

BREAKING CASE LAW

Law Society of
Alberta v. Sidhu,
2017 ABCA 224



This Issue

In search and seizure,
statutory context matters

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Section 8 of the Charter of Rights and Freedoms provides a legal right for everyone to be secure against unreasonable search and seizure. In *Hunter v Southam*, [1984] 2 SCR 145 the Supreme Court of Canada established requirements to protect section 8 Charter rights during searches and seizures conducted in the criminal context. Following *Hunter*, authorization of search and seizure has required, at minimum, “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”.

In *Law Society of Alberta v Sidhu*, 2017 ABCA 224, the question before the Court of Appeal was whether professional or regulatory bodies must conform to these principles when conducting intrusive searches or seizures during the course of an investigation into the conduct of a regulated member. In short, they do not. Statutory context matters.

In *Law Society of Alberta v Sidhu*, the Appellant’s professional regulatory body, the Law Society of Alberta, commenced an investigation into his conduct following media reports of a criminal matter against him. The Appellant was convicted of trafficking in a controlled substance contrary to s 5(1) of the federal Controlled Drugs and Substances Act.

During the course of the Law Society’s investigation the Appellant agreed that an investigator could copy the contents of his office cell phone for the purpose of reviewing text messages sent between himself and the individual he claimed duped him into “unwittingly delivering drugs”. The investigator later made a request under section 55(2)(b) of the Legal Profession Act for the Appellant to produce any records or property that may be relevant, in any way, to the investigation. The Appellant refused, claiming the section infringed his section 8 Charter rights because it was overly broad. It allowed investigation into his personal life, and it did not require the investigator to state on reasonable and probable grounds, or on some other standard, that search and seizure of his records or property would uncover material evidence.

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Considering whether the statute is criminal or regulatory is the first step in the court's assessment process. The former invokes a matter between citizen and state and the latter, a promotion of some other public interest objective. The Court contended that regulatory matters will require a more flexible approach to the application of the standard of reasonableness in a review of an authorization for search or seizure in the course of an investigation. In this case a standard of relevance was reasonable.

The Court of Appeal went on to uphold a previous ruling that the power of investigation in matters of professional misconduct may rightfully extend to a professional's personal life when the alleged conduct speaks to their integrity. Regulators may need broad surveillance powers to fulfill their integral objective to act in protection of the public. Where the integrity of a profession is at stake and the statutory context presents a broad definition of sanctionable conduct, a regulated individual should be aware of the investigatory power they may be subject to. An attenuated sense of privacy is a trade-off accompanying the privilege of practicing a profession.

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