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

I. THE CONTEXT OF SEARCH WARRANTS

Subsection 10(2) of the Narcotic Control Act provides:

(2) A justice who is satisfied by information upon oath that there are reasonable grounds for believing that there is a narcotic, by means of or in respect of which an offence under this Act has been committed, in any dwelling-house may issue a warrant under his hand authorizing a peace officer named therein at any time to enter the dwelling-house and search for narcotics.²⁵⁷

Subsection 37(2) of the Food and Drugs Act reads:

(2) A justice who is satisfied by information upon oath that there are reasonable grounds for believing that there is a controlled drug, by means of or in respect of which an offence under this Part has been committed, in any dwelling-house may issue a warrant under his hand authorizing a peace officer named therein at any time to enter the dwelling-house and search for controlled drugs.²⁵⁸

Section 45 of the latter statute applies the provisions of section 37 mutatis mutandis to situations involving "restricted" drugs. Thus, it may be perceived that the issuance of search warrants for narcotics, controlled drugs and restricted drugs is governed by a set of statutory provisions identical except in the specification of the type of contraband involved.

Before discussing the body of caselaw dealing with these provisions, it is useful to visualize the issuance of a search warrant within the framework of search powers generally pertaining to drug legislation. This framework is outlined in subsection 10(1) of the Narcotic Control Act (and replicated in subsection 37(1) of the Food and Drugs Act) as follows:

A peace officer may, at any time,

(a) without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;

(b) search any person found in such place; and

(c) seize and take away any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

Two significant preliminary points emerge from a reading of this subsection. Firstly, in the case of authority to search a dwelling-house, the warrant is only an alternative to the writ of assistance, which confers upon its holder a general power to engage in particular searches without prior judicial clearance. Indeed, since under subsections 10(3) and 37(3) the issuance of a writ is mandatory upon application by the Minister of National Health and Welfare (whose responsibility in this regard has now been passed to the Attorney General of Canada by Order-in-Council)²⁵⁹ it may be said that the power of search under a writ of assistance is unfettered by any meaningful judicial scrutinization at any stage, a state of affairs which prompted the critical comments of Collier J. in Re Writs of Assistance.²⁶⁰ Secondly, it is to be noted that neither a warrant nor a writ of assistance is necessary when the place to be searched is not a dwelling-house.

It may thus be seen that the standards developed for search warrant issuance can only be of limited impact when viewed in the context of narcotic and drug searches as a whole. This does not mean, however, that the justice's supervisory function in the issuance process loses its importance. On the contrary, the justice plays perhaps an even more critical role in the area of narcotic and drug warrants than in the area of search warrants generally. This is because the course of quashing a warrant after its execution is likely to be of limited

usefulness to a person from whose dwelling-house unlawful narcotics or drugs have been seized. Whatever the discretion of a reviewing court may be after Bergeron²⁶¹ to order unlawfully seized goods returned to their owner, it seems unlikely that such an order would ever be made in the instance of narcotics or drugs seized. Thus, the onus of ensuring that narcotics or drugs are not seized and retained by the police under an unlawful warrant falls squarely upon the shoulders of the issuing justice.

As in the instances of other warrants studied in this manual, the issuance of search warrants for narcotics or drugs may be perceived to involve three stages:

- (1) the conferment of jurisdiction upon the justice by an information upon oath;
- (2) the decision of the justice, after being satisfied as to his jurisdiction to exercise his discretion and grant the warrant;
- (3) the issuance of the warrant for the search which the justice has decided to authorize.

The following analysis is necessarily somewhat sketchy. Because of the limited usefulness of quashing a search warrant, there is, in fact, little caselaw which has actually reviewed this process.

II. THE INFORMATION UPON OATH: DOES IT VALIDLY CONFER JURISDICTION ON THE JUSTICE?

Like subsection 443(1), both subsection 10(2) of the Narcotic Control Act and subsection 37(2) of the Food and Drugs Act require that "information upon oath" be placed before the justice in order to invoke his jurisdiction to issue the desired warrant. However, unlike both section 443, which prescribes the mandatory use of Form 1, and subsection 181(1), which specifically alludes to a "report in writing", the corresponding narcotic and drug provisions do not allude to a specific documentary form. Consequently, special problems arise in connection with the prerequisites to issuance of narcotics and drugs warrants.

A. FORMAL REQUIREMENTS

(1) Is an Oral Information Sufficient?

In Campbell v. Clough, McQuaid J., discussing subsection 10(2) of the Narcotic Control Act commented:

This section prescribes no special form, and merely provides that the justice be satisfied on oath of grounds. Conceivably, the justice could be satisfied by viva voce evidence, that there is believed to be a narcotic in a dwelling house, contrary to the Act.²⁶²

Similarly, in Drug Offences in Canada, MacFarlane contemplates the possibility that viva voce testimony could suffice, although recognizing that "in most cases it would seem preferable to reduce the application to writing".²⁶³

It is suggested that the possibility that a search warrant might be issued on the basis of an oral information is a worrisome one. There is at present no provision for the transcribing of an oral application for a search warrant; in the absence of a documentary record of the presentation under oath, the effective power of a superior court to review the justice's determination of his jurisdiction would be severely impaired. However, it is arguable that the comments in favour of oral informations run counter to the decision of the Ontario Court of Appeal in Goodbaum, supra. Writing for the Court, Brooke J.A. commented:

Proper forms should be carefully drawn and provided for the assistance of Justices of the Peace who may have to act under the provisions of statutes which provide extraordinary powers of search, seizure and forfeiture, to assure that in determining whether a warrant should issue safeguards set forth in the statute are first carefully considered.²⁶⁴

