IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. DeWolfe, 2006 NSPC 51

Date: October 24, 2006
Docket: 1399447
Registry: Halifax

Her Majesty the Queen

v.

Christopher Lee DeWolfe

Judge:	The Honourable Judge Barbara J. Beach
Heard:	November 10, 2004; July 14, 2005; October 14, 2005; December 22, 2005; February 9 and 10, 2006, in Halifax, Nova Scotia
Written decision:	October 24, 2006 (s. 8 *Charter* application)
Charge:	s. 5(2) CDSA
Counsel:	Mark J. Covan, for the Crown Roger A. Burrill, for the Defence

By the Court:

[1] The second part of this application deals with the Applicant's challenge of the particular warrant in operation in this case and the manner of the search conducted by the Halifax Regional Police. The reasons given in Part II of this decision should be considered with my earlier comments in Part I where the Applicant's challenge of s. 52 of the *Constitution Act*, 1982, was considered and the relevant law was canvassed. I concluded that ss. 11(1) and 12(b) of the *Controlled Drugs and Substances Act* were consistent with s. 8 of the *Charter* and accordingly, the first application failed.

[2] The first issue to be addressed in this part of the application can be set out as follows:

> Were there sufficient grounds contained within the Information to Obtain to justify the Justice of the Peace to issue the search warrant executable "at any time" or were the grounds deficient to the extent that the warrant should not have been granted, thereby rendering the search as warrantless, unreasonable and a violation of the Applicant's s. 8 *Charter* rights?

[3] In considering the contents within the Information to Obtain, I am mindful of the fact that the actual circumstances encountered by the police at the Applicant's residence at 2408 Adams Avenue on January 27, 2004, at the time entry was gained, are of no relevance in the determination of this application. The issuing Justice of the Peace was required to consider the contents in the Information to Obtain using the standard of "some evidence" or "reasonable probability" for the issuance of the search warrant. I am cognizant of the presumption of validity that exists with respect to search warrants supported by sworn Informations which have been issued by a judicial officer. It is against this backdrop that I have considered the validity of the search warrant which is the subject of the first issue in Part II of the application.

[4] The Information to Obtain presented to the Justice of the Peace on January 26, 2004, provided the following information from Source "A":

> 1) Crack cocaine was being sold from a residence situated at 2408 Adams Avenue in Halifax, Halifax Regional Municipality.
>
> 2) The cocaine was packaged for resale in tinfoil packages.

3) There was about an ounce of crack cocaine in the residence.

4) Christopher Lee DeWolfe resided at the residence located at 2408 Adams Avenue, along with his wife.

5) Christopher Lee DeWolfe was utilizing his residence as a “crack shop”, wherein crack cocaine was available for purchase on a 24-hour-a-day basis.

6) Christopher Lee DeWolfe kept at the residence a young pit bull that acted as a deterrent for the police and rival drug dealers.

[5] Source “B” and Source “C” provided information on January 26, 2004, which corroborated the information provided by Source “A”. Source “C” further provided information with respect to there being a couple of kids residing in the residence with Christopher DeWolfe and his girlfriend.

[6] Further, the Information to Obtain discloses the following:

7) Christopher DeWolfe is on record with the Halifax Regional Police as being charged with several weapon offences.

8) Christopher DeWolfe has two convictions dating back to 1988 and, more recently, 1997, for uttering threats.

9) Source “A” indicated on January 26, 2004, that she/he had observed a quantity of crack cocaine in the DeWolfe residence within the past 24 hours.

[7] Constable Carlisle, the informant, has worked frequently over the last ten years in the Uniacke Square area where Mr. DeWolfe's residence is located. During his career, he has attempted to conduct surveillance in the area and has learned the following:

a) Residents of the area attempt to do counter-surveillance on the police.

b) He is known as a police officer by the residents of the area.

c) Street level dealers will have “young offenders” act as look-outs for police activity and will identify police coming into the area.

d) Signals are used to alert others of the police presence in the area.

e) The residence of Mr. DeWolfe is located off a pathway that is not visible from the street.

[8] The foregoing information was before the Justice of the Peace on January 26, 2004, at which time he was obliged to consider whether there were sufficient grounds for the issuance of a search warrant. At the same time there was a duty on the Justice of the Peace to consider to what extent the state's intrusion into a *Charter*-protected sphere was justified by the information, bearing in mind the higher expectation of privacy that people reasonably have in their own homes during the night.

