Reaching for Excellence: Evaluating Manitoba's Process for Issuing Judicial Authorizations

ANNE KRAHN, SARAH INNESS,
STACY CAWLEY, BETTINA SCHAIBLE

I. INTRODUCTION

Fifteen years ago, Justice Casey Hill, Scott Hutchison, and Leslie Pringle conducted a study. They questioned whether prior judicial authorization for police searches protects privacy or is an illusion.[1] They reviewed 100 warrants authorized in Ontario and the corresponding information to obtain those warrants. Ultimately, the authors determined that 69% of those warrants had some substantive defect and concluded that 61% would not have survived a *Charter*[2] challenge.[3]

As noted in the article, there are few opportunities for empirical, evidence-based evaluation of criminal justice processes. Anecdotally, the perception by many has been that applications for court authorizations have significantly improved. This panel decided to conduct a similar study in Manitoba to compare results, test the anecdotal perception and objectively determine if there had been improvement in the picture presented in 2000 in an effort to identify error patterns that might be corrected. A definitive statistical comparison cannot be made between these two review projects as they were conducted in different provinces by different evaluators. However, the results of this review may be used as a yard stick to identify changes in the future.

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1 Casey Hill, Scott Hutchinson & Leslie Pringle, "Search Warrants: Protection or Illusion" (2000) 28 CR (5th) 89.

2 *Canadian Charter of Human Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), c 11 [*Charter*].

3 *Ibid* at 91.

The panel consisted of Sarah Inness, an experienced criminal defence lawyer, Bettina Schaible, an RCMP officer with 15 years of experience in drafting applications for court authorizations and instructor of the search warrant drafting course, Stacy Cawley, an experienced federal prosecutor, Anne Krahn,[4] a provincial court judge, and Justice Sadie Bond[5] who participated until her appointment to the Manitoba Court of Queen's Bench at which time, Ms. Cawley took her place. The opinions expressed in this article are the individual views of the authors and do not represent the views of the court, law enforcement, government agency or law firm.

II. EVALUATION PROCESS

The panel reviewed search warrants related to 100 separate files maintained by the Provincial Court. Several files contained more than one application for the same place or item to be searched. For example if the first application was rejected, a second or third application might be filed under the same Provincial Court assigned file number. In total 125 separate applications and judicial decisions were reviewed. The review looked at all unsealed warrants or orders that were sought in Manitoba in September 2013.[6] The month of September 2013 was selected arbitrarily because our warrant study started in December 2013 and the panel wanted to ensure that enough time was allowed for the reports to justice to be filed in the packages that we reviewed. We looked at unsealed packages filed chronologically in the month of September 2013.

Each package that was reviewed consisted of an affidavit or Information to Obtain a warrant (ITO), a warrant, and when filed, the Report to Justice about what was or was not seized under the warrant after it was executed. The first page of the affidavit was most often the form prescribed by the *Code* (often called the facesheet). This form does not

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4 Now an Associate Chief Judge of the Provincial Court of Manitoba.

5 Justice Bond also provided valuable feedback on our final report.

6 Section 487.3 of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*]; authorizes a judicial officer to "seal" or make an order which limits access to information filed as part of an application for judicial authorization when certain pre-conditions are met including where disclosure of information might compromise the identity of a confidential informant, compromise an ongoing investigation, endanger a person engaged in a particular intelligence-gathering technique or prejudice the interests of an innocent person.

allow enough space for the grounds on which the authorization is sought to be filled in, so the grounds are most often attached to the first page of the form or affidavit as an Appendix or Exhibit.

Each warrant was reviewed by the committee members individually. Then every warrant was discussed at meetings attended by all panel members and a consensus was sought as to the final evaluation of each package. While there were some reservations on some of the evaluations, generally a matter was discussed until there was agreement. Where there was agreement about a deficiency in an area, but where it was not invalid in law, the panel recognized it with "half" marks. In an effort to have comparable final results, the panel adopted and used a similar search warrant checklist or evaluation template as the one created for the Ontario study, with some small adaptations to reflect Manitoba practice and interest (attached as Appendix 1). The results of the study were compiled and are attached as Appendix 2.

It must be conceded that there is a healthy dose of subjectivity in a determination of whether a certain set of facts amounts to reasonable grounds or meets the standard of reasonable suspicion. Even the Supreme Court of Canada has had difficulty on occasion agreeing on whether the standard of reasonable grounds has been met. For example, in *R. v. Morelli*[7] the court divided on whether the grounds relied on by a police officer provided sufficient grounds in a search for child pornography on computers in a residence. A similar experience was encountered during this study. Healthy debates occurred on whether certain facts amounted to reasonable grounds. Generally the panel was able to come to a consensus on the final evaluation. So while recognizing the intrinsic difficulty that the type of evaluation undertaken in this study requires, the hope is that by bringing different perspectives to the table, the conclusions can offer the benefit of combined wisdom.

A few comments about the sample size are also necessary. In the month of September 2013, there were a total of 189 applications (this includes re-applications) filed with the court. 43, or 23% of the applications were sealed. The sealing orders were made in applications for search warrants (both *Criminal Code* and *Controlled Drugs and Substances Act*), tracking warrants, general warrants, production orders, and Number

7 2010 SCC 8, [2010] 1 SCR 253.

Recorder Warrants. This is fairly consistent with the applications filed for all of 2013 where 27% of the applications were sealed.[8] The types of warrants reviewed in this study consisted of the following:

Controlled Drugs and Substances Act search warrants 28%[9]

Criminal Code and other regulatory acts search warrants 43%[10]

Production Orders 19%[11]

DNA warrants <1%[12]

Entry warrants 9%[13]

When one looks at the types of applications filed in the entire year of 2013, it is fair to say that these authorizations are a good representation of the main types of judicial applications considered by the Provincial Court.

All applications for judicial authorizations in 2013:

Controlled Drugs and Substances Act search warrants 15%

Criminal Code and other regulatory acts search warrants 34%

Production Orders 25%

DNA warrants 9%

Entry warrants 7%

General warrant (s. 487.01) 5%

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8 Out of 2028 applications filed, 544 were sealed - based on statistics provided by the Manitoba Court Office.

9 35 out of 125.

10 43 out of 125.

11 24 out of 125.

12 1 out of 125.

13 11 out of 125

Omnibus (multiple types of warrants sought in one application) 4%

Tracking warrants <1%

Public Safety Gun/weapons warrants (s. 117.04 of the *Criminal Code*) <1%

Interception of private communications with consent and Assistance orders <1%

Impressions warrants .01%

While the study provides a snapshot of specific applications filed in a discrete period of time – September 2013, it is the panel's view that certain themes and consistent errors emerged. We have expanded on these in this report. We also predict that the same themes or errors would be identified even if a larger sample of applications had been studied. Another study looking at a different period of time would provide more information about the validity and persistence of the themes and errors we have identified.

III. OVERVIEW

Judicial Justices of the Peace (JJP) considered 113 of the applications reviewed. Twelve were considered by Provincial Court Judges. The vast majority of the applications were made by the RCMP or the Winnipeg Police Service.

It is impossible to comment individually on each of the 125 warrants in this report but several themes were repeatedly identified by the committee during this review and these will be discussed further in our analysis.

In all, the Panel felt that 23%[14] of the reviewed Warrants that were authorized should not have been authorized. We concluded 20%[15] would

[14] 25 out of 109. 109 is the number of warrants that were authorized and reviewed in this study. There were a further 16 warrants that were rejected, that is, not authorized.

not have survived a *Charter* challenge. However, when one accounts for triplicate errors made in a series of applications in the same investigation by the same investigator, it is more accurate to say 14% of the warrants should not have been authorized.[16] By comparison, in the Ontario study they concluded that 69% of the warrants should not have been issued due to a material defect in the warrant or the application for the warrant. A further assessment in the Ontario study of whether the defective portion could be severed from the remainder of the application concluded that 61% of the warrants would not have survived a *Charter* challenge.[17]

IV. ANALYSIS

A. Legal Description of the "Offence"

The offence must be set out with sufficient particularity so that the person whose premises or property is to be searched can identify the particular criminal transaction that is being investigated.[18] It is not enough to merely specify, "robbery contrary to section 344 of the *Criminal Code*". "The search warrant must identify the transaction and offence in such a way that the issuing judicial officer can assess the "nexus" between the evidence being sought and the grounds demonstrated in the Information to Obtain."[19]

The panel found that in less than 2% (three) of the warrants reviewed the legal description of the offence was inadequate. In two cases it was an error in the date of the offence – one application was rejected for that reason. In the third case, the offence described did not include the jurisdiction or date of the offence. These appeared to be anomalies. By comparison, the Ontario study found 20% of the sample contained a description of the offence which was substantially inadequate.[20]

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15 18 out of 109.

16 See Section E, *below*; "Applications authorized that ought not to have been" for further explanation.

17 *Supra* note 1 at 91.

18 Scott Hutchison, *Hutchison's Search Warrant Manual*, 2015 ed (Toronto: Thomson Reuters Canada Limited, 2014) at 113-115.

19 *Ibid* at 113.

20 *Supra* note 1 at 94.

In another 2% of the authorization packages, there was some deficiency but not enough to invalidate the warrant. For example, one offence used the wrong section number of the *Criminal Code*. In another case, the grounds in the affidavit described a theft of $2.5 million dollars' worth of materials and the offence specified was theft under $5000. This warrant was not executed due to police resource constraints. The offence was properly described in a second application.

B. Reasonable Grounds for the "Offence"

Most of the authorizations reviewed require the judicial officer to be satisfied that there are "reasonable grounds" to believe the offence under investigation has occurred and that evidence or items to be seized will be found at the search location. The Supreme Court of Canada has defined "reasonable grounds" to mean there is a "reasonable probability" rather than proof beyond a reasonable doubt or a prima facie case.[21] The Supreme Court has also described the standard as one "where credibly-based probability replaces suspicion".[22] The Information to Obtain must therefore contain sufficient evidence capable of being assessed and measured independently by the judicial officer to come to the conclusion that the pre-conditions for the warrant's issuance have been provided.[23]

In some of the applications reviewed, such as some of the production orders, the *Criminal Code* requires that the justice be satisfied that "there are reasonable grounds to suspect".[24] The Supreme Court of Canada described this standard in this way:

> Reasonable suspicion must be assessed against the totality of the circumstances. The inquiry must consider the constellation of objectively discernible facts that are said to give the investigating officer reasonable cause to suspect that an individual is involved in the type of criminal activity under investigation. This inquiry must be fact-based, flexible, and ground in common sense and practical everyday experience. A police officer's grounds for reasonable suspicion cannot be assessed in isolation...[25]

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21 *R v Debot*, [1989] 2 SCR 1140 at para 54, 102 NR 161 [*Debot*].

22 *Canada* v *Southam*, [1984] 2 SCR 145 at para 43, 33 Alta LR (2d) 193 [*Southam*].

23 See also, Hutchinson`s Search Warrant Manual, *supra* note 18 at 114-115.

24 *Criminal Code, supra* note 6, sections 487.012(2), 487.015(2), 487.016(2), 487.018(3), for example.

25 *R v Chehil* 2013 SCC 49 at para 29 (see also paras 30 & 33). See also *R v MacKenzie,* 2013 SCC 50 at para 38, 71-74, [2013] 3 SCR 220 – another example where the

The standard of reasonable suspicion is a modest threshold that is lower than the standard of reasonable grounds.

