

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. DeWolfe*, 2007 NSCA 79

Date: 20070628

Docket: CAC 274229

Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Christopher Lee DeWolfe

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: June 11, 2007

Subject: Search and seizure - s.8 **Charter**

Summary: Pursuant to s.11 of the **Controlled Drugs and Substances Act**, S.C. 1996, c. 19, as am., the police obtained a warrant, executable at any time, to search the residence at 2408 Adams Avenue, a suspected 24 hour “crack shop”. The police executed the warrant at night using a “hard entry” - no announcement and a forceful breaking down of the front door. Cocaine was seized and Mr. DeWolfe was charged with possession for the purpose of trafficking. On a preliminary motion the judge found that the hard entry was an unreasonable search violating s.8 of the **Charter**. Pursuant to s.24(2) of the **Charter** she excluded the drug evidence. Crown appealed.

Issue: Did the judge err in finding the hard entry search here was unreasonable and, in the alternative, in excluding the drugs?

Result: Appeal allowed. The judge concluded that the police executed the hard entry simply because they had an unwritten policy of doing so. Notwithstanding that finding, the judge was obliged

to consider whether there were, in this situation, exigent circumstances justifying an exception to the knock/notice rule. She erred by not doing so. Here, on the facts known to the police prior to the search, there was compelling evidence of legitimate concerns for officer and occupant safety and the destruction of evidence if the police announced their presence and awaited entry. The hard entry was justified. The judge further erred by considering irrelevant factors - either those that could not be known to the police in advance or did not bear on the decision to force entry.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.