[9] The Applicant argues that there was insufficient information contained in the Information to Obtain which permitted the Justice of the Peace, in fulfilling his duty to act judicially, to conclude that the warrant should issue permitting the search “at any time.”

[10] I am satisfied, having examined the Information to Obtain and having heard from the officers who have given evidence in this matter, that the Information to Obtain met the threshold of some evidence, albeit at a minimal level, for the issuance of a warrant to search “at any time.” There existed, in the sworn Information, a reasonable basis to justify the Justice of the Peace, acting judicially, to permit a search at night.

[11] In reaching this conclusion, I am persuaded that there was a need for urgency in the search of the Applicant's residence. The three sources indicated that the amount of cocaine was relatively small and was being sold around the clock. Justice Wells discusses the need for investigative urgency in *R. v. Peddle*, 157 NFLD and P.E.I.R. 54 (S.C.):

> In the circumstances, was it reasonable to execute the search warrant at night? In my view it was reasonable. The role of the police is to investigate crimes. Certain

> crimes have a degree of urgency, but the crime alleged here, which was being in possession of a considerable amount of cocaine for sale in a relatively small community, is a serious one by any standard.
>
> When there are reasonable and probable grounds for acting upon the information received, the peace officer has a duty to pursue an investigation at the earliest possible time. The allegation of possession of cocaine for the purpose of trafficking should not presuppose a "nine to five" police investigation. If there is reason to believe that such criminal activity is being conducted, then it is reasonable also to believe that sales of the drug may take place at any time of day or night. Thus that the peace officer should act quickly and take such steps as are available to prevent the further commission of crime and it follows that there is a duty to investigate with all reasonable haste. The possible sale of cocaine is something that warrants immediate action. Therefore it was reasonable for the officer to seek to proceed to search forthwith, no matter what the time of day or night.

[12] It would have been reasonable for the Justice of the Peace to conclude that a delay in the search until daylight hours would result in there being no cocaine left remaining in the residence and render the whole process futile.

[13] At paragraph 8 in the Information to Obtain, there is reference to counter-surveillance in the area of Uniacke Square. The Applicant suggests that this paragraph did not provide any information to the Justice of the Peace which would advance the need for a night-time search. In my view, the fact that counter-surveillance takes place in a given community would reasonably cause the police to approach and conduct police business in that community differently than in an area where counter-surveillance is not in operation. Further, it is reasonable to assume that this is a factor the police must assess in determining the appropriate time to conduct a search, which might well be under the cover of darkness to reduce the opportunity for those doing the counter-surveillance to make their observations. These considerations might reasonably have been in the mind of the Justice of the Peace at the time the warrant was sought. The information in paragraph 8 provided further grounds upon which to authorize a search of the Adams Avenue residence "at any time," given that counter-surveillance might reasonably be regarded by the Justice of the Peace as going to both the effectiveness of the search as well as to the issue of officer safety.

[14] The information before the Justice of the Peace that suggested there was a "young pit bull" at the residence that acted as a deterrent is clearly a factor with

respect to officer safety. This information served as a reasonable consideration in authorizing a search "at any time."

[15] The Information to Obtain makes reference to the location of the DeWolfe residence. The door from which Source "B" indicated Mr. DeWolfe made his sales was unable to be viewed from the street, thereby making it difficult to conduct physical surveillance on the residence. This information, while of limited value, would provide a further basis upon which to permit a search "at any time" to ensure officer safety.

[16] The Applicant would have the Court accept that Constable Carlisle was simply behaving in a high-handed manner in requesting a warrant that would be executed "at any time." I do not accept the Applicant's characterization of the Constable's evidence. These were clearly busy officers with more than one criminal investigation to attend to on January 26th and 27th of 2004.

[17] While the grounds contained in the Information to Obtain were by no means overwhelming, I am satisfied that the minimum threshold was met upon which the Justice of the Peace could issue the warrant authorizing a search "at any time." I have come to this conclusion within the context of my earlier comments in paragraphs 14 to 32 in Part I of this decision dealing with the application under s. 52 of the *Constitution Act*, 1982.

[18] The second issue in Part II of the application being made on behalf of Mr. DeWolfe relates to the manner of search and can be set out as follows:

> Did the police violate the knock/notice rule thereby rendering the search unreasonable and in violation of the Applicant's s. 8 *Charter* rights?

