

R. v. Feeney, [1997] 2 S.C.R. 13

### Key Terms

Warrantless arrest- Police or armed forces enter a home unwarranted (without legal permission) and arrest subjects with objective reason given conditions must be present for an arrest to occur. This can be found in section 8 of the charter which regards search and seizure rights.<sup>1</sup>

Right to Counsel- The rights which are to be read during an arrest were failed to be performed. These include informing the accused of their right to legal council and a toll-free call to said council. This is found under section 10 of the charter which depicts that a person's rights are to be read when said person is being arrested.<sup>2</sup>

Admissibility of evidence- Evidence must be collected in a legal manner which includes the consultation of the legal council and collection of data in a justful manner.<sup>3</sup>

### Case Summary

During a murder investigation in 1991 police arrived at the Feeney residence and after the door knock had gone unanswered they decided to enter the home without a warrant or consent. After entering the home, police woke up Feeney by touching his leg and forcing him outside his home for better lighting; they discovered blood on his shirt and arrested him. The police followed by asking the accused questions and gathering his fingerprints. Despite doing all these

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<sup>1</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney - SCC cases*. Decisions and Resources - SCC Cases. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1508/index.do>

<sup>2</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"

<sup>3</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"

legal proceedings they failed to inform the accused of his right to legal counsel, something they were supposed to do immediately upon arrest. The police later took cash found under the mattress, cigarettes, and shoes from the residence under a warranted search.<sup>4</sup>

Feeney was accused of second degree murder and his appeal was dismissed despite Feeney's concerns regarding how police had violated his section 8 charter rights of reasonable search and seizure. He also mentioned the infringement of his section 10 (b) rights in which one is given the opportunity to be informed of their rights. Lastly, section 24 (2) which depicts the type of evidence which is to be brought forth (regarding the validity of such evidence) in court.<sup>5</sup>

Feeney was still accused as guilty given the court claimed a warrantless search was permitted under the following clauses found regarding law enforcement procedure:

- a) Officers are able to enter the premises if they have reasonable belief that the accused is on the premises.
- b) A proper announcement regarding their entrance and intent is done.
- c) The officers believe that there are reasonable grounds to conduct an arrest.
- d) There are reasonable and probable grounds regarding said arrest to occur.

Despite these clauses, the manner in which the police entered the home remains unlawful. This is then proven given the fact that the arresting officer did not have reasonable grounds to arrest the accused until after he entered the home and saw the bloody shirt which he then took as

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<sup>4</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"

<sup>5</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney..."*

evidence and enough to proceed with the arrest. Therefore the arrest was considered to be unconstitutional.<sup>6</sup>

In conclusion the police could not have entered the Feeney home unless they had exceptional circumstances, which they of course did not. They had no solid evidence that the accused was guilty until after they had entered and taken him out of his home. This is a direct violation of section 8 of the charter regarding search and seizure rights. Further the police violated Feeney by kicking his leg and instructing him to leave his home. telling him to get out of bed in his own private home. The fingerprints, bloody shirt, and all other evidence were considered to be inadmissible given they were collected without a warrant. Furthermore any statements and such were also considered to be inadmissible.<sup>7</sup>

### How does Precedent Exist in this Case

The Landry Test- A test done during warrantless searches. This considers a balance between the protection of society and the privacy of the individual. This has now been changed and adjusted so that it applies with the rights in the charter which state that the privacy rights of an individual within their home are notwithstanding. Today this means that the privacy of the individual will outweigh the interest which the police and therefore society may have on them.<sup>8</sup>

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<sup>6</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"

<sup>7</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"

<sup>8</sup>Supreme Court of Canada. (1991, January 25). *R. v. Landry - SCC cases*. Decisions and Resources - SCC Cases.<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/718/index.do>

This case is considered to be precedential given the fact that as a result of it warrantless arrests were now considered to be unauthorized and evidence found during such procedures are not to be submitted into trial. A warrant is required before the arrest occurs.<sup>9</sup>

### References

Supreme Court of Canada. (1977, May 22). *R. v. Feeney - SCC cases*. Decisions and Resources - SCC Cases. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1508/index.do>

Supreme Court of Canada. (1991, January 25). *R. v. Landry - SCC cases*. Decisions and Resources SCC Cases. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/718/index.do>

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<sup>9</sup>Supreme Court of Canada. (1977, May 22). *R. v. Feeney...*"