

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

**B E T W E E N:**

**JASON MICHAEL CORNELL**

Appellant

- and -

**HER MAJESTY THE QUEEN**

Respondent

- and -

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**FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION**

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**FACTUM OF THE INTERVENER  
CANADIAN CIVIL LIBERTIES ASSOCIATION**

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## **PART I – OVERVIEW AND FACTS**

### ***Overview***

1. This case presents a civil liberties paradox. On the one hand, police should not conduct a “hard entry” unless doing so is both reasonable and necessary. On the other, to determine whether resorting to this extreme tactic is reasonable and necessary, police may have to intrude on personal privacy by conducting more extensive surveillance of the home and of its occupants. This dilemma seemingly puts two important values in conflict: the right not to be subject to unreasonable search and seizure and the right to privacy.

2. However, the CCLA submits that, assuming that the police conduct surveillance in a lawful manner, society has a right to expect that police will properly investigate the particular circumstances of each case, including trying to obtain reasonable information about the home and its occupants, before deciding that exigent circumstances exist justifying a “hard entry”.

3. The alternative would be to accept that police are entitled to conduct a hard entry in every case involving illicit drugs. The Crown, in essence, argues in favour of such a blanket exception to the “knock and announce” rule. The United States Supreme Court has referred to this approach as the “criminal category exception”. That Court rejected this approach and, it is submitted, this Court should too. Such an exception is unwarranted and would be inappropriate from a civil liberties point of view.

4. One should not assume, simply because a case involves drugs, that it therefore also likely involves “guns and gangs”, or that evidence will likely be destroyed, or that harm will likely come to officers or other persons. There may be justifiable reasons for a hard entry; but in drug cases, as in all cases, police should have the onus of justifying this tactic.

5. Also at issue is the requirement that police must present the search warrant while conducting a search and seizure. This requirement is mandated by statute. It is not a technicality. It is especially important in hard entry cases, where it will be difficult or impossible for the occupants to ask to see the warrant. The CCLA respectfully submits that any situation where the police deliberately omit to bring the warrant to the premises should, absent extenuating circumstances, be considered a serious breach of s. 8.

### ***The Facts***

6. The CCLA accepts the detailed facts set out in the Appellant’s Factum. However, in

adopting this statement of facts, the CCLA emphasizes the almost complete dearth of evidence that a “hard entry” was required *in the particular circumstances of this case*.

7. Before conducting the hard entry, the police had observed the target of a drug investigation, Henry Nguyen, visit the home four times, observed him in the “vicinity” of the home once, and once found him in possession of the appellant’s cell phone.<sup>1</sup> This was the sum of the police’s suspicion that the home was, in the Crown’s words, “used as a stash location.” Police knew that Nguyen did not live in the home. In fact, Nguyen was in custody at the time.<sup>2</sup> The appellant had no criminal record and no history of violence.<sup>3</sup> There was no other indication that he was involved with Nguyen’s “violent” drug gang. Therefore, if a “hard entry” is to be justified in this case, it can only be on the basis of the “criminal category” exception considered, and rejected (it is submitted rightly so), in the United States.

## **PART II – QUESTIONS IN ISSUE**

8. The CCLA submits that two issues arise:
- (a) Did the search violate s. 8 of the *Charter*? and
  - (b) If so, should the evidence be excluded pursuant to s. 24(2)?

## **PART III – ARGUMENT**

### **ISSUE #1: THE SEARCH CONTRAVENED S. 8 OF THE CHARTER**

#### **A. The “Hard Entry” was not Necessary or Reasonable**

9. The knock and announce rule is grounded in centuries of jurisprudence and reflects the right to privacy in the home.<sup>4</sup> The CCLA submits that it should not to be derogated from lightly.