[19] On January 26, 2004, at approximately 8:00 p.m., Detective Constable Tony Carlisle secured a warrant to search the residence of the Applicant at 2408 Adams Avenue. At approximately 2:00 a.m., following an unrelated search on Windmill Road, he participated in a briefing of the officers who were to participate in the search on Adams Avenue and assigned specific duties to each of the participating officers. Detective Constable Carlisle had determined that a no-knock entry would be appropriate, using a ram to gain access to the premises. It was his view that entry into the residence in this manner would facilitate the preservation of evidence given that the occupants would have no opportunity to dispose of the small amount of cocaine.

[20] The second reason articulated by Detective Constable Carlisle related to the information that had been received with respect to there being a dog in the residence and the belief that a no-knock, hard entry would cause the dog to run from the noise and ensure officer safety.

[21] The officer further stated that the information relating to 2408 Adams Avenue operating as a crack house supported a hard entry in that it would give the officers an "opportunity to secure everybody for their safety" and provide "a shock factor more than anything to give us that extra minute to get through – or extra seconds to get through the door and control the scene."

[22] Sergeant David Chatterton confirms the opinion of Detective Constable Carlisle in his evidence wherein he states:

> A. In my experience with the Drug Unit dealing with narcotics, especially cocaine, the destruction of exhibits, the officer safety issue, getting in there quickly. To go up to that address, to look at both sides of it, to go up to that address and knock on the door with (a) whether there's other people hanging around, (b) whether there's a dog inside, you are not going to have a positive search.
>
> You're not going to get in there and find drugs and that's what your purpose for being there is. Forced entry, it allows you to get in there quicker, faster, secure everything, and deal with the elements that's inside there and, like I said, for the safety of the occupants of that home and the safety of the officers involved.
>
> Q. You mentioned really two things, enhancing the safety of the occupants and enhancing the safety of the police officers involved. How does the forced entry in this particular case enhance the safety of the occupants?
>
> A. Well, if we were to knock on the door and the accused came to the door and wouldn't allow us in and we had to gain forced entry, there's a struggle there between officers that are trying to get in the home and the accused who is obviously not going to want us to come into the home.
>
> Whereas when we force the door, it hits so fast and we're in the home, much the same as an ERT team, an Emergency Response Team would hit a door, they'd hit it hard, go in and secure everybody before anybody had time to move. And for us in that line of work, it is more practical under those conditions to execute a warrant in that manner.

[23] In addition to preserving evidence, officer safety and control of individuals at the scene, it is clear from the evidence given by Sergeant Chatterton, Detective Constable Carlisle and Detective Constable Astephen that the forced entry search in the high-density, low-income area known as Uniacke Square has been the practice for some time. In fact, the officers had some difficulty recalling drug searches in the area which were not conducted as hard-entry, late-night searches. It is apparent that the middle-of-the-night, forcible entry and search of homes in Uniacke Square where drug trafficking is suspected has become normal, routine practice.

[24] The evidence of Sergeant David Chatterton illustrates this accepted practice:

> Q. I'm going to suggest to you that you never did search in the Uniacke Square area without hard entry late at night. Isn't that true?
>
> A. I'm trying to think how many other ones we did. No, you're wrong.
>
> Q. Oh.
>
> A. There was - - we had done one on - - well, it's not Uniacke Square, but it's across the street on Gerrish Street. We had targeted a home there, and we had done a cold knock on the door. And when they came to the door, we pushed in. We didn't force the door. So that's the only one I can think of where we did not.
>
> ...
>
> Q. ... But in the Square proper if we can - -
>
> ...
>
> A. I can't recall one.

[25] The same inquiry is made of Detective Constable Astephen, who has participated in many searches in the Uniacke Square area:

> Q. ... And you've advised the Court that you've done how many hard - - how many searches in the Uniacke Square area?

