PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Boudreau*, 2022 NSPC 57

Date: 20221216
Docket: 8510881-8510929
8510938- 8510971
Registry: Halifax

Between:

Gary Boudreau, Shaun Forrestall, Stephen Fleming and Bradley Schofield

Applicants

and

His Majesty the King

Respondent

DECISION #1 - APPLICATION PURSUANT TO SS. 8 AND 24(2) OF THE *CHARTER* RE: TRACKING WARRANT #1

Judge:	The Honourable Judge Elizabeth A. Buckle
Heard:	November 15, 2022
Decision:	December 16, 2022
Charges:	86(2) x 2, 88(1) x 3, 91(1) x 5, 91(2) x 2, 92(1), 92(2), 95(1) x 2, 117.01(1), 354(1)(a) x 4, 462.31(1) x 4, 465(1)(c), 467.11(1) x 2, 467.12(1) x 2, 467.13(1) x 2 of the *Criminal Code* 5(1) x 2, 5(2) x 4, 7.1(1)(b) x 4 of the *Controlled Drugs and Substances Act* 9(1) x 2, 10(2), 12(1)(a), 12(1)(b), 12(4)(a), 12(4)(b), 12(6)(a), 13(1) of the *Cannabis Act*
Counsel:	Pat MacEwen for Gary Boudreau Ian Hutchison for Shaun Forrestall Phil Star for Stephen Fleming Ron Pizzo for Bradley Schofield

Len MacKay and Colin Strapps for the Crown

By the Court:

Introduction

[1] Gary Boudreau and the others are charged with various drug, weapons and proceeds of crime offences and with conspiracy to commit drug offences.

[2] The investigation included more than 30 judicial authorizations, including tracking warrants, search warrants, production orders and a wiretap authorization with renewals.

[3] This decision concerns only the first of those judicial authorizations, a 'tracking warrant' issued pursuant to s. 492.1(2) of the Criminal Code, sworn March 27, 2020 (JPC #20-0526).

[4] The warrant authorized tracking of three mobile devices including one that was associated to Mr. Boudreau. He argues that his right to be free from unreasonable search or seizure under s. 8 of the *Charter* was breached because the information in support of the warrant is insufficient to establish reasonable grounds for its issuance. He seeks to have the resulting evidence excluded under s. 24(2) of the *Charter* and excised from all subsequent judicial authorizations.

[5] The Crown concedes that he has a protected privacy interest in the information sought so has standing to make the s. 8 argument.

[6] I have been provided with a copy of the Warrant and supporting Information to Obtain (ITO) that warrant and the other judicial authorizations and their supporting ITOs or affidavits along with cases which the Crown and Defence rely on in support of their respective positions.

[7] The ITO in this case was vetted to remove information that might identify confidential informants. There was no challenge to that vetting.

[8] The Applicant was granted leave to cross-examine the Informant, Cpl. Shawn Dinsdale, on one narrow issue.

Procedural Background

[9] Br. Boudreau and others are charged upon two Informations with various drug, weapons and proceeds of crime offences and conspiracy to commit drug

offences: an Information alleging offences related to cocaine and other drugs against Gary Boudreau, Cameron Mombourquette and Shaun Forrestall; and, an Information alleging offences related to cannabis against Gary Boudreau, Shaun Forrestall, Stephen Fleming, and Bradley Schofield.

[10] The charges arise out of the same investigation and relate to the same time frame. The two Informations will be tried separately before different judges.

[11] The Crown will seek to rely on the intercepted private communications and results of some of the other judicial authorizations in both prosecutions. Counsel on behalf of all accused in both prosecutions, except Mr. Mombourquette, gave notice that they would challenge various warrants and the wiretap authorization(s) and seek exclusion of evidence under ss. 8 and 24(2) of the *Charter*. This would necessitate one or more *Garofoli* hearings in each trial. Counsel agreed that the legal issues in the respective *Garofoli* hearings would be similar and that it would be in the interests of justice to hold a joint hearing to determine whether the various judicial authorizations are valid and, if not, to determine whether the evidence should be excluded under s. 24(2) of the *Charter*.

[12] I will be the trial judge at one of the trials and, with the agreement of counsel, was assigned under s. 551.7 of the *Criminal Code* to adjudicate these issues that were of joint concern in the two proceedings. Specifically: the validity of the wiretap(s) (including the validity of other authorizations that provided information that was included in the Affidavit in support of the wire tap(s) and any resulting excision from subsequent authorizations); the reasonableness of the manner of execution of a *CDSA* warrant on Mr. Forrestall's residence; and, if necessary, whether any evidence should be excluded under s. 24(2) of the *Charter*.

[13] Mr. Mombourquette did not take part in the *Charter* applications and, under s. 650(2)(b), he and his counsel were permitted to be out of court during the hearing.

Legal Principles

[14] A search will be reasonable if it is authorized by law, if the law is reasonable and the search is carried out in a reasonable manner (*R. v. Collins*, [1987], 1 S.C.R. 265, at para. 23).

[15] We start with a presumption that the warrant is valid and Mr. Boudreau bears the burden of establishing on a balance of probabilities that the search was nonetheless unreasonable.

[16] The sufficiency of the grounds in the ITO are to be assessed based on the revised record: the ITO as properly amplified or corrected by evidence heard during the hearing and absent any information that is appropriately excised from it. The issuing Justice of the Peace would have had the benefit of the unvetted ITO. However, at this stage, my review is to be based on the vetted version that I have reviewed.

[17] My role as the reviewing judge is to review the revised record and determine whether there is a basis upon which an authorizing judge, acting judicially, could have granted the authorization. As was stated by Justice Sopinka in *R. v. Garofoli*, [1990] 2 S.C.R. 1421, at page 1452:

> The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere.

[18] As is clear from this passage and cases that come after, my role is not to determine whether I would have granted the authorization or whether the issuing J.P. should have been satisfied but rather, whether he could have been satisfied on the evidence in the ITO that the standard for issuance had been met.

[19] The warrant here was issued pursuant to s. 492.1(2). That provision permits the issuance of a warrant authorizing a peace officer to obtain tracking data by means of a tracking device where the justice is satisfied by information on oath that there are reasonable grounds to believe specific things. Tracking data and tracking device are defined in the Code (s. 492.1(8)). Tracking data includes data that relates to the location of an individual or thing.

[20] The standard for issuance - reasonable grounds to believe – has been interpreted to mean more than mere possibility or reasonable suspicion but less than proof beyond a reasonable doubt or a *prima facie* case (See: *R. v. Wallace,* 2016 NSCA 79; *R. v. Lofty,* 2017 BCCA 418; *Mugesera v. Canada (Minister of Citizenship and Immigration)* 2005 SCC 40, at para. 114; *R. v. Jir,* 2010 BCCA 497, at para. 27; and *R. v. Debot,* [1989] 2 S.C.R. 1140 at 1166). It has been described

as reasonable belief, reasonable probability (*Debot*, at p. 1166) and credibly-based probability (*Hunter v Southam*, [1984] 2 SCR 145 at p. 167).