10. There is good reason for this ancient rule. As Justice Dickson explained in *Eccles v. Bourque*, “An unexpected intrusion of a man’s property can give rise to violent incidents. It is in

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<sup>1</sup> Testimony of Det. T.A. Barrow, Appellant’s Record [“AR”] vol. 2, Tab 2A, pp. 70/15-20, 71/20-27; Trial Judge’s Oral Reasons on the *Voir Dire*, AR, vol. 1, Tab 2A.

<sup>2</sup> Testimony of Det. T.A. Barrow, AR, vol. 2, Tab 2D, p. 281/25-28; Testimony of Sgt. D.R. Coleman, AR, vol. 2, Tab 2H, p. 355/1-4.

<sup>3</sup> Testimony of Det. T.A. Barrow, AR, vol. 2, Tab 2D, p. 284/23-34.

<sup>4</sup> Oft-cited as the origin of the knock and announce rule is *Semayne’s Case* (1604), 77 All E.R. Rep. 62 at p. 63, CCLA’s Brief of Authorities, Tab 15 [“CCLA’s BOA”], on which Sir Edward Coke reported, “[T]he house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose.” Coke later reported, “[I]n all cases when the King is party, the Sheriff may break the party’s house, either to arrest him, or to do other execution of the K[ing]’s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors...” [emphasis added].

the interests of the personal safety of the householder and the police as well as respect for the privacy of the individual that the law requires, prior to the entrance for search or arrest, that a police officer identify himself and request admittance.”<sup>5</sup>

11. Justice Dickson also emphasized that the knock and announce rule may only be derogated from in “exigent circumstances”. Exigent circumstances may include the need to save someone within the premises from death or injury, “hot pursuit”, police protection, and prevention of the destruction of evidence.<sup>6</sup>

12. Although this Court has not before had occasion to consider the “knock and announce” rule in a constitutional case, appellate and other courts have consistently emphasized that the knock and announce rule finds constitutional expression in s. 8 of the *Charter*.<sup>7</sup>

13. In every case, the police must justify a hard entry:<sup>8</sup> they must be reasonably satisfied that exigent circumstances exist *before* a hard entry is conducted.<sup>9</sup> The onus should not be on the appellant to show that the hard entry was unreasonable. In *Genest*, Chief Justice Dickson made it clear that this onus rests with the Crown:

I would not wish to be taken to say that the Crown must prove a tendency to violence beyond a reasonable doubt, nor that the Crown cannot refer to past conduct as influencing their decision as to the amount of force thought necessary to carry out a search. The assessment of the amount of force, like the motives for the search in the first place, need not be proven on the same standard of guilt as when proving the elements of an offence. The Crown must, however, lay the evidentiary framework to support the conclusion that there were grounds to be concerned about the possibility of violence.<sup>10</sup>

14. This Court should resist the suggestion, made by the Crown, that the police may assume that all drug cases involve “guns and gangs” and therefore determine that there are exigent

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<sup>5</sup> *Eccles v. Bourque*, [1975] 2 S.C.R. 739 at pp. 743-47, Appellant’s Brief of Authorities [“Appellant’s BOA”], Tab 3.

<sup>6</sup> *Eccles*, *id.* at pp. 746-47; *R. v. Genest*, [1989] 1 S.C.R. 59 at pp. 85-86, Appellant’s BOA, Tab 3.

<sup>7</sup> *R. v. Schedel*, [2003] B.C.J. No. 1430 (B.C.C.A.), CCLA’s BOA, Tab 11; *R. v. Lau*, [2003] B.C.J. No. 1307 (B.C.C.A.), CCLA’s BOA, Tab 4; *R. v. K.C.F.*, [2004] N.S.J. No. 527 (Prov. Ct. (Youth Div.)), CCLA’s BOA, Tab 3; *R. v. O’Neill*, [1994] O.J. No. 2080 (Prov. Ct.), CCLA’s BOA, Tab 9.

<sup>8</sup> *K.C.F.*, *id.* at para. 12.

