

Student  
Booklet



# School Searches and You



ēducaloi

INFORMATION EMPOWERS

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# Introduction

There are no right or wrong answers to the questions in the introduction task.

The purpose of this activity is to get you thinking about invasions of your privacy and the need to protect against them.

1. Would you like to live in a place where anyone can search through your things and take what they want? \_\_\_\_\_  
Why or why not? \_\_\_\_\_  
\_\_\_\_\_
  
2. What inconvenience would it cause you? \_\_\_\_\_  
\_\_\_\_\_
  
3. What benefit would it create? \_\_\_\_\_  
\_\_\_\_\_
  
4. According to you, what is the difference between something that is private and something that is not private? \_\_\_\_\_  
\_\_\_\_\_
  
5. In your opinion, what actions do you think are an invasion of your privacy? Why?
  - a) by your parents? \_\_\_\_\_  
\_\_\_\_\_
  - b) by the police? \_\_\_\_\_  
\_\_\_\_\_
  - c) by a teacher? \_\_\_\_\_  
\_\_\_\_\_
  - d) by a friend? \_\_\_\_\_  
\_\_\_\_\_
  - e) by the principal? \_\_\_\_\_  
\_\_\_\_\_

# The Canadian Charter of Rights and Freedoms

## Task 1

Read the text and then answer the questions that follow.

The Canadian Charter of Rights and Freedoms is part of Canada's constitution. It sets out the rights and freedoms that Canadians believe are necessary in a free and democratic society.

Section 8 of the Canadian Charter of Rights and Freedoms is the section that protects you from being searched or having items seized (taken away by authorities) without good reason. It is only one small sentence, but it is a powerful one.

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

#### **Explanation:**

*The Supreme Court of Canada has said that the purpose of Section 8 of the Charter is to protect citizens against unjustified State (government) intrusions into their private lives. This means that people in positions of authority (e.g., police officers), must do their work in a fair and reasonable way. They can't enter private property or take things from people unless they can prove they have a good reason. In most cases, they can only enter private property to look for evidence or seize things if they got a search warrant from a judge.<sup>1</sup>*

#### **Questions:**

1. Section 8 of the Canadian Charter of Rights and Freedoms protects Canadians from \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Section 8 prevents authorities from \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Explain in your own words how this section of the Charter protects you. Give a concrete example. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> Guide to the Canadian Charter of Rights and Freedoms, Government of Canada website: [www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html#a2e2](http://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html#a2e2), 2018-11-22

# Search and Seizure

## Task 2

Before we examine the issue in greater depth, it is important to understand some **legal** concepts. Here are a few that will help you discuss and understand the texts and propose solutions.

Read the following texts and answer the questions below each text.

### What is a search?

A **search** is an inspection of a person or a place (for example, a house, car or backpack) to look for evidence that a crime was committed. The person carrying out the search must have authorization from a court, called a “**warrant**,” or another kind of legal authorization to search. A warrant isn't necessary if the person being searched consents to the search.

#### Questions:

- The purpose of a search is to
  - find evidence that a crime was committed
  - get legal authorization
  - have enough information to ask for a warrant
- Who can give permission to conduct a search?
  - the person being searched
  - a judge
  - no permission is required

### What is a search warrant?

A **search warrant** is authorization from a judge for the police to conduct a search. Police officers who ask for a warrant must convince a judge that they have “reasonable and probable” reasons to believe that they will find evidence of a crime in the place they want to search.

#### Questions:

- A search warrant allows police to
  - take away anything they find in your backpack
  - search for specific clues that a crime was committed
  - publish pictures of you that they find

4. Who can give a search warrant? \_\_\_\_\_  
\_\_\_\_\_
5. What is needed to get a search warrant? \_\_\_\_\_  
\_\_\_\_\_

