SUPREME COURT OF NOVA SCOTIA
Citation: *R v Carvery*, 2026 NSSC 113

Date: 20260306
Docket: Hfx No. 544155
Registry: Halifax

Between:

His Majesty the King

v.

Cory Catlin William Carvery and Charles Wayne Martin

DECISION – *Charter* Application

Judge:	The Honourable Justice Christa M. Brothers
Heard:	January 15, 2026, in Halifax, Nova Scotia
Oral Decision:	March 6, 2026
Written Decision:	April 14, 2026
Counsel:	Colin Strapps, for the Crown Nicholaus Fitch, for the Defendant, Charles Wayne Martin Carbo Kwan, for the Defendant, Cory Catlin William Carvery

By the Court:

Overview

[1] On November 9, 2023, police executed a search warrant on a residence where the applicants were located. The Information to Obtain (ITO) the warrant indicated there was an illegally possessed rifle in the residence that was probably being kept to protect an illicit cocaine enterprise. Upon executing the warrant, the police found *indicia* that the applicants had been engaged in the sale of cocaine and had a rifle for the ostensible purpose of protecting that trade.

[2] The applicants seek to have the ITO found insufficient and the evidence found in their residence excluded from trial. They argue that the ITO was insufficient on its face and did not seek leave to cross-examine the applicant. The applicants' arguments are advanced in the face of corroboration of the information, reliability of the Confidential Informants (CIs) and their information, and consistent accounts, over the course of months, of a rifle in their residence to protect the illicit trade of drugs.

[3] On March 6, I provided a bottom-line decision with reasons to follow. For the reasons that follow, I conclude the ITO was sufficient and a warrant could have been issued. The search of the accuseds' residence was properly authorized, and I dismiss the *Charter* application. I go on to analyze s. 24(2) in the event I am wrong about the sufficiency of the ITO.

Background

[4] On November 9, 2023, police executed a search warrant on a residence located at 35 River Road in Spryfield. The warrant was issued on the basis of a sworn ITO. Cory Carvery and Charles Martin, the co-accuseds in this matter, were present at the residence and were placed under arrest.

[5] In the search of the residence, police found and seized:

a. A total of $6455 in cash ($650 on Carvery's person, $5805 on Martin's person;

b. A pill bottle on the back bumper of a vehicle in the driveway with 31 Dilaudid pills in it;

c. A number of other pills in the residence;

d. Three shotgun shells on the living room table;

e. 3 303 rounds on the living room table;

f. An ammunition round on the basement dresser;

g. A total of 30.1g of cocaine divided amongst 34 baggies;

h. A number of cell phones;

i. A firearm: 303 bolt action Lee Enfield Rifle

[6] There was no suggestion that the applicants lacked standing to challenge the sufficiency of the ITO. Mr. Martin resided at the residence at the time and Mr. Carvery was an invited guest, who occasionally occupied the residence. It was uncontested that they had some level of reasonable expectation of privacy.

Positions of the Parties

[7] Mr. Martin alleges that the contents of the ITO did not justify issuance of the warrant by JP Chewter. Mr. Martin further argues that if the court concludes that the ITO was insufficient, the evidence obtained as a result of this warrant should be excluded under s. 24(2) of the *Charter*. Mr. Carvery joins Mr. Martin in his facial challenge to the ITO.

[8] Mr. Martin argues that the "tips" provided from confidential sources lack detail and are not compelling information. He says the tips are akin to rumour. He argues that the information is based on hearsay and that Informant B has only been known to the Halifax Regional Police (HRP) for 6 months. Mr. Martin argues that the Informants provided no detail about the make and model of the firearm. There was no information concerning whether Mr. Martin could have legally owned the firearm; only that it could not have been held by the brothers named in the ITO. Mr. Martin also argues that there was no surveillance done by the police to confirm any of the information provided by the three informants before the warrant was issued.

[9] Like Mr. Martin, Mr. Carvery argues that no prior surveillance was done to check the information obtained. He argues that Informant B is an unknown source who cannot say if Carvery was at the address and further, he says Informant C's reliability is unknown. Additionally, there is no information about when Handler A spoke to Informant A. Mr. Carvery submits that the information leading to him was not reliable enough.

[10] The Crown argues that this ITO has strong *indicia* of reliability. There were three separate sources, two with past proven reliability and corroboration.

[11] The Crown argues that the information about the firearm was specific. The firearm was identified as a shotgun and there was information as to who was holding it and why. The Crown admitted that paragraph 14.4 in the ITO was conclusory and that although 14.5 could have been more compelling with additional detail, it was compelling enough.

ISSUES

[12] The questions for this court are two-fold:

1. Did the ITO contain sufficient information that an issuing justice could have been satisfied on the evidence set forth in the ITO that there were reasonable and probable grounds for believing that the residence contained an illegal firearm or drugs for sale?
2. If not, should the evidence from the search of the residence be excluded under s. 24(2) of the *Charter*?