<sup>9</sup> *Genest*, *supra* note 6 at p. 89.

<sup>10</sup> *Genest*, *id.* at p. 90 [emphasis added]. It should be noted that Chief Justice Dickson’s comments are *obiter*, since *Genest* was decided on the basis of a defect in a warrant. See also *R. v. Golden*, [2001] 3 S.C.R. 679 at para. 98, Appellant’s BOA, Tab 16.

circumstances. Some drug investigations may involve the risk of harm to officers,<sup>11</sup> and the risk of destruction of evidence. But, the mere fact that an investigation is targeting drugs should not, without more, justify a hard entry.

15. Section 12(b) of the *Controlled Drugs and Substances Act* provides that, in exercising the search and seizure powers under s. 11 of the *Act*, the police may “use as much force as is necessary in the circumstances”. This section requires an assessment of the particular circumstances and does not eliminate the knock and announce rule in drug cases. On the contrary, as the British Columbia Court of Appeal noted in *R. v. Lau*, this section codifies the requirement that the police must inquire as to whether a hard entry is necessary in the particular circumstances of each case.<sup>12</sup>

16. Chief Justice Dickson’s decision in *Genest* is directly on point. The police had conducted a hard entry on a private home on a tip that the resident was trafficking drugs and on evidence that motorcycles had gathered at the home.<sup>13</sup> Dickson C.J.C. held that:

In the passage from *Therens* quoted earlier, Le Dain J. made the point that the assessment of the seriousness of a constitutional violation must take into account the reasons for the conduct. He gave the example of a situation of urgency, where rapid action is necessary to prevent the loss or destruction of evidence. To this I would add another factor that can be considered, whether the circumstances of the case show a real threat of violent behaviour, whether directed at the police or third parties. Obviously, the police will use a different approach when the suspect is known to be armed and dangerous than they will in arresting someone for outstanding traffic tickets. The consideration of the possibility of violence must, however, be carefully limited. It should not amount to a *carte blanche* for the police to ignore completely all restrictions on police behaviour. The greater the departure from the standards of behaviour required by the common law and the *Charter*, the heavier the onus on the police to show why they thought it necessary to use force in the process of an arrest or a search. The evidence to justify such behaviour must be apparent in the record, and must have been available to the police at the time they chose their course of conduct. The Crown cannot rely on *ex post facto* justifications.<sup>14</sup>

17. The lower courts have also held that a hard entry is not *prima facie* reasonable in all cases

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<sup>11</sup> Officer safety is a valid concern where there is specific reason to believe that the occupants of a private residence may pose a threat to police if the police announce their presence. However, as is pointed out in a number of cases, conducting a hard entry may also *compromise* officer safety. When the police do not announce their presence, they run the risk of being mistaken for trespassers and attacked: *Eccles*, *supra* note 5 at p. 746; *R. v. Mak*, [2005] B.C.J. No. 2346 at paras. 47-50 (Prov. Ct.), CCLA’s BOA, Tab 7.

<sup>12</sup> *Lau*, *supra* note 7 at paras. 17-18.

<sup>13</sup> *Genest*, *supra* note 6 at pp. 70-71.

<sup>14</sup> *Id.* at p. 89 [emphasis added].

which involve drugs. For example, in *R. v. Mai*,<sup>15</sup> there was no evidence that would give rise to real safety concerns, since there was no information that the residents had weapons.<sup>16</sup> The Court held that it is not “sufficient for the police merely to chant the mantra ‘officer safety’ without some basis being shown to support it”.<sup>17</sup> In *R. v. K.C.F.*,<sup>18</sup> which involved a young offender charged with possession of marihuana for the purpose of trafficking, the Court addressed the police policy of conducting hard entries in nearly all drug investigations:

