



IP11

WARRANTS SEARCH & SEIZURE

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IP11

Warrants Search & Seizure

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POLICY

1. All searches conducted by members of the Delta Police Department (Department) shall be conducted in full compliance with the *Charter of Rights and Freedoms*, federal, provincial and municipal statutes, common law and current Department policies and procedures.
2. Members of the Department shall conduct searches only when all of the following conditions are met:
 - a) the search is authorized by a specific statute or common law;
 - b) the search is carried out in accordance with the procedural and substantive requirements of the authorizing law; and
 - c) the scope of the search is limited to the area and items for which the law has granted authority to search (therefore not compromising evidence seized in the search).

REASON FOR POLICY

3. To ensure that search and seizures conducted by members of the Department are conducted lawfully and in a reasonable manner.

RELATED POLICIES

IC10 – Use of Force
IC30 – Detention, Arrest & Post-Arrest Processing
IC32 – Search of Persons
IM10 – Criminal Investigations
IP10 – Warrantless Search & Seizure
IP40 – Property & Exhibits
IP60 – Confidential Informers & Agents

DEFINITIONS

4. For the purposes of this Policy, the following definitions will apply:

Dynamic or Unannounced Warrant Service: the entering a premise without immediate prior notification of the occupants, to serve and carry out



the terms of a warrant, and may be used when the potential destruction of evidence by the occupants can be articulated or it is necessary to preserve life (also referred to as 'no knock' warrant service, and includes dynamic breach and the dynamic clearing of the premises).

Exigent Circumstances: situations where immediate police action is required to protect life and/or preserve evidence.

Search: the intrusion upon a person's reasonable expectation of privacy by a police officer (not defined by the *Charter of Rights and Freedoms*, but in case law, e.g., *R. v SANDHU*, 1993, BCCA).

Seizure: the non-consensual taking, by police, of an item in respect of which an individual has possession and/or a reasonable expectation of privacy.

Vetting: the readily apparent blacking out of text or otherwise making text unreadable in an Information to Obtain (ITO), including, for example, text that would identify a confidential informant, reveal privileged information or prevent preserving an investigative technique.

Affiant: the officer with direct knowledge and therefor the ability to swear an ITO, thereby swearing that the information contained in the ITO is true (sworn before an individual authorized to administer oaths).

PROCEDURES

Search Warrants

5. The following types of warrants are most commonly sought by police to authorize forced state action in relation to a person's rights that are otherwise protected under the *Charter of Rights and Freedoms* (note that many other types of warrants and judicial authorizations can be applied for, in order to carry out investigative activities, e.g., impression warrants or authorizations to intercept communications, and members are advised to consult with the Criminal Investigations Branch when in doubt about their specific authorities):
 - a) arrest warrants - authorize police to arrest and taking a person into custody for the purpose of prosecution (to ensure court appearance), preventing continuation of an offence, protecting the safety of others or for process (administrative);



- b) search warrants - authorize entry by police into a location in which a person has a reasonable expectation of privacy;
 - c) entry warrants - authorize the entry into dwelling houses to carry out an arrest (whether based on a warrant or a warrantless power of arrest); and
 - d) biological warrants - permit obtaining bodily substances such as blood, hair, or saliva samples for DNA purposes.
6. A search warrant may be broadly defined as an order issued by a justice under statutory powers, authorizing a police officer to enter a specified place to search for and seize specified property which will afford evidence of the actual or intended commission of a crime.
7. When determining whether their actions constitute a search, members must assess whether their actions will intrude on a person's reasonable expectation of privacy, by considering the following:
 - a) the person's presence during the search;
 - b) possession or control of the property or place;
 - c) ownership of the property or place;
 - d) a person's historical use of property or item; and
 - e) a person's ability to regulate access to a place.
8. Members are to obtain a warrant to search where required by law, unless a search without warrant is justified.
9. A warrant or authorization may be issued based upon a sworn ITO and proof of reasonable grounds for its issuance.
10. Judicial authorizations are granted pursuant to statutory provisions from statutes including the *Criminal Code of Canada (CCC)*, *Controlled Drug and Substances Act*, *Firearms Act*, *Offence Act*, *Liquor Control and Licensing Act*, *Police Act* and any other provincial or federal statute. The member is to rely on the particular section of the statute to provide the specific requirements of the warrant or order sought.



