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Western Symposium on Search and Seizure Law in Canada

Join a faculty of leading experts for incisive analysis and lively discussion of current, critical issues, including:

- Understanding the fundamentals of Section 8 of the *Charter*
- How to analyze a search problem
- Latest developments in technology crime and searches
- Technical issues in warrant preparation
- Interception of private communications
- Grow-op searches: the latest challenges for law enforcement and the defence
- The scope of investigative powers for regulatory and professional bodies
- When is a detention actually a “detention” under the *Charter*?
- Garbage searches today
- Section 24 of the *Charter* after the Supreme Court of Canada’s decisions in *R. v. Grant, Harrison and Shepherd*

Keynote Luncheon Address

The Hon. Mr. Justice David Frankel, Court of Appeal for British Columbia

Conference Chairs

Scott C. Hutchison, Stockwoods LLP

Scott K. Fenton, Fenton, Smith Barristers

M. Joyce DeWitt-Van Oosten, Deputy Director of Prosecution Support
B.C.’s Prosecution Service



DATE & TIME

Friday, January 28, 2011
9:00 a.m. - 4:45 p.m.

LOCATION

Vancouver Marriott Pinnacle
1128 West Hastings Street
Vancouver, B.C.

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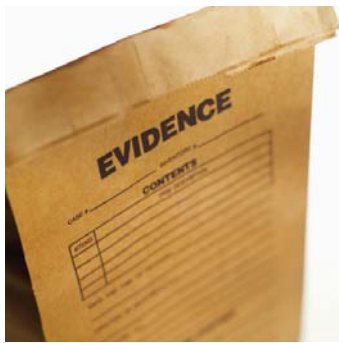
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Western Symposium on Search and Seizure Law in Canada

**“Excellent conference.
Thank you”**

**“Speakers were great,
knowledgeable and
forthright”**

**“Very knowledgeable
speakers. Great format”**

**“I really liked the
‘Lightning Round’”**

A clear understanding of the law of Search and Seizure is a cornerstone of criminal law investigation and litigation. Trial courts continue to grapple with many new and challenging issues including those most recently presented by the intersection between privacy, new technology and the *Charter*.

This *Osgoode Professional Development* one-day intensive program **Search and Seizure Law in Canada** will give you the latest and the most important developments. You'll get practical tactics and tips from prominent experts on key topics, including:

- The latest in wiretap law
- Grow-op searches and Section 8 of the *Charter*
- The practical impact of the Supreme Court of Canada's decisions in *Grant*, *Harrison* and *Shepherd*
- When is privacy illegally invaded? The proper scope of investigative powers for regulatory and professional bodies
- The fundamentals governing a Section 8 *Charter* analysis
- Current and emerging search issues involving technology crime
- Trash and privacy issues
- Law office searches

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Keynote Speaker

The Hon. Mr. Justice David Frankel
Court of Appeal for British Columbia

Conference Chairs

Scott C. Hutchison, Stockwoods LLP
Scott K. Fenton, Fenton, Smith Barristers

M. Joyce DeWitt-Van Oosten, Deputy Director of
Prosecution Support, B.C.'s Prosecution Service

Faculty

Mike J. Brundrett, Crown Counsel
B.C.'s Prosecution Service

Staff Sergeant Tom Caverly, RCMP
Legal Application Support Team

Gregory P. DelBigio, Gregory P. DelBigio Law
Corporation, Vancouver

Martha M. Devlin, Q.C., Associate Chief Federal
Prosecutor, Public Prosecution Service of Canada
B.C. Region

Jennifer Duncan, Crown Counsel
B.C.'s Prosecution Service

Peter Eccles, General Counsel, Public Prosecution
Service of Canada, B.C. Region

Eric Gottardi, Peck and Company
Barristers, Vancouver

The Hon. Judge James Jardine
Provincial Court of British Columbia

Fraser M. Kelly, General Counsel
Ministry of the Attorney General, Ontario

Mark K. Levitz, Q.C., Crown Counsel
B.C.'s Prosecution Service

Michael Lucas, Manager, Policy and Legal Services
Department, Law Society of B.C.

