

SECTION 8 OF THE CHARTER

THE RIGHT TO BE SECURE AGAINST UNREASONABLE SEARCH OR SEIZURE

Learning Objectives

- To develop students' knowledge of section 8 of the *Charter*, including what privacy interests it protects and what constitutes a violation of s. 8.
- To enhance understanding of different types of searches, including those that are unconstitutional.
- To develop legal reasoning skills by having students apply legal concepts and tests to case studies.

Materials

- Copies of *Search and Seizure Role Plays* (three copies - one for each volunteer)
- Copies of the student handout, *Section 8 of the Charter* (one per person)
- Copies of case scenarios in *Is this a Search?* (one or more scenario per person)
- Copies of *Case Study: Warrantless Search* (one per person)
- Copies of *Case Study: Sniffer Dog Searches* (optional; one per person)
- Copies of the OJEN resource, *In Brief: Section 24(2) of the Charter – Exclusion of Evidence* (optional)

Teaching and Learning Strategies

1. Activate students' knowledge of the topic of search and seizure by asking three student volunteers to role play the dialogues outlined in *Search and Seizure Role Plays*. Pause after each scenario is presented to discuss the following questions with students:

- Was this a search?
- Were the police legally allowed to search the premises? (i.e. was the search reasonable?) Why or why not?

Optionally, have students work in groups of 3-4 to create a mind map around the question "what is a search?" Provide time for students to brainstorm and record as many answers as they can on chart paper. Review the ideas as a class and create a larger mind map on the board.

Teacher's Key - Search and Seizure Role Plays

Searches occurred in all three scenarios.

Scenario 1 - police were allowed to search because Scott consented.

Scenario 2 - police were allowed to search because they had a warrant.

Scenario 3 - police were not allowed to search Scott's home because he did not consent and they did not have a warrant.

2. Introduce the law on search and seizure using the handout, *Section 8 of the Charter*. After each section, clarify any points and check for understanding. Have students complete the discussion questions and take up the answers as a class.

Teacher's Key - Section 8 of the Charter – Discussion Questions

1. **When does police action constitute a search?**
Police action will constitute a search where they intrude on an individual's reasonable expectation of privacy.
2. **In what circumstance will a person receive the protection of s. 8 of the Charter?**
A person will receive the protection of s. 8 of the Charter where they have a reasonable expectation of privacy and the police breach that privacy interest.
3. **In determining whether a person has a reasonable expectation of privacy in a given situation, what considerations would a court take into account?**
The court will consider the "totality of the circumstances", including whether a person:
 - Was present at the time of the search;
 - Had possession or control of the property or place that was searched;
 - Owned the property or place searched;
 - Had historically used the property or item;
 - Had the ability to control or regulate access to that property or place, including the right to admit or exclude others from it;
 - Had a subjective expectation of privacy; and
 - Had an expectation of privacy that was objectively reasonable. (see *R v Edwards*)
4. **Give an example of a location where an individual would have a high expectation of privacy and one where they would have a low expectation of privacy.**
A person would have a high expectation of privacy in places such as their bedroom, home and jacket pocket, etc. while they would have a low expectation

of privacy in public places such as parks and public buildings.

5. **What is the basic requirement for a search to be reasonable?**
The basic requirement for a search to be reasonable is a warrant. The police must also conduct the search reasonably and within the scope of the warrant.
6. **In order to prove that a warrantless search was reasonable, what does the Crown need to show?**
The Crown must show either that there was consent or that police had legal authorization other than a warrant. The factors to prove legal authorization were set out in *R v Collins (1987)*, as follows : (1) the search is authorized by law; (2) the law that authorizes the search is itself reasonable; and (3) the search is carried out in a reasonable manner.
3. Have students review the concept of 'reasonable expectation of privacy' by asking them to revisit the role play scenarios and consider whether the result would be different if police tried to search somewhere other than Scott's home (for e.g. his car, his locker at school, his backpack at school, his backpack walking down the street). Distribute the expectation of privacy cards and have students rank the locations in order of 'reasonable expectation of privacy', where 1 is where you have the greatest expectation of privacy and 10 is where you have the least. Debrief as a class and ask students why they might expect to have more privacy in one place than in another.
4. Divide students into small groups and ask each group to read one or more of the case scenarios in the handouts, *Is this a Search?* Have students complete the chart(s) and take up the answers as a class.



