

UNIFORM LAW CONFERENCE OF CANADA

CRIMINAL LAW SECTION

ENFORCEMENT OF EXTRA-PROVINCIAL SEARCH WARRANTS

PROGRESS REPORT

REPORT OF THE WORKING GROUP

Readers are cautioned that the ideas or conclusion set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the Conference at the Annual meeting.

**Whitehorse, Yukon
August 2012**

ENFORCEMENT OF EXTRA-PROVINCIAL SEARCH WARRANTS PROGRESS REPORTS

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Background

Some investigators enforcing provincial/territorial legislation have been unable to seize the evidence necessary to prosecute a regulatory offence because the evidence is at a corporate office located in another jurisdiction. Without the legal authority to exercise a provincial/territorial warrant outside the jurisdiction where it was issued, the regulatory investigation can be thwarted.

A resolution was adopted at the 2011 meeting of the ULCC criminal section recommending that a working group be struck to consider options to enable the enforcement of extra-provincial search warrants in the context of provincial/territorial regulatory investigations.

Working Group

A working group was formed in the fall of 2011. The membership of the group is composed of: Karen Anthony (Department of Justice, Nova Scotia), Peter Craig (Public Prosecution Service, Nova Scotia), Earl Fruchtman (Department of Justice, Ontario), Cameron Gunn, (Office of the Attorney General, New Brunswick), Colleen McDuff (Department of Justice, Manitoba), Nadine Smillie, Chair (Department of Justice, Nova Scotia).

Activities

The initial members of the work group Karen Anthony, Peter Craig, Colleen McDuff, Earl Fruchtman and Nadine Smillie had a couple of conference calls to discuss how to proceed with this project. It was decided that prior to proceeding further information should be gathered to determine whether or not the problems experienced by enforcement officers in Nova Scotia were happening in other jurisdictions. There was also a desire to see how much support for this project existed. A decision was made to survey all the ULCC criminal section representatives to see if they or their regulatory prosecution colleagues were experiencing these problems and whether they were interested in trying to address the issue. A copy of the summary and questions asked on the survey are attached to this report in Schedule "A".

After the initial deadline had passed a second request was made for responses. In total 5 jurisdictions responded. Alberta and British Columbia responded that this issue was serious enough to warrant a look at solutions. Newfoundland indicated it might be an issue. Quebec and Saskatchewan indicated this had not been a concern for their jurisdiction so it would not be a priority matter for them.

In a follow up conference call, the initial working group members representing Manitoba, Ontario and Nova Scotia decided that there needed to be a broader base of support for this project in order to proceed. Since each jurisdiction has its own approach to how regulatory enforcement matters are handled, it was concluded that just seeking input from the criminal

representatives may not be bringing this issue to the attention of regulatory prosecutors. In some jurisdictions regulatory prosecutions are handed within the civil side of government justice departments. Peter Craig, who is a special prosecutor in Nova Scotia, agreed to reach out to his colleagues in New Brunswick and Prince Edward Island to see if their regulatory prosecutors were interested in this issue and willing to put forward a member for this working group. As a result of his efforts, Cameron Gunn, from New Brunswick, joined the working group and Prince Edward Island has indicated they will be identifying a representative.

With confirmed representation from 5 jurisdictions, the working group feels there is sufficient interest in this project to move forward to look at solutions.

Next Steps

With the support of the ULCC criminal section, the working group will start to hold conference calls to discuss possible solutions to this issue including the exploring the possibility of developing a uniform act.

The working group would also like to pursue reaching out to the jurisdictions of British Columbia, Alberta, and Newfoundland with a request that they identify a representative to join in this project.

The working group also would like direction from the ULCC on whether this should be a joint project between the criminal and civil sections of the conference.

Request

The working group requests that the ULCC pass a resolution to:

1. accept this progress report;
2. confirm its support for the working group to explore options to address the problem with the enforcement of extra-provincial search warrants; and
3. make this a joint project of the criminal and civil sections of the ULCC.

Schedule "A"
Survey

Dear ULCC Jurisdictional Representative,

As you may know, a resolution adopted at the 2011 meeting of the ULCC Criminal Section recommended that a working group be struck to consider options to enable the enforcement of extra provincial search warrants in the context of provincial/territorial regulatory investigations.

As a criminal section representative you have been contacted because you may have useful information on this topic. If provincial/territorial regulatory offence prosecutions are not handled by the criminal prosecution service in your jurisdiction, kindly pass on this request to a responsible Ministry solicitor(s) for input.

In some jurisdictions, particularly Nova Scotia, investigators enforcing provincial/territorial legislation are unable to seize evidence necessary to prosecute a regulatory offence if the evidence is at a corporate office located in another jurisdiction and there is no mechanism to exercise a provincial/territorial warrant outside the jurisdiction where it was issued. The trend to minimize commercial barriers by recognizing the registration of corporations in their home province as opposed to mandating registration in every province where they operate has aggravated this situation.

The inability to seize evidence has the potential to hinder enforcement of all provincial/territorial legislation and significant impediments have already been faced in the occupational health and safety, environmental and illegal tobacco contexts. One option is the development of coordinated reciprocal legislation among provinces and territories which would permit the execution of a search warrant issued in another province or territory.

Nova Scotia will be leading the working group in an effort to address this concern. A brief but detailed explanation of the issue has been prepared by Peter Craig, Crown Attorney, Nova Scotia Public Prosecution Service and has been attached for your review.

Your answers to the following questions will be very helpful to the working group:

- 1) Are you or your colleagues facing this issue in your jurisdiction? If so please provide examples and/or other information.
- 2) Do you consider this a matter which should be addressed?

Please respond on or before April 30, 2012.

Thank you very much for your cooperation.

Anouk Desaulniers
Chair, Criminal Section, 2012 Uniform Law Conference of Canada