The observation was made in the context of criticizing the adaptation of Form 5 under the Criminal Code to suit the purposes of a warrant to search for narcotics, but the assertion of the need for proper form basically assumes the desirability of formal presentation. A more explicit stand in favour of written informations was adopted in Regina v. Lauzon, an Ontario Provincial Court decision, in which a massive array of

authority on subsection 443(1) was applied to the issuance of a warrant to search for narcotics and drugs.²⁶⁵

(2) Requirements of a Written Information

Assuming that the information before the justice is a written one, what formal standards must it satisfy? As has been mentioned, no specific form is prescribed by the relevant provisions; until recently, a generally accepted course of procedure was to modify Form 1 of the Criminal Code, the information for a search warrant under subsection 443(1).²⁶⁶ In Campbell, it was held that this practice was permissible, McQuaid J. stating:

The fact that Form 1, intended to be used under Section 443, was used in this case is, I think, immaterial, provided that it does, as I think it does, meet the requirements of Section 10(2). The Narcotic Control Act itself prescribes no particular forms.²⁶⁷

The use of Form 1, without modification, of course will produce certain formal irregularities. In Lauzon, for example, the words "building receptacle or place" appeared in the information despite the fact that narcotic and drug search warrant provisions only cover dwelling-houses. However, the Court was willing to regard the words as mere surplussage since both Acts allowed places other than dwelling-houses to be searched without a warrant.²⁶⁸

While the practice of modifying Form 1 may still be permissible, however, judicial disapproval of it was clearly enunciated in Goodbaum. "There is an obvious danger in attempting to improvise documents such as warrants", Brooke J.A. stated, "where the duties of police officers and the rights of citizens are at stake".²⁶⁹ MacFarlane comments that as a result of Goodbaum, precedent forms for narcotic and drug searches have been brought into use.²⁷⁰ The precedent form for an information is outlined as follows:²⁷¹

Narcotic Control Act, Section 10. (1)
Section 10. (2)

INFORMATION TO OBTAIN SEARCH WARRANT

CANADA }
PROVINCE OF } INFORMATION of
COUNTY [or } (Name of Peace Officer(s))
DISTRICT] } Peace Officer(s) in the said Province of

The informant says that (s) he has reasonable grounds for believing and does believe that there is in a certain dwelling-house, namely the dwelling-house

of
(Owner or Occupant of Dwelling-House)

at
(Address or Location of Dwelling-House)

in the said
Judicial District

a narcotic, to wit,
(Describe narcotic to be searched for)

by means of or in respect of which an offence under The Narcotic Control Act has been committed, namely the offence of
.....
(Describe offence in respect of which search is to be made)

and that his grounds for so believing are that [*state grounds of belief*]

WHEREFORE the informant prays that a search warrant may be granted to search the said dwelling-house for the said narcotic.

SWORN BEFORE ME at

in the Province of , this

day of 19

.....
A Provincial Judge, Magistrate or a Justice
of the Peace in and for the Province of *Informant*

B. SUBSTANTIVE REQUIREMENTS

Like subsection 443(1), the narcotic and drug warrant provisions envisage an information upon oath specifying three elements: an offence, a set of items to be seized, and a location to be searched. The definitions of these elements, however, are somewhat narrower than those in the general warrant provisions. The location to be searched must be a dwelling-house, the offence must be contrary to the Act invoked, and the items must fall within the ambit of "narcotic", "controlled drug", or "restricted drug", as the case may be.

The relationship of the statute invoked to the items to be seized has attracted attention in the caselaw. In effect, the caselaw has insisted on keeping the Narcotic Control Act and the Food and Drugs Act discrete; one cannot apply for a warrant under one to search for a substance prohibited under the other. In Re Regina and Kellet, it was held that a warrant could not issue under the Narcotic Control Act to search for "drugs".²⁷² In Lauzon, it was found that an information and warrant naming "narcotics and/or illegal drugs" relating to offences against both Acts as the objects of search were invalid. Sharpe Prov.Ct.J. held that while a justice could issue search warrants under each Act separately, he could not combine in one warrant searches authorized under the two statutes. Moreover, the Court found that the simple designation of "illegal drugs" could not invoke the warrant provisions of the Food and Drug Acts; rather these provisions contemplated informations specifically describing "controlled drugs" or "restricted drugs".²⁷³

There is a dearth of authority on the standards of particularity governing the description of the essential elements of both informations and warrants. In Lauzon, the Court turned to leading authorities on subsection 443(1) for guidance in this respect, citing decisions such as Frain,²⁷⁴ Shumiatcher,²⁷⁵ and La Vesque.²⁷⁶ It suggested that this reference to the general caselaw is sound. Similar considerations are present in the context of narcotics and drug warrants as in the general context: the need to apprise persons concerned of the alleged offence to which the search relates, the dangers of delegating decisions as to the scope of search to the executor of the warrant, the countervailing desirability of affording the police reasonable latitude in descrip-

tion, the basic necessity of giving the justice sufficient detail to enable him to act judicially.

The Lauzon case dealt directly with each of the three elements in turn. Firstly, the general description of the offence as "against the Narcotic Control Act and/or Food and Drugs Act" was held to be insufficiently particular, as in order to enable the justice to act judicially, the actual offence had to be described.²⁷⁷ Secondly, it was held that the narcotic itself, in the case of an alleged offence against the Narcotic Control Act, would have to be identified, in order for the justice to determine whether it was in fact a narcotic included in the schedule to the Act and hence illegal.²⁷⁸ Finally, it was found that the description of the location to be searched as merely a street address was not as precise as it might have been, since the person suspected of illegal activity occupied only the top portion of the house; however, the Court found that this deficiency did not invalidate the information.²⁷⁹

C. THE DISCLOSURE OF "REASONABLE GROUND TO BELIEVE"

The search warrant provisions for narcotics and drugs contemplate only one basis upon which a warrant may be issued: that the prohibited narcotic or drug, by means of which a defined offence has been committed, is in a dwelling-house. As was pointed out in Goodbaum, section 10 of the Narcotic Control Act contains no provision authorizing the issuance of a warrant to search for anything in respect of the intended commission of an offence.²⁸⁰ It might be commented, though, that this distinction, practically speaking, is probably not a very significant one. In the instance of either narcotics or restricted drugs, mere possession of which constitutes an offence (section 3 of the Narcotic Control Act, section 41 of the Food and Drugs Act), a search warrant would be justified by reasonable grounds simply supporting the possession of the prohibited substance in the place to be searched. In the case of controlled drugs, possession is only unlawful if for the purposes of trafficking (s. 34 of the Food and Drugs Act); essentially this means that in addition to establishing the existence of the prohibited substance in the premises, the grounds for belief would have to indicate the unlawful purpose of the possession, in effect bringing the intended commission of the offence of trafficking into consideration.

