YOUNG, ANDERSON

BULLETIN

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Court of Appeal Clarifies Entry Warrant Requirement

A recent decision of the British Columbia Court of Appeal has significantly narrowed the circumstances under which local governments can search residential property without an entry warrant. While the decision in *Arkinstall v. Surrey (City)* focused on electrical safety inspections conducted by the City of Surrey pursuant to the provincial *Safety Standards Act*, the Court's reasoning indicates the entry warrants may also be required for certain searches under section 16 of the *Community Charter* and section 268 of the *Local Government Act*. The Court of Appeal's decision in *Arkinstall* suggests that local governments will not be able to demand entry to a residence that has been chosen for inspection because of an alleged bylaw contravention, unless the local government first obtains an entry warrant.

The Court of Appeal's decision clarifies the scope of a 1986 decision, *R. v. Bichel*, in which the Court found that administrative inspections for matters such as zoning did not require a search warrant. The decision in *Bichel* was made prior to the adoption s. 275 of the *Community Charter*, which provides for entry warrants. In clarifying the role of warrants in local government inspections, the Court of Appeal has now said in *Arkinstall* that its decision in *Bichel* "stands for the narrow proposition that in the regulatory context of a minimally intrusive spot-check search in which a warrant would serve no function, a warrant is not required".

Local governments should therefore be cautious in demanding to inspect residences for the purpose of investigating compliance with bylaws. This is especially so for local governments that investigate for bylaw compliance only in response to complaints, such a policy being much more likely to attract the entry warrant requirement described in *Arkinstall*.

The factors that the Court of Appeal assessed in determining whether an entry warrant is required are the level of privacy expected, the intrusiveness of the search, the stigma associated with the search, and the feasibility and practicality of obtaining an entry warrant. All of these factors can apply to local government inspections and given the Court of Appeal's analysis, likely apply more often and have a greater relevance than inspectors may currently expect.

The *Arkinstall* decision does not change the fact that entry with the occupier's consent is the preferred method of inspection for local governments. Asking the occupier for permission to enter should be the first step taken by an inspector. However, where consent is not granted freely, local governments must be mindful that they may not otherwise be entitled to search a property without an entry warrant. Practically speaking, obtaining an entry warrant may require greater involvement of the complainant, including a loss of anonymity, and will require the inspectors to present an information to be sworn before a Justice stating the reasons why non-consensual entry under a warrant is justified. All these steps must be taken before the inspector has had an opportunity to enter the property and to visually assess the validity of the complaint. The potential impact of the *Arkinstall* decision on bylaw enforcement inspections is therefore significant.

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