The panel concluded that 12% of the packages reviewed did not disclose reasonable grounds to support the listed offence. There were a number of applications which were made at the conclusion of a single, lengthy drug investigation where there were multiple suspects, multiple locations searched and multiple controlled substances seized. A series of applications were then filed to search cell phones for evidence related to drug trafficking or possession of the proceeds of crime. On a number of the applications related to this investigation, the offence alleged, for example trafficking marihuana, was not the offence supported by the grounds, which referred to the seizure of methamphetamine. In a number of these applications, the offence that was alleged was possession of the proceeds of crime and the grounds to believe that the items were in fact proceeds of crime were missing. For example, an affidavit referred to both drugs and cash being seized. There was no information in the grounds to provide a basis to believe that the cash seized was the proceeds of drug trafficking. The police appeared to have reasonable grounds for the search but had failed to accurately synthesize a lengthy investigation to justify a search of electronic devices for the appropriate offence at the end of the investigation.

C. Legal Description of the "Location"

The location to be searched must be set out correctly; to fail to do so will be fatal to the warrant.[26]

The majority of the locations for which authorizations were sought were the dwelling house of the suspect – 38%. The second most frequent place to be searched was an electronic device related to the suspect – 27%, while the third were independent businesses such as a financial institution, public utility, or medical facility – 21%. The remainder included searches of a vehicle related to the suspect, a dwelling house that was not the home of the suspect or search of items seized from the suspect.

Supreme Court of Canada is divided on whether the facts amount to reasonable suspicion.; and Hutchinson`s Search Warrant Manual, *ibid* at 60-62

26 *R v Parent*, [1989] 47 CCC (3d) 385 (YTCA), 41 CRR 323.

The vast majority of applications and warrants properly described the location of the place to be searched. We found a legally insufficient description of the place in 3% of the applications compared to the Ontario study where they found 5%.[27] For example, in one instance police had seized an electronic exhibit but did not properly note the address of the detachment where the exhibit was being held. In a second example, there were numerous failures (all relating to the same investigation) to properly describe an IPhone or Blackberry. The information to obtain disclosed a list of phones which had been seized. Unfortunately, the list did not differentiate in its description of each item sufficiently so the panel could tell which "black Samsung" police wanted to search, when more than one "black Samsung" phone was seized.

There was some deficiency but not enough to invalidate the warrant in 6% of the applications. An example of such a deficiency was where the information to obtain described the search for unmarked tobacco (contrary to a Manitoba tax statute). The warrant authorized a search of two cardboard boxes (one with a suspect's address on it) located in the investigative unit. However the description of the boxes with the suspect's address did not appear in the grounds of the information to obtain the search warrant. The panel felt that the cardboard boxes that were to be searched for tobacco should be described with more particularity in the grounds of the information to obtain the warrant.

The description of the place to be searched on the warrant should always mirror the description in the affidavit in support of the warrant.

1. Ms. Cawley's Comments:

In the course of this review, there was debate about the best practice in completing the warrant face sheet when police are applying to search a cell phone already in their possession. Should the affiant list the cell phone as the "place" to be searched or the "thing" they are searching for?

It was common for the police to list their exhibit locker as the "place" to be searched and the cell phone (previously seized and held in the locker) as the "thing". It did seem odd that the police were applying to search their own locker. Nevertheless, this is an acceptable practice provided the information is clear that the police have the device in their custody and are applying to search the device for evidence of the offence.

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[27] *Supra* note 1 at 95.

For greater clarity, another option would be to state "cell phone (description) currently located in police exhibit locker....." as the place to be searched.

Given current technology, cell phone searches implicate the same privacy interests as computers.[28] In *R v. Vu*,[29] Justice Cromwell stated, on behalf of the Court, that, "...the privacy interests at stake when computers are searched require that those devices be treated, to a certain extent, as a separate *place*". While these comments appear to support listing a device as the "place" to be searched, context is important. In *Vu,* while the computer was discussed as a place, it was treated as a thing.

Until we have further guidance from the courts, the police must make every effort to clearly articulate they are seeking judicial authorization to search a cell phone, previously seized incident to arrest and in their possession, for evidence of the offence under investigation. Perhaps one day we may have specialized forms tailored to the unique considerations involved in computer or mobile device searches. Until that time, police should strive to be clear in the information to obtain.

It is beyond the scope of this paper to address best practices concerning narrowing the scope of a cell phone search, recommended wording for categories of evidence sought from the device or addressing time requirements for computer/device analysis. Investigators should be aware of the potential issues that may arise in these areas and consult with the Crown for assistance.

D. Reasonable Grounds for the "Location"

The panel found that in 13% of the cases, reasonable grounds did not exist to believe that a search of the location would produce evidence of the offence. In an additional 4% there was some deficiency but not sufficient to invalidate the entire warrant. The types of issues noted were a failure to provide grounds to support a search for firearms at a suspect's residence when the suspect had been involved in a firearm offence at a different location, away from the residence. In a few cases, the search warrant authorized searches of outbuildings, but there were no specific grounds articulated as to why evidentiary items would be located in outbuildings.

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28 *R v Fearon,* 2014 SCC 77 at para 51, [2014] 3 SCR 621 [*Fearon*].

29 2013 SCC 60 at para 51, [2013] 3 SCR 657 [*Vu*].

In a few cases, the grounds relied on to justify the search of the location were two or more months old and the belief that the items would still be at the location was not logical based on the dated nature of the information.

E. Legal Description of the "Things"

The warrant should contain a sufficiently detailed description of the items to be searched for so that a searching officer can identify the items. This test has been described as "the fellow officer" test:

> Would another police officer unfamiliar with the rest of the investigation be able to execute the warrant without reference to the Information to Obtain or other material? Would such an officer know from the warrant (and nothing else) what to seize, and what to leave behind?[30]

We found that in 6% of the applications there was a material deficiency in the description of the items police wanted to search for. Another 6% of applications contained some deficiency but not sufficient to invalidate the warrant. In one case, law enforcement officers appeared to have seized a cell phone incident to an arrest on an offence of luring a child and invitation to sexual touching. It was alleged that the adult suspect sent sexually explicit messages to a child under the age of 16. The first application was denied for a number of reasons, including an incomplete description of the cell phone – no make, colour, model number, and phone number. It was clear to the panel in reviewing the supporting affidavit that police wanted to search the cell phone for text messages and photos that may have been sent to the child. The second application (which was authorized) provided a more detailed description of the phone as the "thing" to be seized and noted the location to be an exhibit locker in the police station. Arguably, greater clarity about what the search authorized could have been achieved by identifying the phone as the "place" to be searched and describing the type of data ("the things") that police were looking for – text messages and photos. As noted in Ms. Cawley's comments above, this is an area of uncertainty in the law at this time.

Another example was where the warrant authorized the search of a cell phone for <u>all</u> text messages and cell phone records. The offence

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[30] *Supra* note 18 at 94.

alleged sexually explicit material being sent to a child on one specific date. The panel felt that the search should have been limited to look for material sent during the time period alleged in the offence. If police are unable to restrict a search due to limitations in the software used to conduct the electronic search, this should be explained in the information to obtain.

Some examples of those matters which we concluded had some deficiency, but the overbroad portions could be severed from the descriptions were:

- where medical records were sought, but these were not restricted to the time period alleged in the offence;
- in a sexual assault investigation, the description of the offence included "offence related clothing";
- a description of the items to be searched for on an IPOD included the phrase "for any evidence [related to the offences] including but not limited to.... text messages, emails, chat logs...." The phrase, "including but not limited to" or "any evidence related to the offence" as a catchall for items to be searched for is to be avoided as it creates an overbroad and imprecise description of the things to be searched for;
- "any other cellular phone data"; and
- "any other forensic evidence".

1. Ms. Cawley's Comments:

Concerning cell phone searches, the affiant should specify the category of evidence they are searching for on the device. In the example above, the search of the cell phone was limited to text messages and photos. The affiant would have to address why he is of the belief text messages and photos (evidence of the offence) would be found on the cell phone. Overly broad statements such as "computers and the data contained therein" should be avoided.

Additionally, investigators should consult the Crown in their jurisdiction for advice on how to articulate categories of evidence as there is regional disparity on how to best approach this issue.

F. Reasonable Grounds for the "Things"

In 13% of the packages reviewed, there were not sufficient grounds to explain why the things to be searched for would afford evidence. There

was some deficiency in a further 6%. It appeared that in many of these instances the affiant believed it was self-evident why the listed things were related to the offence and the location.

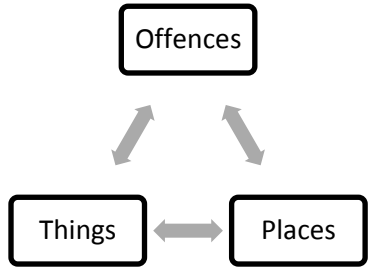
In a number of instances, police sought to search cell phones for text messages or emails, but the affidavit failed to set out any grounds on which to believe that the text messages or emails would provide evidence of the offence. In a few instances the items to be searched for as listed on the warrant itself were not referred to in the affidavit at all.

1. Cpl. Schaible's Comments:

A number of reviewed authorizations failed to properly provide an adequate legal description or reasonable grounds relating to the "offence", "place" or "things to be searched for" (15 Warrants had an issue with one or more of these areas with another 17 Warrants obtaining only a ½ mark in this category). Law enforcement cannot expect the reviewing Justice to authorize a Warrant if the listed "offence", "things to be searched for", or "place" that will be searched does not match what they have outlined in the reasonable grounds detailed in the affidavit.

The "nexus" is a term often used in warrant writing to describe the triangular connection between the "offence" that is being investigated, how it is linked to the "things" that police would like to search for and the reasons why those items can be found in the "place" for which the warrant is written.

FIGURE 1: THE "NEXUS"



Ultimately, these three points are in one form or another on the facesheet of every Information to Obtain, regardless of the type of warrant. It is the affiant's job to clearly explain the investigation and to "connect the nexus dots" for the reviewing Justice, outlining very clearly the reasonable grounds for the triangular connection of "offence", "things",

and "places". In all, the committee felt that in 13% of the applications, the affiant failed to properly provide reasonable grounds detailing one or more of the "nexus" points. Failing to explain even one of those connections should always get the warrant denied as the affiant has not established the required reasonable grounds. This point cannot be highlighted enough as our review has shown that it is the main reason a warrant is denied.

A similar issue was an "overbroad" request in the "Items to be searched for" category. I would caution an affiant against including in their description a term like "…including but not limited to the following items". In every application affiants should be correlating each of the "items" they are searching for on their facesheets to the specific items they have reasonable grounds for and have detailed in their affidavit. It is important to remember that officers executing a warrant that come across offence-related items they did not anticipate would be there and are not listed in the "Items to be searched for" have the authority to seize those items under section 489 of the *Criminal Code*.[31] In my opinion, it is better to use the authority of section 489 C.C. to seize those items then to include an overly broad list in the "Items to be searched for" portion of the warrant that is not supported in the grounds.

2. Ms. Inness Comments:

i. Grounds Not Explained Sufficiently

Recognizing the expediency with which some applications are brought, perfection cannot be expected. That said, a fair number of the warrants were poorly organized and disjointed. It took a few readings to "get" the grounds. These applications left the impression there was sufficient evidence (perhaps even more than that contained in the application), but it was poorly explained and inadequately linked with the reasonable grounds test.

