

LITIGATION

BULLETIN

*A Report on Developments
in Canadian Litigation*

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**“SEARCHING” FOR THE RIGHT RESPONSE? WHAT TO DO
WHEN YOU ARE PRESENTED WITH A SEARCH WARRANT**

There you are, sitting in your office reviewing the latest figures, when your assistant tells you that there is an officer at the door with a search warrant in hand. The officer shows you the warrant and explains that it authorizes him or her to enter your company’s premises and search through your files. Do you know how to respond? We offer the following general comments and suggestions to assist you should this situation arise:

1. Record the officer’s name, title, badge number, time and date of the attendance.
2. Ask for and obtain a copy of the warrant before any search commences.
3. Contact your lawyer and ask the officer to delay the search until your lawyer arrives.
4. If the officer refuses, do not try to stop the officer. Follow the steps described below:
5. Read the warrant carefully to determine: (a) the specific premises covered; (b) the specific documents or objects covered; (c) the alleged offence authorizing the warrant; and (d) if it is a night search, ensure the warrant expressly authorizes this. If there is a defect in the warrant, (i.e. the area to be searched is not described in the warrant), notify the officer of your concern (but do not obstruct any search).
6. Designate a company representative to accompany each officer and instruct them to:
 - a) ensure the search does not exceed the precise limits of the warrant, and if the officer attempts to search beyond these limits, object and record the objection. If the officer persists, ask that the documents beyond the scope of the warrant be placed in a sealed envelope and delivered to your counsel pending a ruling by a judge;
 - b) do not “agree” to expand the search beyond the limits or objects of the warrant;
 - c) never attempt to interfere with or impede the search. Remain courteous, but firm;
 - d) carefully record what specific files and documents were searched, by who, along with times and locations;
 - e) ask to make copies of all documents seized during the search and ensure that the copies identify precisely where they were taken from; and
 - f) ask that any documents containing communications between your company and its counsel for the purpose of obtaining legal advice (which are privileged) be placed in a sealed envelope and deliver them to your counsel pending a ruling by a judge.
7. Do not answer any substantive questions. Representatives of the company may assert their constitutionally-protected right to remain silent during the search.
8. At the end of the search, have each company employee present dictate or write a complete narrative of what transpired during the search and sign his or her statement.

WHO WE ARE



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