[21] In the ITO, the Informant had to state his subjective belief that he had the requisite grounds. However, that is not sufficient. He also had to show the issuing justice that his belief was objectively reasonable and grounded in credible and reliable information (*R v Araujo*, 2000 SCC 65, at para. 51; *R. v. Bisson*, [1994] 3 S.C.R. 1097, at p. 1098).

[22] The Informant's belief does not have to be based on personal knowledge. Hearsay is permitted but it must be sufficiently sourced to allow the issuing justice of the peace to carry out his constitutionally mandated role - to independently assess whether the Informant's belief is reasonable and grounded in credible and reliable information.

[23] In determining whether the standard has been met, the ITO must be assessed as a whole, with each piece of information viewed in the context of the whole. The evidence explicitly included must be considered along with any reasonable inferences available from that evidence.

[24] Consideration must also be given to the fact that peace officers who prepare ITOs generally do so without legal assistance. As such, their drafting should not be held to the "specificity and legal precision expected of pleadings at the trial stage." (*R. v. Durling*, 2006 NSCA 124, at para. 19; and, *R. v. Sanchez*, 20 O.R. (3d) 468 (Ont. Ct. (Gen. Div.)).

[25] The Crown does not seek to rely on amplification to correct any minor or technical errors. However, the Applicant alleges that relevant information which would have detracted from the grounds was not included.

[26] A search warrant application is made *ex parte*. As a result, there is a duty on the Informant to make full and frank disclosure. As was stated by Fish, J, writing for the majority of the Supreme Court of Canada in *R. v. Morelli*, 2010 SCC 8, at para. 58, a person seeking a warrant,

> … must be particularly careful not to "pick and choose" among the relevant facts in order to achieve the desired outcome. The informant's obligation is to present *all material facts, favourable or not*. Concision, a laudable objective, may be achieved by omitting irrelevant or insignificant details, but not by material non-disclosure. This means that an attesting officer must avoid incomplete recitations of

> known facts, taking care not to invite an inference that would not be drawn or a conclusion that would not be reached if the omitted facts were disclosed.

[27] Errors, even fraudulent, misleading or otherwise 'bad faith' errors, in an ITO do not automatically invalidate a warrant (*R. v. Morris,* 1998 NSCA 229, paras. 42 - 43, cited with approval in *Araujo,* at para. 54; and, *R. v. Booth,* 2019 ONCA 970, para. 64).

[28] Where full and frank disclosure has not been made, the reviewing court can 'correct' the ITO to achieve that and then determine whether the warrant could have been issued based on that corrected ITO. That power to 'correct', includes the power to, essentially, 'read in' information where material facts are omitted that might have detracted from the grounds (*Morelli,* at para. 60; *R. v. Paryniuk,* 2017 ONCA 87, para. 45).

[29] However, in some cases, the errors or omissions in an ITO are so serious that the warrant cannot be permitted to stand (*Paryniuk,* para. 45; *Booth,* paras. 64 - 65). This residual discretion was summarized by the Ontario Court of Appeal in *Booth:*

> **65** In some cases, bad faith on the part of an affiant officer can have an even more profound effect. Where an affiant officer's failure to make full and frank disclosure is egregious enough to "[subvert] the pre-authorization process through deliberate non-disclosure, bad faith, deliberate deception, fraudulent misrepresentation or the like", a court has the "residual discretion" to set aside the search warrant, even if there would have been reasonable and probable grounds, had there been full and frank presentation of the information: *Paryniuk,* at para. 69.

[30] The framework for assessing whether reasonable grounds exist when, as in this case, an ITO relies on information from confidential sources comes from the Supreme Court of Canada cases of *R. v. Debot,* [1989] 2 S.C.R. 1140 and *Garofoli*.

[31] In *Debot* and subsequently in *Garofoli*, the Supreme Court of Canada identified factors which are relevant to the issue of whether information from a confidential source would provide reasonable grounds:

1. Is the information compelling having regard to things such as the level of detail or specificity and the informer's source of knowledge?; and,
2. Is the Source credible/reliable by reference to such things as past performance and/or independent confirmation or corroboration from other investigative sources?

[32] Over time these have been distilled into three factors:

(1) Is the tip (information) compelling?

(2) Is the Source credible?

(3) Has there been independent confirmation of the tip?

[33] These factors do not form separate tests but, rather, must be assessed together to determine whether, on the totality of the circumstances, there are reasonable grounds.

[34] The exercise of reviewing an ITO for sufficiency necessarily involves critiquing it. However, the issue is not the quality of the product from an editorial perspective and the question is not whether more could have been done by investigators. The question is whether what is present could have met the standard for issuance.

Analysis

[35] The ITO in this case includes criminal records and history of police interactions for the people referred to in the ITO, information from confidential sources and information obtained by police from databases or other investigations. I also have the testimony of Cpl. Dinsdale and I have reviewed other sworn documents prepared by Cpl. Dinsdale during this investigation.

[36] Cpl. Dinsdale acknowledged in cross-examination that he "chose" not to include certain information in the ITO. In my view that information was material and would have detracted from his grounds. On March 12th, Confidential Informant B (Source B) reported that Mr. Boudreau and Mr. Pearson had been together a lot. This information was important. The Source had reported that Mr. Pearson sold drugs for Mr. Boudreau and provided the only information of a link between Mr. Boudreau and Mr. Pearson which, through another Confidential Informant, also provided an indirect link between Mr. Boudreau and another drug trafficker who was also using Mr. Pearson to sell product. Cpl. Dinsdale acknowledged in cross-examination that when he swore the ITO on March 27, 2020, he was aware that surveillance had been conducted on Mr. Boudreau on March 20, 24, 25 and 26, 2020 and that Mr. Boudreau was not seen meeting with Mr. Pearson. That information was not included in the ITO. Cpl. Dinsdale agreed that he included the information

in an ITO to obtain a different warrant on the same day but 'chose' not to include it in this warrant. He was not asked and did not say why he chose not to include it in this ITO.

[37] At minimum, I will consider that information when assessing the reliability of Source B and ultimately the sufficiency of the grounds. I will also have to consider whether the failure to include it rises to the level of malfeasance to invalidate the warrant entirely. However, to properly determine whether this is an appropriate case to exercise that residual discretion, I have to consider this omission in the context of the entire ITO.