A large number of warrants left much guess work to the judicial officer in determining if the grounds existed. This mainly was due to the affiant's failure to connect the dots for the justice. Although the reviewing judge should take into account reasonable inferences that can be drawn

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31 *Criminal Code*, *supra* note 6, s 489. This is a codified plain view doctrine.

from the information in the ITO,[32] it is important to distinguish between speculation and reasonable inference. Furthermore, while some inferences may lend themselves to their conclusions based on common sense, others may require a bit of specialized knowledge or additional information.

Frequently this was observed in the *Controlled Drug and Substances Act* (CDSA)[33] investigations where the affiant failed to explain the connection between the nature of the investigation and the items they wanted to locate and seize. While some of the items may seem obvious to those who have experience with CDSA matters, it is necessary to explain to the justice why the items sought will afford evidence of the offence. For example, "documents": such a broad term would theoretically allow for the seizure of any and all documents in the home. While items such as score sheets, bills (to establish residency) may relate to the offence, other documents may not.

ii. Feeney Warrants

Some of the Feeney warrant (a warrant that authorizes the entry of a residence to conduct an arrest)[34] applications were extremely well-written. The grounds were well-sourced and properly explained. Many, however, were very lax. Oftentimes the affiant did not adequately explain the grounds to arrest (easily done if an arrest warrant has already been granted) or the basis to believe the suspect is still present in the place they are seeking to enter. For example, in one case, reference was made to a confidential informer who reported that the suspect was living with his girlfriend at a particular address, but the informant information was not sourced or corroborated.

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32 *Vu*, *supra* note 29 at para 16.

33 SC 1996, c 19.

34 Named after *R v Feeney*, [1997] 2 SCR 13, 212 NR 83.

V. RESULTS AND COMPARISON

	Ontario 1999	Manitoba 2013
Legal description of offence was inadequate	18% + 2 % some deficiency	2% + 2% some deficiency
Reasonable grounds for offence was inadequate	10% + 2 % some deficiency	12%
Legal description of Location was insufficient	4% + 1 % some deficiency	3% + 6% some deficiency
Reasonable grounds for the location was lacking	20%	13% + 4% some deficiency
Legal Description of Things was insufficient	13% + 22% some deficiency	6% + 6% some deficiency
Reasonable Grounds for Things was inadequate	10% + 16 % some deficiency	13% + 6% some deficiency

"Some deficiency" not enough to necessarily invalidate the warrant

VI. CERTAIN ISSUES IN THE WARRANT APPLICATIONS

A. Sourcing of Information

In order to disclose reasonable grounds, it is important that an affiant properly describe the source of the information. The panel found that in 74% of the warrants, the information was properly sourced. In 22% there was some sourcing of the information. In 4% of the applications, the affidavit was filled with unsourced information. In the Ontario study, 59% of the warrants contained proper sourcing, 36% had some sourcing and 5% contained unsourced narrative.[35] On this measure, clear

[35] *Supra* note 1 at 119-23 (Table 1).

improvement on the requirement for foundation or basis for conclusions can be seen.

B. Informants

When the information comes from a confidential informant, it is important that the information be corroborated or the reliability of the informant be substantiated. In 90% (19 out of 21) of the applications where information from a confidential informant was referenced, the information was properly corroborated with other independent information. In 86% of the applications, the reliability of the informant was properly explained. Although the panel concluded that most applications established *sufficient* information to support the minimum levels necessary to support reliability and corroboration, in 43% (9 out of 21) we would have liked to see *more* information to establish either the informant's reliability or corroboration of the informant's information.

1. Ms. Cawley's Comments

Special concerns arise when a search warrant application is based on informant information. The court, Crown, and police are obligated to protect informant privilege. The law has made clear the privilege is not qualified by *R. v. Stinchcombe*[36] disclosure obligations and is subject only to the "innocence at stake" exception.[37]

In two warrants, accounting for 10% of the warrants containing informant information, there was detail included that could have identified the informer. This is problematic. There is simply no margin for error when protecting the identity of a confidential informant. It is a worthwhile reminder to all investigators that the duty to protect informant privilege arises whether the informant is anonymous or known to police. Courts have recognized that "the smallest or most innocuous detail may unwittingly reveal the identity of the informer".[38] Police should exercise heightened caution when using information from anonymous sources as it is extremely difficult to ascertain whether the detail will reveal the informer's identity.

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36 [1991] 3 SCR 326, 68 CCC (3d) 1.

37 *R v Leipert*, [1997] 1 SCR 281 at para 9, 143 DLR (4th) 38.

38 *R v Omar,* 2007 ONCA 117 at para 5, 218 CCC (3d) 242.

Affiants are faced with a challenging task when they use informant information to justify a search warrant. There is a natural tension between including enough detail to allow the Justice to assess the content and reliability of the informer tip and the legal obligation of the police to protect informer privilege. While informer privilege prevents disclosure of certain details, it does not dilute the "totality of the circumstances" test outlined in *Debot.*[39] How does an affiant navigate between his legal obligation to protect the informer's identity and simultaneously meet the reasonable grounds threshold in the information to obtain? In the sample of warrants reviewed, the compromise was to summarize the informant information. The summary was written in a manner that protected the informer's identity yet permitted disclosure to the accused. This is an acceptable practice provided the affiant does not mislead the authorizing justice and is full, fair and frank in the summary.

When faced with uncertainty, investigators should consult with the Crown's office and consider obtaining a sealing order.[40]

2. Cpl. Schaible's Comments

In all, 10% of the reviewed Warrants (2 out of 21) that included confidential informant information did not properly reference or corroborate the informant. I will re-iterate Ms. Cawley's comments in that it is the affiant's job to detail as clearly as possible, depending on each individual circumstance, that the informant's information is compelling, credible and wherever possible, corroborated.[41] Affiants who are including an informant in their grounds need to be very conscious of the difficult balance between providing the Justice enough detail to help them assess the credibility of the informant and the confidential informant's right to have their identity protected by not revealing identifying details.

In those instances where an affiant does not have experience in handling informants and/or drafting authorizations that include confidential source information, I would strongly urge them to request the assistance of a Crown attorney to review the material before submitting it to the court for consideration.

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39 *Debot, supra* note *21.*

40 Pursuant to s 487. 3 of the *Criminal Code, supra* note 6.

41 *Debot, supra* note 21.

C. Night Time Executions

Section 488 of the *Criminal Code*[42] requires a warrant issued under 487 or 487.1 to be executed by day (defined in s. 2 as between 6 am and 9 pm) unless reasonable grounds exist and the warrant is authorized for night execution.

The panel found that all search warrants (three) which sought to execute a *Criminal Code* search warrant during night hours contained grounds for that request. There were an additional eight *CDSA* search warrants which sought night execution. Of these eight drug warrants, seven contained specific grounds to justify executing the *CDSA* search warrant at night. Arguably, a *CDSA* search warrant does not require explicit grounds to justify a night execution (see Ms. Cawley's comments below). The panel did not consider it an error when grounds were omitted to execute a *CDSA* search warrant at night.

There were five files all relating to the same lengthy drug investigation. Each of these five court files consisted of three applications to search a cell phone. They appeared to be *Criminal Code* search warrants but the standard *Criminal Code* form was not used. In each case, the police were seeking to search a cell phone to further a drug investigation. The phone had already been seized and was in the police exhibit locker. The Information to Obtain had been filled in seeking to execute by "day or night". The information to obtain did not contain explicit grounds to search by night. In some cases, the warrant was granted for an extended period of time so that the police Tech Crime unit would have time to search for data on the phone. There was information in the third application (which was filed requesting an extended expiry date) that a police backlog would require at least one year for the phones to be analysed. In the second and third applications of these series of warrants, the warrants were noted as authorizing a search "by day". These series of applications are problematic for a number of reasons:

- They related to a drug investigation and no additional grounds to justify a night execution if it was a *CDSA* warrant would be required.
- These warrants were for devices already in police custody so the usual justification for the requirement for reasonable

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[42] *Criminal Code*, *supra* note 6, s 488.

> grounds to execute at night are absent. The phone is already in police custody and there is no greater invasion of privacy if the phone is searched at night as opposed to during the day.

Given that these series of applications did not involve the search of premises like a residence or commercial business, the panel concluded that these applications should not be counted as errors in neglecting to include reasonable grounds to justify night execution. This provides an example of where traditional search principles do not fit comfortably with searches of modern, digital devices.

1. Ms. Cawley's Comments

i. Section 11 *CDSA* warrants

The prohibition on night warrants in section 488 does not apply to warrants issued under section 11 of the *CDSA*. *CDSA* search warrants may be executed "at any time" without justification for doing so in the information to obtain.[43] There has been some judicial debate about this point.[44] Indeed, even the original search warrant review article stated that, "s.8 of the *Charter*, at least in respect of dwellings, requires the inclusion of reasonable grounds in the information to justify the extraordinary step of a night search"[45] (in the context of a *CDSA* search). Subsequent case law has not imposed that high a standard.[46] In *R. v. Saunders*, the majority of the Newfoundland and Labrador Court of Appeal,[47] concluded that:

> ...the determination by the trial judge that, in the case of a search warrant issued pursuant to the authority of section 11 of the *CDSA*, 'there must at the very least be something in the information to obtain from which the justice can draw an inference that the request to search at night has a reasonable basis is, on the law as it presently stands, in error.[48]

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43 See s. 11(1) of the *CDSA* and *R v Saunders,* 2003 NLCA 63, [2003] 181 CCC (3d) 268, affirmed by SCC [2004] 3 SCR 505.

44 *R v Duncan*, 2002 MBQB 240, [2002] 2 WWR 61, and *R v DeWolfe,* 2006 NSPC 51, [2006] 250 NSR (2d) 9.

45 *Supra* note 1 at 95.

46 See also *R v Floyd,* 2012 ONCJ 417 at para 87, [2012] OJ No 3133, and *R v Ulrich,* 2012 MBQB 170 at paras 57-59, [2012] MJ No 225.

47 Later affirmed by the Supreme Court of Canada in *R v Saunders*, 2004 SCC 70, [2004] 3 SCR 505.

48 *R v Saunders,* 2003 NLCA 63 at para 34, [2003] 181 CCC (3d) 268.

There is also confusion surrounding whether authorization for night execution should be sought when a *CDSA* warrant is obtained by telewarrant pursuant to section 487.1 of the *Criminal Code*.[49] In my view, if a warrant is obtained pursuant to s.11 of the *CDSA*[50] it does not require night execution justification regardless of whether it is sought in person or by telewarrant.

Section 11(2) of the *CDSA* states:

> Application of section 487.1 of the *Criminal Code*
>
> (2) For the purposes of subsection (1), an information may be submitted by telephone or other means of telecommunication in accordance with section 487.1 of the *Criminal Code*, *with such modifications as the circumstances require.* [51] (emphasis added)

The meaning of "with such modifications as the circumstances require" in ss. 11(2) of the *CDSA* was considered in *R. v. Dueck.*[52] Police had executed a *CDSA* warrant at night that was authorized under the telewarrant provision in ss.11 (2). *Dueck* alleged that the trial judge erred in finding the *CDSA* warrant authorized the police to search the residence at night.[53] Counsel for the accused conceded that a warrant executed under the *CDSA* may be executed "at any time". He argued, however, that this did not apply to the telewarrant section in ss.11 (2) of the *CDSA*. The British Columbia Court of Appeal rejected this argument. The Court adopted a common sense approach pointing out that:

> ...no sensible reason comes to mind that would require the provisions of a warrant obtained over the telephone or by fax under the *Controlled Drugs and Substances Act* to be different in substance from one obtained in person where the substantive requirements to obtain them are the same.[54]

Accordingly, *Saunders* and *Dueck* support the position that investigators need not justify the night execution of a *CDSA* search

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49 *Criminal Code*, *supra* note 6 at s 487.1.