Unlike subsection 443(1), the narcotic and drug provisions do not allow the issuance of a search warrant for anything of evidentiary value. Rather, in order to justify the issuance of the warrant, there must be reasonable grounds to believe that the prohibited substance is itself in the specified location. This does not preclude the executor, once armed with the warrant, from seizing other evidence on the searched premises, however; paragraphs 10(1)(c) of the Narcotic Control Act and 37(1)(c) of the Food and Drugs Act explicitly countenance the seizure of such evidence. The reasonable belief in the presence of the narcotic or drug, in other words, must be demonstrated to the justice to get the officer past the front door of the house; once inside, it is the officer's own reasonable belief alone which determines whether an evidentiary connection exists to justify seizure. The sufficiency of the evidentiary connection only becomes reviewable by a judicial authority upon the making of a restoration application under subsection 10(5) or subsection 37(5) as the case may be. (It is interesting to note that the reviewing magistrate's standard, like that of a justice under subsection 443(1) is that of relevance: Burgess v. the Queen.²⁸¹)

In Campbell, the Court appeared to sanction the practice of oral disclosure of the reasonable ground for belief, notwithstanding the fact that the information itself was a written one. In that case, the police officer had merely stated that "there are reasonable and probable grounds to believe that narcotics are being kept"; on an attached sheet the justice had written a summary of the officer's reason for belief. McQuaid J. stated:

I conclude also that Ms. Clough quite properly pressed the Constable for his reasonable and probable grounds for requesting the search warrant, and took the added precaution of making a note of such either directly on the Information or on a sheet attached hereto. In this respect, I am of the opinion that she not only acted prudently, but also judicially as she is required to do.²⁸²

If this practice is indeed proper, the disclosure of reasonable grounds under the narcotics and drugs warrant provisions is governed by rules similar to those pertaining to subsection 181(1) of the Code: the grounds need not be specified in writing, but ought to be inquired into by the justice granting the warrant. In

Foster, this was identified as a necessary step in the exercise of the justice's judicial discretion.²⁸³ However, it is clear from a reading of the narcotics and drugs warrant provisions that the matter is not a discretionary one. Rather, the wording of these provisions in this regard corresponds to that of subsection 443(1). The ascertainment of reasonable grounds for belief is jurisdictional; if such grounds are not disclosed by the information upon oath, the justice is not furnished with a proper basis upon which he may be "satisfied".

The Campbell decision does not clearly purport to classify reasonable grounds as a discretionary matter. Logically, the justice, in orally examining the informant, could still be determining his jurisdiction. As a practical matter, though, the identification in subsequent proceedings of the grounds sworn to by the officer is rendered uncertain if Campbell is correct. While not taking by the justice was of some assistance to the reviewing Court, it is important to realize that the justice did not attest to the actual swearing of the described grounds of belief by the officer. Yet if the officer did not disclose the reasonable grounds under oath, it is apparent under the narcotics and drugs provisions that the justice ought not to have taken account of them.

It is suggested that the preferable analysis to that of the Court in Campbell is that adopted in Lauzon. Citing an array of authorities on subsection 443(1) including Worrall²⁸⁴ and Kehr,²⁸⁵ Sharpe Prov.Ct.J. stated:

In the long line of reported decisions dealing with this aspect, it seems to be well established that the justice is acting in a judicial capacity and he must be satisfied not only that there is a reasonable belief but the grounds of this belief must be before him and therefore should be expressed in the information sworn before him.²⁸⁶

III. JUDICIAL DISCRETION: SHOULD THE JUSTICE ISSUE THE WARRANT ONCE IT IS ESTABLISHED THAT HE HAS JURISDICTION?

Both subsection 10(2) of the Narcotic Control Act and subsection 37(2) of the Food and Drugs Act specify that a justice "may" issue a warrant when presented with the requisite information upon oath. As was argued in

the earlier discussion of subsection 443(1) warrants, this reposes a discretion in the justice to refuse to issue the warrant, even if his jurisdiction to do so is established.²⁸⁷ The factors relevant to the exercise of this discretion, of course, depend upon the nature of the jurisdictional tests which the information upon oath must meet. If, as has been suggested, the information must conform to standards similar to those established under subsection 443(1), then it follows that the factors left for the justice in the exercise of his discretion are similarly limited.

IV. THE SEARCH WARRANT ISSUED: ARE ITS CONTENTS LEGALLY SUFFICIENT?

A. FORMAL REQUIREMENTS

There is no form of warrant referred to in any of the relevant narcotics or drugs provisions. Consequently, as was the case with informations, search warrants issued for narcotics and drugs have often been on the documentary form appropriate to subsection 443(1) of the Criminal Code, Form 5. However, while the Courts have been somewhat tolerant towards this practice in the instance of informations, they have adopted a stricter position in regard to warrants. Primarily, the Courts have asked whether or not the warrant has been truly issued pursuant to the relevant narcotics or drugs provision or whether its form establishes that it was actually issued, incorrectly, under the Code. As a related matter, the Courts have invalidated searches carried out by officers covered only by a general designation in the warrant, as permitted by subsection 443(1), and not specifically named, as required by the narcotics and drugs provisions.