The ITO

[13] Dt./Cst. Thibault swore the ITO in support of the warrant to search the residence located at 35 River Road, Spryfield, N.S. Dt./Cst. Thibault indicated she had reasonable grounds to believe the following would be located in the residence:

- A shotgun;
- Ammunition;
- Cocaine;
- Scales;
- And other firearms.

[14] The grounds for her belief were based on discussions with three HRP handlers who received information from informants. In addition to these informants, databases were queried for information including the Canadian Police Information Centre (CPIC) as well as Versadex, which holds information from police agencies such as the HRP.

[15] Dt./Cst. Thibault has been employed by the HRP since October 2008 and has been assigned to the Integrated Guns and Gangs Unit (GGU) since January 2023. From 2008-2018, she was on patrol, general duties and from 2018-2022, she was

assigned to Quick Response involved in drugs and firearms cases. The initial information provided to Dt./Cst Thibault was that the suspect was in possession of a shotgun used for intimidation, protection and use in the drug trade. The first suspect identified was Christian Schrader and the second was Corey Carvery. Neither one has a Possession Acquisition License (PAL).

[16] The ITO was sworn by Dt./Cst. Thibault on November 6, 2023, and JP Chewter granted the search warrant pursuant to s. 487.1 of the *Criminal Code* on the same date.

[17] The ITO contains source information from three Informants. While the affiant did not speak directly with the Informants, she did speak to their respective handlers. The information from Informant A was given on March 7, 2023, and is the most dated information. The following relates to Informant A and is pertinent to the sufficiency of the ITO:

[18] Informant A:

- Financially motivated and associates with those involved in crime;
- Not willing to act as agent for the police;
- Has provided information in the past that was corroborated by surveillance, database inquiries and officers;
- Has never provided information which was found to be untruthful;
- Has provided information leading to the submission of source debriefs on more than 80 occasions;
- On more than 8 occasions, their information led to successful search warrants pursuant to the CDSA and search warrants for firearms;
- Maintains weekly face-to-face meetings or phone calls with the handler;
- Had firsthand information based on observations and/or conversations with the people involved.

[19] The following information relates to Informant B and was provided by Handler B on October 23, 2023, much closer to the ITO being sworn:

- Provided information to the HRP for over 6 years on the basis of anonymity. Handler B has known the Informant for 2 years, and a prior handler worked with them for over 4 years;
- The Informant is financially motivated and has been paid for information provided in the past;
- Information provided by this Informant has been corroborated through police investigation, surveillance and other confidential informants;
- Associates with those involved in criminal activity and has personal information based on conversations and observations;
- Information provided has led to CDSA and s. 487 *Criminal Code* search warrants on no less than 16 occasions leading to charges under the two statutes;
- Information provided by this Informant has been confirmed to be reliable and accurate through CDSA and s. 487 *Criminal Code* search warrants where evidence was seized consistent with the information provided;
- Informant B's information has led to a negative search;
- Not willing to act as an agent for the police or to testify;
- Maintains regular contact with the Handler;
- The Handler believes the information supplied to be accurate.

[20] Handler C received confidential information from Informant C and provided this information to Dt./Cst. Thibault on November 6, 2023. The following information pertains to Informant C:

- Freely associates with persons involved in criminal activity and has firsthand information based on observations and conversations;
- Is a coded confidential source with the HRP;
- The Handler has known the Informant for less than 6 months;
- They have regular contact through phone and in-person meetings;
- Past information has been used as intelligence but has not yet led to an arrest;

- Past information has not yet been used to facilitate searches through the execution of CDSA or s. 487 *Criminal Code* search warrants;
- They are financially motivated to provide information to police;
- The information provided has been corroborated by investigation, physical surveillance, and information from other sources;
- They are not willing to testify or act as agent.

[21] The information provided by Informant A was:

- Christian Schrader lives at 35 River Road in Spryfield;
- His phone numbers are [redacted];
- There are other people living in the house;
- Charlie and Keagan, and possibly others;
- He is in possession of a shotgun;
- He has it for protection and has used it for intimidation;
- He is in possession of drugs for both using and selling;
- He is an addict.

[22] On October 23, 2023, Handler B gave the following information from Informant B:

- Cory Catlin Carvery lives at 35 River Road, Spryfield;
- Informant “B" was told by a very close friend that Carvery has a shotgun that he keeps in the basement laundry room;
- The shotgun was seen within the last 7 days;
- He sells cocaine end illegal cigarettes;
- Charles Martin and Christian Schrader also live at 35 River Road.

[23] On October 24, 2023, Dt./Cst. Thibault queried Carvery on CPIC for status on a Possession Acquisition License (PAL) and learned the following:

- He does not have a PAL.