50 *CDSA*, *supra* note 33 at s. 11.

51 *Ibid,* s 11.2.

52 2005 BCCA 448 at para 20, [2005] 200 CCC (3d) 378, cited with approval by the Ontario Court of Appeal *in R v Shivrathan* 2017 ONCA 23 at para 60-61, 35 CR (7th) 143.

53 *Ibid* at para 2.

54 *Ibid* at para 22.

warrant whether the warrant is obtained in person or using the telewarrant provision.

D. Technological Issues

Thirty one years ago the Supreme Court of Canada decided that judicial pre-authorization for a search, where feasible is the constitutional standard required by section 8 of the *Charter* in the vast majority of cases.[55] In *R. v. Evans*,[56] the Supreme Court said that a warrantless search is presumed unreasonable, unless the party seeking to justify it can rebut the presumption. These principles have been affirmed and applied recently as the same Court grapples with the advance of technology and vast amounts of information that can be carried around on small devices or stored in computers in the home. The Supreme Court continues to rely on front line judicial officers to screen and balance the citizen's reasonable expectation of privacy against law enforcement's request for searches to further criminal investigations. For example in *Vu*[57] the Court noted that requiring specific authorization to search a computer listed in the warrant alerts the judicial officer to the need to weigh the distinctive privacy concerns raised by computer searches and whether in the circumstances it should give rise to law enforcement's goals. In *Spencer*,[58] the Supreme Court found that the linking of anonymous internet activity to a certain subscriber engaged a reasonable expectation of privacy and therefore the police should have sought judicial pre-authorization for subscriber information.

1. Cpl. Schaible's Comments

The committee identified some issues surrounding warrant applications dealing with technological items. Unfortunately, legislation cannot be drafted and updated to reflect the rapidly changing world of technological devices that police must seek to search in their investigations. This creates a grey area that is usually addressed through litigation and affiants are then guided by new and emerging case law. This, however, poses great difficulties for an affiant who is attempting to work

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55 *Southam*, *supra* note 22.

56 [1996] 1 SCR 8 at para 16, 45 CR (4th) 210.

57 *Vu*, *supra* note 29 at para 47.

58 *R v Spencer*, 2014 SCC 43, [2014] 2 SCR 212.

within the confines of the law where there is no clarity on the subject. Defense counsel would like police to include restrictions on what can be searched and, where possible, I would also encourage this practice.

Having said that, it is not always possible to be specific as the technology used by police to conduct the search of a computer or cellular device may not be able to narrow in on specific texts or specific photos (as an example). Tech Crime investigators advise that the software used for retrieving information from different devices and various models of devices (even models from the same company) may not always allow the retrieval of the same information. In order to address this challenge, I would strongly recommend that affiants consider including a paragraph from a Tech Crime member (expert) stating the limitations of the search technology they will need to use in an effort to educate the reviewing Justice as to what their software is, or is not, capable of retrieving. This suggestion is comparable to a drug investigator including a paragraph in their grounds from a qualified drug expert on why certain items are usually present in a drug search (i.e. score sheets, residency documents, scales, etc) to justify the inclusion of those items in their "Items to be searched for" section.

E. Rejected Applications

In all, 13% (16 out of 125 applications) of the Manitoba warrants were rejected by the reviewing judicial authority. By comparison, in the Ontario study 7% of the applications were rejected. In this study, for each denial, written reasons for rejection were included in the returned court information. Some applications were rejected for more than one reason. The reasons for denials included the following:

- Wrong date on the Information to Obtain (ITO) for the offence – 3 out of 16 (19%)
- Wrong name of suspect – 1 out of 16 (6%)
- Wrong address – 2 out of 16 (13%)
- No offence date – 1 out of 16 (6%)
- No jurisdiction – 1 out of 16 (6%)
- Inadequate description of phone/place – 1 out of 16 (6%)
- Lack of jurisdiction for offence – 1 out of 16 (6%)
- Lack of grounds for place – 5 out of 16 (31%)
- Lack of grounds for items – 4 out of 16 (25%)

- No reference to attached Appendix (grounds attached to affidavit) – 1 out of 16 (6%)
- Did not identify that there was a prior application made – 2 out of 16 (13%)
- Technical issue – no place for the JJP to sign in Telewarrant – 1 out of 16 (6%)

The panel largely agreed with the reasons for rejection with the exception of two cases. In one the matter was rejected for lack of reasonable grounds, in the other it was rejected because the judicial officer felt the police applied under the wrong *Criminal Code* section number. The panel felt that there were sufficient grounds in the first case. In the second, the panel disagreed that the applicant was required to apply for a production order under another section number. Ultimately in that investigation, the production order that was sought by police was authorized by a Provincial Court Judge on a third application.

It is helpful to note the statistics kept by Manitoba Courts in the last years as to the rates of rejection of warrants and orders:

- 2010 – 1970 Applications, 402 of those applications were rejected – 20 %
- 2011 – 2092 Applications, 402 of those applications were rejected – 19%
- 2012 – 2280 Applications, 410 of those applications were rejected 18%
- 2013 – JJPs: 1769 applications, 293 of those applications were rejected – 16.5%
    - Judges: 535 applications, 57 of those applications were rejected – 11%
- 2014 – JJPs: 1837 applications – 371 of those applications were rejected – 20%
    - Judges: 565 applications, 52 of those applications were rejected – 9%[59]

It does appear that a healthy level of scrutiny is being brought to bear on judicial applications.

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[59] Based on statistics provided by the Manitoba Court Office search registry via e-mail on June 23, 2015. These types of statistics will be published in future Provincial Court Annual Reports.

1. Judge Krahn's Comments:

In all of the cases where a warrant was not granted, the judicial officer provided written reasons for the rejection. This is an improvement from what was noted in the Ontario study[60] where written reasons for rejection were not consistently provided.

In one case the warrant was rejected because the judicial officer erroneously believed that the application should have been made under section 487.013 not section 487.012.[61] This highlights a more recent difficulty with a legislative approach which is to continue to add to the *Criminal Code* different types of court authorizations. This creates difficulty because it increases the technical difficulty of choosing the right tool to further an investigation.[62] Academics have long been advocating for the simplification of the *Criminal Code*[63] rather than the continued additions of more sections which, arguably, cause the law to become more and more inaccessible to both front line judicial officers and police officers who most often do not possess law degrees.

The number of rejections support that judicial officers are fairly and accurately scrutinizing the applications. The providing of reasons for rejection promotes transparency and education of the police officer to the identified deficiency. From an even broader perspective, it promotes *Charter*[64] compliance and the truth-seeking function of the legal process.

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60 *Supra* note 1 at 111-12.

61 *Criminal Code, supra* note 6, s 487.012 – .013

62 See *R v Telus Communications,* 2013 SCC 16, [2013] 2 SCR 3. Where Telus successfully argued that the police chose the wrong type of authorization in seeking to obtain text messages on a go-forward basis. A similar debate is currently unfolding based on a gap in the types of production orders available because the legislation does not allow you to capture subscriber information on a "go forward" basis to accompany tracking warrants and trace communications recorders, see *Re Transmission Data Recorder Warrant,* 2015 ONSC 3072, [2015] OJ No 2471.

63 Don Stuart & Allan Manson, *Towards a Clear and Just Criminal Law* (Toronto: Carswell, 1999); Don Stuart, "The Anti-Terrorism Bill (Bill C-36): An Unnecessary Law and Order Quick Fix that Permanently Stains the Canadian Criminal Justice System" (2002) in Errol P Mendes and Debra McAllister, ed, *National Journal of Constitutional Law 14.1 Special Issue: Between Crime and War: Terrorism, Law and Democracy* (Toronto: Carswell, 2002); Don Stuart, "Time to Recodify Criminal Law and Rise Above Law and Order Expediency: Lessons from the Manitoba Warriors Prosecution" (2001) 28:1 Man LJ 89.

64 *Charter*, *supra* note 2.

The reasons fulfill an important role in educating the police officer, allows for correction of the deficiency and furthers transparency in the decision making process.

Anecdotally, one sometimes hears the concern that the judicial officer is merely a rubber stamp for law enforcement.[65] Based on our examination, the Panel concluded this was not the case. While there was an error rate that we have described for warrants authorized that ought not to have been authorized, this can largely be attributed to misunderstandings of the legal definitions in a few cases and applying a lower standard of what amounts to reasonable grounds.

There was also good evidence of judicial officers approaching their task with scrutiny and good faith. The panel noted that in numerous instances, the judicial officer would delete items identified on the search warrant for which there were no grounds in the information to obtain the warrant. In numerous instances, the judicial officer would include date limitations for records being sought, in order to properly limit the scope of records being produced to those which were related to the grounds in the affidavit. In another instance, the judicial officer deleted an overbroad phrase "and any other cell phone number...." when the investigation related to explicit sexual messages being received from one cell phone.

In one instance, the judicial officer endorsed the night execution of an entry warrant[66] when grounds had been substantiated for this in the affidavit. It is not immediately clear that the *Criminal Code* requires an officer to seek permission to execute an entry warrant as section 488[67] requires that all search (487)[68] warrants be executed by day unless there are grounds to search at night. There is no reference to section 529[69] in section 488.[70] Section 529.2[71] permits a judicial officer to include any conditions on the execution of the entry warrant that would make it "reasonable in the circumstances." While there have not been appellate

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65 James Stribopoulos, "Unchecked Power: The Constitutional Regulation of Arrest Reconsidered" (2003) 48 McGill LJ 225 at 286.

66 See *Criminal Code, supra* note 6 at s 529.

67 *Ibid*, s 488.

68 *Ibid*, s 487.

69 *Ibid*, s 529.

70 *Ibid*, s 488.

71 *Ibid*, s 529.2.

decisions that have specifically ruled on this issue, in *R. v. N.M.*,[72] Justice Hill, in *obiter* comments, concluded that a combined reading of sections 487, 488, 487.1 and 529.5[73] would require judicial pre-authorization of a night time execution of an entry warrant. This is an example of a police officer seeking authorization for a night time search as a best practice and the judicial officer giving consideration to that request and authorizing it.

F. Applications Authorized that ought not to have been

The panel felt that 23%[74] of applications were authorized but ought not to have been. Nine of these were authorized by a Provincial Court Judge and 16 by a Judicial Justice of the Peace (JJP). In most of these cases the panel did not agree that the information contained in the application was sufficient to meet the reasonable grounds test, in relation to the items likely to be found at the location or insufficient grounds to establish the delineated offence. In a number of occasions the warrant package was deficient in more than one area.

1. Judge Krahn's Comments:

Of the 25 warrants granted that we found should not have been, 15 were applications by the same police officer from a smaller urban center and related to the same, lengthy drug investigation into multiple accuseds and multiple offences. These 15 applications related to only five devices that had been seized when many search warrants were executed at different locations. In each of these five files, there were three applications made as the police officer tried to correct errors he had noticed, even after being granted the first authorization. The applications themselves were difficult to read and understand. The panel ended up re-reading and returning to them more than once in order to evaluate them. The Informations to Obtain were obviously "cut and pasted" from earlier applications in order to seek search warrants for various devices that had been seized from residential properties at the conclusion of a lengthy police investigation. These applications exemplified the difficulty that an affiant may have in synthesizing a large amount of information and including only relevant information related to the search of one device

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72 *R v M (N.N.)*, [2007] 159 CRR (2d) at para 236, 223 CCC (3d) 417.

