



**Arkinstall v. City of Surrey 2010 BCCA 250:  
Warrantless Searches Ruled Unconstitutional**

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The BC Court of Appeal yesterday released its decision in **Arkinstall v. City of Surrey 2010 BCCA 250**. In the decision, a five member panel unanimously ruled that the use of warrantless searches under the *Safety Standards Act* (SSA) to inspect electrical systems for safety risks that may be related to marijuana grow operations is unconstitutional. Local government inspectors must now obtain an administrative warrant before conducting a search.

The SSA permits local government access to BC Hydro records for homes where electrical consumption is within standards prescribed by regulation. The SSA also authorizes local governments to conduct warrantless searches of such homes if there are reasonable grounds to do so; the purpose is to inspect electrical systems for safety risks related to marijuana grow operations.

Safety inspectors from the City of Surrey, accompanied by the RCMP, attempted a search at a home owned by the appellants. Each time, Mr. Arkinstall refused entry to the RCMP officers because they did not have a warrant. In May 2007, following one such refusal, BC Hydro disconnected the appellants' electrical service at the request of the City. The appellants commenced litigation. They argued, in particular, that a warrantless search contravened section 8 of the *Charter of Rights and Freedoms*, which protects individuals against unreasonable search and seizure.

The Court of Appeal agreed. In a narrowly-focussed decision, it held that to the extent that SSA provisions authorize the warrantless entry and inspection of residential premises for the regulatory purpose of inspecting electrical systems for safety risks that may be related to marijuana grow operations, such provisions infringe an individual's rights under section 8. In particular, the entry and inspections constitute a considerable intrusion into an individual's reasonable expectation of privacy.

The Court found that the requirement in the SSA that there be reasonable grounds for the search was insufficient protection. Inspectors should obtain an administrative warrant before conducting a search. Obtaining a warrant would protect the individual's expectation of privacy without undermining the public interest in public safety; and would require the local government to show that "reasonable grounds" exist to believe that permit conditions, or codes or standards established by regulation, are being contravened.

The Court of Appeal emphasized that the decision concerns only inspections under the SSA of private residences for the purpose of inspecting electrical systems for safety risks that may be associated with grow operations. The decision does not mean that inspectors must obtain administrative warrants for *all* regulatory inspections of private residences, or even for SSA inspections of homes for purposes other than inspecting electrical systems for safety risks that may be associated with grow-operations.

The ruling is significant for local governments, and will likely set the practice for many years. The Court sat as a five member panel, which is rare, and made a unanimous decision. The decision cannot be overturned other than by another five member panel or by the Supreme Court of Canada. The City of Surrey has already announced that it will change its practice to obtain warrants.