. [Section 103(4)]

At the disposition hearing, the firearms/ammunition/explosive can be ordered sold or forfeit. Terms can be set by the judge. The judge can go so far as to make a prohibition order of up to 5 years [Section 103(6) b(i)] and revoke the PAL/POL and even prohibit a person from applying for a PAL.

If the police do not apply within the 30 days then the items seized must be returned [Section 103(7)]. A justice can by order restore the PAL/POL, registration and carry permits [Section 103(7.1)]. This is an order that must be made. The decision of a judge at this hearing is appealable.

This section is used a lot and is the most comprehensive section. This allows the police to obtain a warrant to enter, search and seize. The place, time and items should be specific.

Criminal Code, Section 102

a. A restricted firearms can be seized by a police officer if the person in possession cannot "then and there," meaning "immediately," produce a registration certificate or a permit that allows the person to have possession of that firearm.



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b. Any firearm possessed by a person under 16 can be seized by the police unless the person can produce the permit that allows him/her to possess. Except where that person under age 16 is under the immediate supervision of another person (another under 16 even) who may lawfully possess a firearm.

c. The police can seize any prohibited weapon, unless the person who has the correct permits and license to possess.

For a restricted firearm or a prohibited firearm the police must give it back if the registration and permits are produced within 14 days. The police must immediately apply to a court with notice to the owner for an order of what to do with the firearm or to allow the owner an opportunity to prove he may lawfully possess the firearm.

NOTE: This is a major use section the police can only inspect the papers; they cannot seize the papers of registration or your permits under this section.

Criminal Code, Section 491
(Weapon used in an offense)

This is used when a firearm, knife, other is used in an offense, such as threatening, assault, murder, robbery.

The court hearing or the trial can dispose of the firearm. The owner can get it back if he was not part of the offense and did not think the firearm was going to be used in the offense or if it is sold the money can go to the owner. The owner must apply to court to do this. Otherwise the gun will be destroyed or if sold the money will go to the Attorney General.

General Search Warrants

Criminal Code, Section 487

Section 487 of the Criminal Code provides for these warrants. The police must convince the court that there are reasonable grounds to believe that there is in a building, receptacle or place evidence that an offense occurred or something that will be used in the commission of an offense. The police must go to court on an affidavit. If they have to they can do this by a telewarrant. This warrant is specific as to time, place, what is to be searched for and seize. These are always challenged in court.

Bill C-68 Searches

Bill C-68 has expanded the rights of the police to search. Before C-68, the general reason any police could use to obtain a warrant for entry to your home was by making a sworn statement before a justice that an offense had been committed and that the search was necessary to find evidence. The police could then use this warrant of search and seizure to enter your house and take items that were evidence of an offense.

Bill C-68 changes this substantially. A firearms officer, who is a specially designated police officer, can obtain a warrant to search your home if there is the allegation that ten or more firearms are present. This does not require any allegation of wrong-doing or of a prior offense.

This is a very important distinction and is a tremendous leap in procedure. The mere allegation that you have 11 firearms allows a police officer to search your home with a warrant. The search can be exhaustive and the police may look anywhere a gun could reasonably be hidden. Past examples of warrants searches show that the police



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will use metal detectors and will open up walls to find out if the metal is a gun or a water pipe. The C-68 warrant is not a warrant of seizure, only of search. But when the police find the slightest items that offends the strict storage laws or the confusing prohibited weapon regulations or any other technical irregularity, they can use that evidence to obtain a warrant of search and seizure to gather the evidence of the offense.

The ability of the police to use this power for fishing expeditions is present and likely will be used. This may be challengeable with application of the Supreme Court decision of R v Feeney of 1997 but the cost and time to do so will be high and beyond the reach of most ordinary sports shooters. The Charter of Rights protects us from unreasonable search and seizure yet C-68 gives license to the police and then leaves it up to the person who has been searched to bring a court action to challenge the search as unreasonable.

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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.