73 *Criminal Code*, *supra* note 6, ss 487, 488, 487.1, & 529.5.

74 25 of 109 of the applications.

into one document. These series of warrants contained a great deal of irrelevant information which would have made it more difficult for the judicial officer to sift out those pieces that actually bore on the requirements necessary to validly issue the warrant. The panel concluded that sufficient grounds likely existed but the affiant's ability to articulate was wanting.

So while the panel has concluded that 23% of the warrants were authorized that ought not to have been, the numbers do not tell the complete story. Since 15 of the 25 were warrants granted by the same two judicial officers and written by the same police officer in relation to the same lengthy investigation, the same type of mistake is being made and double or triple counted in our review. If this is taken into account, it is more accurate to conclude the "error rate" in our study is 14%.

G. Reports to Justice

The Report to Justice sections in the *Criminal Code* (sections 489.1 and 490)[75] are designed to be a check-and-balance so the court has some type of documentation explaining the results of the execution of a duly authorized warrant and the items that were seized under that warrant or any other appropriate authority.

Upon review, the panel determined that in 87 out of 100 authorizations a Report to Justice ought to have been filed. The panel reviewed each of the corresponding Reports to a Justice that were filed with the court in relation to the 100 reviewed authorizations and discovered that of the reports that needed to be filed, only 60% were actually submitted to the court. Of those that were actually filed, several of them had errors in the paperwork including quoting the wrong section number of the warrant and incomplete reports.

There are special requirements for Reports to a Justice where a telewarrant is sought (s. 487.1 (9) C.C.)[76] that require the filing of a report "as soon as practicable but within a period not exceeding seven days after the warrant has been executed". Upon review, the committee found that of the 17 authorizations that were obtained via telecommunication and required the filing of a report, only 12 such reports were submitted and

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75 *Criminal Code*, *supra* note 6, ss 489.1 & 490

76 *Ibid*, s 487.1(9)

that less than half (only 42%) were actually filed within the specified 7 days.

Finally, the committee determined that 40% of the reports that should have been submitted were not filed at all. Sections 489.1 and 490[77] of the *Criminal Code* clearly outline law enforcement's responsibilities post-search with respect to reporting the results of a search and identifying the items seized to the court. Recently, the Court of Appeal in Ontario highlighted in *R. v. Garcia-Machado*,[78] that a failure to file a Report to Justice "as soon as practicable" (or at all) is a Section 8 breach of the *Charter* in that "Everyone has the right to be secure against unreasonable search or seizure".[79] In that decision, the Ontario Court of Appeal quoted *Canada v. Southam Inc.*, stating "The matter seized thus remains under the protective mantle of s. 8 so long as the seizure continues."[80]

1. Cpl. Schaible's Comments

More and more cases across the country are being challenged by defence counsel relating to the failure of police to properly file the required Report to a Justice and the courts are starting to view this failure as "symptomatic of an institutional and systemic problem".[81] I would strongly encourage all law enforcement agencies to re-visit those sections of the *Criminal Code* and ensure <u>all</u> their members understand their obligations for the post-search reports to justice as we clearly have room for improvement in this area.

VII. CONCLUSION

A. Ms. Cawley's Comments

The overall results of the Manitoba search warrant review project were positive. However, a potential systemic issue was identified concerning the search warrant training available to smaller municipal and specialized police agencies within the province of Manitoba. The smaller agencies had

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77 *Ibid*, ss 489.1 & 490

78 *R v Garcia-Machado*, 2015 ONCA 569 at para 44-49, 327 CCC (3d) 215 [*Garcia-Machado*].

79 *Charter*, *supra* note 2, s 8.

80 *Southam*, *supra* note 22 at para 41.

81 *Garcia-Machado*, *supra* note 78 at para 29.

the highest percentage of warrants assessed as "substandard". The smaller agencies also had the majority of applications containing sourcing issues, erroneous applications for night execution, and inadequate grounds to support the issuance of the warrant.

Rural municipal police agencies and specialized units are encouraged to proactively seek out search warrant training opportunities. There is much to be gained by developing good working relationships with experienced members of the larger agencies. If possible, members should participate in the courses offered by the RCMP or WPS. Additionally, the role of the Crown cannot be overstated. It is important that the Federal and Provincial Crown offices continue to support these units by assisting with formal search warrant training and offering to review search warrant materials before they are submitted.

Police officers are participants in a justice system that demands a balance between law enforcement goals and individual privacy rights. The Manitoba search warrant sample demonstrated that the majority of investigators understand and respect the need to maintain that balance. For example, the warrants reviewed for this project were submitted in 2013, a time when there was uncertainty concerning police powers to search cell phones incident to arrest. The Supreme Court had not yet released its decision in *R. v. Fearon*.[82] In the course of review, the committee noted several search warrant applications for cell phones that were likely unnecessary as the search would have been authorized by the common law doctrine of search incident to arrest. The fact that an investigator, in circumstances where there was legal uncertainty, pursued judicial authorization as opposed to relying on a pre-existing common law doctrine demonstrates a desire to be *Charter* compliant. These efforts should be commended.

Investigators and prosecutors alike must appreciate that systemic weaknesses, including a failure to adequately train police officers, will have negative consequences including the exclusion of evidence. For this reason it is imperative that training for all police agencies in the province is prioritized to ensure standards are maintained and that investigators are apprised of changes in the law.

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82 Fearon, *supra* note 28.

B. Cpl. Schaible's Comments

The Committee evaluated each package and assigned an A to an application that demonstrated a sophisticated police understanding of warrant drafting requirements, a C+ when the application demonstrated a passable, decent understanding of warrant drafting requirements and an F when the application demonstrated a substandard understanding of warrant drafting requirements.

A large number of warrants the committee reviewed were very professionally written and met all the legal requirements for judicial authorization. The bulk of the reviewed warrants were drafted by the two largest police agencies in Manitoba, namely the Winnipeg Police Service and the Royal Canadian Mounted Police, who wrote 84% of the original warrants reviewed. It is also clear that the large majority of those applications were well written and received either an "A" or "C+" rating – WPS (84%) and RCMP (87%). I highlight these statistics to point out that the continued efforts of both agencies to focus on education through various warrant drafting courses has had a positive overall effect on their final product and should be encouraged into the future.

Our review also indicated that in some instances, the smaller police agencies in the province have struggled with their judicial applications and a greater focus should be emphasized on the continued education and development of their members. Efforts have already been made to reach out to these agencies to offer them some positions on upcoming warrant drafting courses.

On occasion, I am approached by affiants expressing frustration at the reviewing Judicial Justices of the Peace (JJPs) for denying their warrant application. In some instances, I concur with their frustration at the inconsistencies between different JJP's. However I would also like to point out that not all police officers submit applications to the highest standard and an individual's understanding and interpretation of the law will always play a role in our system. I would like to highlight, however, that our review of these 100 warrants, including the 25 different re-applications for previously denied warrants and the corresponding rejection letters from the court, showed the JJP's do a very good job providing consistent reasons for their rejection, which is supported in law.

While law enforcement appreciates as much consistency as possible from the court when it comes to judicial authorizations, it is impossible to eliminate the occasional human error. Certainly a continued focus on

training and education for JJPs and Judges is to be encouraged as it is for law enforcement personnel and their affiants.

Judicial authorizations are a powerful tool at the disposal of the police and great care should be taken to ensure that each application meets the necessary legal requirements. As technology changes, there are many hurdles to overcome as affiants navigate their way through the challenges of submitting a warrant in an environment where the statutes do not provide specific guidance on how to search these ever-changing technologies. Keeping an eye on the case law coming out of the Supreme Court and Manitoba Courts will be important as we move forward in dealing with these challenges. Ultimately, police officers want to do things right and it is up to the various police agencies to ensure they have the tools to do the job properly.

C. Ms. Inness Comments:

Without access to the full file it is impossible to know how many of the applications reviewed may have contained false or misleading information, or omitted information that should have been included. To that extent, the review is limited to an analysis of the face of the ITO and warrant.

The review uncovered some systemic deficiencies in the warrant-granting process in Manitoba, many of which could be rectified with education and training. While the findings/observations of this working group may lead to improvements in the system, this "deconstruction process" lent itself to some fruitful areas for defence counsel to consider in defending clients in warrant cases.

Defence counsel should scrutinize applications where inferences are required to support the grounds. Although the reviewing judge should take into account reasonable inferences that can be drawn from the information in the ITO[83] there must be a sufficient evidentiary basis to do so. Furthermore, while some inferences are readily available based on common sense reasoning, others may require a bit of specialized knowledge or additional information.

Given the fact that very private and personal information is frequently stored on cell phones, there should be some restriction on the time-frame

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83 *Vu*, *supra* note 29 at para 16.

of the data to be searched, as well as the areas within the phone (e.g. texts, emails, phone logs), the same could be said for requests to search other electronic equipment, i.e. computers. The Supreme Court of Canada's ruling in *R. v. Fearon*[84] sends a strong message to law enforcement to limit the searches of cell phones incident to arrest to a valid purpose for the search. The recognition of highly personal information stored on personal electronic devices underscores the importance of clearly defined searches. This case, along with *Vu*,[85] speaks to the importance of ensuring that searches go no further than reasonably necessary. Defence counsel have strong ammunition in these decisions to attack search warrants for electronic devices where no limits are put in place in order to protect privacy interests.

It was a general consensus among the group that many of the warrants that contained deficiencies likely would have withstood a *Charter* challenge, either by way of correction of the technical defects or the evidence being admitted under section 24(2).[86] From the writer's perspective, this prediction was based upon the observation that very few warrants are quashed in Manitoba. One is hard pressed to find cases in any database search in Manitoba where a warrant was found to have issued in breach of section 8 and the evidence excluded under section 24(2). Is that a result of the warrants in Manitoba meeting the statutory and constitutional requirements for prior judicial authorization? Or is that as a result of a very restrictive application of the test by reviewing judges? The recent decision of *R. v. Evans (E.D)*[87] may answer that question for those who are more defence-minded. Notwithstanding materially misleading and false information being presented by the affiant, the warrant was upheld in what was described by the trial judge to be a "close call". If the warrant in that case was upheld, one is left to wonder what would be required in order to have one quashed.

Reading a number of warrants in succession was helpful in identifying flaws or inadequacies. Sometimes it was necessary to read an ITO multiple times in order to "see" the issues. A similar approach in practice can lead

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84 *Fearon*, *supra* note 28.
85 *Vu*, *supra* note 29.
86 *Charter*, *supra* note 2, s 24 (2).
87 2014 MBCA 44, 306 Man R (2d) 9.

to the discovery of a possible attack on a warrant that was not apparent at first blush.

Often times defence counsel focus our analysis on the ITO and gloss over the actual warrant. This exercise emphasized the importance of closely examining the issuing document itself. Errors on that document may serve as a valuable tool in the attack on its issuance.

D. Judge Krahn's Comments:

In the Ontario study, Hutchison noted justices of the peace "are largely without formal training."[88] There has been significant improvement and change since that study was conducted in 1999. Judicial Justices of the Peace in Manitoba now have at least two days set aside for education and training twice a year, as well as ongoing on the job training.