[38] There is another potential error in the ITO. When setting out the Source qualifications for Source B and Source C, Cpl. Dinsdale stated that the information provided by them came from direct contact with the persons informed on "and also" from speaking with persons who spoke directly with the persons informed on. In the subsequent Affidavit to support the wire tap authorization, Cpl. Dinsdale stated that information from these Sources came from direct contact – the "and also" portion was removed. It appears that the information from Source B and C that was included in the tracking warrant was repeated in the Affidavit in support of the wiretap. The Applicant argues that the statements about how these Sources obtained their information cannot both be correct – if their information came from both direct and indirect sources, the statement in the Affidavit for the wiretap is not correct; if their information came from direct sources only, the statement in the ITO for the warrant is not correct. The Applicant did not seek leave to cross-examine Cpl. Dinsdale on this and the Crown did not seek to rely on amplification to explain or correct it, so I have no information as to which is correct or why the qualification statement was changed for the wiretap authorization. I do note that use of the word "or" instead of "and" in the qualification statement contained in the ITO would have the result that there was no discrepancy between the two statements.

[39] I will assess this warrant on the basis that some of the information provided by Source B and Source C was obtained indirectly. This is most beneficial to the Applicant. I will also consider this potential error when I decide whether to exercise my residual discretion to set aside the warrant.

[40] In this case, the Applicant attacks both the subjective and objective basis for the warrant's issue.

[41] The requirements for issuance of the tracking warrant are set out in s. 491.1(2). The ITO must show that the Informant has a subjective believe that is also reasonably held for each requirement. Specifically, that:

- An offence, in this case a CDSA offence, has been or will be committed;
- tracking the targeted individual(s)'s movements will assist in the investigation of the offence;
- the individual(s)'s movements can be tracked by identifying the location of a thing; and,
- the thing is usually worn or carried by the individual(s).

[42] The Applicant challenges whether the ITO includes the Informant's subjective belief that he had the requisite grounds.

[43] In para. 9 of the ITO, under the heading "Overview", the Informant states that he has "reasonable grounds to suspect the listed offences are being committed".

[44] As I've said the standard for issuance of this warrant is "reasonable grounds to believe", therefore, the officer's statement that he had reasonable grounds to "suspect" would not satisfy the subjective requirement. However, in the opening paragraph of the ITO, Cpl. Dinsdale does state under oath that he has reasonable grounds to "believe" that the listed offences have been or will be committed. The Applicant submits that this is merely boilerplate and should be viewed as less weighty than the subsequent statement. It may be that the opening paragraph is boilerplate, meaning a standard part of every warrant and perhaps included without thought by the Informant. However, it is an uncontroverted statement under oath that the officer subjectively believed the offences had been or would be committed. I cannot simply ignore it without evidence that the Informant's oath did not include this paragraph. His later reference to reasonable suspicion is unfortunate but does not contradict this statement. As such, the subjective requirement is met for this requirement.

[45] The subjective belief requirement for the other component parts of the warrant requirement is also satisfied in the first two paragraphs of the ITO where the Informant states that he has reasonable grounds to believe each requirement.

[46] The Applicant also challenges whether there are objectively reasonable grounds to believe each of the component requirements for issuance of the warrant.

[47] I'll first address some of the more specific arguments concerning whether the ITO demonstrates reasonable grounds to believe that tracking Mr. Boudreau's movements will assist in an investigation; whether Mr. Boudreau's movements can be tracked by identifying the location of a cell phone associated to a specific number; and, whether the cell phone is usually worn or carried by Mr. Boudreau. Then I'll address the more general argument that the ITO does not demonstrate reasonable grounds to believe that an offence has been or will be committed and that tracking Mr. Boudreau's movements will assist in the investigation of that offence.

[48] In the second part of para. 9, the Overview, the Informant says, "the information police hope to obtain from this technique will assist by identifying the types of mobile devices being used and the associated numbers". This does not address the requirements for a tracking warrant and adds nothing to the grounds for this warrant.

[49] In para. 46, the Informant states that he believes "data available from tracking these phones will assist in determining the user's habits which will help investigators while both planning and conducting surveillance activities". On March 25, 2020, Source 'D' provided a phone number for Gary Boudreau, police confirmed that number was associated to Mr. Boudreau in a June 2019 investigation and more recently that the number was an active Bell Mobility number so associated with a mobile device as opposed to a land-line. In para. 49, the Informant explains that technology can enable investigators to determine the location of a mobile telephone. That provides reasonable grounds to believe that Mr. Boudreau had a mobile telephone and that the location of mobile telephones can be tracked.

[50] There is no specific information provided to support a belief that Mr. Boudreau usually carries his mobile device and no further summary of the basis for the officer's belief that tracking phones would, in general or Mr. Boudreau's phone in particular, assist the investigation.

[51] First, dealing with whether there are reasonable grounds to believe that Mr. Boudreau usually carried his mobile phone. There is no information that any police officer or confidential informant saw Mr. Boudreau with a mobile device.

However, the information that he had an active mobile account and had the same phone number in 2019 and March of 2020 is sufficient to provide reasonable grounds to believe Mr. Boudreau used a mobile device at the time the warrant was sought. This leaves the question of whether the issuing J.P. could reasonably infer that Mr. Boudreau would usually carry the device associated with that number. "Usually" means under normal conditions or generally. In my view, in 2022, it is reasonable to infer that people who use a mobile device, usually carry them. It was open to the issuing J.P. to make that same inference.

[52] Next, dealing in a general way with whether there are reasonable grounds to believe that tracking Mr. Boudreau's device would assist the investigation. That does not require a belief that evidence would be obtained, just that it would assist the investigation. Further, the J.P. was not limited to consideration of the officer's summary of grounds in para. 46. He was entitled to review the document in its entirety to determine whether this component of the test had been met. The investigation had multiple targets with multiple associates. The information from confidential sources was that drugs were being obtained by some of them, including Mr. Boudreau, and then others were distributing the drugs. Assuming, for now, that the Source information was sufficiently credible and reliable to provide reasonable grounds that drug trafficking was or would be occurring and that Mr. Boudreau was involved directly or indirectly, then the ITO contained sufficient information to support the officer's statement of belief in paras. 2 and 46, that tracking Mr. Boudreau's location would assist in the investigation of a drug offence. There is no doubt that meaningful surveillance would be of assistance, if not necessary, to the investigation. It is also reasonable to believe that tracking the location of anyone who was directly involved in the trafficking or involved with the people who were directly involved would assist with that surveillance by providing officers with information about whether, when and where they met, and whether they regularly attended any locations which could lead to discovery of stash houses or other associates.

[53] Next, I have to deal with whether there are reasonable grounds to believe that a drug offence had been or would be committed and, more specifically, with whether Mr. Boudreau was sufficiently connected to that activity that tracking his movements would assist with the investigation.

