

# Search and Seizure

## Summary

To prevent crime and to make sure that there is order in the community, police officers are given special powers to search, arrest, and detain any individual who is committing, has committed, or who is believed to have committed a criminal offence. However, these powers are limited by certain basic rights guaranteed to all Canadians in the *Canadian Charter of Rights and Freedoms*

According to the *Charter*, everyone has the right to be secure against unreasonable search and seizure. Many people are under the mistaken belief that the police do not have the right to carry out a search without a **warrant**. Subject to certain limitations, there are a number of situations where the police are entitled to conduct a search without first obtaining a **warrant**. For example, they may perform a “frisk” search on an individual that is incidental to a lawful arrest or detention, or where the police observe evidence of criminal activity or the product of a crime in “plain view” (or without entry or search), or where consent is given to search.

With some exceptions, the police cannot enter any residence or place of business against the occupant’s wishes unless they have a valid search **warrant**. A **warrant** is not necessary if the police are invited into the premises. You should check the **warrant** to make sure it is valid before you allow the police to enter. A **warrant** may be invalid if it is improperly filled out or does not refer to the residence that the police want to enter.

## *The Criminal Code of Canada*

**117.02 (1)** Where a peace officer believes on reasonable grounds  
(a) that a weapon, an imitation firearm, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance was used in the commission of an offence, or  
(b) that an offence is being committed, or has been committed, under any provision of this Act that involves, or the subject-matter of which is, a firearm, an imitation firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance,  
and evidence of the offence is likely to be found on a person, in a vehicle or in any place or premises other than a dwelling-house, the peace officer may, where the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practicable to obtain a warrant, search, without warrant, the person, vehicle, place or premises, and seize any thing by

## Lesson Plan Overview

Criminal law is an area of law that deals with criminal offences and consequences when someone is found guilty.

This lesson plan introduces students to the concepts of searches and seizures and basic rights under the *Charter*.

## Activities & Discussion Questions:

- 1) Do you think the police should have to get a warrant before any search?
- 2) What do you think an unreasonable search or seizure would be?
- 3) Read the *R. v. Cornell* case summary that deals with search and seizure in a private residence, and answer the discussion questions.
- 4) Read the *R. v. Fearon* case summary that deals with search and seizure of a cell phone, and answer the discussion questions.

## Glossary

**Warrant** – a court order that gives the police various powers, for example, to arrest someone, or search a home.

## Relevant Law:

*Criminal Code of Canada* – section [117.02](#)

*Charter of Rights and Freedoms* – section 8

means of or in relation to which that peace officer believes on reasonable grounds the offence is being committed or has been committed.

*The Canadian Charter of Rights and Freedoms*

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