11. All search warrants applied for by members of the Department are to ensure they are using forms provided by the Department and/or they are using forms that are current and up to date for the warrant or order being sought.

Considerations Before Applying for a Warrant

12. When determining if a judicial authorization is required pursuant to any statute that has search warrant provisions, members are to consider the following:
 - a) are there reasonable grounds to believe that an offence has been or will be committed;
 - b) is a judicial authorization required and what kind;
 - c) will the judicial authorization advance the investigation;
 - d) what are the requirements of the particular warrant or order that is to be sought;
 - e) can the requirements be met;
 - f) if the ITO is to be sealed, will it still meet the requirements after it has been unsealed and vetted; and
 - g) is further investigation needed to meet those requirements?

Ex Parte Applications & Full & Frank Disclosure

13. An application for a warrant or other judicial authorization is made 'ex parte,' meaning the individual who will be subject to the warrant is not present and therefore unable to argue why a warrant should not be granted.
14. The facts of the case reported in the ITO must provide a justice with sufficient information to satisfy the minimum standard needed to justify overriding an individual's privacy interests.
15. In order to ensure complete fairness, members swearing an ITO are obligated to have fully and frankly disclose all known information, presented all material facts, favourable or not, and not to have omitted facts that that would allow a justice to reach other conclusions.



Search Warrant Application

16. The warrant being applied for shall contain the following:
 - a) request that 'police officers of British Columbia' be authorized to conduct the search;
 - b) the specific location to be searched;
 - c) the items to be searched for;
 - d) when entry is requested to be made to conduct the search; and
 - e) any other information deemed relevant to specific warrants, e.g., information required unique to DNA warrants).
17. The ITO is a narrative that sets out the facts and circumstances being relied upon by the police to establish legal elements necessary for the granting of a warrant (also commonly referred to as 'grounds for belief').
18. The ITO must contain sufficient information to allow a justice to assess whether the police have established the necessary legal elements that would authorize the right to carry out the actions specified in the warrant.
19. The grounds for belief are the foundation of the ITO and are required to set out the following in detail:
 - a) the nature of the offence under investigation including a description of the offence, the date and place it occurred and those involved;
 - b) the evidence established to date;
 - c) the required reasonable grounds to obtain the warrant in question;
 - d) specifics as to the place to be searched;
 - e) specifics as to the things sought, or procedure to be conducted by the police;
 - f) the reason that the things/information sought will be present in the place to be searched; and
 - g) the reason that the things/information will afford evidence of the offence under investigation.



20. It is crucial that the member provides specific details known and the source of those details, as doing so allows the reviewing justice the ability to assess the credibility of the information.
21. All search warrants and ITOs applied for by members are to be reviewed by a supervisor prior to the application.
22. The reviewing supervisor is to ensure that:
 - a) all the requirements of the warrant sought are met prior to making the application;
 - b) all information on the draft warrants is accurate and matches that in the ITO; and
 - c) the review is documented in PRIME or the MCM Task.

Confidential Informers

(Refer to related Policy IP60 – *Confidential Informers & Agents*)

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Crime Stoppers Tips

- [REDACTED]
- [REDACTED]

Appearing Before a Justice or Faxing

31. The most common methods of producing an application for a judicial authorization are either in person or by fax. In either case the member is required to swear or affirm that they believe the information contained in the ITO is true. In person, the member will swear/affirm in front of the justice, whereas by fax, the member will swear/affirm before an individual authorized to receive an oath, prior to faxing.



- 32. Prior to faxing an application, the member is to ensure that the option to fax the ITO is available for that particular warrant. The member must satisfy the justice as to why it would be impracticable to appear in person before a justice and explain those reasons in the ITO.
- 33. It is recommended that, after the ITO is sworn/affirmed, the member leave the ITO with the justice and return once it has been granted or denied. This is to avoid any conversation with the justice which may add to the grounds of the ITO.

Subsequent Applications

- 34. Where a justice has not granted a warrant, and the member wishes to re-apply, the member must include in the subsequent ITO:
 - a) that there had been a previous application;
 - b) the reasons why it was denied;
 - c) what the member has done to address those reasons; and
 - d) any relevant updates in the investigation that would affect the issuance of the warrant sought.
- 35. Any ITO that was produced to a justice is to be kept in the master file, whether granted or not, and is subject to disclosure.