Brock Martland, Smart, Harris & Martland
Barristers and Solicitors, Vancouver

Lindsay MacDonald, Q.C., Barrister & Solicitor
Calgary and Vancouver

Andrea N. MacKay, Winteringham MacKay George
Law Corporation, Vancouver

Trevor Shaw, Crown Counsel
B.C.'s Prosecution Service

Janet Winteringham, Q.C., Winteringham MacKay
George Law Corporation, Vancouver

8:15 Registration and Continental Breakfast

9:00 Analyzing a Search Problem – An Introduction to Section 8 of the Charter

Scott C. Hutchison, Stockwoods LLP, Toronto

Scott K. Fenton, Fenton, Smith Barristers, Toronto

M. Joyce Dewitt-Van Oosten, Deputy Director of Prosecution Support B.C.'s Prosecution Service

A half-hour primer on the fundamentals that govern a s.8 Charter analysis, including: (1) standing to bring a claim; (2) the meaning of "reasonable expectation of privacy"; (3) what it takes to prove a breach; and (4) remedies for unreasonable search and seizure. This session will establish an overarching framework for discussion of the subsequent topic areas.

9:30 Garbage Searches – Is There a Privacy Interest in Trash?

Brock Martland, Smart, Harris & Martland, Barristers and Solicitors Vancouver

Jennifer Duncan, Crown Counsel, B.C.'s Prosecution Service

R. v. Patrick, [2009] 1 S.C.R. 579 seems to have resolved most of the legal issues surrounding garbage searches; however, the judgment raises issues that go to the core of our normative concepts of privacy.

10:00 Technology and Section 8 – Developments Post-Morelli, 2010 SCC 8

Scott C. Hutchison, Stockwoods LLP, Toronto

Trevor Shaw, Crown Counsel, B.C.'s Prosecution Service

A discussion of current and emerging search and seizure issues, as well as recent developments in the rapidly evolving area of technology crime:

- Cellular telephone searches
- Computer searches incident to arrest: *R. v. Giles*, [2007] B.C.J. No. 2918 (B.C.S.C.) vs. *R. v. Polius*, [2009] O.J. No. 3074 (O.N.S.C.)
- *R. v. Morelli*, 2010 SCC 8: reasonable expectation of privacy in personal computers
- Limits of the scope of computer searches
- Expectation of privacy in ISP and telephone subscriber records

10:45 Refreshment Break

11:00 When is a Detention Actually a "Detention" for Charter Purposes? *R. v. Suberu*, [2009] 2 S.C.R. 460

M. Joyce Dewitt-Van Oosten, Deputy Director of Prosecution Support B.C.'s Prosecution Service

The decision in *R. v. Suberu* seems to recast the balance on the "detention" issue under s.10 (b) of the Charter firmly in favour of the police. How do we distinguish stops from "detentions" and when a "detention" has been established within the meaning of the Charter, is there a related power to search?

11:30 Law Office Searches in 2011: How to Apply the Principles from *R. v. Lavallee*, *Rackel & Hentz v. Canada*, [2002] 3 S.C.R. 209 to Searches of Law Office Computers

Scott K. Fenton, Fenton, Smith Barristers, Toronto

Michael Lucas, Manager, Policy and Legal Services Department Law Society of B.C.

Lindsay MacDonald, Q.C., Barrister & Solicitor, Calgary and Vancouver

Law office searches in the computer age pose significant challenges for law enforcement and privilege-holders alike. The decision of the Supreme Court in *Lavallee* dealt with a "paper case". What are the implications when privileged and confidential client files are stored on computer hard drives and servers?