[24] On October 24, 2023, Dt./Cst. Thibault queried Carvery on Versadex and learned the following:

- File #2021-135961 is a drug file with Carvery and Schrader as entities;

- A text entered on April 7. 2022, by Detective Constable Jason Joncas, under subject IR D/Cst. Joncas, states that Carvery and Schrader are brothers as per Carvery.

[25] Dt./Cst. Thibault noted that this is the second time a shotgun has been seen in this residence, with two different CIs providing that information.

[26] On October 24, 2023 Handler C provided the following information from Informant C:

- Corey Catlin Carvery lives at 35 River Road, Spryfield;
- He sells cocaine.

[27] On November 6, 2023, Dt./Cst. Thibault spoke with HRP member Constable Seebold who has been qualified as a drug expert 15 times in court. He stated that due to the violent nature of the drug trade, it is common for dealers to possess weapons for personal defense as well as to intimidate other persons involved in the drug trade. Drug dealers are often subject to home invasions, robberies, and shootings that are directly linked to the drug trade. Therefore, it is not uncommon to find firearms, replica firearms, bats, knives, bear spray or other homemade weapons within their residence or on their person.

Law and Analysis of the ITO

[28] The accuseds are charged in an indictment as follows:

1. unlawfully have in their possession for the purpose of trafficking, Cocaine, a substance included in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the Controlled Drugs and Substances Act.
2. AND FURTHER that they at the same time and place aforesaid did unlawfully have in their possession, for the purposes of trafficking, N-methyl-3, 4-methylenedioxy-amphetamine(N,a-dimethyl-1,3-benzodioxole -5-ethanamine), (Ecstasy) a substance included in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to Section 5(2) of the Controlled Drugs and Substances Act.
3. AND FURTHER that they at the same time and place aforesaid, did unlawfully have in their possession for the purpose of trafficking, Hydromorphone (dihydromorphinone), a substance included in Schedule I of the Controlled Drugs

> and Substances Act, S.C. 1996, c. 19, and did thereby commit an offence contrary to section 5(2) of the said Act.

[29] This is a facial validity challenge to the impugned ITO. The starting point is that the warrant for the residence is presumed valid. Whether the ITO is sufficient is determined by asking whether the presiding Justice of the Peace, JP Chewter, "could have been satisfied based on the evidence in the ITO that there were reasonable and probable grounds for believing the articles sought would be of assistance in establishing the commission of an offence and would be found in the premises sought to be searched" (*R. v. Stillman,* [1997] 1 S.C.R. 607).

[30] The burden of proof rests with the applicants to satisfy the court on a balance of probabilities that there has been a *Charter* violation and that a remedy under s. 24(2) of the *Charter* should be invoked. Under s. 24(2) the applicants must prove on a balance of probabilities that the admission of the evidence would bring the administration of justice into disrepute.

[31] The review of the warrant by this court is a narrow one and the decision of the JP is entitled to deference. This is not a *de novo* hearing. In the role of a reviewing judge, I am not to substitute my view for that of the JP (*R. v. Garofoli*, [1990] S.C.J. No. 115, and *R. v. Nicholson*, 2024 NSSC 412).

[32] I must be satisfied that there is "no justifiable basis" upon which the JP could have granted the warrant (*R. v. Whalen*, 2015 NLCA 7). As stated in *R. v. Wallace*, 2016 NSCA 79:

> 25. …the reviewing judge or court does not determine whether the justice of the peace should have been satisfied on the evidence presented to him, but rather could he have been satisfied on the evidence set out in the ITO that there were reasonable and probably grounds for believing that the articles sought would have been of assistance in establishing the commission of an offence and would be found in the premises sought to be searched….

[33] In this application, I examine only the face of the warrant and the ITO. Those are the documents that were before the issuing JP. In this facial challenge, I do not go behind the ITO to consider credibility or reliability of the statements made by the affiant.

[34] In *R. v. Araujo*, 2000 SCC 65, the court said the question to be answered was whether "there was at least some evidence that might reasonably be believed on the

basis of which the authorization could have issued." (See also, *R. v. Vu*, 2013 SCC 60, at para. 16).

[35] In *Garofoli, supra*, the court was clear that as a reviewing judge, I am not to substitute my view for that of the authorizing justice of the peace. If I conclude, based on the evidence set out in the ITO, that the authorizing JP could have granted the authorization then I am not to interfere. In coming to this consideration, the existence of fraud, non-disclosure, misleading evidence and new evidence are relevant in terms of whether there was a basis for the decision of the authorizing justice.

[36] In *R. v. Shiers*, 2003 NSCA 138, the court spoke of the test to be employed which is "could the issuing judge, on the material before her, have properly issued the warrant?" In making this assessment the court is to consider the whole of the circumstances and material and not look at isolated passages and information.

[37] Fichaud J.A. summarized the role of a reviewing judge in relation to the authorization of a search warrant.