[54] Essentially, the only information provided in the ITO other than that referred to above is information relating to the criminal records and history of police

interactions with the named persons and information from four confidential informants.

[55] In general, the criminal records and summary of the subjects' history with police establishes that Mr. Boudreau and Mr. Strickland, both of whom were targets of the tracking warrant, and some of those believed to be associated with them have criminal records for drug activity and/or have been investigated by police for drug activity in the past.

[56] Mr. Boudreau had an outstanding charge of assault causing bodily harm and a record that included convictions for drug trafficking and conspiracy in 2004. Those convictions resulted from a 2002 investigation. He also had a conviction for possession of a narcotic in 1997.

[57] He was also implicated in drug investigations in 2013 and 2018.

[58] In 2013, Stephen Fleming told an undercover police officer (UCO) that he could distribute large quantities of cocaine in a short period and that he had access to large quantities of cash to purchase drugs. During the investigation, the target was in contact with Mr. Fleming and Mr. Boudreau regularly. The target brokered a cocaine deal with the UCO and when the UCO asked who his associates were, he said Fleming and "Boo" Boudreau. As part of that deal, Mr. Fleming accepted 5 kg of fake cocaine from the UCO for the purpose of having it tested. He immediately drove to Mr. Boudreau's apartment complex, went into the building, and then left. Mr. Fleming and Mr. Boudreau were arrested. The fake cocaine was in Mr. Fleming's car. It had been opened and police believed he learned it was fake so did not pass it on to Mr. Boudreau. Mr. Boudreau was not charged and there is no direct evidence that Mr. Fleming met with Mr. Boudreau when he went to his apartment complex.

[59] In 2018, two UCOs met with Mr. Boudreau and two others a couple of times, purchased cocaine from one of the others and arranged to meet that person again. During the investigation the other person who had been with Mr. Boudreau told the UCOs that Mr. Boudreau was a high-end drug dealer and he was his bodyguard.

[60] Mr. Fleming had five drug related convictions for possession for the purpose of trafficking, trafficking, possession and two counts of conspiracy. These are from 2000, 2001, 2011 and 2017. The most recent conviction resulted from the 2013 investigation that also involved Mr. Boudreau.

[61] Daniel Verrilli also has convictions for possession for the purpose of trafficking and production of a substance from 2011. In 2018, Mr. Verrilli was also the target of an investigation into cocaine trafficking. He was arrested during a search of a business where marihuana, money and drug packaging material was found, but no cocaine. A search of his home discovered $7,220 in cash, vacuum sealers, three phones, two money counters but no cocaine. He was not charged.

[62] Christian Strickland had a prior conviction for trafficking in 2009, and possession for the purpose of trafficking between 2009 and 2013. He also has a record for crimes of violence. In early 2020, targets of an Ontario RCMP investigation were in NS and called Mr. Strickland the day after.

[63] None of the others have criminal records for drug offences.

[64] The Applicant argues that Mr. Boudreau's record for drug related activity is very dated so not very relevant and the information suggesting his subsequent involvement in drug related activity which did not result in convictions is untested so not reliable. I agree that the dated record without more would not be very relevant. I also agree that the information from the 2013 and 2018 investigations is untested. However, the Source of some of that information is direct police observations or information provided to UCOs directly by the people involved. That enhances its reliability.

[65] The 2013 investigation provides reasonably reliable and credible information that Mr. Fleming was involved in cocaine trafficking, Mr. Boudreau had regular contact with Mr. Fleming and the target who was brokering a large cocaine deal, and Mr. Gary Boudreau went by the name "Boo". There is no direct evidence that Mr. Fleming visited Mr. Boudreau after he received what he believed was cocaine, but the information that Mr. Fleming went directly to Mr. Boudreau's apartment complex and entered the building, after he received what he would, at the time, have believed to be cocaine is capable of supporting an inference that he visited Mr. Boudreau.

[66] The reasonably credible and reliable information from the 2018 investigation is that Mr. Boudreau was present when a third party sold cocaine to an UCO. The reliability of the description of Mr. Boudreau as a high-end drug dealer can not be assessed and in the absence of information to support that bald statement, it is entitled to no weight.

[67] The 2018 investigation into Mr. Verrilli for cocaine trafficking adds nothing. No cocaine was found and what was found at his home is equally consistent with some involvement with marihuana.

[68] The criminal records and this information from the 2013 and 2018 investigations is potentially relevant and is capable of showing that:

- that in addition to his dated conviction for drug trafficking, in 2013 and 2018, Mr. Boudreau was still involved with people who were trafficking cocaine;
- Mr. Boudreau was referred to as "Boo" giving rise to a reasonable inference that a subsequent reference to "Boo" was Gary Boudreau;
- Mr. Strickland's record for violent crimes was at least consistent with the role of 'bodyguard' attributed to him by a confidential informant;
- there was some previous association between Mr. Boudreau and Mr. Fleming that was connected to cocaine trafficking; and,
- Mr. Boudreau, Mr. Fleming, Mr. Verrilli and Mr. Strickland all had previously been involved in drug trafficking which was at least consistent with the criminal activity reported by some of the confidential informants.

[69] The ITO also includes information from four confidential informants.

[70] Source A provided information on October 29 and November 7, 2019, about 5 months before the warrant was sought.

[71] On October 29, Source A said that:

- Daniel Verrilli works with Stephen Fleming in the drug business and they are moving 10-20 kg of cocaine a week;
- Verrilli supplies Brad Sullivan with a couple of kg per week;
- Brad Sullivan is an MMA fighter – Cpl. Dinsdale corroborated this through google searches;
- Verrilli owns East Coast Financing on Sackville Dr. which sells vehicles and offers loans – Cpl. Dinsdale corroborated this through a web page associated with that business name;

- Fleming and Verrilli are providing "Makhoul" with about a kg per month – subsequent information received from Source A identifies Makhoul as Karam Makhoul and the ITO includes information that someone with that name has a criminal record for crimes of violence and breaches of court orders; and,

- Verrilli and Fleming have houses near each other on a lake in Mount Uniacke – Cpl. Dinsdale confirmed that Mr. Verrilli owns a house on a lake in Mount Uniacke but could not confirm that Mr. Fleming had ever lived near him on the lake. He confirmed that the cottage next door to Mr. Verrilli's property is owned by a person who's first name is Stephen, but with a different last name, and another police officer believed that person had rented out a house in Mount Uniacke to a member of Mr. Verrilli's "crew" but had no recollection of Mr. Fleming ever living out there;

[72] On November 7th Source A said that:

- Verrilli and Fleming are moving cocaine through Hayden's Auto on Windmill Road using John Furey who works there - Cpl. Dinsdale confirmed through a website associated to Hayden Auto that John Furey is listed as the General manager.