Sealing the ITO

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]



Search Warrant Execution

Surveillance

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

Risk Assessment

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]



Entry Announcement

50. Before entering the place to be searched, Department members are to make a proper announcement by:
- a) making a demand for entry (presence);
 - b) identifying themselves as police officers (authority); and
 - c) stating the purpose for which entry is demanded.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Use of Force

53. A member may, when acting under a search warrant or other lawful authority, use such force as is reasonably necessary (refer to related Policy IC10 – *Use of Force*).

Warrant On Hand

54. Department members who are executing a search warrant are to have the warrant or a true copy of it, in their possession during the search and, unless delayed notification is authorized in the warrant, are to:
- a) produce the warrant and allow the occupants or owner a reasonable amount of time to examine the document; or
 - b) leave a copy of the warrant in a prominent place within the premises, if the premise to be searched is unoccupied at the time of the search.



Search Participants

55. Participants in a search will be limited to:

- a) officers necessary to conduct the search, and/or
- b) persons named in the warrant.

Preparation for Search

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

Arrest v. Detain

- 59. Members are only to arrest individuals where reasonable grounds exist to believe they are party to an offence. All others may be detained as lawful. Individuals detained or arrested are to be granted access to counsel without delay, unless circumstances exist which would justify delaying access. Reasonable grounds to suspect there is an immediate risk to police or loss of evidence may justify a delay in access to counsel.

Seizure of Items Not Specified & Discontinuation of Search

- 60. Criminal Code section 489 provides the authority to seize, in addition to the items mentioned in the warrant, anything that is believed on reasonable grounds to have been obtained by crime, used in an offence, or will afford evidence in respect to any criminal or other statutory offences.
- 61. A search is to be discontinued when the grounds for belief no longer exist or the items described in the warrant are located and seized.
- 62. Although Criminal Code section 489 provides the authority to seize additional items not named in the warrant, it does not provide authority to search further for things not named. If the member wishes to engage in a search for things no named in the warrant relating to another offence, an additional search warrant is to be sought. The member is to take into consideration the nature or seriousness of the offence discovered and



whether or not the search authorized by the warrant should be suspended and the scene secured until another warrant is obtained.

Report to the Justice of the Peace

63. The member is to submit a Report to a Justice (Form 5.2) reporting the seizure for all seizures with a warrant.

Damage

64. Any damage caused, or alleged to have been caused, during the execution of a search warrant is to be reported to the investigator's supervisor and damage caused must be photographed.

Unexecuted Warrants

65. An unexecuted warrant to search is to be returned to the issuing justice for cancellation.

Search Warrant Execution – Special Considerations

Law Offices

66. Solicitor/client privilege recognizes the right to communicate with a legal advisor in confidence.
67. The privilege is that of the client and may only be waived by the client.
68. A solicitor's client is entitled to the confidentiality of all communications made for the purpose of obtaining legal advice.
69. Exceptions to the principle of solicitor/client confidentiality include:
- a) a communication from or to a professional legal advisor or staff not acting in their professional capacity;
 - b) a communication not made in confidence, or that has since lost its confidentiality; and
 - c) a communication that is criminal, or was made to obtain legal advice to facilitate the commission of a crime, even if the lawyer is unaware of the client's criminal purpose.



70. Since any search of a lawyer's office may raise the issue of privilege, it is essential that officers contact Crown counsel at the earliest opportunity.
71. Upon approval of Crown counsel, the application for a warrant to search will be made to a justice of the Supreme Court of British Columbia.
72. All items seized as a result of the warrant are to be:
 - a) sealed in an envelope without examining them or making copies;
 - b) conveyed without delay to the justice who issued the warrant; and
 - c) subject to any terms and conditions that might have been imposed by the judge in the warrant itself.

Media Outlets

73. A search for media news material must strike a balance between the interests of the state in an investigation and the right to privacy of the media as an innocent third party in the gathering and dissemination of the news.
74. An ITO specific to media news material is to:
 - a) disclose alternative sources for evidence and whether all reasonable efforts have been made to investigate those sources;
 - b) provide assurances that the execution of the warrant will not unduly impede the publication, broadcast, or dissemination of the news; and
 - c) provide grounds to show the existence of the material to be obtained.

Immunity from Search

75. Property of diplomatic missions, consular posts, representatives of the United Nations and certain international organizations may enjoy immunity from search.

*Revised Dates:
N/A