> Based on these principles, the reviewing judge should have applied the following test. Could the issuing judge, on the material before her, have properly issued the warrant? Specifically, was there material in the Information from which the issuing judge, drawing reasonable inferences, could have concluded that there were reasonable grounds to believe that a controlled substance, something in which it was contained or concealed, offence related property or anything that would afford evidence of an offence under the CDSA was in Ms. Shiers' property. (para. 15)

[38] For a search warrant to be issued, the police need reasonable grounds to believe that the place to be searched will afford evidence of the commission of an offence and that the items searched for will be located in the place to be searched. Those reasonable grounds are made out when credibility-based probability replaces mere suspicions (*R. v. Chiasson*, 2024 NSSC 417; *Hunter v. Southam Inc*., [1984] 2 S.C.R. 145). In *R. v. Debot*, [1989] 2 S.C.R. 1140, the court commented on the appropriate standard being "reasonable probability".

[39] In *Debot, supra,* and *Garofoli, supra,* respectively, the Supreme Court of Canada addressed the factors relevant to assessing the sufficiency of grounds based on confidential source information. The *Debot* factors are directed towards helping assess the weighing of the information in an ITO. They are often referred to as the "three C's": is the information compelling, credible and/or corroborated? Weakness in one area may, to some extent, be compensated by strengths in the other two. The

Court emphasized that a reviewing court must consider the "totality of the circumstances".

[40] When referring to the "three C's" in this context, the Supreme Court of Canada explained that "compelling" refers to whether the information is "sufficiently specific to warrant their attention and did not take the form of bald conclusory statements or 'mere rumors or gossip'" (*Debot, supra*, at p 3). In *R. v. Greaves-Bissesarsingh*, 2014 ONSC 4900, at para. 35, Code J. commented further on this definition:

> It appears from Wilson J.'s reasons in *Debot*, and from the subsequent jurisprudence, that the term "compelling" refers to considerations that relate to the reliability of the informer's tip such as the degree of detail provided and the informer's means of knowledge, that is, whether the informer made first-hand observations or merely relied on second-hand hearsay, rumour, or gossip. The term "credibility" would appear to capture considerations such as the informer's motivation, criminal antecedents, and any past history of providing reliable information to the police. The term "corroboration" refers to any supporting information uncovered by the police investigation.

[41] In *Debot, supra*, the court set out the factors relevant to assessing confidential informant's information as follows at p. 1456:

> I am of the view that such a mere conclusory statement made by an informer to a police officer would not constitute reasonable grounds for conducting a warrantless search …. Highly relevant … are whether the informer's "tip" contains sufficient detail to ensure it is based on more than mere rumour or gossip, whether the informer discloses his or her source or means of knowledge and whether there are any *indicia* of his or her reliability, such as the supplying of reliable information in the past or confirmation of part of his or her story by police surveillance.

[42] When reviewing the reliability of the informant's information the court is to review the totality of the circumstances and look at factors including the degree of detail of the tip, the informer's source of knowledge and any *indicia* of the informant's reliability.

[43] Paragraph 14.6 of the ITO paints a compelling picture. It describes the use of the shotgun and the sale of illicit substances. The ITO provides information about why Schrader required the shotgun for protection and intimidation. While some of the information, such as that of Informant A, was dated by the time the search warrant was obtained and executed, the totality of the information painted a clear

picture of the presence of a shotgun in the home over many months. When taken in conjunction with the information provided by Informants B and C, there is recent information concerning the shotgun. Informant A has an excellent record of reliability and their information has been relied upon on over 16 prior occasions.

Compelling

[44] All three informants had personal knowledge of the information attributed to them in the ITO. The information was based on conversations and observations of persons involved, unless explicitly stated otherwise. This is contained in paragraphs 11.8, 12.4 and 13.2 of the ITO. The ITO contains mostly firsthand information.

[45] When reviewing the ITO, the following markers of high reliability are present in relation to Informant A. First, they have never provided information that was found to be untruthful. On eight prior occasions they provided information which led to the execution of a search warrant which was characterized by the affiant of the ITO as successful. This can reasonably mean that something or some things were found during the searches that matched the information provided by Informant A.

[46] Informant A provided information that was compelling in its detail. It included the specific address of the applicants, their phone numbers, the type of firearm that was supposedly in Mr. Schrader's possession (a shotgun), the two reasons he had it (protection and intimidation), the fact that he was in possession of drugs, and why (to sell and to use, with the additional detail that he was an addict). The details of the type of firearm and the reasons he had it are particularly private and therefore compelling. Mr. Martin argues at p. 4 of his brief that police did not check to see whether anyone other than the applicants had PAL licenses. This is not so germane since Informant A specifically stated that Mr. Schrader, who did not have a PAL license, was in possession of a shotgun for which he was not licensed (ITO at paragraph 17.1) and which he had for the purpose of intimidating others and protecting himself. The information about Mr. Schrader's drugs is likewise specific to Mr. Schrader himself and provides an obvious motive for having a firearm. While the information on a shotgun being in the possession of a resident at 35 River Road was dated by some months by the time the warrant was obtained and executed, it was updated by Informant B's information (paragraph 18 of the ITO). Taken together, the information provided by Informants A and B paints a picture of two individuals residing together, selling drugs and possessing a firearm over the course of several months.