- Furey is friends with Karam Makhoul; and,

- the cars are being used to transport cocaine into the city.

[73] Essentially, Source A reports that Mr. Verrilli and Mr. Fleming are working together to sell large quantities of cocaine using Mr. Sullivan, Mr. Makhoul and Mr. Furey at Hayden's Auto. That Source does not mention Mr. Boudreau.

[74] Source B provided information on October 30, 2019, March 2, and March 12, 2020.

[75] On October 30th, Source B provided information that:

- Kevin Pearson had worked with Mr. Verrilli selling drugs;

- That they had a falling out because Mr. Pearson wrecked one of Mr. Verrilli's vehicles but they settled their differences;

- Mr. Pearson is making cocaine runs to New Brunswick for Mr. Verrilli;

- Mr. Pearson makes these runs using a van with a hidden compartment; and,

- Mr. Pearson picks up multiple kg of cocaine in New Brunswick and brings it back to Halifax.

[76] There is no information that Cpl. Dinsdale attempted to corroborate that Mr. Pearson had been in a motor vehicle accident, whether there was any record of him making regular trips to New Brunswick (such as traffic tickets or other interactions with police) or whether Mr. Verrilli had ever made an accident report concerning a vehicle owned by him.

[77] On March 2nd, Source B provided information that:

- Gary Boudreau is bringing in large amounts of 'molly' (also known as ecstasy);

- Boudreau is bringing in kilos of molly at a time, packaged in 500 gram lots;

- Kevin Pearson is selling some of the molly for Boudreau;

- Pearson keeps drugs in a storage unit in his apartment building and has access to all the storage units because his mother is the super of the building - Cpl. Dinsdale confirmed that Kevin Pearson's mother had died and in the sudden death investigation her occupation was listed as "building manger". The ITO does not say when she died but the HRP file number associated with the investigation is "2019-33502", so I infer that she must have died in 2019; and,

- Pearson works as a door man at the Fickle Frog and sells from there;

[78] On March 12th, Source B provided the following information:

- Boudreau received a shipment of cocaine yesterday;

- Kevin Pearson sells cocaine for Boudreau;

- Pearson can supply molly;

- Pearson and Boudreau have been together a lot – this statement was not corroborated. I have no evidence of any police surveillance on or before

March 12th. However, surveillance on Mr. Boudreau on March 20, 24, 25 and 26, 2020 did not show Mr. Boudreau meeting with Mr. Pearson;

- Pearson drives a white land rover; and,

- Pearson's phone number - Cpl. Dinsdale confirmed that the phone number provided by Source B for Mr. Pearson had been associated to him during a 2019 police investigation.

[79] Essentially, Source B reports that Mr. Pearson transports cocaine from New Brunswick for Mr. Verrilli, Mr. Boudreau brings in molly and on one occasion received a shipment of cocaine, and Mr. Pearson sells molly and cocaine for Mr. Boudreau.

[80] Source C provided information on January 24, March 3 and March 4, 2020. On January 24th, he provided the following information:

- Someone named 'Christian' is buying a lobster pound from a named individual;

- Christian has a facebook profile and is part owner of "All Canadian Seafood Group";

- He is involved in the lobster business with someone named 'Sam';

- Christian's cell phone number;

- Christian is 'Boo's' bodyguard/muscle;

- Boo was seen at the lobster pound; and,

- Christian had a lot of cash to pay for service on boats.

[81] Based on other information in the ITO, I believe it is a reasonable inference that when Source C used the name Christian, it was a reference to Christian Strickland. In the ITO, Cpl. Dinsdale stated that on March 5, 2020 he spoke with a name that is vetted who advised him that 'Christian' is Christian Strickland. It is not clear whether the vetted person is Source C, Source C's handler or someone else so that statement is not particularly reliable. However, Cpl. Dinsdale also confirmed that on March 9, 2020, there was a facebook profile for 'Christiano Stricklando'

which listed that name as "co-owner of 'All Canadian Seafood Group'". On the same date, Cpl. Dinsdale also found a Linkedin profile for Christian Strickland that listed him as co-owner of that company.

[82] Based on other information in the ITO, I also believe it is a reasonable inference that when Source C used the name Sam, it was a reference to Samer Zakhour. On November 5, 2019, Christian Strickland was issued a warning for speeding while driving a truck and trailer bearing licence T457957. Two weeks later, on November 20th, a police officer went to a lobster pound to investigate illegal fishing by the person Source C said was selling his pound to Christian. The same truck and trailer were at the pound. The officer was approached by Samer Zakhour who told him that he and his partner had purchased the business and gave the officer the name of the business. Cpl. Dinsdale conducted a database inquiry for a NS company registration number associated with Samer Zakhour and learned that Christian Strickland, Samer Zakhour and a third party were listed as Directors.

[83] Based on information contained in the 2013 investigation and referenced previously, I believe it is a reasonable inference that when Source C used the name 'Boo' it was a reference to Gary Boudreau.

[84] On March 3rd, Source C provide the following information:

- Christian and Sam are overpaying for lobster that they take to Toronto to sell;
- Boo is running the operation and money is not an obstacle;
- Two other named individuals work for Verrilli, had previously been involved in transporting marihuana, had been involved in a bust a few years ago involving a tractor trailer load of marihuana and are now back to moving cocaine;
- One of the individuals is from West Hants;
- Verrilli is offering large sums of money to drive a truck to move cocaine to Nova Scotia

[85] On March 4th, Source C provided the following information:

- Christian and Sam are selling their lobster in Toronto and Montreal; and,

- Source C believes they are buying lobster for an inflated price in order to clean money derived from drug sales.

[86] Essentially Source C reports that Mr. Strickland and Mr. Zakhour have a lobster business, Mr. Boudreau has been seen at the lobster pound owned by that business. Further, the Source believes the business is a front to launder money, is actually run by Mr. Boudreau, and Mr. Strickland is Mr. Boudreau's bodyguard/muscle.

[87] In considering the Source information, I will use the *Debot* factors to guide my analysis. However, of course I have to assess the strength of the Source information more globally and, ultimately, have to assess that information together with the other information in the ITO to determine whether the standard for issuance is met.

(1) Is the information compelling?

[88] This requires consideration of whether the information is sufficiently detailed to preclude the possibility that it was based on mere rumour, gossip, speculation or coincidence.