...[I]n my opinion, the police should not fetter their assessment or discretion as to what force is necessary to be exercised in any given situation. In other words, the police should individually assess the situation, especially where the use of force is statutorily restricted and the common law requires restraint, in this case in the form of the “knock and announce” rule. This is not to say that well-established police practices which are solidly grounded and consistent with public policy should not be respected. However, in my opinion, the practice which effectively dictates a forced entry in all situations should not necessarily be regarded as reasonable...<sup>19</sup>

18. The cases reveal a number of non-exhaustive factors that can be considered by police when deciding whether to conduct a hard entry. It is not enough for the police to rely on their “general experience”.<sup>20</sup> Factors for consideration include the prior criminal records and associations, if any, of the suspect; the nature and physical layout of the premises to be entered; the nature of the suspected criminal activity occurring there; the presence or absence of gang activity; the presence or absence of weapons, barricades, dogs or other factors that may deter the police; the number of people likely to be inside the premises; the presence of children or the elderly; and the ease with which the suspected evidence might be destroyed.<sup>21</sup>

19. The CCLA submits that, only where the police have diligently investigated these factors and found specific concerns of safety, evidence destruction, or other exigent circumstances should a hard entry be permissible. It should not be enough for police to state that the risks are unknown without having diligently satisfied themselves of this fact. The last listed factor, the

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<sup>15</sup> [2005] B.C.J. No. 319 (S.C.), CCLA’s BOA, Tab 6.

<sup>16</sup> *Id.* at para. 39.

<sup>17</sup> *Id.* at para. 57.

<sup>18</sup> *K.C.F.*, *supra* note 7 [emphasis added].

<sup>19</sup> *Id.* at paras 14 -15. See also *Mai*, *supra* note 15; *R. v. Mac*, [2005] O.J. No. 858 (S.C.J.), CCLA’s BOA, Tab 5.

<sup>20</sup> *Lau*, *supra* note 7 at para. 34.

<sup>21</sup> *R. v. DeWolfe*, [2007] N.S.J. No. 285 at paras. 28-31 (C.A.), Respondent’s BOA, Tab 18; *Genest*, *supra* note 6 at p. 89; *Schedel*, *supra* note 7 at para. 17; *K.C.F.*, *supra* note 7 at para. 14.

prospect of destruction of evidence, should factor in favour of a hard entry in some drug cases, but should not be determinative.<sup>22</sup>

20. The American law on this issue is similar: police are *prima facie* required to knock and announce prior to entering a private residence, but this obligation will give way when the police “have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or ... would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence”.<sup>23</sup> The knock and announce rule is mandated by the Fourth Amendment.<sup>24</sup>

21. In *Richards v. Wisconsin*, the United States Supreme Court made it clear that the police do not have the right to conduct hard entries in all felony drug investigations. The majority acknowledged that felony drug investigations may involve both a risk to officer safety and of evidence destruction. Yet the Court refused to dispense with the police’s obligation to evaluate the appropriateness of a hard entry in every case. In arriving at this conclusion, the Court identified two very serious concerns about an exception for drug cases:

First, the exception contains considerable overgeneralization. For example, while drug investigation frequently does pose special risks to officer safety and the preservation of evidence, not every drug investigation will pose these risks to a substantial degree. For example, a search could be conducted at a time when the only individuals present in a residence have no connection with the drug activity and thus will be unlikely to threaten officers or destroy evidence. Or the police could know that the drugs being searched for were of a type or in a location that made them impossible to destroy quickly. In those circumstances, the asserted governmental interests in preserving evidence and maintaining safety may not outweigh the individual privacy interests intruded upon by a no-knock entry...

