

**“Source: *The Issuance of Search Warrants,*
Criminal Law Series Study Paper, 1982.
Department of Justice Canada.
Reproduced with the permission of the Minister of Public
Works and Government Services Canada, 2007.”**

TABLE OF CONTENTS

	Page
FOREWORD	1
INTRODUCTION: THE JUDICIAL APPROACH TO SEARCH WARRANT ISSUANCE	4
<u>PART ONE: SECTION 443 OF THE CRIMINAL CODE</u>	
I. THE THREE PART PROCESS	8
II. THE INFORMATION: DOES IT VALIDLY CONFER JURISDICTION ON THE JUSTICE?	10
A. FORMAL REQUIREMENTS	11
(1) Form 1	11
(2) Under Oath	15
B. SUBSTANTIVE REQUIREMENTS	16
(1) The Offence Alleged	18
(a) Scope of subsection 443(1)	18
(i) Offences under other statutes	18
(ii) Offences committed in other provinces	21
(b) Standards of Particularity	21
(i) The recitation of the section number of the offence	24
(ii) The identification of the victim of the offence	24
(iii) The naming of an accused ..	25
(iv) The general circumstances of the offence	26
(2) The Items to be Seized	28

(a)	The Scope of subsection 443(1)	
(i)	Realty, fixtures and immovables	28
(ii)	Items covered by solicitor-client privilege	28
(b)	Standards of Particularity	30
(i)	The categorization of the objects of the search	31
(ii)	The limitation of the items to be seized to those relating to the alleged offence	32
(3)	The Location to be Searched	34
(a)	The Scope of subsection 443(1)..	34
(b)	Standards of Particularity	35
(i)	The definition of the geographical location	36
(ii)	The isolation of the particular building, receptacle or place to be searched	36
C.	THE DISCLOSURE OF "REASONABLE GROUND TO BELIEVE"	37
(1)	Features of the "Reasonable Ground to Believe" Test	39
(2)	Standards of Particularity	42
(a)	The General Level of Disclosure	43
(b)	The Confidential Source	45
D.	THE INNOCENT OWNER-OCCUPIER: VARIATIONS IN JURISDICTIONAL STANDARDS	47
III.	JUDICIAL DISCRETION: SHOULD THE JUSTICE ISSUE THE SEARCH WARRANT ONCE IT IS ESTABLISHED THAT HE HAS JURISDICTION?	51
IV.	THE SEARCH WARRANT ISSUED: ARE ITS CONTENTS LEGALLY SUFFICIENT?	57
A.	FORMAL REQUIREMENTS	57
(1)	Form 5	57
(2)	The Jurisdiction of the Issuing Justice	58
(3)	The Time for Execution	59

(4) The Designation of Executors of the Warrant	60
B. SUBSTANTIVE REQUIREMENTS	61
C. SEVERABILITY	62

PART TWO: SECTION 181 OF THE CRIMINAL CODE

I. THE SPECIAL POWERS UNDER A SECTION 181 WARRANT	65
II. THE REPORT IN WRITING: DOES IT VALIDLY CONFER JURISDICTION ON THE JUSTICE?	68
A. FORMAL REQUIREMENTS	68
B. SUBSTANTIVE REQUIREMENTS	70
(1) The Offence Described	70
(2) The Location to be Searched	71
III. JUDICIAL DISCRETION: SHOULD THE JUSTICE ISSUE THE SEARCH WARRANT ONCE IT IS ESTABLISHED THAT HE HAS JURISDICTION?	73
IV. THE SEARCH WARRANT ISSUED: ARE ITS CONTENTS LEGALLY SUFFICIENT?	75
A. FORMAL REQUIREMENTS	75
(1) The Jurisdiction of the Issuing Justice	76
(2) The Designation of Executors of the Warrant	76
(3) The Time of Execution	77
B. SUBSTANTIVE REQUIREMENTS	78
C. SEVERABILITY	80

PART THREE: SEARCH WARRANT PROVISIONS
UNDER THE NARCOTIC CONTROL ACT
AND THE FOOD AND DRUGS ACT

I. THE CONTEXT OF SEARCH WARRANTS	81
II. THE INFORMATION UNDER OATH: DOES IT VALIDLY CONFER JURISDICTION ON THE JUSTICE?	83

A.	FORMAL REQUIREMENTS	84
(1)	Is an Oral Information Sufficient? ..	84
(2)	Requirements of a Written Information	85
B.	SUBSTANTIVE REQUIREMENTS	87
C.	THE DISCLOSURE OF "REASONABLE GROUND TO BELIEVE	88
III.	JUDICIAL DISCRETION: SHOULD THE JUSTICE ISSUE THE WARRANT ONCE IT IS ESTABLISHED THAT HE HAS JURISDICTION?	90
IV.	THE SEARCH WARRANT ISSUED: ARE ITS CONTENTS LEGALLY SUFFICIENT?	91
A.	FORMAL REQUIREMENTS	91
(1)	What Statute Has Been Invoked?	91
(2)	The Executors of the Warrant	93
B.	SUBSTANTIVE REQUIREMENTS	94
C.	SEVERABILITY	95
	ENDNOTES	96
	APPENDIX: TABLE OF AUTHORITIES	111