[89] The information from Source A is detailed, including names of individuals, lifestyle details about some of the individuals involved, type of drug, quantity of drug, and method of operation. The ITO states that Source A has "personal knowledge of the information obtained herein based on conversations and observations of persons named". The Applicant argues that this could mean any of the more than ten people named in the ITO, diminishing the value of the Source's information both under this factor and when considering its reliability. I do not agree that this is a reasonable interpretation of this statement. The statement of personal knowledge and its explanation would be devoid of all meaning and very misleading if an Informant or source handler used it in the manner suggested by the Applicant. In my view, the more reasonable interpretation is that each piece of information was obtained from conversations and/or observations of the persons named with respect to that piece of information. For example, when Source A says, in para. 36 (d) that "Verrilli supplies Brad Sullivan with a couple of kilograms per week", it is reasonable for the issuing justice and for me to conclude that the Source at least purported to have obtained that information from speaking with either of those two

people or through personal observation of one or both of those two people. Otherwise, the information would not be personal knowledge.

[90] Further, the qualification paragraphs are drafted either by the Informant or by the Source handler and adopted by the Informant. My interpretation of the Informant/Handler's intent and the proper interpretation of this sentence is bolstered by comparing the qualification for Source A with the qualification for Source B and C. For B and C, the source of information is stated to include information based on "speaking with persons who spoke directly with the persons informed on". I note that Source A and B had the same Handler so either the Handler or the Informant chose to use different language to describe the how each of those two Sources obtained their information. In my view, if the Applicant's interpretation of the Informant/Handler's intent were correct, there would be no reason for this distinction.

[91] Source A's information was provided almost five months before the warrant was sought so is somewhat dated. In the circumstances, without more, I could not say that information about drug trafficking in early November would be compelling in considering whether drug trafficking would be continuing in mid-March. However, Source A's information must be viewed together with other information in the ITO, including the other sources who provide more recent information.

[92] Source B and C each provide some information that is more recent to the issuance of the warrant. However, their information is stated to include information obtained from speaking with persons who spoke directly with the persons informed on. This allows for the possibility that each Source was reporting information they heard from an intermediary. The ITO does not identify which pieces of information were obtained from personal or direct knowledge and which were obtained indirectly, so unless it is clear from context, all would have to be treated as if it came indirectly.

[93] This clearly impacts the reliability of the information but also must be considered when assessing whether it is compelling.

[94] The Applicant also submits that much of the Source information about Mr. Boudreau is conclusory, lacking in detail and entitled to no weight or should not have been included in the ITO at all. There was some discussion during the hearing about how a conclusory statement in an ITO should be treated. There is no dispute that bald or conclusory statements and statements are generally insufficient to

provide reasonable grounds for a warrant (eg. *R. v. Capson*, 2019, NSSC; and *R. v. Simon*, 2020 NSCA 25*)*. For example, a statement from a confidential source that a suspect traffics drugs would not be enough to ground a warrant. For any statement provided from a Source, the underlying circumstances given by the Source for his or her conclusion must be set out in the ITO so that the authorizing justice can satisfy themselves there are reasonable grounds for believing what the Source has alleged.

[95] In their brief the Applicants submitted that conclusory statements should be "excised". Excision is a term of art in the warrant context and, in my view, should be reserved for those situations addressed in cases such as *Garofoli*, *Grant*, *Plant* and *Wiley* - incorrect statements, privileged information, and unconstitutionally or illegally obtained information. It is preferable to assess conclusory statements based on the weight that should be given them. I realize that some cases have used language suggestive of excision. For example, in *Capson*, the court said that conclusory statements should not be included in ITOs. However, that was in the context of saying that an issuing J.P. has a right to expect better and police officers should know that this type of statement should not be in an ITO. The justice was not saying conclusory statements should be 'excised', just that a statement that is entirely conclusory adds virtually nothing and should not be included. Some statements will be completely conclusory, without any detail, context or circumstances. Those will be given no weigh so the net effect will be the same as excision. However, others will require the issuing or reviewing justice or judge to assess the level of detail in context and then determine what weight it should be given.

[96] In their Brief, the Applicant refers to several statements which they submit are conclusory, lacking in detail and should be entitled to no weight.

[97] First, with respect to Source B: paragraph 40(a) where the Source says that Gary Boudreau is bringing in large amounts of molly; para. 40(b) – that the molly is packaged in 500 gram lots and Boudreau is bringing in kilos at a time, 40(c) – that Pearson is selling some of the molly for Boudreau at $100 per gram, the statement in paragraph 43(a) that Boudreau received a shipment of cocaine yesterday; 43(c) Kevin Pearson sells cocaine for Boudreau; and 43(g) – Pearson and Boudreau have been together a lot.

[98] For some of these statements, if they were made in isolation without any further information on the topic, I would agree that they are conclusory. However,

those single statements must be read in the context of the other information provided by the Source.

[99] Looking first at para. 40, which contains information provided by Source B on March 2nd. The Defence submits that, other than 40(a), the information relates to Mr. Pearson and the only details provided are about Mr. Pearson, not about Mr. Boudreau. I disagree. The remaining information cannot be divorced from the first statement. Read as a whole, the paragraph provides details about what drug Mr. Boudreau is bringing in, what quantity he's bringing in, how it is packaged, the name of a person who is selling it for him and at what price, where that person stores his drugs, where he works and where he sells it. Even individually, statements like that contained in para. 40(b), that "the molly is packaged in 500 gram lots and Boudreau is bringing in kilos at a time" are not mere assertions by an informer that the named individual is involved in criminal activity. It contains a fair amount of detail and when put in the context of the whole, is a detailed statement about Mr. Boudreau's reported criminal activity.

[100] The statement in paragraph 43(a), that Boudreau received a shipment of cocaine yesterday, was provided by Source B on March 12th. That statement is not completely devoid of detail. Even viewed alone it names the drug and is specific about the date of the shipment. However, it does not provide information about quantity, method of transport or packaging. The remainder of the paragraph says that Mr. Pearson sells cocaine for Boudreau and then provides details about Mr. Pearson. In a limited way, that fleshes out the statement that Mr. Boudreau received cocaine the day before.

[101] Next, looking at the information from Source C. That Source's information about the lobster business and the people involved is detailed and suggestive of personal knowledge on that subject. The Source provided names of people, a business, and a mobile phone number. The statement that Verrilli is offering large sums of money to drive truck to move cocaine to Nova Scotia is also relatively detailed. However, the information of potential criminal activity relating to Mr. Boudreau is neither detailed nor, for the most part, suggestive of personal knowledge. The statement that Boo was seen at the lobster pound is not entirely conclusory but is devoid of details such as when he was there and what he was doing. It is quite possibly based on third hand information. Other statements from the Source are not facts, but rather reflect the Source's opinions, speculation, the opinions or beliefs of others or rumour. For example, the statement that the

operation was being run by Mr. Boudreau and that the business was essentially a front for money laundering. Those statements are, in and of themselves, entitled to very little weight. The issuing J.P. would have to consider the factual information provided by this Source and elsewhere in the ITO to determine whether he could draw his own inferences about potential criminal conduct.