(1) What Statute Has Been Invoked?

The leading case on point is Goodbaum, in which Brooke J.A. stated:

Section 10 of the Narcotic Control Act is a code for search, seizure and forfeiture for the purposes of those who enforce the provisions of the Act, and of significance, it protects the citizen by limiting the use of those powers to those peace officers named therein. In my opinion, a warrant for the

purpose of search and seizure of narcotics can only be issued under the provisions of the Narcotic Control Act and the warrant in issue here is invalid.²⁸⁸

Brooke J.A. did not elaborate upon why the warrant in question was not issued under the provisions of the Narcotic Control Act. The warrant appears to have been an adapted copy of Form 5, and argument in the case proceeded upon the question of whether subsection 443(1) could be properly invoked to search for narcotics.

Goodbaum was followed in Campbell, where it was simply observed that the warrant was in Form 5. McQuaid J. observed:

Here, the intent was to seek a warrant under Section 10(2) of the Narcotic Control Act which contains within its own framework the appropriate procedure. What was, in fact, done was to secure a warrant under Section 443 of the Code, the application of which is restricted to offences "under this Act".²⁸⁹

A similar conclusion was reached in Lauzon, in which "a badly amended Form 5 search warrant" was before the Court. Sharpe, Prov.Ct.J. commented that "it may be impossible to amend a Criminal Code search warrant to comply with the search provisions of the Narcotic Control Act".²⁹⁰ There has, in fact, been no reported decision in which such an amendment has been found to be successful. It is suggested that the strict attitude of the courts indicates that in order to effect such an amendment, appropriate revisions would have to be made to the document such as (1) the alteration of the notation of form number and statutory authority, and (2) a modification of the direction in the heading from the general one permitted by subsection 443(1) to one naming a group of specifically identified officers, as is required by the narcotics and drugs provisions.

The labour of altering Form 5 is no longer necessary, however. The following precedent form, developed for general use, is set out in MacFarlane:²⁹¹

Narcotic Control Act, Section 10. (1)
Section 10. (2)

WARRANT TO SEARCH

CANADA
PROVINCE OF
COUNTY [or
DISTRICT]

To
(Name of Peace Officer(s))
Peace Officer(s) in the said Province of`
WHEREAS it appears on the oath of
.....
.....

that there are reasonable grounds for believing there is a narcotic,
to wit,

which is being sought as evidence by means of or in respect of which
an offence under The Narcotic Control Act has been committed, to wit,

in the dwelling-house of
at

THIS IS, THEREFORE, to authorize and require you, between the hours
of
to enter into the said dwelling-house to search for the said narcotic.

DATED at
in the Province of , this day
of, 19

.....
A Provincial Judge, Magistrate or a Justice
of the Peace in and for the Province of

(2) The Executors of the Warrant

The wording of the narcotics and drugs provisions
is stricter than both subsections 443(1) and 181(1), as
far as the designation of executors is concerned. Where
the general provision mentions "a person named therein"
or a "peace officer", and the special provision specifies
"a peace officer", both the narcotics and drugs pro-
visions limit execution to "a peace officer named
therein".

This distinction has not escaped the attention of the Courts. In Goodbaum, the warrant was directed "to the peace officers in the Municipality of Metropolitan Toronto and in the Judicial District of York and in the Province of Ontario". Brooke J.A. held that even if the warrant was purportedly issued pursuant to section 10 of the Narcotic Control Act it was totally defective "as it was not issued to a peace officer named therein." His Lordship went on to observe,

I agree with the submission of Crown counsel that s. 26(7) of the Interpretation Act provides that "words in the singular include the plural, and words in the plural include the singular" might be applied so that a warrant can be issued to more than one peace officer. However, I do not agree with his submission that this is broad enough for the warrant to be issued to "all members of the drug squad or all members of the Metropolitan Toronto police force". In my view, its application is limited to the extent that the warrant may be issued to more than one peace officer named in the warrant.²⁹²

Similarly in Campbell, the direction of the warrant to "the peace officers in the said county of Queens" was held to be unlawful. "What is clearly contemplated", stated McQuaid J. was "that the warrant be directed to one or more certain and particularly identified police officers..."²⁹³

B. SUBSTANTIVE REQUIREMENTS

It would appear that, as in the case of subsection 443(1), the standards applicable to the descriptions of the offence, items to be seized and location to be searched are common to the information and the warrant. In Lauzon, in discussing the failure of the warrant to describe an offence adequately, the Court cited the same general caselaw it had applied in invalidating the information.²⁹⁴ A consideration particular to the narcotics and drugs warrants, on the other hand, is the need for correctly identifying the prohibited substance and authorizing the search for it under the appropriate statute, as discussed earlier in the context of informations.

C. SEVERABILITY

There is no reason why the general rule permitting severance of an offending part of a search warrant ought not to be applicable to narcotics and drugs warrants.²⁹⁵ As a practical matter, however, severance is likely to make little difference to the scope of search. Under paragraph 10(1)(c) of the Narcotic Control Act, (duplicated mutatis mutandis in paragraph 37(1)(c) of the Food and Drugs Act) an officer armed with a warrant is permitted to:

...seize and take away any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

Thus, even if an item were excised from the warrant, so long as a warrant itself in some form were issued, the officer executing it would be able to seize the item, so long as it fell within the wide ambit of paragraph 10(1)(c).