12:20 Luncheon – Keynote Address

The Hon. Mr. Justice David Frankel
Court of Appeal for British Columbia

1:30 Technical Issues in Warrant Preparation

Eric Gottardi, Peck and Company, Barristers, Vancouver

Staff Sergeant Tom Caverly, RCMP, Legal Application Support Team

Mark K. Levitz, Q.C., Crown Counsel, B.C.'s Prosecution Service

The hard work of constitutional compliance involves an understanding of the technical issues associated with the preparation and review of the documents required for proper judicial pre-authorization of investigative activities. This expert panel will identify problem areas and provide guidance on how to identify and avoid (or challenge) substantive and formal defects in warrant materials.

2:15 The Interception of Private Communications

Peter Eccles, General Counsel, Public Prosecution Service of Canada, B.C. Region

Fraser M. Kelly, General Counsel, Ministry of the Attorney General, Ontario

The decision in *R. v. Garofoli*, 2 [1990] S.C.R. 1421 is over twenty years old and it has been five years since the Supreme Court of Canada last addressed electronic surveillance in *R. v. Pires*; *R. v. Lising*, [2005] 3 S.C.R. 343. What are the latest developments in wiretap law?

- Leave to cross-examine
- Investigative necessity
- Criminal organizations

2:45 Refreshment Break

3:00 Grow-Op Searches: Challenges for Law Enforcement and the Defence

Gregory P. DelBigio, Gregory P. DelBigio Law Corporation, Vancouver

Martha M. Devlin, Q.C., Associate Chief Federal Prosecutor Public Prosecution Service of Canada, B.C. Region

Grow-op searches continue to come under s.8 Charter scrutiny. This panel will canvass common problems; new developments in the law; and discuss the practical challenges faced by both the Crown and the defence in responding to these searches.

3:30 Professional Regulation and Investigation Powers

Scott C. Hutchison, Stockwoods LLP, Toronto

Andrea N. MacKay, Winteringham MacKay George Law Corporation, Vancouver

Janet Winteringham, Q.C., Winteringham MacKay George Law Corporation, Vancouver

Invasions of privacy outside the four corners of criminal law are commonplace in regulatory, administrative and professional disciplinary contexts. The proper scope of investigative powers for regulatory and professional bodies remains a hot topic.

Agenda [Cont'd]

4:00 Section 24 (2) of the *Charter: The Law after Grant*, [2009] 2 S.C.R. 353; *Harrison*, [2009] 2 S.C.R. 494 and *Shepherd*, [2009] 2 S.C.R. 527

The Hon. Judge James Jardine
Provincial Court of British Columbia

Scott K. Fenton, Fenton, Smith Barristers, Toronto

Mike J. Brundret, Crown Counsel, B.C.'s Prosecution Service

It has been 18 months since the Supreme Court of Canada's landmark decisions in *Grant*, *Harrison* and *Shepherd* rewrote the test for the exclusion of evidence obtained as a result of a breach of the *Charter*. What has been the practical impact of these judgements and how have the lower courts been applying the new exclusionary rule?

4:30 Lightning Round

Various Speakers

This panel will identify, examine and explain the most recent developments in the law of search and seizure and how they will impact on the investigation, prosecution and defence of criminal cases.

4:45 Program Concludes

"The papers and speakers were clearly all very well informed in this area of law. Excellent presentations. Thank you for offering this course and specifically for bringing it to Vancouver"



Approved in accordance with the requirements of the **LSUC CPD program** for 6.5 hours, **LSUC EPPM** credits hours (pending); the **Barreau du Québec**, **BC CPD**, **Law Society of New Brunswick**, **Northwest Territories**, **Nunavut** and **Manitoba** for 6.5 credit hours for CPD requirements; the **New York CLE Board** for 7.5 credit hours in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

Registration

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\$465 plus 12% HST for a total of \$520.80.

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Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Date & Time

Friday, January 28, 2011
9:00 a.m. - 4:45 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

Vancouver Marriott Pinnacle
1128 West Hastings Street
Vancouver, B.C.

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