[47] Informant B's information also contained compelling detail. It was specific as to where Mr. Carvery resided, where in the residence he kept his shotgun, the time frame in which he possessed the shotgun, the illicit items he was selling, and who lived with him. The specificity of information about the type of firearm and where he was storing it are particularly compelling. Moreover, Informant B had a proven record of providing reliable information to police, having provided information that was confirmed as reliable through the execution of search warrants on 16 past occasions.

[48] Informant C's information was also compelling in the detail of Mr. Carvery's address. Informant C's detail about Mr. Carvery selling cocaine was corroboratory of Informant B's information that Mr. Carvery sold drugs and provided an update to Informant B's information in that regard, as it came to police approximately 13 days later (see the ITO at paragraphs 18.4 and 22.2).

[49] Corroboration as between the CIs and police observations and reports is a feature of the ITO and summarized in the following table:

ITO Para #s	**Corroborated information**	**Sources of information**	**Notes**
14.1, 15.2, 16.6, 18.5	Christian Schrader lives at 35 River Rd	Informant A, Melissa MacBurnie's report, Christian Schrader himself, Informant B	This piece of information spans 8 months, from March 7 to October 23, 2023.
14.4, 18	Christian Schrader and/or Cory Carvery are in possession of a shotgun.		At para 18, Informant B places a shotgun in the possession of Mr. Schrader's co-resident, Mr. Carvery, in the residence they shared.
14.6, 16	Christian Schrader is in possession of drugs.	Informant A, police observations	
14.7, 16.5	Christian Schrader is an addict.	Informant A, Christian Schrader himself	

18.1, 22.1	Cory Carvery lives at 35 River Road.	Informant B, Informant C.	
18.4, 22.2	Cory Carve1y sells cocaine.	Informant B, Informant C.	
15.5, 18.5, 20.2	Co1y Carvery and Christian Schrader are associated with each other.	Melissa MacBurnie's report, Informant B, Versadex entry.	Paras 14.1, 15.2, 16.6, 18.1 and22.1 indicate both persons live at the same address. Para 15.5 characterizes them as "associates"; 18.5 specifically points out that they live together at 35 River Road; Para 20.2 quotes a Versadex entry that quotes Mr. Carvery himself as saying they are brothers.

[50] Taken in its totality, the ITO provides an account of reasonable grounds to believe that the residence at 35 River Road was inhabited by individuals with illicit drugs for sale and a firearm in their possession, probably for the purpose of protecting the illicit enterprise of cocaine selling, with all of this occurring over the course of eight to nine months.

[51] This information was corroborated on various points by at least two and, in the case of illicit drug sales, three independent sources of information as well as police interactions with the individuals involved. Informant A said that Mr. Schrader possessed the firearm for intimidation (ITO at paragraph 14.5). Mr. Schrader had already been the victim of a robbery (ITO at paragraph 15.4) and the police had strong grounds to believe that both Mr. Schrader and Mr. Carvery were selling illicit drugs.

[52] The fact that police did not check on whether other individuals in the residence may have had firearm license does not raise any concern because the information was specifically that Mr. Schrader and Mr. Carvery were in possession of a shotgun, that it was kept in a specific location in the residence, that they had it as a tool of

their illicit trade, and that neither of them had PAL licenses. In light of those alleged facts, the police's failure to check whether some other individuals in the residence may have been licensed to possess firearms is not concerning.

[53] Informant B is corroborated by Informants A and C. While this is dated corroboration it certainly provides a picture of the activities and the use of the shotgun in the home. Informant C bolsters the information. This is a compelling ITO when taken as a whole and in its totality.

[54] One of the arguments advanced on behalf of both accuseds was that the affidavit was sworn by an officer who was not a handler of any of the CIs and that the affidavits ought to have been obtained from the handlers instead. In *Araujo*, *supra*, the Supreme Court of Canada confirmed that there is no legal requirement for affidavits to come directly from the police officers handling the informers. The court acknowledged, however, that consideration should be given to obtaining such affidavits as this "would strengthen the material by making it more reliable" (para. 48).

[55] In the case before me, there is a facial challenge and no finding of a lack of credibility. While best practice would see officers who are handling CIs swear the affidavits, the factual circumstances in *Araujo, supra*, which included needless errors in an affidavit, are not present here.

[56] The importance is that the police need not confirm every detail of an informer's tip, but what is provided must remove the possibility of innocent coincidence (*R. v. McNair*, 2009 NSPC 31).