A second difficulty with permitting a criminal category exception to the knock and announce requirement is that the reasons for creating an exception in one category can, relatively easily, be applied to others. Armed bank robbers, for example, are, by definition, likely to have weapons, and the fruits of their crime may be destroyed without too much difficulty. If a *per se* exception were allowed for each category of criminal

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<sup>22</sup> *R. v. Newell*, [2007] O.J. No. 2348 at paras. 51-53 (S.C.J.), CCLA’s BOA, Tab 8. In the Court below, Slatter J.A. relied on *Newell* for the proposition that “the fact that the warrant was being executed for drugs and the corresponding risk of the destruction of evidence is itself sufficient justification for the ‘hard’ entry”. However, even in *Newell*, the Court at para. 51 emphasized that the police need not knock and announce “as long as a reasoned decision has been made concerning the likely risks” [emphasis added].

<sup>23</sup> *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) [emphasis added], CCLA’s BOA, Tab 14. See also *Hudson v. Michigan*, 547 U.S. 586, 589-590 (2006), Respondent’s BOA, Tab 31.

<sup>24</sup> *Wilson v. Arkansas*, 514 U.S. 927 (1995), CCLA’s BOA, Tab 16.

investigation that included a considerable – albeit hypothetical – risk of danger to officers or destruction of evidence, the knock and announce element of the Fourth Amendment’s reasonableness requirement would be meaningless.<sup>25</sup>

22. The CCLA submits that this analysis is exactly right. A hard entry can be justified only where, looking at the totality of the circumstances of a given case, exigent circumstances exist.

23. However, the CCLA respectfully submits that it would be appropriate for this Court to take the analysis one step further. It may well be that, after properly investigating the particular circumstances, the police reasonably conclude that a hard entry is necessary, in the sense that exigent circumstances exist such that a hard entry is the only safe or effective way for the home to be searched. However, the CCLA submits that this fact should not end the analysis.

24. The CCLA submits that, in such circumstances, the police should go on to consider whether the potential benefits of searching the home outweigh the risks. It may be that the police can adequately pursue their investigation without searching the home at all.

25. As an example, the CCLA respectfully asks the Court to consider the following hypothetical situation. There is evidence that: (1) there are almost always young toddlers in the home, which is a small one room apartment; (2) there are several adult suspects in the home, all of whom have serious criminal records for violent offences, violently resisting police; and destroying evidence during the conduct of searches. A warrant is obtained. In such circumstances, a hard entry may be necessary if the search is to be conducted; a tactic that would no doubt be very traumatic for the children, not to mention potentially dangerous. However, the evidence also shows, reliably, that the drugs were brought into the home only to be stored overnight and that they will be transported the next day by one or more of the suspects.

26. The CCLA submits that, in such circumstances, it should not be a given that the police can use a hard entry and search. The police should consider whether the investigation may be pursued without searching the home at all; for instance by searching the suspects the next day when they attempt to transport the drugs. Or, it could be that the amount or form of the drugs suspected to be in the home would make quick destruction unlikely. In other words, the risks of conducting a hard entry may outweigh the benefits. In circumstances where a hard entry is the only effective way to search the home, the CCLA submits that the police should at the very least

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<sup>25</sup> *Richards, supra* note 23 at pp. 393-94.

have to show that they considered, and rejected on reasonable grounds, alternatives to searching the home at all.

27. In any event, in the present case, the sum total of the evidence was that Nguyen had visited the home four times, had been in the vicinity once, and that he once had the appellant's cell phone. Neither he nor his mother had criminal records or any history of violence or of obstruction of justice. The police made no effort to find out who else lived in the home or when the appellant was likely to be present, and had no evidence he was in possession of drugs apart from assumptions they made regarding his interactions with Nguyen.

28. In short, the police did not engage in an analysis of the specific circumstances of this case.<sup>26</sup> Instead, they relied on general assumptions about "guns and gangs" and on what they knew or suspected about Nguyen. The CCLA submits that this kind of evidence should not be enough to warrant derogation from the knock and announce rule.

29. The use of balaclavas during the hard entry rendered the search all the more unreasonable. The police testified that they wore balaclavas just in case they needed to use an incendiary device, to conceal their identities, and to create an "overwhelming sensory uniformed appearance"<sup>27</sup> – in other words, to intimidate. It is submitted that this tactic should be justified only where there is specific evidence that it was necessary. No such evidence exists in this case.