The fundamental requirements of judicial authorizations and identified needs for training based on informal feedback from the Superior Court, the bar or law enforcement are addressed in those training sessions. The Provincial Court judges also have annual education sessions and the opportunity to attend more educational programs across the country and abroad. The National Judicial Institute offers a great variety of high calibre judicial training in Canada. In 2000, the Ontario study concluded that 61% of the authorizations would not survive a section 8 *Charter* challenge and 69% should not have been authorized. In our review, we concluded that 20% might not survive a *Charter* challenge and 23% were authorized that should not have been. When one takes into account the repetition of 15 applications in relation to the same investigation, it is more accurate to say that we found an error rate of 14% of authorizations granted that ought not to have been. While there is still scope for improvement, there is significant reason for optimism that judicial officers are largely getting it right and education programs have begun to address the shortcomings noticed in 2000.

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88 *Supra* note 1 at 110.

Appendix A

Warrant Review Exercise	Reviewer	Warrant No. (from tab)
	Cr.	

Documents in File

□ Information to Obtain □ Warrant/ Order □ Report to Justice □ Detention Order

Charges laid □ yes □ no

□ Other

_____

_____

Total pages of ITO - Total pages overall -

Warrant Application Data

1. Warrant/Order prepared by □ WPS □ RCMP □ Other – Specify

_____

1A. Affiants - □ General Duty □ Specialty Section – Specify

_____

1B. Affiants - years of service – Specify _____

2. The type of Warrant or Order

□ Search Warrant □ C.C. □ CDSA □ Other (HTA, etc...) Specify

_____

□ Production Order

□ DNA Warrant

□ Other (General, Impression, Tracking etc…) – Specify

_____

2A. The Warrant was issued by Telewarrant □ yes □ no

2B. The reason for the Telewarrant requirement was provided □ yes □ no

3. The Warrant was issued by a □ Judicial Justice of the Peace (JJP) □ Provincial Court Judge (PCJ)

3A. Court Location : □Winnipeg □Portage □Brandon □Thompson □Steinbach □Dauphin □ The Pas

3B. Does the material in the file indicate any earlier application, whether granted or not?

□ Yes (an earlier application was made) or □ no indication of an earlier application

3C. Written reasons for rejection provided?

□ yes □ no

3D. Reason for rejection supported in law?

□ yes □ no

Reasons for rejection (add into "Other Notes" at the end):

□ Lack of reasonable grounds

□ Inaccuracies or inadequacies on the place to be searched

□ Adequate description of the offence

□ Reasons for Telewarrant requirement not specified

□ Other

4. The location to be searched is a

□ dwelling house where the suspect resides (DWH)

□ dwelling house, other (DWHO)

□ financial institution (FI)

□ other investigator (□ regulatory agency or □ other police officer) (OI)

□ institutional repository of evidence (e.g. TSE, prison, etc.) (IR)

□ utility (hydro, phone) (UT)

□ commercial (COM)

□ computer (CMPT)

□ iPhone

□ iPod

□ cell phone

□ other (OTH)

Reasonable Grounds

5. Does the Information to Obtain set out reasonable grounds with respect to:

yes	no	
□	□	the commission of the offence
□	□	the things to be seized will afford evidence
□	□	the things are at the location to be searched

6. How are the Grounds in the Information to Obtain sourced (pick one):

□ in general properly identify and reference all necessary investigative sources

□ reference some investigative sources, but portions of the information are without any identified investigative source (e.g., "my investigation has revealed ...")

□ is essentially an unsourced narrative of the offence the officer believes has been committed.

7. Does the Warrant contain a legally adequate description of:

yes	no	
□	□	offence under investigation
□	□	the place to be searched

□ □ the things to be seized

8. Does the Warrant provide for s. 488 night execution? □ yes □ no

8A. If yes, is the endorsement property justified in the Information? □ yes □ no

Informers

9. Does the Information make reference to Informers (unidentified persons claiming informer privilege?

□ yes □ no (If no, skip to next section)

9A. Did the Information depend on the informer's credibility for its issuance? □ yes □ no

9B. Was the informer's evidence properly referenced and corroborated? □ yes □ no

9C. Is the informer reliability properly explained, not simply identified as "known to me and proven reliable in the past" without more? □ yes □ no

Specialized Warrants and Endorsements

10. Did the Warrant involve any of the following special provisions, and if so, was their use justified in the information?

□ s. 487(1)(c.1) (offence related property)

□ s. 487(2.1) (search of computer for data)

□ s. 487.02 (assistance orders)

If an assistance order was granted, at whom was it directed?
Specify:_____

Was the assistance order justified in the information? □ yes □ no

□ s. 487.03 (sealing order)

Regulatory Relationship

11. Does the Warrant application raise Colarusso issues (i.e., does it refer, or seek to seize, evidence gathered using a regulator/administrative statutory power)?

□ yes □ no

Special Locations

12. Did the Warrant authorize a search of a "special location" (i.e. law office, receptacle of medical, mental health, counselling or media outlet records)? (If no, skip to next section)

□ yes □ no If yes, specify: _____

12A. If so, did the Warrant address the issues associated with the special location?

(endorsements or other accommodation of the nature of the place)

□ yes □ no

Inadmissible Evidence (Charter breach or otherwise)

13. Does the Warrant include reference to evidence likely not admissible or properly available for the Warrant application? □ yes □ no

13A. If yes, does the Warrant application properly identify the evidence as such?

□ yes □ no

13B. The nature of any such evidence is earlier

□ s. 8 breach □ s. 10(b)/statement breach □ other *Charter* breach

General Observations

14. Does the Warrant application demonstrate a:

□ sophisticated police understanding of warrant drafting requirements (A)

□ passable, decent understanding of warrant drafting requirements (C+)

□ sub-standard understanding of warrant drafting requirements (F)

15. Overall, <u>should</u> the warrant have been issued (as distinct from "<u>could</u> it have issued")?

□ yes, it should have issued □ no, it should not have been issued

16. Would the warrant likely have been confirmed in any subsequent Charter or other challenge?

□ yes, would have survived challenge □ no, would likely have been struck down

16A. Could some part of the warrant have survived scrutiny if severed from the defective/deficient portions of the document? (Y, ½, N)

□ yes □ no

17. On the basis of the material, was it legally necessary for the investigator to have obtained a warrant?

□ yes □ no

18. Comments/ Other Notes

_____
_____
_____

APPENDIX B

		Agency/ Affiant			Type			Application Information						Grounds			Sourcing			Description		
	Co	Agency (RCMP/WPS/Other)	Affiants - GD or Specialized Unit	Affiants - years of service	Type of Warrant	Telewarrant (Y)	Telewarrant reasons provided (Y/N)	Warrant issued by - JJP or PCJ	Court location	Previous application identified in ITO? (Y/	Written reasons for rejection? (Y/N)	Rejection supported by law? (Y/N)	ocation to be searched	RG -Offence (Y/N)	RG - Evidence (Y/N)	RG - Place (Y/N)	Sourcing properly identified	Some sourcing	Unsourced	Offence - legal description (Y/N)	Place - legal description (Y/N)	Things - legal description (Y/N)
1	8127	WPS	S- Drugs	7	SW-CDSA			JJP	WPG		Y	Y	DWH	Y	Y	Y	✓			N	Y	Y
	8127	WPS	"		SW-CDSA			JJP	WPG	Y			DWH	Y	Y	Y	✓			Y	Y	Y
2	8137	RCMP	GD- Selk	1	SW			JJP	WPG				e-iPhn	Y	½	Y	✓			Y	Y	Y
3	8141	TAX		27	SW			JJP	WPG				E-box	N	Y	Y		✓		Y	½	Y
4	8143	WPS	GD- CRU	7	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
5	8145	WPS	S- MCU	8	SW			JJP	WPG				DWHC	Y	Y	Y	✓			Y	Y	Y
6	8147	WPS	GD- CSU	5	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
7	8150	TAX		27	SW			JJP	WPG				E-box	N	Y	Y	✓			Y	½	Y
8	8153	RCMP	S- Auto	10	SW			JJP	WPG				Prop	Y	Y	Y	✓			Y	Y	Y
9	8157	WPS	S- Child	10	SW			JJP	WPG				E-Phn	Y	Y	Y	✓			Y	Y	½
10	8162	WPS	S- ICE	15	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
11	6353	RCMP	GD- PLP	6	SW	Y	Y	JJP	THPAS				DWH	Y	½	Y	✓			½	Y	½
12	6524	RCMP	S- MCU	7	SW			JJP	THOM				E-clotl	Y	Y	Y	✓			Y	Y	Y
13	6349	RCMP	GD-Stein	12	SW-CDSA	Y	Y	JJP	THPAS				DWH	Y	Y	Y	✓			Y	Y	Y
14	6352	RCMP	GD-Was	4	SW	Y	Y	JJP	THPAS				DWH	Y	Y	N	✓			Y	Y	Y
15	8155	WPS	GD- CRU	5	PO			JJP	WPG		Y	Y	Med	Y	Y	Y	✓			N	Y	½
	8155	WPS	"		PO			JJP	WPG	N	Y	Y	Med	Y	Y	Y	✓			Y	Y	Y
	8155	WPS	"		PO			JJP	WPG	Y			Med	Y	Y	Y	✓			Y	Y	Y
16	8165	WPS	GD-CRU	15	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	½
17	7156	RCMP	GD- PLP	6	SW-CDSA	Y	Y	JJP	THOM				DWH	Y	Y	Y	✓			Y	Y	Y
18	8140	WPS	S-NWEST	15	SW			JJP	WPG		Y	Y	DWH	Y	Y	N		✓		Y	Y	Y
19	7736	WPS	S-MGU	12	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
20	8166	WPS	S-MCU	13	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
21	8167	WPS	S-MCU	13	SW			JJP	WPG				VEH	Y	Y	Y	✓			Y	Y	Y
22	8176	WPS	GD-CSU	11	SW-CDSA			JJP	WPG				DWH	Y	N	N	✓			Y	Y	Y
23	8177	RCMP	GD-Thon	6	SW	Y	Y	JJP	WPG		Y	Y	E-veh	Y	Y	Y	✓			N	N	Y
	8177	RCMP	"		SW	Y	Y	JJP	WPG	Y			E-veh	Y	Y	Y	✓			Y	Y	Y
24	8178	WPS	S- ICE	12	SW			JJP	WPG		Y	Y	COMP	Y	N	N	✓			Y	Y	Y
	8178	WPS	"		SW			JJP	WPG	Y	Y	Y	COMP	Y	Y	Y	✓			Y	Y	Y
25	8183	CBSA	N/A		SW- IRPA			JJP	WPG				DWH	Y	Y	Y	✓			Y	½	Y
26	8184	WPS	GD	7	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
27	8185	WPS	GD- CRU	7	PO			JJP	WPG				FI	Y	Y	Y	✓			Y	Y	Y
28	8189	WPS	S- Child	10	SW			JJP	WPG				E-Phn	Y	Y	Y	✓			Y	½	Y