[57] As the court has stated in *Garofoli, supra,* 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, and he or she should not interfere. In this process, the existence of fraud, non-disclosure, misleading evidence and new evidence are all relevant, but, rather than being a prerequisite to review, their sole impact is to determine whether there continues to be any basis for the decision of the authorizing judge.

[58] The court in *Araujo, supra*, found that the search and authorization did not fail simply because material in an affidavit contained errors; even fraudulent ones would not automatically invalidate a warrant. The court explained:

> 54 The authorities stress the importance of a contextual analysis. The Nova Scotia Court of Appeal, while reviewing the cases from our Court cited above, explains this is in a judgment dealing with problems arising out of errors committed in good faith by police in the material submitted to the authorizing justice of the peace:
>
> > These cases stress that errors, even fraudulent errors, do not automatically invalidate the warrant.
> >
> > This does not mean that errors, particularly deliberate ones, are irrelevant in the review process. While not leading to automatic vitiation of the warrant, there remains the need to protect the prior authorization process. The cases just referred to do not foreclose a reviewing judge, in appropriate circumstances, from concluding on the totality of the circumstances that the conduct of the police in seeking prior authorization was so subversive of that process that the resulting warrant must be set aside to protect the process and the preventive function it serves. [Emphasis added.]
> >
> > (*R. v. Morris* (1998), 134 C.C.C. (3d) 539, at p. 553)
>
> An approach based on looking for sufficient reliable information in the totality of the circumstances appropriately balances the need for judicial finality and the need to protect prior authorization systems. Again, the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued, not whether in the opinion of the reviewing judge, the application should have been granted at all by the authorizing judge.

[59] The accuseds challenged the CIs credibility, suggesting that some were proven reliable and one had one negative search. In assessing these CIs, I keep in mind the comments in *Debot*, *supra*, and in particular the following at pp. 1167-1168:

> In *Eccles v. Bourke*, a pre-*Charter* case decided by this Court, Dickson, J. (as he then was) held that hearsay evidence communicated by one officer to another may contribute to establishing probable cause. The principle was applied more recently by this Court in the *Charter* case of *R. v. Collins*. In the present case, the tip from the confidential source was hearsay in Seargeant Briscoe's hands. While Sergeant Briscoe was entitled to assume the authenticity of Guttreidge's report of his conversation with the informant, the value of the evidence in establishing reasonable and probable grounds must also take into account the credibility of the informant, whether or not Sergeant Briscoe himself had any personal knowledge of the source.
>
> In my view, there are at least three concerns to be addressed in weighing evidence relied on by the police to justify a warrantless search. First, was the information predicting the commission of a criminal offence compelling? Second, where that information was based on a "tip" originating from a source outside the police was

> that source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin J.A.'s view that the "totality of the circumstances" must meet the standard of reasonableness. Weaknesses in one area may, to some extent, be compensated by strengths in the other two.

[60] The court in *Debot, supra*, found that it is not necessary for the police to confirm each detail in an informant's tip so long as an informant's credibility can be assessed and the quality and reliability of the information is acceptable. I conclude I am able to assess the credibility of the informant given the quality of the information and the totality of the circumstances.

[61] The accuseds' application challenging the sufficiency of the ITO in support of the search warrant is dismissed. Viewed as a whole, the grounds in evidence in the ITO were sufficient for the JP to conclude that credibly-based probability had replaced suspicion.

Section 24(2)

[62] In the event that I am wrong in my conclusion that the accuseds' rights under section 8 were not violated, I will go on to assess, in the alternative, whether the accuseds would have been able to discharge their onus to prove that the evidence should have been excluded under section 24(2) of the *Charter*. I acknowledge that if I erred in my section 8 analysis, this exclusion consideration does not attract deference.

[63] In *R. v. Grant*, 2009 SCC 32, the court provided an overview of the application of section 24(2). In doing so, the court commented at paragraph 71:

> [71] A review of the authorities suggests that whether the admission of evidence obtained in breach of the *Charter* would bring the administration of justice into disrepute engages three avenues of inquiry, each rooted in the public interests engaged by s. 24(2), viewed in a long-term, forward-looking and societal perspective. When faced with an application for exclusion under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and (3) society's interest in the adjudication of the case on its merits. The court's role on a s. 24(2) application is to balance the

> assessment under each of these lines of inquiry to determine whether, considering all of the circumstances, admission of the evidence would bring the administration of justice into disrepute. These concerns, while not precisely tracking the categories of considerations set out in *Collins*, capture the factors relevant to the s. 24(2) determination as enunciated in *Collins* and subsequent jurisprudence.

[64] In *R. v. Collins*, [1987] 1 S.C.R. 265, the Supreme Court of Canada set forth the factors to be considered in deciding whether the admission of evidence would bring the administration of justice into disrepute, including:

1. whether the admission of evidence would affect the fairness of trial;
2. the seriousness of the violation; and
3. factors relating to the effect of excluding the evidence.