(2) Is the Source credible?

[102] The credibility of a confidential informant can be assessed through past performance, a review of a criminal record or through details that can be corroborated through other investigative means, scrutinized for plausibility and assessed to determine whether they support what might otherwise be a bald assertion or statement of belief by a source.

[103] The ITO contained information about each Source's history with police. The source qualification information was provided relatively close in time to the swearing of the ITO so can be considered current.

[104] Source D only provided a phone number for Mr. Boudreau which was corroborated by police, so I will not deal with that Source's reliability and credibility.

[105] Source A:

- had been a CI for four years;
- previously provided information that had been corroborated through various sources and had provided information that led to the execution of search warrants, no less than 15 times leading to positive search and charges;
- had also provided information leading to arrests;
- had twice provided information that led to negative searches;
- was financially motivated and had been pad for information no less than 15 times;

[106] Source B:

- had been a CI for six years;

- previously provided information that had been corroborated through various sources;

- had provided information that was not acted on because of police resources or because of a risk of jeopardizing the Source's security and identity;

- previously provided information on illegal drug activity, firearms and organized crime which was listed as resulting in: the authorization of a tracking warrant and transmission data recorder warrant in the winter of 2018; the execution of a negative search in the spring of 2018 – evidence of CDSA trafficking was found but not enough to substantiate charges; and the execution of a warrant in the summer of 2019 that resulted in the seizure of drugs;

- had been paid for information five times; and,

[107] Source C:

- had been a CI for 6 months;

- previously provided information that had been corroborated through various sources;

- had provided information that was not acted on because of police resources or because of a risk of jeopardizing the Source's security and identity; and,

- was financially motivated but had not yet been paid for information.

[108] Information about the Sources' criminal history was vetted so it is unclear whether any of them have a criminal record and, if so, whether it includes convictions for serious crimes of dishonesty such as perjury or obstruction of justice. The issuing J.P. had that information and can be presumed to have made reasonable inferences from it, but for my review, I have to allow for the possibility that the Sources have criminal records that would negatively impact their reliability.

[109] Vetting, or even failing to include any detailed criminal record for a source is not fatal to the issuance of a warrant. Two decisions from the Ontario Court of Appeal speak to this issue: *R. v. Rocha*, 2012 112 O.R. (3d) 742 at para. 33; and, *R. v. Dhillon*, 2016 ONCA 308. Both confirm that it is proper for the reviewing judge to take a contextual approach to assessing the strength of information from

confidential sources. The reviewing judge must consider the credibility of the Sources, the compelling nature of the information, and any corroboration of the information in the totality of the circumstances. Failure to include a criminal record, or vetting it from the reviewing judge, weakens the credibility of the Sources in this case. However, it is only one factor.

[110] Source A had a relatively good past proven reliability, purported to be providing information based on personal knowledge and provided details that could be investigated. Some of the information was corroborated, but much of that was publicly available. However, important information about Mr. Fleming was not corroborated.

[111] Source B and Source C both had a more limited history as informants. Source B had provided information that had been relied on but had not led to charges. Source C had provided information that was corroborated but none that could be acted on.

[112] Past proven reliability is important but not necessary. Even information from anonymous tipsters can provide reasonable grounds. However, where there is limited history to support reliability, other means become more important, such as details that speak to personal knowledge and corroboration.

[113] All three of these Sources were financially motivated but only Source A and B had been paid for information. Financial motivation and payment tend to increase confidence in a source's credibility because presumably the Source will know that if they provide false information, they will not be paid for information in the future.

[114] Further, as I said, the information from Source B and Source C must be treated as if it came indirectly unless the context suggests otherwise.

[115] This clearly impacts the reliability of the information. In part because the reliability and credibility of the intermediary cannot be assessed. Further, it reduces the value of any corroboration between Source B and Source C or between either of these Sources and Source A. That is because it is possible that they got their information from the same intermediary, which could be Source A, or because they are in fact getting it from each other.

[116] The ITO is vetted to remove the names of the source handlers, however, it is agreed that Source A and B had the same handler. The Applicant argued that this

increases the risk that Source B, whose information is not exclusively personal knowledge, has obtained information from Source A. The basis of that argument is that the fact that they share a handler makes it more likely that they operate in the same geographic area. I agree that there is a risk that information provided by Source B was obtained from Source A or Source C. However, I don't agree that the fact that they share a handler makes that more likely in the circumstances of this case. The investigation is, geographically, relatively focussed so I assume that all the CIs operate in that geographic area. In my view, the fact that these two CIs are handled by the same handler actually reduces the risk that Source B is relying on information from Source A. I say that because the handler would know the identities of those two CIs and it is reasonable to infer that Source B would have told the handler where he obtained the information. In the absence of information to the contrary, I have to trust that the handler would have disclosed to Cpl. Dinsdale and he would have disclosed in the ITO if Source B was providing information obtained from Source A.

(3) Has the information been independently corroborated?

[117] Independent confirmation can be a powerful tool to assess a source's reliability, so corroboration or lack thereof is inextricably linked to the assessment of a source's credibility and reliability. If information provided by a source is confirmed in some respects, the issuing justice and reviewing court can have more confidence that it is safe to rely on other pieces of information that are not capable of corroboration. In contrast, where information provided by a source is proven to be incorrect, it can cause concern that the Source is unreliable or incredible.

[118] The quality and type of confirmation also matters. It is not necessary and usually not possible to have independent corroboration of the criminal behaviour reported by the Sources. As has been repeatedly said, police will rarely be able to corroborate information of criminality to the extent that they observe the commission of the offence (eg. *R. v. Caissey*, 2007 ABCA 380). However, confirmation of information that would be public knowledge or easily discoverable will not help much in assessing the reliability of a source's information.

[119] As I've mentioned, there is some corroboration for the information provided by the Sources. Other information has not been corroborated, either because there is no indication that police sought to confirm it or because they did and could not. Clearly, information falling in the latter category, especially if a source's

information is proven to be wrong, can have a significant negative impact on the credibility or reliability of a source's information.

[120] For Source A, much of the information that was corroborated was easily accessible so does not help much with the Source's reliability. Information that Mr. Verrilli was involved in drug trafficking is corroborated by Source B and C, albeit with different associates. The information that Mr. Fleming lived next door to Mr. Verrilli was not corroborated. That was significant information because it is suggestive of personal or intimate knowledge of one or both. The Source's information was not proven to be wrong, but it seems probable that Source A was either mistaken about where Mr. Fleming lived or mistaken that it was Stephen Fleming who was working with Mr. Verrilli to sell drugs. The latter would have a more significant impact. This would also cause concern about the reliability of other pieces of information that could not be confirmed.