Teacher's Key - Is this a Search?

| Responsibility | Scenario 1 - <i>R v Collins</i> , [1987] 1 S.C.R. 265 | Scenario 2 - <i>R v AM</i> , [2008] 1 S.C.R. 569, 2008 SCC 19 | Scenario 3 - <i>R v M (MR)</i> , [1998] 3 S.C.R. 393 |
|---|---|--|--|
| Was there a search by police? | Yes | Yes. A majority of the SCC decided that the dog sniff of A.M.'s backpack amounted to a search within the meaning of s. 8 of the <i>Charter</i> . | Yes |
| If yes, what type of search? | Bodily search. No consent given. | Territorial search. No consent, no warrant. | Bodily search. |
| Did the person have a reasonable expectation of privacy? | Yes. Individuals have a high expectation of privacy over their body. | Yes. The majority of the SCC held that although teenagers might have little expectation of privacy from searches performed by their parents, they would expect the contents of their backpacks to be free from random and speculative searches by the police. Students are entitled to privacy in a school environment. | |
| Was the search reasonable? | No. The SCC held that the search was not reasonable. The Crown was not able to prove the search reasonable because it did not establish under s. 10 of the Narcotic Control Act that the officer had reasonable and probable grounds to search the accused. There was no concrete evidence the accused possessed drugs. Furthermore, the police used unnecessary force to detain the accused in order to conduct the search. | No. The majority held that the search here was not reasonable. By using the sniffer dog, the police were able to "see" through the backpack to the concealed contents, for which A.M. had a continuing expectation of privacy. However, police could have conducted a sniffer dog search without a warrant if they had had a reasonable suspicion that drugs were present. | Yes. Teachers and school administrators should have the flexibility needed to deal with discipline problems in schools and to be able to act quickly and effectively, including conducting searches of students and seizing prohibited items. |
| Considering all of the above questions, were the s. 8 Charter rights of the accused violated? | Yes. The SCC held that the search amounted to a violation of the s. 8 of the <i>Charter</i> because the police had no reasonable and probable grounds to suspect that the woman had drugs. The majority held that the evidence should be excluded pursuant to s. 24(2) of the <i>Charter</i> because to admit it would bring the administration of justice into disrepute given the seriousness of the police conduct. A new trial was ordered. | Yes. The majority held that the search amounted to a violation of s. 8 of the <i>Charter</i> and the evidence (i.e. the drugs) should be excluded pursuant to s. 24(2) of the <i>Charter</i> . A.M. was acquitted. | No. The majority held that search did not amount to a violation of s. 8 of the <i>Charter</i> . A teacher or principal can search a student if they have reasonable grounds to believe that a school rule has been broken, and that evidence will be found in the search. In this case, that standard was met. |

4. Have students read the case summary of *R v Patrick* in the handout, *Case Study: Warrantless Search*. Once they are finished, have students either discuss the related questions or provide written responses to one or more of the questions. Debrief as a class.

Extension

1. Have students expand their knowledge of searches by reading the case summaries of *R v AM* and *R v Kang-Brown* in the handout, *Case Study: Sniffer Dog Searches*. Discuss the related questions and debrief the cases as a class, particularly with respect to the impact of searches in the school environment.
2. Have students complete the OJEN resource, *In Brief: Section 24(2) of the Charter – Exclusion of Evidence*.
3. Create a graffiti wall in the classroom to represent the various concepts and issues students learned about related to searches. Students can include definitions, pictures, reflections, comments, opinions, etc. to contribute their ideas about the key learnings from the lesson.