

# legal rights

## 1 search and seizure

A lot of times we hear people complaining on TV or in the newspaper about how criminals get off on technicalities. When we hear this it often sounds like some criminal got a get out jail free card because of a silly rule. This seems unfair. After all, you might think, "I get punished every time I get caught doing anything, where's the justice in that?" Well, those silly rules are actually your legal rights. Sometimes they stop innocent people from going to jail, and they also stop the police and other government agents from abusing their powers.

There are any number of situations that could occur at school where your legal rights might apply. However, in this section we're going to focus on search and seizure because, in our experience, searches and seizures are more common in schools.

Why should we care about searches and seizures? After all, if you have nothing to hide why should you care, right? Wrong. There are at least two very good reasons why we need to care about limiting the ability of others to enter our private spaces or to take our property. First, most of us like to have some measure of freedom, and being free means having personal privacy. How free would you feel if you knew that anyone could, at any time, spy through your diary, search your jean pockets, or monitor your telephone calls or e-mail? Not very free at all.

The second reason is that we like our stuff. We don't want just anyone to come in to our homes and help themselves to our rap records or rock posters. These are our things, and if they're going to be taken away we expect it to be for a fairly good reason.

The *Charter* says:

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

In most cases, however, searches are conducted because someone in authority suspects that a law or rule has been broken. When the person doing the searching is a police officer, the search is legally permissible in one of three circumstances:

1. during a lawful arrest
2. if the police have a legally valid search warrant or
3. with the person's consent.

Surprisingly, searches involving consent are probably the most common. Why? Because people tend to get nervous around authorities and say "Sure, go ahead and look in my trunk/gym bag/socks". Generally, when someone in authority asks you if they can search you, you can say no.



**HOWEVER BE WARNED** while you have the right to refuse to be searched when asked by a police officer or other law enforcement official, consent is not required when the search is performed by a teacher or principal, Canada Customs, or your parents. Keep reading....

# person

Searches of your person include being patted down, being asked to remove the contents of your pocket, taking off your shoes and socks, or being strip-searched; a “search of the person” means being forced to show what you have in or on your body.

In schools, searches of your person can occur in a couple of different ways, and these differences are important to remember. For example, teachers, principals and other members of the school administration *can* search you. This is because while you are in school they are responsible for your safety and well-being (*in loco parentis* again), and therefore the Courts have consistently held that you should expect to have less of a right to privacy.

School officials who find drugs or other illegal things can also seize them and turn them over to the police. In fact, in an interesting Supreme Court of Canada decision [*R. v. M (R.M.)*] the Court had no problem with a principal not only searching a student, but conducting the search in front of a police officer. The principal found drugs on the student, handed them over to the police officer and the student was charged with narcotics possession.

However, anyone conducting a search must have reasonable grounds for doing so. Reasonable grounds might include something like a teacher saw someone passing you drugs, or that a couple of reliable students informed the principal that you were carrying a knife. Reasonable grounds would not include such things as the fact that teacher doesn't like you, or that you have pink hair and a nose ring. It has to be a reason based on some kind of reliable proof of *wrongdoing* [*R. v. M.(R.M.)*].

Again, the situation is a little bit different when the person who wants to search you is a police officer. According to the Supreme Court of Canada (*R. v. M.(R.M.)*), the police do not have the same authority and responsibility as a school official. **In other words, the officer can only conduct the search based on one of the three circumstances we mentioned before: arrest, warrant or consent.**

## possessions and lockers

When it comes to searching your stuff, for the most part the rules are pretty similar. The police can't search your gym bag because they feel like it and, while school staff can demand to see your things to ensure that you are not carrying weapons, drugs or contraband, they must have reasonable grounds for doing so.

This is also true of student lockers. Some schools rent lockers to students on an annual basis, other schools rent locks for the lockers only. Either way, the school owns the locker and this (in conjunction with the *in loco parentis* rule) means that they can search lockers. However, students do have *some* expectation of privacy in this area (in other words, you don't expect to see school staff pawing through your gym clothes every other day). So, again, there should be reasonable grounds for a search; searches should only be conducted for a serious reason (ie. to protect the safety and well-being of students); searches should never be random or arbitrary (ie. let's look in here for fun); and the rights of students to privacy should be respected as much as possible.



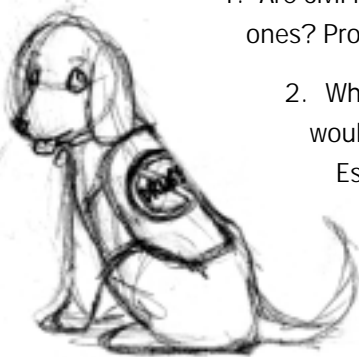
**SPECIAL CASE** You know when you go to a dance and sometimes the teachers, school staff or parents at the gym door search you or your stuff to make sure that you're not carrying weapons, drugs or alcohol? Well, those are consent searches (believe it or not). The idea is that if you want to go to a dance, after

# \* case study

## brutus, the drug-sniffing dog

**facts:** A local school board has just announced a plan to have a private company patrol schools daily with drug-sniffing dogs. The dogs will be sniffing lockers, gym bags, and people. All drugs will be turned over to the principal, and some criminal charges may be filed against students who get caught. You are a lawyer. Concerned students come to you for advice. Consider the following questions:

1. Are civil liberties being violated? If so, which ones? Provide some details.
2. What type of legal or other action would you advise your clients to take? Estimate their chances of success.



school hours, the school as the property owner can set conditions on your entering their building, and it is up to you to choose whether you will agree to those conditions or not. Unfortunately, what the Courts haven't looked at are those situations where a police officer is at a school dance conducting searches at the door for the school. Given the consequences of a police officer finding something bad on you, compared to say your mother, it may be that a Court would see the random police searches as an infringement of your rights. However, this issue has never gone to court. As far as it goes with your parents, you're on your own.