

# LEAVE YOUR LAPTOP BEHIND



BY JASON FILEK

*civil litigation, insurance litigation,  
property disputes and estate litigation*

ORIGINALLY PUBLISHED IN THE SPRING 2008 EDITION OF THE BAILIWICK NEWSLETTER

If you are planning on travelling to the United States of America, you may want to consider leaving your laptop, and even your Blackberry, at home or at the office. This is because recent court rulings in the United States allow border guards to search the contents of laptops without a warrant.

The Fourth Amendment of the United States Constitution, similar to Section 8 of the Canadian Charter of Rights and Freedoms, protects the right of a person to be secure against unreasonable search and seizure. Generally speaking, in most circumstances a search without a warrant would be unreasonable, and would be a violation of that right. However, a warrant will not necessarily be required if a search is conducted at or near a border.

If you have travelled to the United States you have most likely witnessed someone's luggage being searched at the border. Recent court rulings in the United States have held that a laptop is no different than luggage. As a result, your laptop, and likely your Blackberry or other electronic devices, are potentially subject to search at or near a border. While that search may consist merely of asking you to turn on your laptop, it could potentially be more intrusive, such as examining any files contained on your hard drive or other diskettes. If your laptop or Blackberry is used for your business or employment, then they will more than likely contain information of a sensitive, private, confidential, or privileged nature. The border guards would be able to view this information and potentially make a copy of it.

The Supreme Court of the United States has not yet given a judgment on this issue, but as mentioned above, there are lower court decisions in the United States which give the United States border guards the power to search your laptop, and presumably any other electronic devices.

Therefore, if your laptop contains sensitive, private, confidential or privileged information, then your safest bet is to leave your laptop behind.

*To learn more about Jason Filek, his areas of practice and view other articles written by lawyers at our firm, visit us online at [www.bakernewby.com](http://www.bakernewby.com)*