

UNIFORM LAW CONFERENCE OF CANADA

**JOINT CIVIL LAW SECTION
AND CRIMINAL LAW SECTION**

**ENFORCEMENT OF EXTRA-PROVINCIAL SEARCH WARRANTS
PROGRESS REPORT**

REPORT OF THE WORKING GROUP

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

**Toronto, Ontario
August 10 - 14, 2014**

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Background

Some investigators enforcing provincial/territorial legislation have been unable to seize the evidence necessary to prosecute a regulatory offence because the evidence is located in another jurisdiction. Without the legal authority to exercise a provincial/territorial warrant outside the jurisdiction where it was issued, the regulatory investigation can be thwarted. In practice some jurisdictions have experienced this impediment to a regulatory prosecution in the occupational health and safety, environmental or illegal tobacco context. This situation most frequently occurs when a corporation under investigation for a provincial regulatory offence holds relevant documents in a corporate office outside the investigating jurisdiction.

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

A survey was prepared for all ULCC criminal section representatives to see if they or their regulatory prosecution colleagues were experiencing these problems and whether they were interested in trying to address the issue. The responses to the 2012 survey indicated that this issue was serious enough to warrant a look at solutions.

A progress report was presented by the working group to the criminal section at the ULCC Annual Meeting in August 2012 in Whitehorse, Yukon Territories. At the ULCC meeting, more jurisdictions indicated that they wanted to have members on the working group.

Joint Working Group

As the work continued it was felt that having a joint working group would be helpful in ensuring that a final proposal from the working group would be useful to Canadian jurisdictions.

Many of the members of the criminal section working group have experience in enforcement and criminal prosecutions but not as much exposure to the legislation making process.

However, unlike many other civil section projects, this project involves the authorization of regulatory enforcement officers either acting to support an enforcement agency outside their jurisdiction or alternatively authorizing an extra-provincial enforcement officer to conduct a search within the territory of another jurisdiction. Issues concerning the admissibility of evidence collected and the grounds to issue a search warrant which are similar to concerns which arise in the criminal law context apply here.

ENFORCEMENT OF EXTRA-PROVINCIAL SEARCH WARRANTS JOINT WORKING GROUP PROGRESS REPORT

For these reasons it was thought that representation from both the civil and criminal sections of the ULCC would be valuable to this project.

In 2013, the criminal section working group presented a report to the ULCC annual meeting in Victoria, British Columbia. The working group recommended that a joint civil and criminal sections working group be formed. It also recommended that the model for extra provincial recognition and enforcement of search warrants found in the Nova Scotia *Summary Proceedings Act* be used as the model. The ULCC annual meeting accepted the recommendation to form a joint working group.

The civil section requested that the joint working group first consider if there are models other than the Nova Scotia model which could be considered. In particular the civil section was interested in whether a non-reciprocal model could be found.

Joint Working Group Members

The members of the joint working group are:

BC

Monty Carstairs (Criminal)

Alberta

Craig Kallal (Criminal)

Kelly Hillier (Civil)

Saskatchewan

Dean Sinclair (Criminal)

Manitoba

Peter Edgett (Criminal)

Ontario

Earl Fruchtman (Criminal)

Judy Hayes (Civil)

PEI

Lisa Goulden (Criminal)

NFLD

Elaine Reid (Criminal)

New Brunswick

Cameron Gunn (Criminal)

Michael Hall (Civil)

UNIFORM LAW CONFERENCE OF CANADA

Nova Scotia

Peter Craig (Criminal)
Karen Anthony (Civil)
Genevieve Harvey (Civil)
Nadine Smillie (Co-Chair)(Civil)
Catherine Cogswell (Co-Chair)(Criminal)

Activities

The joint working group is made up of many of the original members of the criminal section working group and 4 new civil section representatives. Co-chairs for both the civil and the criminal sections help to ensure that both sections are fully represented.

The criminal section working group had discussed the legislative frameworks for regulatory offences which exist within their jurisdictions and discovered that each jurisdiction has its own regulatory enforcement scheme. The members also discussed what options might be available to address the practical problem faced by investigators when relevant evidence relating to a regulatory offence is located outside of the jurisdiction and therefore outside of their reach. The members identified two possible concerns that might arise if regulatory search warrants could be executed in other jurisdictions:

1. A receiving jurisdiction may not want to enforce certain laws from another jurisdiction.
2. Who would be the appropriate party to execute an extra-provincial search warrant; the enforcement officer from the initiating jurisdiction or some other party?

The criminal working group had concluded that the Nova Scotia amendments to the *Summary Proceedings Act* made in the fall of 2012 created a model which addressed the two possible concerns identified.

The joint working group began to hold teleconferences and to exchange information in March of 2014. It started by reviewing work previously done by the criminal section working group. (See Schedule A for an overview on the Nova Scotia model recommended by the criminal section working group).

Next Steps

The joint working group committed to consider if there were any non-reciprocal models which could also meet the concerns identified and be used as a model for other Canadian

ENFORCEMENT OF EXTRA-PROVINCIAL SEARCH WARRANTS JOINT WORKING GROUP PROGRESS REPORT

jurisdictions. This commitment was as a result of the civil section of preference for using non-reciprocal models.

The benefit to a non-reciprocating model is that it would not require each jurisdiction to enter into agreements with all other jurisdictions and to amend their laws to add jurisdictions as reciprocal agreements were reached. The civil section has generally moved towards a full faith and credit approach to the cross border recognition of orders. One question is whether or not that type of approach will work when an investigation on private property and the seizure of evidence are involved.

The members of the joint working group began reviewing the provincial legislation outside of Nova Scotia, looking at international jurisdictions, and considering recent work by the civil section of the ULCC for a non-reciprocal model for extra-territorial recognition and enforcement of territorial search warrants. That work was still on going as this report was being prepared.

Request

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

1. Receive this joint working group progress report;
2. Endorse the continuation of the work of the joint working group.

UNIFORM LAW CONFERENCE OF CANADA**Schedule "A"****Nova Scotia Initiative on Extra-Provincial Search Warrants**

Chapter 46 of the Acts of 2012, entitled *Interprovincial Investigative Authority Act* (amended), which amends the *Summary Proceedings Act*, Chapter 450 of the Revised Statutes, 1989. On December 6, 2012 these amendments came into effect. The intent is that where a "designated province" requires a search warrant within Nova Scotia an application can be made to the Attorney General for a search warrant to be issued under the *Summary Proceedings Act* which can then be executed within the Province of Nova Scotia. Before another province can be a "designated province" there must first be a reciprocal agreement between that jurisdiction and the Province of Nova Scotia. The reciprocal agreement would set out the details on how extra-provincial search warrants could be issued and executed and would require that both jurisdictions have provisions in their legislation over provincial offences to enable the recognition of the other jurisdiction for the issuance and execution of their search warrants.

Details on the proposed model

Nova Scotia's *Summary Proceedings Act* has a dual search warrant process. A general warrant under s. 2B(1) is available for any provincial offence under investigation. It allows for a basic search of a place and seizure of items. An investigative warrant under s. 2B(1A) is only available for enactments designated under the regulations. It allows for a search to include the creation of records of computer files, testing and the use of other investigative techniques or procedures.

A "designated province" would be designated in the regulations made under the *Summary Proceedings Act*. Those enactments for which investigation techniques might be required for a search warrant from a "designated Province" would also need to be designated in the regulations in order for an investigative warrant to be available. Most matters requiring extra-provincial execution of a search warrant are likely to require an investigative warrant in Nova Scotia.