Night		Informants								Inadmissible										
Night Execution (Y/N)	Night execution properly justified (Y/N)	Informants used? (Y/N)	Issuance depends on Informant (Y/N)	Informer evidence corrob? (Y/N)	Informer reliability explained? (Y/N)	Specialized Warrants/Endorsements	Colarusso issues (Y/N)	Special locations search? (Y/N)	A. Location properly explained? (Y/N)	Inadmissible evidence mentioned? (Y/N)	A. Inadmissible evidence identified? (Y/N)	B. Nature of Inadmissible evidence?	Was the Warrant authorized (Y/N)?	mmittee's Overall assessment (A/C+/F)	Should Warrant have been issued? (Y/N)	Pass Charter Challenge (Y, 1/2, N)	Warrant needed? (Y/N)	Other Notes	Length of ITO	20. # of days between granting of SW & ng of R2J
N		N											N	F	N		Y	Rej- inconsistent offence dates	4	xxx
N		N											Y	C+	Y	Y	Y		4	0
N		N											Y	C+	Y	Y		Things- lack of clarity	12	25
N		N											Y	F	N	N	N	Warrant not req-incid2arrest	4	24
N		Y	Y	Y	Y								Y	A	Y	Y	Y	Good Warrant	17	17
N		N											Y	A	Y	Y	Y	Good Warrant	9	74
N		Y	Y	Y	Y								Y	C+	Y	Y	Y	Off/Thgs-no date/some items n	3	1
N		N											Y	F	N	N	N	Warrant not req-incid2arrest	4	7
N		Y	N	Y	Y								Y	A	Y	Y	Y	Good Warrant	12	6
N		N											Y	C+	Y	Y	Y	Thgs-asking more than grounds	3	34
N		N											Y	A	Y	Y	Y	Good Warrant	7	4
N		N								Y	N	s.8	Y	C+	Y	Y	Y	Thgs-too broad/ wrong offence	5	7
N		N					Y			Y	N	s.8	Y	F	N	N	N	Grds unclear on orig seizure	16	12
Y	Y	N											Y	A	Y	Y	Y	Good Warrant	9	3
N		N											Y	F	N	N	Y	No grounds guns at residence	9	26
N/A		N											N	F	N		Y	PO denied 2x,	4	xxx
N/A		N											N	F	N		Y	Didn't identify prev application		xxx
N/A		N											Y	C+	Y	Y	Y	Warrant granted		No rpt
Y	Y	N											Y	C+	Y	Y	Y	Things- too broad	13	1
N		Y	Y	Y	Y								Y	C+	Y	Y	Y	Informant- more details needed	6	6
N		N											N	F	N		Y	SW denied/ no 2nd appl	8	xxx
N		N											Y	C+	Y	Y	Y		4	9
N		N											Y	A	Y	Y	Y	assoc to Warrant #21	12	0
N		N											Y	A	Y	Y	Y	assoc to Warrant #20	12	0
N		N											Y	C+	Y	Y	Y	more details items/loc of items	6	2
N		N											N	F	N		Y	denied for off date/det address	14	xxx
N		N											Y	A	Y	Y	Y	Warrant granted	14	18
N		N											N	F	N		Y	denied-no grds in ITO for items	8	xxx
N		N											N	C+	Y		Y	denied-we disagree; shb auth		xxx
N		N											Y	A	Y	Y	Y	Good Warrant-complicated case	25	34
N		Y	Y	Y	Y								Y	C+	Y	Y	Y		4	No rpt
N/A		N											Y	F	N		Y	wrong PO- 487.012 was needed	6	No rpt
N		N											Y	F	N	Y	Y	cell phone- date restriction	5	26

	8177	RCMP	"		SW	Y	Y	JJP	WPG	Y			E-veh	Y	Y	Y	✓			Y	Y	Y
24	8178	WPS	S- ICE	12	SW			JJP	WPG		Y	Y	COMP	Y	N	N	✓			Y	Y	Y
	8178	WPS	"		SW			JJP	WPG	Y	Y	Y	COMP	Y	Y	Y	✓			Y	Y	Y
25	8183	CBSA	N/A		SW- IRPA			JJP	WPG				DWH	Y	Y	Y	✓			Y	½	Y
26	8184	WPS	GD	7	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
27	8185	WPS	GD- CRU	7	PO			JJP	WPG				FI	Y	Y	Y	✓			Y	Y	Y
28	8189	WPS	S- Child	10	SW			JJP	WPG				E-Phn	Y	Y	Y	✓			Y	½	Y
29	8191	WPS	S- MGU	7	SW-CDSA			JJP	WPG				DWHC	Y	Y	Y	✓			Y	Y	Y
30	8190	WPS	S- MGU	8	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	½	Y
31	6831	RCMP	GD-Pow	1.5	DNA			PCJ	WPG				OTH	Y	Y	Y	✓			Y	Y	Y
32	8209	MP	N/A		SW	Y	Y	JJP	WPG		Y	Y	E-Phn	Y	N	N		✓		Y	Y	N
	8209	MP	N/A		SW	Y	Y	JJP	WPG	Y			E-Phn	Y	N	½		✓		Y	Y	N
33	8210	WPS	S- Street	5	SW			JJP	WPG				DWHC	Y	Y	Y	✓			Y	Y	Y
34	8213	WPS	S- Traffic	8	SW			JJP	WPG				IR-hsp	Y	Y	Y		✓		Y	Y	Y
35	8214	WPS	S- Traffic	8	SW			JJP	WPG				IR-hsp	Y	Y	Y		✓		Y	Y	Y
36	8215	CON	Nat Res	6	SW-Wildl			JJP	WPG		Y	Y	DWH	Y	Y	N	✓			Y	Y	Y
	8215	CON	"		SW- Wildl			JJP	STEIN	Y			DWH	Y	Y	Y	✓			Y	Y	Y
37	8216	WPS	S-	7	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
38	8219	WPS	S- Traffic	24	SW			JJP	WPG				IR-hsp	Y	Y	Y	✓			Y	Y	Y
39	8221	WPS	S- Traffic	24	PO			JJP	WPG				IR-hsp	Y	Y	Y	✓			Y	Y	Y
40	8222	RCMP	S- ICE	10	PO			JJP	WPG				UT	Y	Y	Y		✓		Y	Y	Y
41	7466	RCMP	GD	6	SW	Y	Y	JJP	BRAN				E-Phn	Y	½	½	✓			Y	½	Y
42	4832	RCMP	S- Drugs	8	SW	Y	Y	JJP	THPAS	Y	N/A	N/A	E-veh	Y	½	Y	✓			½	Y	Y
	4832	RCMP	"			Y	Y	JJp	THPAS				E-veh	Y	Y	Y	✓			Y	Y	Y
43	4836	RCMP	GD	4	SW	Y	Y	JJP	STEIN		Y	Y	E-iPod	Y	Y	Y	✓			Y	Y	½
	4836	RCMP	"		SW	Y	Y	JJP	STEIN	Y			E-iPod	Y	Y	Y	✓			Y	Y	½
44	6355	RCMP	GD-Thom	2	SW-CDSA	Y	Y	JJP	THPAS				DWH	Y	½	Y	✓			Y	Y	Y
45	7161	RCMP	S-GIS-TP	5	SW-CDSA	Y	Y	JJP	THOM				DWH	Y	½	½	✓			Y	Y	Y
46	7462	MP			SW			JJP	BRAN	N			E-Phn	Y	Y	Y	✓			Y	Y	N
47	8128	WPS	S- MCU	8	SW			JJP	WPG				DWH	Y	Y	Y			✓	Y	Y	Y
48	7464	RCMP	GD-Klrny	1	SW			JJP	BRAN				E-Phn	Y	Y	Y	✓			Y	Y	Y
49	8205	RCMP	GD-LdB	12	PO			JJP	WPG				IR-hsp	Y	Y	Y	✓			Y	Y	Y
50	8206	WPS	GD- CRU	8	SW			JJP	WPG				DWHC	N	N	Y	✓			Y	Y	Y
51	8212	WPS	GD-CSU	11	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
52	4833	RCMP	GD-Stein	11	PO			JJP	STEIN				IR-hsp	Y	Y	Y	✓			Y	Y	Y
53	4834	RCMP	GD-Stein	5	SW-CDSA			JJP	STEIN				DWH	Y	Y	Y	✓			Y	Y	Y
54	4835	RCMP	GD-LdB	1	SW-CDSA	Y	Y	JJP	STEIN				DWH	Y	Y	Y	✓			Y	Y	Y
55	5152	WPS	S- MGU	7	SW-CDSA	Y	Y	JJP	DAUP		Y	Y/N	DWH	Y	Y	Y	✓			Y	Y	Y
	5152	WPS	"		SW-CDSA	Y	Y	JJP	DAUP	??			DWH	Y	Y	Y	✓			Y	Y	Y
56	5928	BPS	S-CSU	8	SW-CDSA			PCJ	BRAN				E-Phn	N	Y	N		✓		Y	Y	N
	5928	BPS	"		SW-CDSA			PCJ	BRAN				E-Phn	N	Y	N		✓		Y	Y	Y
	5928	BPS	"		SW-CDSA			JJP	BRAN				E-Phn	N	N	N		✓		Y	Y	Y
57	5931	BPS	S-CSU	9	SW			PCJ	BRAN				E-iPhn	N	Y	Y		✓		Y	Y	N
	5931	BPS	"		SW			PCJ	BRAN				E-iPhn	N	Y	Y		✓		Y	Y	Y
	5931	BPS	"		SW			JJP	BRAN				E-iPhn	N	N	Y		✓		Y	Y	Y
58	7159	RCMP	GD-Gill	2	PO			JJP	THOM				IR-hsp	Y	Y	½	✓			Y	Y	Y
59	7457	MP			SW			JJP	BRAN				E-Phn	Y	Y	Y		✓		Y	Y	½
60	8126	WPS	GD-CRU	5	SW			JJP	WPG		Y	Y	DWH	N	Y	N	✓			Y	Y	Y
	8126	WPS	"		SW			JJP	WPG	Y			DWH	Y	Y	Y	✓			Y	Y	Y
61	5929	BPS	S-CSU	9	SW			PCJ	BRAN				E-Phn	N	Y	Y		✓		Y	Y	N
	5929	BPS	"		SW			PCJ	BRAN				E-Phn	N	Y	Y		✓		Y	Y	Y
	5929	BPS	"		SW			JJP	BRAN				E-Phn	N	N	Y		✓		Y	Y	Y