ENDNOTES

1. Re Pacific Press Ltd. and the Queen et al (1977) 37 C.C.C. (2d) 487 (B.C.S.C.), at p. 489.
2. Re McAvoy (1970) 12 C.R.N.S. 56 (N.W.T. Terr. Ct.).
3. Re United Distillers Ltd. (1946) 88 C.C.C. 338 (B.C.S.C.).
4. Re Black and the Queen (1973) 13 C.C.C. (2d) 446 (B.C.S.C.).
5. Ibid., pp. 449-50.
6. Bergeron et al v. Deschamps et al (1977) 33 C.C.C. (2d) 461 (S.C.C.).
7. Re Atkinson and the Queen (1978) 41 C.C.C. (2d) 435 (N.B. S.C. - A.D.).
8. Regina v. Pomerleau et al (unreported February 14, 1979, Que. C.A.).
9. Re Model Power and the Queen (unreported, October 1, 1979, Ont. H.C.J., affirmed January 25, 1980, Ont. C.A.).
10. Re Alder et al v. the Queen (1978) 37 C.C.C. (2d) 234 (Alta. S.C. - T.D.), at p. 251.
11. Leave to appeal in Model Power was refused on March 18, 1980.
12. The Queen v. Wray [1970] 4 C.C.C. 1 (S.C.C.).
13. R. Thomas Farrar, "Aspects of Police Search and Seizure Without Warrant in England and the United States", (1975) 29 Univ. of Miami L.R., 491, at p. 551.
14. Rex v. Kehr (1906) 40 O.L.R. 517 (Ont. Div. Ct.) at p. 521.
15. Re Worrall [1965] 2 C.C.C. 1 (Ont. C.A.) at p. 5. See also MacIntyre v. A.G. of Nova Scotia et al (as yet unreported, March 14, 1980, N.S.C.A.).

16. James A. Fontana, The Law of Search Warrants, Toronto, Butterworths, 1974; at p. 32.
17. Re Purdy et al and the Queen (1972) 8 C.C.C. (2d) 52 (N.B.S.C.), at p. 60.
18. Reginald Francis Carter, The Law Relating to Search Warrants, The Law Book Company of Australia, 1939, at p. 77.
19. Fontana, supra, note 16 at p. 47.
20. Lynn v. McCuish et al (1924) 41 C.C.C. 272 (N.S.S.C.).
21. Purdy, supra, note 17, at p. 60.
22. Re Pacific Press Ltd. and the Queen et al, supra,
23. Re Abou-Assale and Pollack and the Queen (1978) 39 C.C.C. (2d) 546 (Que. S.C.).
24. Re Regina and Johnson & Franklin Wholesale Distributors Ltd. (1973) 12 C.C.C. (2d) 221 (B.C.C.A.), at p. 223.
25. Re Regina and Johnson & Franklin Wholesale Distributors Ltd. (1971) 3 C.C.C. (2d) 484 (B.C.C.A.) at p. 488.
26. Regina v. Colvin, ex parte Merrick et al (1970) 1 C.C.C. (2d) 8 (Ont. H.C.J.), at p. 11.
27. David Watt, Criminal Law Precedents, Toronto, Carswell, 1978.
28. Abou-Assale, supra, note 23, at p. 549.
29. Re Worrall, supra, note 15, at p. 21.
30. Rex v. La Vesque (1918) 30 C.C.C. 190 (N.B.S.C. - A.D.), at pp. 197-8.
31. Royal American Shows Incorporated v. the Queen et al [1975] 6 W.W.R. 571 (Alta S.C.).
32. Rex v. Solloway & Mills (1930) 53 C.C.C. 271 (Ont. S.C. - A.D.).

33. Rex v. Kilmartin [1924] 1 W.W.R. 107 (B.C.S.C.).
34. Campbell v. Walsh (1910) 18 C.C.C. 304 (N.B.S.C.),
per Barry and McKeown JJ.
35. Rex v. Woods (1925) 44 C.C.C. 371 (N.S.S.C.).
36. Re PSI Mind Development Institute Ltd. et al and
the Queen (1977) 37 C.C.C. (2d) 263 (Ont. H.C.J.).
37. Royal American Shows, *supra*, note 31.
38. Norland Denture Clinic Ltd. v. Carter et al (1968)
5 C.R.N.S. 93 (Sask. Q.B.).
39. R.S.C. 1970, c. I-23.
40. Re Adelphi Book Store Ltd. and the Queen (1972) 8
C.C.C. 49 (Sask. C.A.), at p. 51.
41. R.S.C. 1970, c. C-30.
42. Re Krassman v. the Queen (1972) 8 C.C.C. (2d) 45
(Alta. S.C. - A.D.).
43. R.S.C. 1970, c. S-11.
44. Re Goodbaum and the Queen (1977) 38 C.C.C. (2d) 473
(Ont. C.A.).
45. R.S.C. 1970, c. N-1.
46. Abou-Assale, *supra*, note 23.
47. R.S.C. 1970, c. C-40.
48. Purdy, *supra*, note 17, at p. 58.
49. Re McAvoy, *supra*, note 2.
50. R.S.C. 1970, c. A-3.
51. La Maison du Fleuriste du Québec Ltée et al v.
Dumontier (unreported, July 3, 1979, Que. Sup.
Ct.).
52. Re Doer and the Queen (unreported, Sept. 7, 1979,
Ont. H.C.J.).

