

The What If Scenario

This blog explores whether or not the police should be allowed to enter someone's property if they hear a disturbance inside without a warrant or consent? And how reasonable it would be to bestow this power upon police officers? For the purpose of this blog, disturbance will be defined as an interruption of a settled or peaceful condition. An example could be screaming, pleading or a loud noise.¹

Police have the right to protect the health and safety of Canadian citizens. They must comply to the procedures and guidelines when performing their duties, however, under exigent circumstances they may be able to bend some rules. This blog will deal with privacy matters, police powers, and public safety. The cases I reflect on will help show the extent of police power in Canada. In *R v. Le*, the most recent case in Canada on police duties, the courts find themselves restricting police powers when they are dealing with civilians and their private property. *R v. Feeney* explores what an emergency situation is and how far police duty extends when they feel there is one. *R v. Godoy* expands on the extent of police power when protecting the health and safety of the public. These are a few of the cases this blog examines. The blog interprets the *Charter*, judge's opinions and case law in order to answer the question posed above.

Charter of Human rights and Freedom

Understanding the *Charter of Human Rights and Freedom* will illustrate how far the rights of Canadian citizens extend. *S. 8* in the *charter* states that "everyone has the right to be secure against unreasonable search or seizure".² The key word to understand is 'unreasonable', unreasonable is defined by Oxford dictionary as "not guided by or based on good sense"³. The issue is how far does the word unreasonable extend? Would the question posed at the beginning be classified as reasonable or unreasonable?

In *Canada v. Southam Inc.* Mr. Justice Dickson states that s. 8 needs the presence of "reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search".⁴ *S. 8* of the *Charter* needs reasonable grounds to be either validate or invalidated. I will try to explain what reasonable grounds means and see if it relates to the main question of this blog by referring to recent case law in Canada.

Relevant Case Law: showing exigent circumstances and illustrating the extent of police duties to protect the public

An "exigent circumstance" is defined in *R. v. Paterson* as "not merely convenience but **urgency**, arising from circumstances calling for immediate police action to preserve evidence, officer

¹ Disturbance" in Bryan A Garner, ed *Black's Law Dictionary* 3rd ed (St Paul, MN: West Publishing , 1996)

² *Canadian Charter of Rights and Freedoms*, s 8, Part I of the *Constitution Act, 1982*.

³ "Unreasonable" in Bryan A Garner, ed *Black's Law Dictionary* 3rd ed (St. Paul, MN: West Publishing, 1996) 749.

⁴ *Canada v Southam Inc*, 1984 SCC 36 at para 43.

safety or public safety”.⁵ Exigent circumstances coincide with the three emergency situations which will be defined later in the blog by legalline Canada. Public safety is relevant to the question posed at the beginning of the paper, if police officers are inclined to suspect that someone is in danger, as a peace officer they have the right to act – given they take proper precaution and follow the laws in place.

In *R v. Dymont*, a man was found injured in a car, a doctor on the scene was helping the injured man. When the police officers came they took the man to the hospital, the doctor found traces of alcohol in his blood and the doctor passed this information to the officer, the officer ends up using the blood sample to charge the man.⁶ The Supreme Court of Canada (SCC) held that the evidence in question was obtained in violation of the *Charter*, La Forest states: “the spheres of privacy are spatial, personal and informational”.⁷ The doctor breached the man’s privacy and the police officer would not have known the man was under the influence without the breach of privacy. The officer went beyond his right to use the information. In doing so the officer breached the mans *charter* rights.

In *R v. Kokesch*, the police erred when searching a man’s house. They breached his privacy because they entered and search his place without any reasonable grounds; consequently, the evidence they collected was found to be inadmissible in court.⁸ The man was acquitted because the police violate his rights under s. 8 *charter*, Sopinka J. stated: “where the police have nothing but suspicion and no legal way to obtain other evidence, it follows they must leave the suspect alone, not charge ahead and obtain evidence illegally and unconstitutionally.”⁹ Meaning the police cannot search or seize unless they have proper evidence to make a charge. They cannot trespass someone’s property waiting for evidence, the law will favour the suspect when officers violate *Charter* rights without justification.

In *R v. Feeney*, the police deemed the situation to be an emergency to the community and entered the suspected man’s trailer without warrant. An emergency was defined as exigent circumstance which required immediate action. Police have a duty to protect the community, in case of emergencies the police are granted extra rights.¹⁰ There are three general circumstances that are considered emergencies defined by the legalline of Canada. First, the police can follow someone into a property if they have just committed an offence, or they believe the person will try to commit an offence. Second, the police can enter a property if they believe someone is about to harm someone else. Third, they can enter to give emergency aid to someone.¹¹

In *R v. Godoy*, the judges create a framework for police officers to follow. The police received a distress call, but the call was cut short. When they arrived at the location, they knocked on the

⁵ *R v Paterson*, 2017 SCC 15 at para 32-33.

⁶ *R v Dymont*, 1988 SCC 82.

⁷ *Ibid* at para 45.

⁸ *R v Kokesch*, 1990 SCC 177.

⁹ *Ibid* at para 49.

¹⁰ *R v Feeney*, 1997 SCC 49.