**B. Section 8 was Further Violated by the Decision not to Bring the Warrant**

30. Section 29(1) of the *Criminal Code*, and the common law,<sup>28</sup> requires that every one who executes a warrant must "have it with him" where feasible and must produce it upon requested.

31. The requirement is not a mere technicality. In *Search and Seizure Law in Canada*, Hutchison, Morton and Bury explain the rationale for this important duty as follows:

The reason for the requirement that an officer executing the warrant have it available for production is to allow the occupant of the searched premises to know (1) why the search is being carried out, so as to enable the occupant to properly assess his or her legal

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<sup>26</sup> By contrast, in *DeWolfe*, *supra* note 21 at paras. 3-4, on which the Crown relies, before conducting a hard entry, the police had obtained evidence that, *inter alia*, the residence was being used as a "crack shop", the target of the investigation had crack-cocaine at any time and had a history of weapons offences, and the residence was guarded by a pit bull.

<sup>27</sup> Testimony of Sgt. T.R. Marston, AR, vol. 2, Tab 2E, p. 309/35-44.

<sup>28</sup> *Codd v. Cabe* (1876), 1 Ex. D. 352 (Ch.D.), CCLA's BOA, Tab 1.

position; and (2) that there is, at least, a colour of authority for the search and that forcible resistance is improper. This last rationale also plays a role in the second procedural requirement for a valid search, that the peace officers announce themselves before entering the premises to be searched.<sup>29</sup>

32. Where police conduct a hard entry, the failure to carry the warrant is all the more serious. In such circumstances, it is completely natural and expected that the occupants of the home, some or all of whom may not have engaged in any criminal activity whatsoever, may be extremely frightened by the hard entry and may even have reason to doubt whether the intruders are police officers as opposed to persons with other, more sinister, intent. In such circumstances, the police should carry the warrant on entry and produce the warrant as soon as reasonably practicable after the premises have been secured so as to at least make clear to all concerned who they are and why they are there.

**ISSUE #2: THE EVIDENCE SHOULD BE EXCLUDED PURSUANT TO S. 24(2)**

33. Whether the administration of justice is brought into disrepute, such that the evidence obtained should be excluded under s. 24(2) depends on the seriousness of the state conduct which infringed the *Charter*, the impact of the breach of the *Charter*-protected interests of the accused, and society's interest in the adjudication of the case on its merits.<sup>30</sup>

34. The CCLA submits that, where the police conduct a thorough investigation of the facts of a specific case, and make a good faith and reasonable judgment call that a hard entry is necessary, the seriousness of the *Charter* breach may be attenuated should it later appear that the wrong call was made.

35. However, where, as here, the police relied on general assumptions about drug cases, and did not fully investigate the relevant factors, the breach will be less easy to excuse. Moreover, the seriousness of the breach was exacerbated by the unfortunate fact that the police chose to wear balaclavas and were unable to provide any reasonable explanation for this decision.<sup>31</sup> The seriousness of the breach was exacerbated further still by the decision not to bring the warrant.

36. The impact on the appellant's *Charter* rights is significant. An accused has a reasonable

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<sup>29</sup> Scott C. Hutchison, James C. Morton & Michael P. Bury, *Search and Seizure Law in Canada*, Vol. 1, looseleaf ed. (Toronto: Thomson Reuters, 2005) at p. 17-5, CCLA's BOA, Tab 2.

<sup>30</sup> *R. v. Grant*, [2009] S.C.J. No. 32 at para. 71, Appellant's BOA, Tab 17.

<sup>31</sup> *Mai*, *supra* note 15 at para. 60.

expectation of privacy in the home, regardless of whether he actually owns the home or simply lives there.<sup>32</sup> Any unlawful search of the home violates this reasonable expectation of privacy.<sup>33</sup> If Coke's words still resonate in 2009, and the home is still to be considered to each as a "castle and fortress",<sup>34</sup> any unlawful search of the home, where the expectation of privacy is at its highest,<sup>35</sup> is *prima facie* serious.

