

# A Reasonable Expectation of Privacy? You Be the Judge!

CFP 2007  
Montreal, Canada

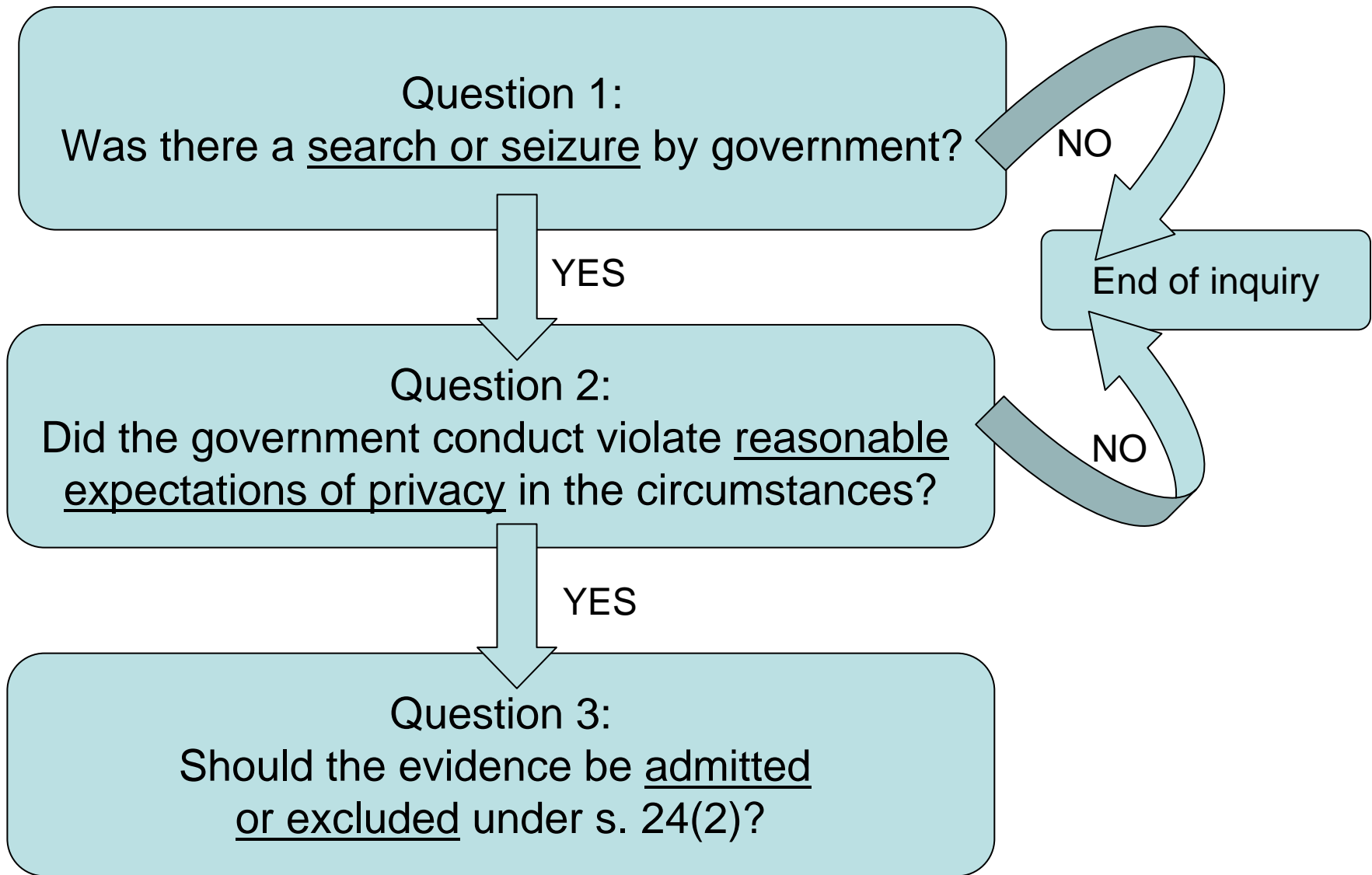


[idtrail.org](http://idtrail.org)

ON THE IDENTITY  
TRAIL 

# Section 8

“Everyone has the right to be secure against unreasonable search and seizure.”



# Question 1

## Was there a search or seizure?

“Totality of the circumstances” test:

- Did the accused have a subjective expectation of privacy?
- Was that subjective expectation objectively reasonable?

# Objectively reasonable?

- place/subject matter
- public view
- abandonment
- third party access/control
- reasonableness of technology
- nature of information revealed by technology

## Question 2

# reasonable expectation of privacy violated?

- (a) Prior authorization of search or seizure?
- (b) If prior authorization, presumed reasonable, unless accused can establish otherwise.
- (c) If no prior authorization, presumed unreasonable unless government can show:  
(Collins)
  - (i) authorized by law;
  - (ii) the law is reasonable; and
  - (iii) search carried out in a reasonable manner.

# Question 3

## exclude or admit evidence?

- Would admission of the evidence bring the administration of justice into disrepute, having regard for:
  - trial fairness
  - seriousness of Charter violation
  - effect of excluding evidence

*Collins*