53. Norland, supra, note 38, at p. 96.
54. Martin's Criminal Code (1955), at p. 712.
55. Solloway & Mills, supra, note 32, at p. 274.
56. Rex v. Frain (1915) 24 C.C.C. 389 (Sask. S.C.).
57. La Vesque, supra, note 30.
58. Rex v. Munn, (No. 1) (1938) 71 C.C.C. 139 (P.E.I. S.C.) at p. 141.
59. Fontana, supra, note 16 at p. 24.
60. See Weins et al v. the Queen (1973) 24 C.R.N.S. 341 (Man. Q.B.), and Worrall, supra, note 25.
61. Re Lubell and the Queen (1973) 11 C.C.C. (2d) 188 (Ont. H.C.J.), at p. 189.
62. Regina v. Trottier et al [1966] 4 C.C.C. 321 (Que. Q.B. - A.S.), at p. 327.
63. Regina v. Read, ex parte Bird Construction Ltd. [1966] 2 C.C.C. 137 (Alta. S.C.).
64. Regina v. Harrison and Burdeyneu [1965] 1 C.C.C. 367 (B.C.S.C.).
65. PSI Mind, supra, note 36, at p. 268.
66. Alder, supra, note 10, at p. 247.
67. Trottier, supra, note 62.
68. Marlboro Manufacturing Ltd. et al v. The Queen (1971) 16 C.R.N.S. 338 (Man. Q.B.).
69. Regency Realities Inc. v. Loranger (1961) 36 C.R. 291 (Que. S.C.).
70. PSI Mind, supra, note 36, at p. 270.
71. Regency Realities, supra, note 69, at p. 197.
72. Trottier, supra, note 62.
73. Worrall, supra, note 15.

74. Regency Realities, supra, note 69, at p. 297.
75. Lubell, supra, note 61. See p. 22 of this manual.
76. Re Liberal Party of Quebec and Merzwinski (1978) 46 C.C.C. (2d) 118, at p. 122.
77. Abou-Assale, supra, note 23.
78. Marlboro Manufacturing, supra, note 53.
79. Alder, supra, note 10, at p. 248.
80. Re Flanagan et al and Morand et al (1978) 43 C.C.C. (2d) 546 (Que. S.C.).
81. Re Pink Triangle Press and the Queen (unreported, March 15, 1978, Ont. H.C.J., approved May 2, 1978, Ont. C.A.).
82. Royal American Shows, supra, note 31, at p. 573.
83. Re United Distillers Ltd., supra, note 3.
84. Weins, supra, note 60.
85. Munn, supra, note 58, at p. 141.
86. Fontana, supra, note 16, at p. 145.
87. Re Bell Telephone Company of Canada (1947) 89 C.C.C. 196 (Ont. H.C.).
88. Colvin, supra, note 26. See also Attorney General of Quebec v. T., G., W., R. and C. (1977) 2 C.R. (3d) 32 (Que. Ct. S.P.).
89. Re B.X. Development Inc. et al and the Queen (1976) 31 C.C.C. (2d) 14 (B.C.C.A.), at p. 17.
90. Re Borden & Elliot and the Queen (1975) 30 C.C.C. (2d) 337 (Ont. C.A.).
91. Alder, supra, note 10, at p. 245.
92. Re Steel (1974) 29 C.R.N.S. 355 (Ont. Prov. Ct.).
93. Regina v. Mowat, ex parte Toronto Dominion Bank [1968] 2 C.C.C. 374 (Ont. H.C.J.).

94. R.S.C. 1970, c. E-10.
95. S.C. 1968-69, c. 14, s. 3(2).
96. Abou-Assale, supra, note 23, at p. 560.
97. See Johnson and Franklin Wholesale Distributors, supra, note 25, at p. 489, and Regency Realities, supra, note 69, at p. 298.
98. Lubell, supra, note 61 at p. 189.
99. Royal American Shows, supra, note 31, at p. 573.
100. Dare to be Great of Canada (1971) Ltd. v. Attorney General for Alberta et al [1972] 3 W.W.R. 308 (Alta. S.C.), at p. 314.
101. Alder, supra, note 10.
102. Lubell, supra, note 61.
103. PSI Mind, supra, note 36.
104. Regency Realities, supra, note 69.
105. Johnson and Franklin Wholesale Distributors, supra, note 25, at p. 489.
106. McAvoy, supra, note 2.
107. Merzwinski, supra, note 76.
108. Pink Triangle Press, supra, note 81, at p. 4
109. Schumiatcher v. Attorney General of Saskatchewan et al (1960) 129 C.C.C. 270 (Sask. Q.B.).
110. Weins, supra, note 60.
111. Laporte v. Laganiere J.S.P. et al (1972) 18 C.R.N.S. 357 (Que. Q.B.) at p. 368.
112. Solloway & Mills, supra, note 32. See the text of the manual at p. 21.
113. Solloway Mills & Co. v. A.G. Alta. (1930) 53 C.C.C. 306 (B.C.C.A.).

114. McLeod v. Campbell (1894) 26 N.S.R. 458 (N.S.C.A.).
115. S.A. 1916, c. 4, s. 79, as amended by S.A. 1917, c. 22, s. 15.
116. Rex v. Gibson (1919) 30 C.C.C. 308 (Alta. S.C.), at pp. 308-9.
117. Fontana, supra, note 16, at pp. 27-8.
118. R.S.C. 1886, c. 106, s. 108.
119. Sleeth v. Hurlbert (1896) 3 C.C.C. 197 (S.C.C.), at p. 201.
120. McAvoy, supra, note 2.
121. Purdy, supra, note 17, at p. 58.
122. McAvoy, supra, note 2.
123. Gibson, supra, note 116.
124. Royal American Shows, supra, note 31.
125. Johnson & Franklin Wholesale Distributors, supra, note 25.
126. Bell Telephone, supra, note 87, at p. 198.
127. Purdy, supra, note 17, at p. 60.
128. Weins, supra, note 60.
129. B.X. Developments, supra, note 89.
130. Colvin, supra, note 26.
131. Johnson & Franklin Wholesale Distributors, supra, note 25.
132. Re Newfoundland & Labrador Corp. Ltd. (1974) 6 Nfld. & P.E.I. R. 274 (Nfld. C.A.), at p. 281.
133. Weins, supra, note 60, at p. 347.
134. Bell Telephone, supra, note 86, at p. 198.
135. Purdy, supra, note 17, at p. 59.