N/A		Y	N	Y	Y								Y	A	Y	Y	Y	Affiant- electrical course	10	7
N/A		N											Y	A	Y	Y	Y	"other outlying buildings"	19	7
N/A		N											Y	A	Y	Y	Y	night execution req, not req	14	1
N		N											N	F	N		Y	Denied- more info needed	3	xxx
N		N											Y	F	N	Y	Y	Granted- we disagreed sNhba	3	4
N		Y	Y	Y	Y								Y	A	Y	Y	Y	Good Warrant	10	3
N		N											Y	C+	Y	Y	Y		2	5
N		N											Y	C+	Y	Y	Y		2	5
N		N											N	F	N		Y	Denied- things at location	8	xxx
N		N											Y	A	Y	Y	Y	Granted	9	9
N		N								Y	N	s.8	Y	C+	Y	Y	Y		9	7
N		N											Y	A	Y	Y	Y	SW hospital for blood	4	42
N/A		N											Y	A	Y	Y	Y	PO hospital for medical records	4	42
N/A		N											Y	A	Y	Y	Y	PO for phone records	9	2
N		N											Y	A	Y	Y	Y		15	20
N		Y	N	Y	Y								Y	C+	Y	Y	Y	auth not executed - time	22	36
N		Y	N	Y	Y								Y	C+	Y	Y	Y			xxx
N		N								Y	N	s.8	N	F	N		Y	Denied- used wrong form	10	xxx
N		N								Y	N	s.8	Y	C+	Y	Y	Y	s.8- viewed video next day	11	11
Y	Y	Y	Y	Y	½								Y	C+	Y	Y	Y	Informant - more b/g	9	1
Y	Y	Y	N	Y	Y								Y	A	Y	Y	Y	Things - overbroad	7	96
N		N											Y	C+	Y	Y	Y	assoc to Warrant #59	3	23
N		N											Y	C+	Y	Y	Y	unsourced Grounds	11	No rpt
N		N											Y	A	Y	Y	Y	Good Warrant	6	18
N/A		N								?	?	?	Y	A	Y	Y	Y	possible s.10(b) -see Comments	7	19
Y	Y	N											Y	F	N	N	N	could have gotten Consent	5	1
N/A		Y	Y	Y	Y								Y	A	Y	Y	Y	Good Warrant - not executed	8	145
N/A		N											Y	A	Y	Y	Y	Good Production Order	13	9
N/A		N											Y	A	Y	Y	Y	Good Warrant - no Health Can	6	0
Y	Y	N											Y	A	Y	Y	Y	Good Warrant - no Health Can	7	15
Y	Y	N											N	A/F	Y		Y	denied for technical issue	3	xxx
Y	Y	N											Y	A	Y	Y	Y		?	No rpt
N		N											Y	F	N	N	Y	granted; not executed		xxx
N		N											Y	F	N	Y	Y	granted;more time needed	11	xxx
N		N											Y	F	N	N	Y	granted;		no rpt
N		N											Y	F	N	N		granted; assoc to Warrant 56		xxx
N		N											Y	F	N	Y		granted;	7	xxx
N		N											Y	F	N	N		granted;		no rpt
N/A		N											Y	C+	Y	Y	Y		6	20
N		N											Y	C+	Y	Y	Y	assoc to # 46; not executed;	3	7
N		N											N	F	N		Y	denied- name/loc written wron	5	xxx
N		N											Y	C+	Y	Y	Y		5	no rpt
N		N											Y	F	N	N	Y	assoc to Warrants 56,57,62 & 63	7	xxx
N		N											Y	F	N	N	Y			xxx
N		N											Y	F	N	N	Y			no rpt

62	5936	BPS	S-CSU	9	SW-CDSA			PCJ	BRAN				E-Phn	N	Y	Y		✓		Y	N	N
	5936	BPS	"		SW-CDSA			PCJ	BRAN				E-Phn	Y	Y	N		✓		Y	N	Y
	5936	BPS	"		SW-CDSA			JJP	BRAN				E-Phn	Y	N	Y		✓		Y	Y	Y
63	5937	BPS	S-SCU	9	SW			PCJ	BRAN				E-Phn	N	N	N		✓		Y	N	N
	5937	BPS	"		SW			PCJ	BRAN				E-Phn	Y	Y	Y		✓		Y	y	Y
	5937	BPS	"		SW			JJP	BRAN				E-Phn	Y	N	Y		✓		Y	Y	Y
64	8130	WPS	S- WAU	14	Entry			JJP	WPG				DWH	Y	Y	Y		✓		Y	Y	Y
65	8129	WPS	S- ICE	12	SW			JJP	WPG				COMP	Y	Y	Y	✓			Y	Y	Y
66	8131	WPS	GD	5	PO			JJP	WPG				OTH	Y	Y	Y	✓			½	Y	Y
67	8132	WPS	S- CCU	5	PO			JJP	WPG				COMP	Y	Y	Y	✓			Y	Y	Y
68	8133	WPS	S- MCU	6	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
69	8134	Alton	GD	1	PO			JJP	WPG		Y	Y	FI	Y	N	Y		✓		Y	Y	Y
	8134	Alton	"		PO			JJP	WPG	Y	Y	N	FI	Y	Y	Y		✓		Y	Y	Y
	8134	Alton	"		PO			PCJ	WPG	Y			FI	Y	Y	Y		✓		Y	Y	Y
70	8135	WPS	S- WAU	7	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
71	8138	WPS	GD-CRU	23	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
72	8142	WPS	GD- CRU	7	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
73	8144	WPS	GD- CSU	16	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
74	8146	WPS	S- MCU	8	SW			JJP	WPG				E-veh	Y	Y	Y	✓			Y	Y	Y
75	8148	WPS	??		Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
76	8149	RCMP	S-SCU	11	PO			JJP	WPG				IR-hsp	Y	Y	Y	✓			Y	Y	Y
77	8152	WPS	S- Traffic	6	SW			JJP	WPG				IR-hsp	Y	Y	Y	✓			Y	Y	Y
78	6351	RCMP	GD- PLP	7	SW-CDSA	Y	Y	JJP	THPAS				DWH	Y	½	Y	✓			Y	Y	Y
79	8136	WPS	GD- CSU	3	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
80	6525	RCMP	GD-Stein	4	SW	Y	Y	JJP	THOM				IR-hsp	Y	Y	Y	✓			Y	Y	Y
81	7157	RCMP	GD-StP	4	SW-CDSA	Y	Y	JJP	THOM				DWH	Y	½	Y	✓			Y	½	Y
82	7160	RCMP	GD-Cross	5	SW-CDSA	Y	Y	JJP	THOM				DWH	Y	Y	½	✓			Y	Y	Y
83	7458	BPS	??	25	SW			JJP	BRAN				E-iPhn	Y	Y	Y	✓			Y	Y	Y
84	7460	MP	??		PO			JJP	BRAN		Y	N	UT	Y	N	N			✓	Y	Y	Y
	7460	MP			PO			JJP	BRAN	N			UT	Y	N	N			✓	Y	Y	Y
85	7461	MP	??		PO			JJP	BRAN		Y	N	UT	Y	N	N			✓	Y	Y	Y
	7461	MP			PO			JJP	BRAN	N			UT	Y	N	N			✓	Y	Y	Y
86	7456	RCMP	GD- Kill	2	PO			JJP	BRAN				IR-hsp	Y	Y	Y	✓			Y	Y	Y
87	8154	WPS	GD- CRU	4	PO			JJP	WPG				FI	Y	Y	Y	✓			Y	Y	Y
88	8158	WPS	GD-CSU	3	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
89	8161	WPS	S- MCU	13	SW			JJP	WPG				E-iPhn	Y	Y	Y	✓			Y	Y	Y
90	8163	WPS	GD-CSU	5	SW			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
91	8164	WPS	GD- CRU	14	SW			JJP	WPG				OTH	Y	Y	Y	✓			Y	Y	Y
92	8170	WPS	S- ICE	15	SW			JJP	WPG				E-Com	Y	Y	Y	✓			Y	Y	Y
93	8174	WPS	S- Street	6	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
94	8186	WPS	GD	5	PO			JJP	WPG				UT	Y	Y	Y	✓			Y	Y	Y
95	8179	WPS	S- CCU	6	PO			JJP	WPG				FI	Y	Y	Y	✓			Y	Y	Y
96	8181	WPS	S- HCU		Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
97	8180	WPS	S- CCU	17	PO			JJP	WPG				MPI	Y	Y	Y	✓			Y	Y	Y
98	8182	WPS	S- WAU	7	Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
99	8187	WPS	S- Street	8	SW-CDSA			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y
100	8211	WPS	??		Entry			JJP	WPG				DWH	Y	Y	Y	✓			Y	Y	Y

N		N											Y	F	N	N	Y	Req day/night not in Grounds		xxx
N		N											Y	F	N	N	Y			xxx
N		N											Y	F	N	Y	Y			40
N		N											Y	F	N	N	Y	assoc to Warrants 56,57,61 & 62	7	xxx
N		N											Y	C+	Y	Y	Y	Req day/night not in Grounds	11	xxx
N		N											Y	F	N	Y	Y			no rpt
N/A		Y	Y	N	N								Y	F	N	N	Y	Informant- no corr/no reliab	1	N/A
N		N					Y						Y	A	Y	Y	Y	Col- starts w/ border search	6	no rpt
N/A		N											Y	A	Y	Y	Y/N	Video at Main Strt Pr - Consent?	2	no rpt
N/A		Y	N	N	N								Y	A	Y	Y	Y	Informant- no corr/no reliab	13	no rpt
N/A		N											Y	A	Y	Y	Y	Good, short Entry Warrant	2	N/A
N/A		N											N	F	N		Y	denied - dates wrong;	3	xxx
N/A		N											N	C+	Y		Y	denied - we disagree; shba	3	xxx
N/A		N											Y	C+	Y	Y	Y	signed by Judge	2	52
N/A		Y	Y	Y	Y								Y	A	Y	Y	Y	asked for night, not required	1	N/A
Y	Y	N								Y	N	s.8	Y	A	Y	½	Y	D- felt would not pass Charter	7	No rpt
N/A		Y	Y	Y	Y								Y	A	Y	Y	Y		17	No rpt
N/A		N											Y	C+	Y	Y	Y		2	N/A
N		N											Y	C+	Y	Y	Y	sourcing through Sgt i/c	9	No rpt
N		N											Y	C+	Y	Y	Y	no Intro of affiant at all	1	N/A
N/A		N											Y	A	Y	Y	Y	R2J is express cond/ not filed	9	No rpt
N		N											Y	C+	Y	Y	Y	some vague descriptions	2	No rpt
Y	Y	Y	Y	Y	Y								Y	A	Y	Y	Y	Good use of informants	9	No rpt
N/A		N											Y	A	Y	Y	Y	Good Entry Warrant	1	N/A
N		N											Y	A	Y	Y	Y		8	No rpt
N		N											Y	C+	Y	Y	Y	Items don't match ITO/ SW	9	No rpt
Y	Y	Y	Y	Y	Y								Y	A	Y	Y	Y	3 Informants	11	No rpt
N		N											Y	A	Y	Y	Y	Warrant for computer &iPhone	7	No rpt
N/A		N											N	F	N		Y	Denied for wrong reason-xref 85	4	xxx
N/A		N											Y	F	N	N	Y	shouldn't have been granted	4	No rpt
N/A		N											N	F	N		Y	Denied for wrong reason-xref 84	4	xxx
N/A		N											Y	F	N	N	Y	shouldn't have been granted	4	No rpt
N/A		N											Y	A	Y	Y	Y		4	No rpt
N/A		N											Y	A	Y	Y	Y	Good, short Production Order	2	No rpt
N/A		N											Y	A	Y	Y	Y	Good, short Entry Warrant	1	N/A
N		N											Y	A	Y	Y	Y	Good Warrant	7	No rpt
N		Y	Y	Y	Y								Y	A	Y	Y	Y	Good, short Warrant w/ Inform	3	No rpt
N		N?											Y	A	Y	Y	Y	possible "F" rating re informant	6	No rpt
N		N											Y	A	Y	Y	Y	Good Warrant- child porngrphy	8	No rpt
N/A		N											Y	A	Y	Y	Y	Good, short Entry Warrant	2	N/A
N/A		N											Y	A	Y	Y	Y		5	No rpt
N/A		N											Y	A	Y	Y	Y	Good, short Fraud Warrant	4	No rpt
N/A		N											Y	C+	Y	Y	Y		3	N/A
N/A		N											Y	A	Y	Y	Y	*special req in ITO/ Good Warr	33	No rpt
N/A		Y	Y	Y	N								Y	C+	Y	Y	Y	No informant qualification	1	N/A
Y	Y	Y	Y	Y	Y								Y	A	Y	Y	Y	1 ITO/ 1 CDSA & 1 CC SW	5	No rpt
N/A		N											Y	C+	Y	Y	Y		1	N/A