[121] Both Source B and C provided details that could be investigated and corroborated. For Source B, some of the information provided about Mr. Pearson was corroborated and would not have been public knowledge. For example, that Mr. Pearson's mother was the superintendent of a building so would have access to storage lockers. However, information provided by Source B about the relationship between Mr. Boudreau and Mr. Pearson was not corroborated. No other information confirms they were associates. Further, the Source's statement that Mr. Boudreau and Mr. Pearson were spending time together in mid-March was not borne out by surveillance of Mr. Boudreau on four separate days in late-March.

[122] That Source reported on March 12th that Mr. Pearson and Mr. Boudreau had been together a lot and less than two weeks later, surveillance of Mr. Boudreau over four days did not reveal him to meet with Mr. Pearson at all. Again, that does not prove that the information from Source B was wrong. Mr. Pearson and Mr. Boudreau may have been together a lot leading up to March 12th and for reasons unknown were not meeting during the period police were conducting surveillance. It is also possible that they met, and police surveillance officers missed it. I have no information about whether police maintained constant surveillance during those four days. However, these are possibilities only, so the surveillance information certainly also allows for the possibility that Source B was mistaken about who he was observing, exaggerated how often they met or purposefully lied about them meeting at all.

[123] Information from Source C relating to the lobster business, including some details that would not be public knowledge was corroborated. However, that information does not contribute much to the grounds for the warrant.

Conclusion

[124] I have reviewed all the decision provided by the Crown and the Applicant and others.

[125] It is difficult to compare cases when my task is to review and consider the totality of circumstances which will never be identical between cases. One case may have more detailed information but from a source with little past proven reliability or vise versa.

[126] I have reminded myself that my task is not to determine whether I would have been satisfied by the information in the ITO or whether the issuing justice should have been satisfied but rather, whether he could have been satisfied on the evidence in the ITO that the standard for issuance had been met.

[127] I have also reminded myself that the criteria for issuance of this warrant is not that evidence will be discovered by tracking Mr. Boudreau's movements, rather whether there are reasonable grounds to believe that it will assist the investigation.

[128] To determine whether there were reasonable grounds to track Mr. Boudreau, it is important to focus on the reasonably credible information that could support grounds to believe that a drug offence had been or would be committed and that could implicate him either directly or indirectly in that activity and allow for reasonable inferences from that information. That includes:

- Information from Source A, B and C that Mr. Verrilli is involved in trafficking large quantities of drugs;

- Mr. Verrilli has a criminal record for drug trafficking and two Sources provide detailed information that he was involved in cocaine trafficking in the fall of 2019 and spring of 2020;

- Information from Source B that Mr. Pearson is trafficking drugs for others, including Mr. Verrilli;

- Information from Source A that Mr. Fleming was involved in drug trafficking with Mr. Verrilli;

- Mr. Fleming has multiple and relatively recent convictions for drug offences, including conspiracy;

- Detailed information from Source B concerning Mr. Boudreau's drug trafficking with Mr. Pearson;

- Mr. Boudreau has dated criminal convictions for drug offences, in 2013 was associated with multi-kilo trafficking of cocaine, and in 2018 was present during the sale of a small quantity of cocaine;

- Mr. Boudreau was associated with Mr. Fleming in the 2013 cocaine trafficking investigation;

- There is no evidence of a direct link between Mr. Boudreau and Mr. Virrelli, however Source A reports that Mr. Virrelli sells drugs with Mr. Fleming with whom Mr. Boudreau had a historic relationship and Source B reports that Mr. Pearson brings in cocaine for Mr. Virrelli, sells cocaine for Mr. Virrelli and sells both cocaine and molly for Mr. Boudreau;

- Source B provides detailed information about Mr. Boudreau's trafficking relationship with Mr. Pearson; and,

- Source C links Mr. Boudreau to Mr. Strickland and to the business co-owned by Mr. Strickland and provides information from which the issuing justice could have inferred that the business was illegitimate.

[129] There are concerns about the reliability of Source A's information linking Mr. Fleming to Mr. Virrelli and of Source B's information of a relationship between Mr. Boudreau and Mr. Pearson. Source C's information connecting Mr. Boudreau to any illegitimate business is weak.

[130] Despite the weaknesses, when the ITO is viewed as a whole and allowing for weaknesses in one area to be helped by strengths in another, I am satisfied that the J.P. could have issued it.

[131] The information is sufficiently reliable and credible to provide reasonable grounds to believe that a drug offence was or would be committed and that Mr.

Boudreau was sufficiently connected, either because he was directly involved or associating with those who were, for the J.P. to conclude there were reasonable grounds to believe that tracking his movements would assist the investigation.

[132] I have also concluded that this is not an appropriate case to exercise my discretion to set aside the warrant due to bad faith or other malfeasance. I am not satisfied that the evidence establishes that the failure to make full and frank disclosure and the potential inaccuracy in the source qualification for Source B and C show such egregious conduct on the part of the Informant that the warrant authorization process was subverted.

[133] There was a failure to make full and frank disclosure. At the hearing, Cpl. Dinsdale agreed that the surveillance information did not corroborate Source B's statement that Mr. Boudreau was meeting regularly with Mr. Pearson and agreed that he "chose" not to include it in the ITO for that warrant.

[134] He was not asked why he did not include it. He testified that on March 27th, he swore ITOs to obtain two warrants – the one before me and JPC#20-0527. They were sent electronically to the JP centre at the same time and the one before me was issued first. From my review of ITOs and Affidavits for other authorizations, I am aware that JPC #20-0527 was a tracking warrant for a vehicle and that it was issued but never executed. Cpl. Dinsdale included the surveillance information in the ITO for that warrant.

[135] This suggests that he knew the information was relevant but also suggests that he did not leave it out for the purpose of misleading the issuing justice.

[136] Similarly, there is a discrepancy between the ITO and the Affidavit for the wiretap authorization in the wording of the source qualification relating to how Source B and C obtained their information. The wording in the ITO for the tracking warrant detracts from the grounds by making the information from those Sources less compelling and less reliable. As I have said, I don't know which is correct. Because Cpl. Dinsdale was not questioned on this at all, I also don't know what he knew or believed at the time the ITO was drafted. As a result, I cannot say whether the information is incorrect and, if so, whether it was a deliberate deception. If it was a deliberate deception, a potential motive would be to further shield the identities of those two confidential Sources. If there was a deliberate deception, it would not make sense to infer that Cpl. Dinsdale deliberately deceived the issuing

JP for the purpose of increasing his chances of having the warrant issued, since what he included weakened the grounds.

Elizabeth Buckle, PJP