A. I think I estimated it around 80 - - 80 - -

Q. Okay.

A. - - 75, 80, 100.

Q. All right. And you can't think of one in which you've not used the hard-entry method, is that correct?

A. I could think of a couple that were Criminal Code ones for sure - -

Q. Okay.

A. - - where we knocked.

Q. All right.

A. Criminal Code, a different scenario for sure.

Q. No, I understand. I'm thinking - -

A. Yeah.

Q. - - of NCA and CDSA, the norm is to do hard entry, late-night searches.

A. Or early morning - -

Q. Yes.

A. - - or 5 o'clock in the morning.

Q. That's what I mean.

A. Late night, early morning - - everyone - -

Q. Yeah.

A. Yeah. Agreed..

Q. That's the norm, isn't it?

A. Agreed.

[26] Following the briefing, the officers went to 2408 Adams Avenue, Halifax Regional Municipality, at approximately 2:22 a.m., where they parked their vehicles close by and approached the residence in a single file to conduct a routine no-knock forcible entry. Constable Lima struck the door three times with a steel ram and there were contemporaneous shouts of "Police" and "Search warrant." Once the door was smashed open, Constable Lima stepped aside, allowing Constable Thompson, with the shield, and Detective Constable Astephen, with the spray, to enter first. The officers scattered throughout the house upon entry. Constables Thompson and Lima went to the third level of the residence, with their firearms in hand until they located three children who had been asleep in the bedrooms on that level.

[27] Sergeant Chatterton proceeded directly upstairs to the third level of the three-storey townhouse before participating in the search for and retrieval of 26.26 grams of cocaine, found in or on a pipe above the dryer on the ground level.

[28] Detective Constables Boutilier, Carlisle and Casey, once inside the residence, went down a hallway to their left where they found what appeared to be a shut or locked door. Without attempting entry in the usual manner by using the door handle, Detective Constable Boutilier kicked the door twice and the officers proceeded into a bedroom where Christopher and Angela DeWolfe were in bed, clearly having been asleep. There was a young child in a crib who was distressed by the intrusion of the police officers.

[29] Detective Constable Astephen had the responsibility of deterring any dog on the premises with spray; however, after proceeding through the house, no dog was located. Detective Constable Astephen returned to the entry level and went to the bedroom where he assisted the other officers by removing the young child and taking him upstairs to avoid him being present at the time the Applicant was arrested and placed in handcuffs.

[30] At no time did the officers check to determine whether the door to the residence or to the bedroom would open without the use of rams or kicks. Once the decision

was made at the police station by Detective Constable Carlisle to engage in a forcible entry by hitting the door using the ram, there was no further assessment of the situation upon arrival at the residence.

[31] At the time the police conducted a search of the residence, all the occupants (two adults and four children) had been asleep. Christopher and Angela DeWolfe were asleep in their bed, without clothing. The young child, Jason, had been asleep in a crib in their bedroom and the other children were asleep on the third level of the home.

[32] When it became clear that Angela DeWolfe was in bed, without clothing, there was no attempt made to secure a female officer to take charge of the situation. The police knew in advance of the search that there was an adult female in the residence but, apparently, no female officers were available to assist at the time the search was conducted. One of the officers found Angela DeWolfe's housecoat and gave it to her, at which time she requested some privacy. She states in her evidence,

> I asked him if he could please turn his back so I could get dressed ... and there was a little bit of discussion about whether or not they should bring in a female officer.

Further she states,

> When I asked the officer to turn his back, he looked at me and said, You'll be lucky if I turn my back,' and he did not turn his back. So what I did was, I discreetly as I could put one arm into my housecoat and then switched hands to hold the blanket up and then switched it over my shoulders and put the other hand in as much as I could.

During this process, the police had removed the young child from the bedroom and Angela DeWolfe was escorted upstairs to the living room area.

[33] A significant number of male officers went to the Adams Avenue residence on January 27 in the middle of the night, knowing that the Applicant's wife or girlfriend lived at the same residence. It was inappropriate, in my view, for this search to go forward when there was not a female officer in the attending group. The search was conducted in the middle of the night and the possibility that there would be a woman present in nightclothes, or without, should have been addressed. As it turned out, Angela DeWolfe was present, unclothed, and not provided with a suitable opportunity

to dress herself with adequate privacy. It is inexcusable that a no-knock, hard entry search was conducted in these circumstances without the presence of a female officer.

[34] In my opinion, the presence of children in a home that is to be searched requires the police to execute the search in a manner that will result in the least amount of distress and trauma to the children balanced against the desire to have a positive search. Children are the innocent victims of hard entry night-time searches and the police must not lose sight of their presence when conducting invasive entries into homes where children reside.

[35] When the police officers were briefed in advance of the search at 2408 Adams Avenue, there does not appear to have been any consideration given to re-evaluating the method of entry at the targeted residence depending on the circumstances present upon their arrival. Given that the police were aware of there being children in the home, it is surprising, in my view, that the police would not have exercised some discretion with respect to the manner of search when they arrived at the DeWolfe residence and it became apparent that the occupants were likely asleep.