37. Notwithstanding the foregoing, the Crown suggests that the appellant has no standing to assert s. 8 rights since he was not physically present at the time of search. The Crown cites no case directly on point. Indeed, contrary to the assertion at paragraph 44 of the Crown's factum, there is precedent for the exclusion of evidence following a hard entry at which the accused was not present.<sup>36</sup> It is submitted that police should not, in essence, be given a *carte blanche* to conduct a hard entry simply because they know that the accused will not be present.

**PARTS IV & V – ORDER REQUESTED AND COSTS SUBMISSIONS**

38. The CCLA respectfully requests permission to make oral argument at the hearing of this appeal, of such length as this Court may consider helpful and appropriate, and respectfully requests that the appeal be allowed, without costs against the CCLA.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 26<sup>th</sup> day of October 2009,**

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Christopher A. Wayland

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Sarah R. Shody

Counsel to the CCLA

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<sup>32</sup> *R. v. Sandhu*, [2005] O.J. No. 5914 at para. 81 (S.C.J.), CCLA's BOA, Tab 10; *R. v. Vasic*, [2009] O.J. No. 685 (S.C.J.) at para. 47, CCLA's BOA, Tab 12. See also *R. v. Wong*, [1990] 3 S.C.R. 36, CCLA's BOA, Tab 13 in which the accused was held to have a reasonable expectation of privacy in a hotel room.

<sup>33</sup> The Crown relies on this Court's decision in *R. v. Edwards*, [1996] 1 S.C.R. 128, Respondent's BOA, Tab 20 in which the accused, an occasional visitor to his girlfriend's apartment, did not have standing to challenge the police's actions in entering and searching the apartment. This case is distinguishable. In *Edwards*, the apartment was not the accused's home. He did not live there. He had no reasonable expectation of privacy.

<sup>34</sup> *Semayne's Case*, *supra* note 4.

<sup>35</sup> *R. v. Silveira*, [1995] 2 S.C.R. 197 at para. 141, Appellant's BOA, Tab 23.

<sup>36</sup> *K.C.F.*, *supra* note 7 at para. 4.

**PART VI – TABLE OF AUTHORITIES**

<b>No.</b>	<b>Authority</b>	<b>Para.</b>
1	<i>Codd v. Cabe</i> (1867), 1 Ex. D. 352 (Ch.D.)	30
2	<i>Eccles v. Bourque</i> , [1975] 2 S.C.R. 739	10, 11, 14
3	<i>Hudson v. Michigan</i> , 547 U.S. 586 (2006)	20
4	Scott C. Hutchison, James C. Morton & Michael P. Bury, <i>Search and Seizure Law in Canada</i> , Vol. 1, looseleaf ed. (Toronto: Thomson Reuters, 2005)	31
5	<i>R. v. DeWolfe</i> , [2007] N.S.J. No. 285 (C.A.)	18, 28
6	<i>R. v. Edwards</i> , [1996] 1 S.C.R. 129	36
7	<i>R. v. Genest</i> , [1989] 1 S.C.R. 59	11, 13, 16, 18
8	<i>R. v. Golden</i> , [2001] 3 S.C.R. 679	13
9	<i>R. v. Grant</i> , [2009] S.C.J. No. 34	33
10	<i>R. v. K.C.F.</i> , [2004] N.S.J. No. 527 (Prov. Ct. (Youth Div.))	12, 13, 17, 18, 37
11	<i>R. v. Lau</i> , [2003] B.C.J. No. 1307 (B.C.C.A.)	12, 15, 18
12	<i>R. v. Mac</i> , [2005] O.J. No. 858 (S.C.J.)	17
13	<i>R. v. Mai</i> , [2005] B.C.J. No. 319 (S.C.)	17, 35
14	<i>R. v. Mak</i> , [2005] B.C.J. No. 2346 (Prov. Ct.)	14
15	<i>R. v. Newell</i> , [2007] O.J. No. 2348 (S.C.J.)	19
16	<i>R. v. O'Neill</i> , [1994] O.J. No. 2080 (Prov. Ct.)	12
17	<i>R. v. Sandhu</i> , [2005] O.J. No. 5914 (S.C.J.)	36
18	<i>R. v. Schedel</i> , [2003] B.C.J. No. 1430 (B.C.C.A.)	12, 18
19	<i>R. v. Silveira</i> , [1995] 2 S.C.R. 197	36