136. Borden & Elliot, supra, note 90, at p. 347.
137. Worrall, supra, note 15, at p. 5.
138. See the text of the manual at pp. 28-30.
139. Included among these cases are Bell Telephone, supra, note 87, Borden & Elliot, supra, note 90, and Purdy, supra, note 17.
140. Hicks v. McCune (1921) 36 C.C.C. 141 (Ont. S.C. - A.D.).
141. Johnson and Franklin Wholesale Distributors, supra, note 25 at p. 488.
142. Goodbaum, supra, note 44, at p. 478.
143. Hicks, supra, note 140.
144. Kehr, supra, note 14, at p. 524.
145. Weins, supra, note 60.
146. Borden & Elliot, supra, note 90.
147. Lubell, supra, note 61, at p. 190.
148. Trottier, supra, note 62. See the text of this manual at p. 25.
149. Abou-Assale, supra, note 23.
150. Alder, supra, note 10.
151. Imperial Tobacco Sales Co. v. A.-G. Alta. et al [1941] 2 D.L.R. 673 (Alta. S.C. - A.D.).
152. Poliquin v. Decarie (1927) 33 R. de J. 367 (Que. S.C.).
153. Worrall, supra, note 15.
154. Lubell, supra, note 61, at p. 190.
155. Newfoundland and Labrador Corp., supra, note 132, at p. 289.
156. Solloway & Mills, supra, note 32, at p. 276.

157. Imperial Tobacco Sales, note 151.
158. Royal American Shows, supra, note 31.
159. Newfoundland and Labrador Corp., supra, note 132, at p. 281.
160. Regency Realities Inc., supra, note 69, at p. 289.
161. Royal American Shows, supra, note 31.
162. Trottier, supra, note 62.
163. Weins, supra, note 60.
164. Fontana, supra, note 16, at p. 174.
165. United Distillers, supra, note 3, at p. 341.
166. Pacific Press, supra, note 1, at p. 495.
167. PSI Mind, supra, note 36 at p. 271.
168. Re Wurm et al and the Queen (unreported, March 16, 1979), Alta S.C. - T.D.).
169. Borden & Elliot, supra, note 90.
170. Colvin, supra, note 26.
171. Fontana, supra, note 16, at p. 174.
172. Abou-Assale, supra, note 23, at p. 560.
173. Carter, supra, note 18, at p. 52.
174. Fontana, supra, note 16, at p. 7.
175. R.S.C. 1952, c. 58, R.S.C. 1970, c. C-40.
176. Re Writs of Assistance [1965] 2 Ex C.R. 646 (Ex. Ct.), at p. 650.
177. Regina v. Coughlan, ex parte Evans [1970] 3 C.C.C. 61 (Alta. S.C.), at p. 72.
178. Regina v. Foster, ex parte Royal Canadian Legion Branch 177 et al [1964] 3 C.C.C. 82 (B.C.S.C.), at p. 90.

179. Worrall, supra, note 15, at p. 5.
180. Carter, supra, note 18 at p. 52.
181. S.A. De Smith, Judicial Review of Administrative Action (3rd ed.) London, Stevens and Sons, 1973; at p. 253.
182. Re Blythe and the Queen (1973) 13 C.C.C. (2d) 192 (B.C.S.C.).
183. Gilles Letourneau, The Prerogative Writs in Canadian Criminal Law and Procedure, Toronto, Butterworths, 1976, at p. 144.
184. Newfoundland and Labrador Corp., supra, note 132, at p. 280.
185. Foster, supra, note 178, at p. 90.
186. By way of contrast, s. 455.3(1) provides that when deciding whether to issue process subsequent to the laying of an information charging an offence, the justice shall hear and consider the evidence of witnesses, where he considers it desirable or necessary.
187. See, for example, Arthur Burnett, "Evaluation of Affidavits and Issuance of Search Warrants: A Practical Guide for Federal Magistrates", (1973) 64 Journal of Criminal Law and Criminology 270.
188. Dare to be Great, supra, note 100.
189. Re United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of U.S. and Canada and the Queen (1972) 8 C.C.C. (2d) 364 (B.C.S.C.), pp. 355-6.
190. Worrall, supra, note 15, at p. 11.
191. Re Den Hoy Gin (1965) 47 C.R. 89 (Ont. C.A.), at p. 90.
192. Pacific Press, supra, note 1, at p. 492.
193. R.S.C. 1970, Appendix III.
194. Pink Triangle Press, supra note 81, at p. 2.

195. Rex v. Solloway Mills & Co. (1930) 53 C.C.C. 261 (Alta. S.C. - A.D.), at p. 263.
196. La Vesque, supra, note 30.
197. Black, supra, note 4, at p. 182.
198. Sleeth v. Hurlbert, supra, note 119.
199. Solloway Mills, supra, note 113.
200. Abou-Assale, supra, note 23.
201. Rex v. Plummer (1929) 52 C.C.C. 288 (Man. C.A.).
202. Arthur Rogers and Clifford Magone, Police Officer's Manual, Toronto, Carswell, 1955; at p. 205.
203. Regina v. Execu-Clean Ltd. (unreported, Jan. 30, 1980, Ont. H.C.J.)
204. Purdy, supra, note 17, at p. 60.
205. Solloway & Mills, supra, note 32, at p. 274.
206. Flanagan, supra, note 80, at p. 549.
207. Abou-Assale, supra, note 23.
208. Black, supra, note 4, at p. 448.
209. See the text of this manual, at p. 17.
210. Royal American Shows, supra, note 31, at p. 573.
211. Abou-Assale, supra, note 23, at p. 560.
212. Gibson, supra, note 116, at p. 308.
213. Flanagan, supra, note 80, at p. 548.
214. Johnson and Franklin Wholesale Distributors, supra, note 25, at p. 489.
215. Abou-Assale, supra, note 23.
216. Worrall, supra, note 15. See the text of this manual at p. 15.