[65] The administration of justice may be brought into dispute by excluding evidence that is required to substantiate a charge and if the conclusion is that the *Charter* breach is trivial. Here, there is both the firearm and the illicit substances. This is real evidence that existed unrelated to any C*harter* violations. There is no evidence to suggest that the police acted in bad faith in proceeding based on a belief that they had reasonable and probable grounds to obtain the search warrant. Here, the integrity of the judicial system would be better served by the inclusion of the evidence.

Seriousness of *Charter* Infringing Conduct

[66] In *R. v. Holmes*, 2024 NSSC 435, Hoskins J. stated:

> [321] At this stage, the Court must consider the nature of the police conduct that led to the *Charter* violation and the subsequent discovery of evidence. The Court must ask itself whether the police engaged in misconduct from which the Court should disassociate itself. This will be a case where the departure from *Charter* standards was major in degree or where the police knew (or should have known) that their conduct was not *Charter*-compliant (*Harrison* at para. 22).
>
> [322] In *Grant*, McLauchlin C.J.C. and Charron J. for the majority explained that this first line of inquiry under the *Grant* test – the evaluation of the seriousness or gravity of the offending state conduct – focuses upon the level of fault of the breaching officers in the circumstances (paras. 72-75). In *R. v. Tim*, 2022 SCC 12, Jamal J. explained that there is a spectrum or scale of police misconduct, with inadvertent or mere violations at one end of the spectrum to wilful or reckless disregard for the rights of others. The more serious the offending conduct, the more pressing the need for the court to dissociate itself from the fruits of that conduct

> (para. 82). Put differently, the more offensive the *Charter* violating conduct, the more this factor will favour exclusion (*Grant* at paras. 72-74).
>
> [323] It is also settled law that the seriousness of the breach is aggravated where there is a systemic problem or pattern of *Charter*-infringing conduct (*R. v. Thompson*, 2020 ONCA 264, at para. 85).

[67] Here, if there was a violation of section 8, it would not have been severe in that there were many informants whose reliability was proven. The question would have been whether the police should have done additional surveillance to corroborate or whether some of the information was too outdated. In this way, the breach would not have been severe, or purposeful and not in bad faith. This would have been an inadvertent minor violation of the *Charter*. There was no attack on the affidavit or search warrant suggesting that the police lacked good faith. That is not to say that negligence or wilful blindness can be equated with good faith.

Impact on *Charter* Interests

[68] At this stage, the court must evaluate the extent to which the breach of the *Charter* right(s) undermined the interests to be protected. The more serious the impact on the applicant, the greater the risk that the public will see *Charter* rights not being respected and the administration of justice will be brought into disrepute. Was this a serious or trivial impact?

[69] If the *Charter* breach is severe or the officer's conduct that led to the breach was deliberate, there is a greater need for a court to disassociate itself from that conduct by excluding the evidence. This would preserve public confidence.

[70] The search was conducted of the residence where one accused lived and the others occasionally resided. They would have had a high expectation of privacy, elevating the seriousness of the breach.

[71] There is no doubt of the accuseds' interest to privacy in their home. As stated in *R. v. Silveira*, [1995] 2 S.C.R. 297, at para. 140 (and referred to in *R. v. Tessling* 2004 SCC 67):

> … There is no place on earth where persons can have a greater expectation of privacy than within their 'dwelling-house'"…

[72] The *Charter*-infringing state conduct in this case was a search of the accuseds' home and the seizure of money, drugs and firearms. Here, the search warrant was authorized by a justice of the peace and the police who executed the

search believed that they were acting under lawful authority. These likely favour admission of the evidence in relation of the first factor set out in *Grant, supra*.

[73] With regards to the second stage, although the circumstances in *R. v. MacDonald*, 2014 NSSC 218, are vastly different in that there was only one source and the police were found to have been negligent, I conclude the following comments by Justice Arnold apply equally in this case:

> [78] The repute of the administration of justice would be significantly eroded, particularly in the long term, if information devoid of the necessary detail, that comes from a source not proven to be reliable and is not confirmed through police investigation, is permitted to form the basis for so intrusive an invasion of privacy as the search of our homes. If the police are going to enter our homes, they must be diligent and careful.