20	<i>R. v. Vasic</i> , [2009] O.J. No. 685 (S.C.J.)	36
21	<i>R. v. Wong</i> , [1990] 3 S.C.R. 36	36
22	<i>Richards v. Wisconsin</i> , 520 U.S. 385 (1997)	20, 21
23	<i>Semayne's Case</i> (1604), 77 All E.R. Rep. 62	9, 36
24	<i>Wilson v. Arkansas</i> , 514 U.S. 927 (1995)	20

**PARTS VII – LIST OF STATUTES**

No.	Authority	
1	<p><i>Canadian Charter of Rights and Freedoms</i>, Part I of the <i>Constitution Act</i>, 1982, being Schedule B to the Canada Act 1982 (U.K.) 1982, c.11</p>	<p><i>Charte Canadienne des droits et libertés</i>, partie I de la <i>Loi constitutionnelle de 1982</i>, constituant l'annexe B de la Loi de 1982 de la <i>Loi de 1982 sur le Canada</i> (R.-U.), 1982, c. 11.</p>
	<p><b>Search or seizure</b></p> <p>8. Everyone has the right to be secure against unreasonable search or seizure.</p> <p><b>Enforcement of guaranteed rights and freedoms</b></p> <p>24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.</p> <p><b>Exclusion of evidence bringing administration of justice into disrepute</b></p> <p>(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.</p>	<p><b>Fouilles, perquisitions ou saisies</b></p> <p>8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.</p> <p><b>Recours en cas d'atteinte aux droits et libertés</b></p> <p>24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.</p> <p><b>Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice</b></p> <p>(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.</p>

2	<i>Controlled Drugs and Substances Act, R.S.C. 1996, c. 19</i>	<i>Loi réglementant certaines drogues et autres substances, L.R.C. 1996, c. 19.</i>
	<b>Assistance and Use of Force</b> 12. For the purpose of exercising any of the powers described in section 11, a peace officer may (a) enlist such assistance as the officer deems necessary; and (b) use as much force as is necessary in the circumstances.	<b>Assistance et usage de la force</b> 12. Dans l'exercice des pouvoirs que lui confère l'article 11, l'agent de la paix peut recourir à l'assistance qu'il estime nécessaire et à la force justifiée par les circonstances.
3	<i>Criminal Code of Canada, R.S.C. 1985, c. C-46.</i>	<i>Code criminel, L.R.C. 1985, c. C-46</i>
	<b>Duty of Person Arresting</b> 29. (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.	<b>Obligation de la personne qui opère une arrestation</b> 29. (1) Quiconque exécute un acte judiciaire ou un mandat est tenu de l'avoir sur soi, si la chose est possible, et de le produire lorsque demande lui en est faite.

**B E T W E E N :**

JASON MICHAEL CORNELL  
Appellant

and

HER MAJESTY THE  
QUEEN  
Respondent

and

CANADIAN CIVIL LIBERTIES  
ASSOCIATION et al.  
Interveners

Court File No: 33186

***IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL  
OF ALBERTA)***

**FACTUM OF THE INTERVENER, CANADIAN  
CIVIL LIBERTIES ASSOCIATION**

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