### What kinds of searches are allowed?

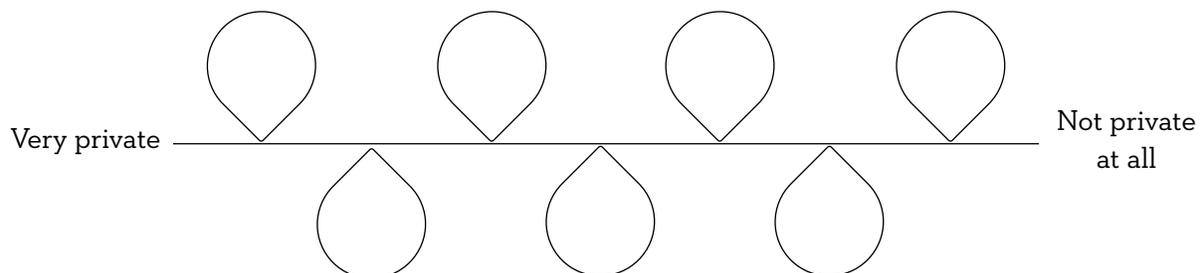
Section 8 of the Canadian Charter of Rights and Freedoms protects every Canadian against “unreasonable” searches and seizures. This protection applies to searches by police officers or other people working on behalf of the State (government) in places where a person has a **reasonable expectation of privacy**: your home, car, hotel room, backpack, clothes, etc. What is a reasonable expectation of privacy depends on all the circumstances and varies from case to case.

#### Questions:

6. **According to you**, how private are the items below? Using the scale below, put them order according to what you think is *very private*, *not so private* and *not private at all*.
- a) a baby picture of you that is in your bedroom drawer
  - b) conversation at home with your mom
  - c) your geography homework on the Canadian provinces
  - d) your test results from the doctor
  - e) your opinion on the hockey victory that you published on Twitter
  - f) a picture of you at a party that you published on Instagram
  - g) a picture of you at a party that you sent to one person on Snapchat

**Answers will vary.**

*There are no right or wrong answers. As students volunteer answers, ask them to justify. They should come to the conclusion (with your help) that privacy depends on many things. This is why courts make their decisions after looking at all the circumstances of each particular case.*



## When is a search reasonable?

For a search to be “reasonable” and therefore **legal**, it must meet these tests:

- It must be authorized by law.

A search is authorized by law when the person searching has permission under a court order called a **warrant** or another kind of legal authorization.

The police can search without a warrant when they think that **evidence could be lost** if they wait to get a warrant.

The police don't need a warrant to do frisk searches for security reasons of people they arrest and their belongings (backpack, car). They can only do frisk searches after they have put **someone under arrest**.

- The people searching must have “reasonable and probable grounds” for thinking the law has been broken or is about to be broken **and** that evidence of this will be found in the place searched.

- The search must be carried out in a reasonable way.

For example, a search done with too much force is not reasonable.

### Question:

7. Fill in the blanks using this word bank: **arrested, evidence, reasonable, warrant**.

For a search to be legal, it must be \_\_\_\_\_.

A \_\_\_\_\_ is a legal authorization (permission) from a judge to search a place or person.

Police can search a person or place without a warrant when the person is \_\_\_\_\_ or if waiting for a warrant can result in the loss or destruction of \_\_\_\_\_.

## What happens when a search is found to be unreasonable?

If a person accused of a crime can show that a search was unreasonable, the person can ask the judge to throw out any evidence found during the search. Judges can prevent evidence obtained illegally from being used in court.

### Question:

8. Using words from the text above, please fill in the blanks of the paragraph below.

If the search was \_\_\_\_\_ the judge may throw out the \_\_\_\_\_ found during the search. The \_\_\_\_\_ can't be used in court and can't affect whether the person is found guilty or not guilty.

# Decisions of the Supreme Court of Canada can directly impact your life.



Read the following texts and answer the questions below each text.

Then your teacher will give you a summary of a court decision to see how it can impact your life at school.

## How Supreme Court Judges Make Decisions

The two cases included in this guide took place before the Supreme Court of Canada, the highest court in the country. The Supreme Court reviews decisions made by some other courts across Canada, usually in cases involving legal issues of national importance. **Decisions of the Supreme Court are final**, which means that no other court can change them.

The Supreme Court is an appeal court. This means that Supreme Court judges can either approve or change decisions of lower courts, but they don't hear witnesses or examine new evidence. The judges examine the evidence that was presented in the lower court, and the applicable law, and then decide whether the original decision was correct.

There are nine judges on the Supreme Court. Not all the judges hear every case, but there must always be an odd<sup>2</sup> number of judges to ensure that a majority is always possible. Unlike a jury, which must make a unanimous decision, Supreme Court decisions are made by majority vote. All Supreme Court judges who hear a case have a chance to explain their own reasoning, even when they don't agree with the majority. This reasoning appears in the written version of the court's decision.