Adjudication on the Merits

[74] In *R. v. Holmes, supra,* Hoskins J. stated:

> [334] As recognized in *Grant*, "Society generally expects that a criminal allegation will be adjudicated on its merits" (para. 79). The public interest in truth-finding remains a relevant consideration under s. 24(2) analysis. Thus, the reliability of the evidence is an important factor in this line of inquiry.
>
> [335] In effectively doing away with the distinction between conscriptive and non-conscriptive evidence, the court in *Grant*, instructed courts to consider the new third factor, the effect of admitting evidence on the public interest in having a case adjudicated on its merits when assessing admission of all evidence including, real evidence.
>
> [336] In *Grant*, the court recognized that the importance of the evidence to the Crown's case is another important factor that should be considered in this line of inquiry:
>
> > 83 The importance of the evidence to the prosecution's case is another factor that may be considered in this line of inquiry. Like Deschamps J., we view this factor as corollary to the inquiry into reliability, in the following limited sense. The admission of evidence of questionable reliability is more likely to bring the administration of justice into disrepute where it forms the entirely of the case against the accused. Conversely, the exclusion of highly reliable evidence may impact more negatively on the report of the administration of justice where the remedy effectively guts the prosecution.
>
> [337] Another important consideration under this line of inquiry is the seriousness of the offence at issue. The majority in *Grant* expressed the view:

> 84 … [W]hile the seriousness of the alleged offence may be a valid consideration, it has the potential to cut both ways. Failure to effectively prosecute a serious charge due to excluded evidence may have an immediate impact on how people view the justice system. Yet, as discussed, it is the long-term repute of the justice system that is s. 24(2)'s focus. As pointed out in *Burlingham*, the goals furthered by s. 24(2) "operate independently of the type of crime for which the individual stands accused" (para. 51). And as Lamer J. observed in Collins, "[t]he *Charter* is designed to protect the accused from the majority, so the enforcement of the *Charter* must not be left to that majority" (p. 282). The short-term public clamour for a conviction in a particular case must not deafen the s. 24(2) judge to the longer-term repute of the administration of justice. Moreover, while the public has a heightened interest in seeking a determination on the merits where the offence charged is serious, it also has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high.
>
> [338] At this stage, the Court must consider factors such as the reliability of the impugned evidence and its importance to the Crown's case (*Harrison* at para. 33).

[75] Society wants criminal allegations adjudicated on their merits. One of the questions in the s 24(2) analysis is whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence or by its exclusion.

[76] In *R. v Mann*, 2004 SCC 52, Iacobucci J. concluded that there must be a weighing of factors in order to "balance the interests of truth with integrity of the justice system". As Doherty J.A. stated in *R. v. Kitaitchik*, [2002] 166 C.C.C. (3d) 14 (Ont. CA), at para 47, the court must ask "whether the vindication of the specific *Charter* violation through the exclusion of evidence exacts too great a toll on the truth-seeking goal of the criminal trial".

[77] In this case, the exclusion of all of the evidence used during the search would leave the Crown with essentially no case against either accused. Exclusion of the evidence would therefore seriously undermine the truth-seeking function of the trial. This factor weighs against the exclusion of the evidence.

[78] In *R. v. Holmes, supra,* Justice Hoskins set forth considerations for the s. 24(2) analysis:

> [318] … The second question is whether the admission of evidence found to have been obtained in a manner that infringed a *Charter* right would, having regard to all the circumstances, bring the administration of justice into disrepute. Answering

> this question involves an objective assessment of whether the overall repute of the justice system, viewed in the long term, will be adversely affected by admission of the evidence (*Grant* at para 68). This involves examining the seriousness of the Charter-infringing state conduct; the impact on the breach of the Charter-protected interest of the accused; and society's interest in an adjudication of the merits.
>
> [319] As stated in *Harrison*, the first two inquiries work in tandem in the sense that both pull toward exclusion of the evidence. The more serious the state-infringing conduct and the greater the impact on the *Charter*-protected interests, the stronger the pull for exclusion. The strength of the claim for exclusion under s. 24(2) equals the sum of the first two inquiries identified in *Grant*. The third inquiry, society's interest in an adjudication on the merits, pulls in the opposite direction, toward the inclusion of evidence That pull is particularly strong where the evidence is reliable and critical to the Crown's case (paras. 33-34).

[79] I must balance the interests. As stated in *R. v. Harrison*, 2009 SCC 34, at paragraph 36:

> The balancing exercise mandated by s. 24(2) is a qualitative one, not capable of mathematical precision. It is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case. The evidence on each line of inquiry must be weighed in the balance, to determine whether, having regard to all the circumstances, admission of the evidence would bring the administration of justice into disrepute. Dissociation of the justice system from police misconduct does not always trump the truth-seeking interests of the criminal justice system. Nor is the converse true. In all cases, it is the long-term repute of the administration of justice that must be assessed.

[80] Given the assessment of the above noted factors, I would allow the evidence in and conclude admission would not bring the administration of justice into disrepute. The serious of any breach would not be significant. The impact, invasion into one's home and sanctuary are significant. However, the truth-seeking function, and adjudication on the merits requires the admission of the evidence as its admission will not bring the administration of justice into disrepute.

Conclusion

[81] Based on the totality of the circumstances, I conclude there was no breach of s. 8 of the *Charter.* If there was, I would have admitted the evidence after a consideration of the *Grant* factors and a balancing and having consideration of all the circumstances.

Brothers, J.