217. Johnson and Franklin Wholesale Distributors, *supra*, note 25, at p. 490.
218. PSI Mind, *supra*, note 36.
219. Alder, *supra*, note 10.
220. Abou-Assale, *supra*, note 23.
221. Re Sommerville's Prohibition Application (1962) 38 W.W.R. 344 (Sask. Q.B.), at p. 347.
222. Re MacKenzie and The Queen (1973) 10 C.C.C. (2d) 193 (Sask. Q.B.), at p. 196.
223. See text of this manual at p. 11.
224. Worrall, *supra*, note 15, at p. 21.
225. MacKenzie, *supra*, note 222.
226. These were the forms of the documents used by the named forces during the course of the survey conducted by the Law Reform Commission in the autumn of 1978.
227. Fontana, *supra*, note 16, at p. 113.
228. Rex v. Miller (1931) 55 C.C.C. 232 (Alta. S.C. - A.D.), at p. 235.
229. See the text of this manual at pp. 28-34.
230. Plummer, *supra*, note 201.
231. MacKenzie, *supra*, note 222 at p. 197.
232. Regina v. Chew (1964) 44 C.R. 145 (Ont. S.C.), at p. 148.
233. Campbell, *supra*, note 34.
234. See the text of this manual at pp. 51-57.
235. Foster, *supra*, note 178, at p. 90.
236. Re Rex v. Liebman (1943) 79 C.C.C. 86 (Ont. H.C.), at p. 88.
237. Foster, *supra*, note 178, at p. 89.

238. Ibid., at p. 92.
239. Newfoundland & Labrador Corp., supra, note 132.
240. Foster, supra, note 178, at p. 93.
241. United Distillers, supra, note 3.
242. Solloway & Mills, supra, note 32.
243. Black, supra, note 4. See the text of this manual at p. 58.
244. The Liquor License Act, R.S.O. 1887, ch. 19, s. 131.
245. The Queen v. Lyons (1892) 2 C.C.C. 218 (Ont. Ct. Gen. Sess.), at p. 219.
246. Rex v. Glenfield et al (1934) 62 C.C.C. 334 (Alta. S.C. - A.D.), at p. 339.
247. Rex v. Miller (1951) 99 C.C.C. 79 (Ont. Co.Ct.), at p. 87.
248. Re Old Rex Cafe (1972) 7 C.C.C. (2d) 279 (N.W.T. Terr. Ct.), at pp. 283-4.
249. Solloway & Mills, supra, note 32.
250. Plummer, supra, note 201.
251. Rex v. Lukich [1946] 2 W.W.R. 508 (Alta. S.C. - A.D.).
252. See the text of this manual at p. 17.
253. Shan Yee v. Attorney General for Saskatchewan et al (1971) 16 C.R.N.S. 263 (Sask. Q.B.), at p. 264.
254. Foster, supra, note 178.
255. Royal Canadian Legion (Branch 177) and Mount Pleasant Branch 177 Credit Union [1964] 3 C.C.C. 381, at p. 388.
256. Re Laborde and the Queen (1972) 7 C.C.C. (2d) 86 (Sask. Q.B.).

257. R.S.C. 1970, c. N-1.
258. R.S.C. 1970, c. F-27.
259. Order-in-Council P.C. 1978-732.
260. Re Writs of Assistance (1975) 34 C.C.C. (2d) 62 (Fed. Ct. - T.D.).
261. Bergeron, supra, note 6. See the discussion in this manual at pp. 5-6.
262. Campbell v. Clough (unreported, P.E.I. S.C., March 26, 1979), at p. 5.
263. Bruce MacFarlane, Drug Offences in Canada, Toronto, Canada Law Book Co., 1979, at p. 333.
264. Goodbaum, supra, note 44, at p. 480.
265. Regina v. Lauzon (unreported, March 30, 1977, Ont. Prov. Ct.).
266. As of the autumn of 1978, (the time at which search warrant practices in seven Canadian cities were surveyed by the Commission), two cities (Toronto and Vancouver) were using special forms for NCA/FDA searches. One other (Edmonton) was using both modified Code forms and special NCA/FDA forms. The remaining four cities (Winnipeg, Montreal, Fredericton, St. John) were using basically identical forms for NCA/FDA searches and searches under s. 443 of the Code.
267. Campbell, supra, note 262, at p. 5.
268. Lauzon, supra, note 265.
269. Goodbaum, supra, note 44, at p. 480.
270. MacFarlane, supra, note 263, at p. 333.
271. Ibid., at p. 586.
272. Re Regina and Kellet (1973) 14 C.C.C. (2d) 4 (Ont. C.A.).
273. Lauzon, supra, note 205, at p. 7.
274. Frain, supra, note 56.

275. Schumaitcher, supra, note 108.
276. La Vesque, supra, note 30.
277. Lauzon, supra, note 265, at p. 9.
278. Ibid.
279. Ibid., at p. 2.
280. Goodbaum, supra, note 264, at p. 478
281. Burgess v. The Queen (1975) 18 Crim. L.Q. 254 (Ont. Prov. Ct.).
282. Campbell, supra, note 6, at p. 2.
283. Foster, supra, note 178. See the discussion in this manual at pp. 73-75.
284. Worrall, supra, note 15.
285. Kehr, supra, note 14.
286. Lauzon, supra, note 265, at p. 5.
287. See the text of this manual at pp. 51-57.
288. Goodbaum, supra, note 44, at p. 478.
289. Campbell, supra, note 262, at p. 8.
290. Lauzon, supra, note 265, at p. 12.
291. MacFarlane, supra, note 263, at p. 587.
292. Goodbaum, supra, note 44, at p. 479.
293. Campbell, supra, note 262, at p. 6.
294. Lauzon, supra, note 265, at p. 19.
295. See the text of this manual at pp. 62-64.

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R. Thomas Farrar, "Aspects of Police Search and Seizure Without Warrant in England and the United States", (1975) 29 <u>Univ. of Miami L.R.</u> , pp. 491-558.	6
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