¹¹ Turnbull & Co, “Can the police enter and search your home?” online (website): *Legalline* <www.legalline.ca/legal-answers/can-the-police-enter-and-search-your-home> [perma.cc/FW74-LJ7V].

door and asked to look around. A man opened the door and gave an unsatisfactory answer, the police decided to enter the premise and look around they found a woman bruised and crying on the floor, the police arrested the man.¹² The police have a duty to engage when they believe the health and safety of someone is at stake. They are justified in using force, entering a private property to make sure nothing bad occurs, and if something happened to help those in need.¹³ Justifiability depends on the duty, extent of interference to perform the duty, importance to the public, and extent of the interference.¹⁴ Police officers must decide based on the facts they have accumulated, using their reasoning to comply with the rules. The common law duties of the police include the protection of life.¹⁵

R v. Cornell explains how the police can use their judgement and bend the law, if required, when dealing with exigent circumstances. If police officers feel public health and safety is at risk, they are allowed, and should under law, act accordingly. Justice Cromwell stated three things a police must do before forcing entry into a dwelling, called the “Knock and Announce Approach”: “1) notice of presence by knocking or ringing a door bell; 2) notice of authority, by identifying themselves as law enforcement officers; and 3) notice of purpose, by stating a lawful reason for entry”.¹⁶ If a police officer fails to comply to the rule they must provide evidence in court to prove why. In this case it was the destruction of materially relevant evidence, they feared the accused may destroy the narcotics hidden in his apartment. The courts gave favour to the police officers because they deemed that under exigent circumstances police officers are given discretionary powers to uphold public safety and health.¹⁷

R v. Macdonald the police are responding to a noise complaint. The person who opens the door fractionally opens it. The police see that the man has something shiny near his legs. They ask him if they can come in. the man refuses. The police enter anyways. The man was carrying a loaded gun without a permit and was sentenced. The court found that the police acted reasonably because duties of police officers are allowed to conduct warrantless searches, and the search constitutes a justifiable exercise of powers associated with the duty.¹⁸ The police had concern for the safety of the public, so their infringement on the mans right was not violating any duties. Binnie J.’s observation in *A.M.* in relation to sniffer-dog searches that “the police are generally required to take quick action guided by on-the-spot observations” (at para. 90) is equally applicable to safety searches,¹⁹ which can easily be applied to other exigent circumstances. However, the judge did state that “the power to carry one out is not unbridled”,²⁰ police officers do not have unlimited power.

¹² *R v Godoy*, 1999 SCR 311.

¹³ *Ibid* at para 22.

¹⁴ *Ibid*.

¹⁵ *Ibid* at para 15.

¹⁶ *R v Cornell*, 2010 SCC 31 at para 18.

¹⁷ *Ibid*.

¹⁸ *R v Macdonald*, 2014 SCC 3.

¹⁹ *Ibid* at para 32.

²⁰ *Ibid* at para 41.

R v. Le is the most recent case dealing with police powers that reached the SCC. Five young men were in a backyard, in a less affluent neighbourhood in Toronto. The Police officers were in the neighbourhood investigating a suspect; however, they did not get information on the suspect. The police officers decided to walk around and happened on a backyard where the five boys were hanging out, They jumped the fence and began interrogating the young men. One of the young men tried to flee and was discovered with drugs, cash and a gun. He was charged by the police.²¹ The SCC decided that the police erred in the way they conducted their duties. The police officers cannot trespass on someone's property without probable cause. The judge accepts that officers have a wide range of powers to help police communities and often do so by walking around, however it was found that the conduct of the police officers exceeded the norms of community policing.²² Regardless of the intentions of the officers when approaching the backyard or the legitimacy of their investigative purposes, a reasonable person would not perceive entry into their backyard as merely "assisting in meetings needs or maintaining basic order".²³

Yes, the police have a right to enter private property under certain circumstances

The police have a right, when emergency circumstances arise, to enter unannounced into someone's property. An emergency puts the public at risk, if the police have concern for public safety, they have the right to enter a premise and assist those in need. *R v. Godoy* illustrates that police have discretion, they can use their judgements to bend the law, if they deem public health and safety is at risk.²⁴ In *R v. Macdonald* the judge stated that for police to conduct properly they should use on-the-spot observation.²⁵ After reading various case law, in certain circumstances police officers are allowed bend the law in order to help out those in need. The circumstances are limited to exigent ones. Police officers must take care when they cross boundaries laid out by the Charter and other statutes.

No, the police do not have the right to enter private property without consent or a warrant

Police officers who enter a private property without justification, warrant or consent of the owner of the property, violate s. 8 of the *charter* and should not be granted the right to enter a premise without it. Violation of a basic right goes beyond the scope a police officer has. If courts allow them to enter without consent or warrant that would lead to an encroachment of Canadian citizens privacy and would call into question our democratic freedom. There is a thin line between trespassing property waiting for a disturbances and stumbling upon a mere coincidence that would lead to an actual emergency. In *R v. Le* we saw how police cannot enter a person's backyard and conduct an interrogation.²⁶ That went beyond the scope of police powers. In *R v.*

²¹ *R v Le*, 2019 SCC 34.

²² *Ibid* at para 34.

²³ *Ibid* at para 42.

²⁴ *R v Godoy*, *supra* note 12.

²⁵ *R v Macdonald*, *supra* note 18.

²⁶ *R v Le*, *supra* note 21.

Kokesch, Justice Sopinka stated that police cannot conduct a search under mere suspicion, doing so violates the rights of the person and is unconstitutional.²⁷

Conclusion

Police should be allowed in certain circumstances to enter a premise without consent or warrant. However, the decision to let police enter without consent or warrant should be held on a case-by-case basis. Police must use caution when they use this power. This will allow them to act in cases of emergency, without being hindered by the thought of being over thrown in court. The power bestowed upon the police is to protect the public's health and safety. That is their duty. Thus, giving police officers the power to act will strengthen the power they have because they will be able to act without worry. If they use their power in "exigent circumstances"²⁸ courts will be favourable when deciding an outcome.

²⁷ *R v Kokesch*, *supra* note 8.

²⁸ *Ibid.*