

## Brown v The Queen, 2013 FCA 111

### Can the Crown introduce in Evidence Documents Seized by Police Under Warrant Executed as Part of a Criminal Investigation?

*Brown v The Queen*, [2013 FCA 111](#)

The FCA held that it is not in breach of a taxpayer's section 8 rights for crown to introduce into evidence, as part of a TCC proceedings, documents seized by police during a criminal investigation. The FCA stated that a taxpayer has very little privacy interest in documents that the taxpayer is expected to keep and produce that are relevant to a tax audit. The Court stated:

[18] Section 8 of the Charter guarantees everyone “the right to be secure against unreasonable search or seizure”. The Supreme Court of Canada has defined this right as one which protects a reasonable expectation of privacy (*R. v. Cole*, 2012 SCC 53, [2012] S.C.J. No. 53).

[19] The search and seizure conducted by the London Police Service was authorized by warrant. At no time has the appellant challenged the validity of the search warrant. It follows that the search and the seizure were lawful. The question then becomes whether the appellant had a reasonable expectation that the London Police Service would maintain the confidentiality of the documents it seized. The existence of any such expectation depends upon “the totality of the circumstances” (*Cole* at paragraph 39).

[20] The appellant did not point to any evidence or judicial authority which supports the conclusion that he had a reasonable expectation of privacy over the documents lawfully seized by the London Police Service.

[21] As to the evidence, the appellant’s evidence before the Tax Court was inconsistent with any subjective expectation of privacy. In direct examination he stated that the documents seized by the police should have been returned to him, so that the Canada Revenue Agency could then ask him to deliver the documents to it (transcript of evidence given on February 28, 2012, at page 173).

[22] As to judicial authority, the jurisprudence does not support on an objective basis any significant expectation of privacy. As the Judge noted, in *Jarvis* (at paragraph 95) the Supreme Court observed that “taxpayers have very little privacy interest in the materials and records that they are obliged to keep under the [Act], and that they are obliged to produce during an audit.”

[23] Because the appellant failed to demonstrate that he had a reasonable expectation of privacy over the seized documents, it follows that the appellant’s right to be free of any unreasonable search or seizure was not violated. It further follows that the Judge was correct to receive the documents into evidence.