[36] It would not be unreasonable to expect the police to have some discussion of an alternate plan at their briefing, given the presence of children in the home. I find it of concern that once a decision is made to execute a no-knock, hard entry, there is apparently no turning back, no point when discretion is exercised with respect to the manner of search based on the real events as they unfold.

[37] I am not convinced in this case that the drugs would have been destroyed if something short of a no-knock, hard entry had been employed to gain access to the home and it would, no doubt, have been much less distressing for the children who were asleep in their beds.

[38] In this case, there was no attempt to corroborate the information received from a confidential source with respect to there being in the residence a young pit bull which acted as a deterrent. Second only to preservation of evidence, the manner of entry was predicated on the presence of a dog and yet only one of the three sources made mention of a dog in the house. Again, in these circumstances, given the knowledge of there being children in the home and the real impact such an intrusion would have on them, it seems reasonable to expect the police to make the effort to retrieve more conclusive information about the presence of a pit bull.

[39] The search of the residence which followed the no-knock, hard entry resulted in a seizure of a piece of crack cocaine located in the front jeans pocket beside the bed in the bedroom on the basement level, as well as a larger amount in bulk found in the residence in or on a pipe above the dryer. This amount weighed 26.26 grams. In addition to the drugs seized from the residence, a set of digital scales were located and seized, as well as $680 in cash.

[40] In the absence of exigent circumstances, a reasonable search of a dwelling will comply with the common law knock/notice rule. The manner of search must be reasonable relative to the actual circumstances as they evolve. Whether force was actually necessary is a question of fact and must be examined in light of all the circumstances. My comments on this issue should be read with paragraphs 33 - 49 in Part I wherein the knock/notice rule is reviewed.

[41] The police made their decision to use a no-knock, hard entry because this has become the norm with respect to drug searches, particularly in Uniacke Square and other drug hot spots. As Sergeant Chatterton states, “It is practical.” While I acknowledge that the police have a number of factors to consider in determining how a search might be conducted most effectively, at no time on January 27 did the officers consider something less invasive than a no-knock, hard entry in the event that they arrived at the residence and found the house in darkness with the occupants seemingly asleep. It is apparent from the comments of the officers, particularly Detective Constable Carlisle, Detective Constable Astephen and Sergeant Chatterton that there is indeed an unwritten policy, or at least a practice, regarding forced entries in a vast percentage of drug searches in this area.

[42] As a result of this practice, the police, in this instance, neglected to exercise their discretion as the events of the early morning hours unfolded. Had they done so, it would have been apparent that the manner of entry contemplated earlier at the police briefing session was not required.

[43] An “announced” entry into a family home by seven officers in the middle of the night would have been a sufficient and significant intrusion in these circumstances and would have served to provide the required shock value being sought.

[44] I agree with the comments of My Brother Tufts, J. in *R. v. K. C. F.:*

> It is clear to me that these officers were operating under an established practice or policy regarding hard or forced entries in drug searches, except for very specific incidences where children were present or where there was a grow operation. Whether this is a formally adopted policy or simply an accepted police practice is unclear, although there is no evidence that there was a formally entrenched policy in the H.R.M. Police. It appears to be an accepted practice, at least amongst the officers who testified based on their experience. In my view experienced officers such as those who testified should be given considerable deference to their opinions regarding officer safety in particular and their experience with police investigations. After all, they are most often the best ones to assess any particular situation.
>
> At the same time, in my opinion, the police should not fetter their assessment or discretion as to what force is necessary to be exercised in any given situation. In other words the police should individually assess the situation, especially where the use of force is statutorily restricted and the common-law requires restraint, in this case in the form of the "knock and announce" rule. This is not to say that the well-established police practices which are solidly grounded and consistent with public policy should not be respected. However, in my opinion the practice which effectively dictates a forced entry in all situations should not necessarily be regarded as reasonable, given the law in this area as I described above.

[45] In the *Schedel* case, at paragraph 45, the B. C. Court of Appeal referred to a report on policing produced by the Oppal Commission of Inquiry:

> The knock-notice rule also reflects past experience, which indicates that when it is followed, the vast majority of people submit to the authority and presence of the police. The common law has long recognized that avoiding violent incidents advances both the personal safety of the householder and the police.

[46] I have considered all the factors outlined above: the manner of search having become an established practice or unwritten policy; the fact that there was insufficient consideration given to the presence of children in the residence in advance of the search and when the officers were presented with the actual circumstances at the residence; the grave omission of not having a female officer either on the search team or available to assist when Angela DeWolfe was found in a vulnerable and potentially humiliating situation.