The decisions of the Supreme Court influence how courts across Canada will decide similar issues. They can also influence decisions made by police officers and even school authorities. When the Supreme Court makes a decision about searches in schools, it directly affects whether and how school authorities can search you at school, and this directly impacts your life.

### Questions:

1. What tools, evidence and references do Supreme Court judges use to make their decisions?
  - a) evidence presented during the trial
  - b) the law
  - c) new evidence

2. Explain in your own words how you think a Supreme Court decision can impact your life.

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<sup>2</sup> Odd: French = impair

## Searches in Schools: Are They Allowed?

S. 8 protects people from searches and seizures in places that they can reasonably expect to be private, like their homes, cars, backpacks, etc. Is it reasonable for students to also expect privacy at school? The Supreme Court of Canada has said that students can expect a certain level of privacy at school. But there are limits.

School authorities must maintain order and discipline on school grounds. They must also supervise and educate students under their care. Parents expect schools to take action if the safety and well-being of students are at risk. This means that schools can, under some conditions, search a student to ensure respect for school rules. In public schools, these rules are made by the school and approved by a committee known as the governing board (*Conseil d'établissement*). This committee includes parents, teachers and the principal. School rules usually prohibit, among other things, drugs and weapons at school.

To be legal, searches by school authorities must respect these rules:

- School authorities must have reasonable grounds to believe that a school rule has been broken.
- The search itself must be carried out respectfully and in the least intrusive way possible in the circumstances.

School authorities have more latitude than the police when it comes to searches, much like parents have at home. This latitude cannot be transferred to the police. For example, if school authorities find drugs on a student, the police still need a search warrant to include the drugs in a police investigation. Also, the police can't ask the school principal to search a student or backpack to avoid getting a warrant.

### Questions:

#### 3. True or False

- a) Your level of privacy is the same at school and at home. \_\_\_\_\_
- b) School authorities can search students in some situations. \_\_\_\_\_
- c) The principal can search your pockets, without a warrant, if the principal has good reasons to believe you have illegal drugs. \_\_\_\_\_
- d) Police can search a locker without a warrant if they think a school rule has been broken. \_\_\_\_\_
- e) The principal can search your locker if you left your friend's school book in it and your friend needs it. \_\_\_\_\_
- f) The police can search your backpack without a warrant if they think there is a gun in it. \_\_\_\_\_

# Supreme Court of Canada Decision Analysis

## Task 4

Individually, summarize the important information in the decision you read.

1. In the case of a search by a vice-principal (R. v. M. (M.R.), 1998), the Supreme Court of Canada said the search was \_\_\_\_\_  
because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. In the case of the police search using sniffer dogs (R. v. A.M., 2008), the Supreme Court of Canada said the search was \_\_\_\_\_  
because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. The decision presents different points of view: the majority opinion and the opinion(s) of other judge(s). Which opinion(s) do you agree and disagree with and why?

a) I **agree** with the opinion that \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) I **disagree** with the opinion that \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Agent**

a person who acts on behalf of someone else

**Authorization**

permission

**Crime investigation**

official study to see if a crime was committed and to find out the facts

**Evidence**

proof

**Frisk search**

a pat down where a person runs their hands along the clothes someone is wearing to look for something, such as a weapon or drugs

**Intrusion**

unwanted invasion

**Jury**

a group of people given the responsibility to decide if someone accused of a crime is guilty

**Legal authorization**

permission according to law

**National importance**

important to everyone in the country

**Plain clothes**

e.g., a police officer dressed in plain clothes is not wearing a uniform or anything to identify them as a police officer

**Private property**

something that belongs to someone and is not freely available to anyone else

**Reasonable and probable grounds**

reasons that are fair and likely to be true

**Reasonable expectation of privacy**

the standard in a free and democratic society that a person's privacy will be respected

**Search**

an inspection of a person or place to look for something, for example, proof that something was done

**Search warrant**

permission given by a judge to the police to do a search of a person's property

**Seizure**

taking something from someone

**Sniffer dog**

a dog trained to find something (e.g., drugs) by following its smell

**State**

the government

**Trafficking**

selling or trading something, such as drugs

**Unjustified**

not right or reasonable

**Zero-tolerance**

refusal to accept any amount of a specific behaviour or act