[47] I am satisfied the search of the Applicant’s residence was not conducted in a reasonable manner and that his right to be secure against unreasonable search and seizure has been violated.

[48] The Applicant is seeking an order to exclude the evidence seized in the search of 2408 Adams Avenue, pursuant to s. 24(2) of the *Charter*, on the basis that the manner in which the search was conducted was unreasonable. The onus is on the Applicant, on a balance of probabilities, to establish that the evidence ought to be excluded.

[49] The Supreme Court of Canada, in *R. v. Collins*, [1987] 33 C.C.C. (3d) 1 (S.C.C.), set out the factors that should be considered when determining whether the evidence should be excluded under s. 24(2):

1. Trial fairness;

2. The seriousness of the *Charter* breach;

3. The exclusion of evidence on the reputation of the administration of justice.

[50] The Supreme Court of Canada reviewed the issue of trial fairness in the context of conscriptive or non-conscriptive evidence in *R. v. Stillman*, 113 C.C.C.(3d) 321, and stated at page 363:

> Where evidence is determined to be non-conscriptive, its admission will generally not render the trial unfair and the court should proceed to consider the seriousness of the violation. However, where evidence is found to be of a conscriptive nature, the court must proceed to the second step, which involves an assessment of whether the evidence would have been discovered in the absence of (but for) the Charter violation.

[51] The evidence obtained in the Applicant's case is non-conscriptive and therefore the issue of trial fairness is not triggered.

[52] In considering the seriousness of the breach, the Court must evaluate, among other things, whether the police officers acted in good faith. There is no specific evidence here to the contrary; however, it is clear that they acted in a manner that was both practical, from their perspective, and routine. They did not exercise their discretion in a manner which had sufficient regard for the factors they knew to be present at the residence to be searched.

> They did not, in my opinion, exercise an individualized discretion relative to the search but fettered their discretion by following past practice. (*R. v. K. C. F.)*

[53] It has been stated on many occasions that invasion into a home in the middle of the night without notice, albeit with authorization, is a serious matter. I am guided by the reasons in *R. v. Schedel*, *supra*, that no-knock, hard entry searches will attract scrutiny.

[54] The knock/notice rule is of fundamental importance in protecting residents, while in their homes, from unreasonable searches, regardless of whether they live in Uniacke Square or elsewhere. For such intrusions to become routine practice because a particular neighbourhood is involved, without adequate consideration of all the factors, such as the presence of children or the dignity of the occupants, is a grave mistake. The information available to the police must be the subject of careful consideration both at the front end of the process and throughout the process of preparing for and executing the search.

[55] While the police did not set out to violate the rights of the Applicant in this case, the violation occurred because the police conducted themselves in a manner consistent with a routine practice with respect to this neighbourhood and without regard for individual circumstances present at the targeted residence. I am satisfied, having considered all the circumstances, that the breaches were serious.

[56] The Court must consider the reputation of the administration of justice when deciding to exclude evidence under s. 24(2):

> Finally, it must be emphasized that even though the inquiry under s. 24(2) will necessarily focus on the specific prosecution, it is the long term consequences of regular admission or exclusion of this type of evidence on the repute of the administration of justice which must be considered. (*R. v. Collins, supra*, p. 24)

[57] The exclusion of evidence is not reserved for those cases where the evidence is of limited value or for minor criminal offences. In *R. v. Burlingham*, [1995] 2 S.C.R. 206, Justice Iacobucci states:

> We should never lose sight of the fact that even a person accused of the most heinous crimes, and no matter the likelihood that he actually committed those crimes, is entitled to the full protection of the Charter. Short-cutting or short-circuiting those rights affects not only the accused, but also the entire reputation of

> the criminal justice system. It must be emphasized that the goals of preserving the integrity of the criminal justice system as well as promoting the decency of investigatory techniques are of fundamental importance in applying s. 24(2). These goals operate independently of the type of crime for which the individual stands accused. (See also **Silveira**, supra, at paragraph 88)

[58] The seizure in this case involved a relatively small amount of cocaine, a hard drug, a piece of crack cocaine, scales, cash, and a Telus mobility bill, all of which are critical to the Crown's case. The evidence seized from 2408 Adams Avenue on January 27, 2004, should, in my view, be excluded from the trial on the charge against the Applicant.

Dated at Halifax, Nova Scotia, on October 24, 2006.

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Barbara J. Beach
Judge of the Provincial Court