SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Allen-Simec*, 2026 NSSC 121

Date: 20260317
Docket: Hfx, No. 541321
Registry: Halifax

Between:

His Majesty the King

v.

John Nicholas Allen-Simec

Judge:	The Honourable Justice D. Timothy Gabriel
Heard:	March 17, 2026, in Halifax, Nova Scotia
Oral Decision:	March 17, 2026
Written Reasons Released:	April 22, 2026
Counsel:	Jeffrey Moors, for the Federal Crown Allan MacDonald, for the Defendant

By the Court:

[1] On February 25, 2026 the Accused, John Nicholas Allen-Simec (hereinafter, "the Applicant" or "Mr. Allen-Simec") brought a *Charter* application seeking an order for a stay of proceedings pursuant to Section 24(1) of the *Canadian Charter of Rights and Freedoms* (hereinafter, "the *Charter*") or, in the alternative, exclusion of the Canadian evidence under s. 24(2). This was predicated on the basis of an alleged infringement of his rights pursuant to several sections of the *Charter*, one of which is related to an earlier (dismissed) application under s. 7, and another under s. 8 related to Informations to Obtain (ITO's) prepared by the RCMP during the course of their investigation.

[2] I heard this application on March 17, 2026 and rendered a "bottom line" decision dismissing it with reasons to follow. These are my reasons.

Background

[3] The Applicant faces fourteen charges under the *Controlled Drugs and Substances Act* ("CDSA"). They all relate to either ss. 5(1), 5(2) and/or 6(1) of that *Act*. I will refer to them collectively as "the charges". The charges resulted from a joint investigation between the United States Department of Homeland Security ("HSI"), United States Customs and Border Patrol ("CBP") and the Royal Canadian Mounted Police ("RCMP"). This joint endeavour was dubbed "Operation Hackstone".

[4] The charges which the Applicant faces are said to have arisen from his operation of a "dark web" enterprise known as "Intrepidtrips", whereby he would sell various amounts of CDSA Schedule 1 substances to domestic and international customers. These drugs were exchanged for cryptocurrency.

[5] Some of the investigative steps taken under the aegis of Operation Hackstone are set out in point-form below:

- April 2022: Dozens of mail packages were intercepted and seized in the United States. As parcels entering the United States, some were searched at the border by CBP and were noted to contain Schedule 1 narcotics.
- Information on the packages contained, in some cases, HRM addresses. One of them, 545 Young Avenue in Halifax, NS, was

specifically connected to the Applicant. Phone numbers on the packages included (but were not limited to) 902-565-6620, 902-565-6440, 902-565-6333, 902-565-6444, and 902-565-6430. As will be seen, the latter 2 phone numbers were also connected to Mr. Allen-Simec specifically;

- November 9, 2022: The package addressed to Ashley Wooley in Chunchula, Alabama was intercepted and searched in Memphis, Tennessee. It was found to contain Schedule 1 narcotics. As a result, HSI and local operatives in Alabama executed a search warrant at the Wooley residence in Chunchula. In his first statement to police on December 7, 2022, Jordan Wooley (also a resident at the address) did not identify the vendor;
- January 13, 2023: Mr. Wooley provided a more comprehensive statement to HSI, among other things, identifying the Intrepidtrips vendor. He also provided additional information which was used during Operation Hackstone on subsequent investigations and eventually led to the Applicant's arrest;
- As a result of Mr. Wooley's confession, HSI began investigating Intrepidtrips on the dark web. They discovered a link to Dalhousie University. This evidence was communicated via telephone by HSI Agent Conboy to the RCMP on March 17, 2023;
- Agent Conboy, on March 20 and 29, 2023 provided the RCMP with the email address and PGP key for Intrepidtrips;
- This information (i.e. vendor identity, email address, and PGP key) led the RCMP to conduct some purchases from Intrepidtrips with the assistance of RCMP undercover officer "UC Mark";
- Information in the emails provided by Agent Conboy was given by the RCMP to their Sergeant Hawryluk (hereinafter "the Affiant") who authored the initial ITO (for production of Telus records in relation to the two phone numbers which were eventually linked to the Applicant through this means) and also all of the other ITO's. Each of the successive ITO's contains more and more information, as what is known builds upon the information obtained as a result of the issuance of its predecessor Orders and/or authorizations;
- One of the ITO's (*Applicant Brief*, February 25, 2026, Tab 5) enabled the RCMP to receive waybills, including, a FedEx waybill to Ashley

Wooley (*Applicant Brief*, Tab 6) dated November 8, 2022, which identified the sender as "HFX new and used goods", the sender's name as "John", and the sender's address as 1511 Queen Street, Halifax B3J 4A8 with a phone number of 902-564-6444. Agent Conboy advised RCMP Corporal Swain, who in turn advised the Affiant that the number was incorrect and should read 902-565-6444;

- Among other things, this was used, in conjunction with all of the other information received by the RCMP to draft an ITO for a tracking warrant for data associated with the phone number 902-565-6430.

[6] Other ITO's for judicial authorizations authored in this matter (reproduced from *Applicant Brief*, p. 7, para. 6(xi)) are listed below:

- Transmission warrant ITO for 902-565-6430;
- ITO for General Warrant for a Canada Post mailbox;
- ITO for a further Tracking Warrant;
- ITO for a General Warrant for a Canada Post Outlet;
- ITO for Scotiabank banking information of the accused;
- ITO for BMO banking information of the accused;
- ITO for the search of the accused's residence;
- And various ITO's for searches and seizures of the accused's electronics seized as a result of the warrant to search the accused's residence.

[footnotes and references removed]

[7] Some of the information used to draft the first ITO in this proceeding was obtained by the RCMP from what the Applicant has referred to as the "Cornerstone Emails" which were tendered into evidence as Exhibit 1. Included in these emails was a summary of the statement offered by Jordan Wooley upon his arrest in Alabama on January 13, 2023:

> … WOOLEY waived his Miranda Rights and agreed to be interviewed by investigators. The details of this interview are contained with ROI MO13BE23MO0001-004. WOOLEY conducts the majority of illicit drug and other criminal activities by utilizing cellular phones to access the dark web. WOOLEY gave verbal and written consent to access and assume any/all social media accounts and any/all dark web accounts associated to WOOLEY. This includes but is not limited to AlphaBay account "SonofaSavage" which utilizes email account sonofasavage@protonmail.io and password [redacted]. WOOLEY

> has used the SonofaSavage online persona to access darkweb market AlphaBay to purchase illegal drugs from Canada, the United States, and other areas.
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> Specifically, WOOLEY has purchased a multitude of illegal drugs to include but not limited to methamphetamines, fentanyl, heroin, hydromorphone, and an array of other illicit drugs from a vendor located in Canada known as AlphaBay market persona "intrepidtrips".
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> WOOLEY made approximately 15 to 30 purchases of illicit drugs from the AlphaBay vendor "intrepidtrips" with the packages being sent, via fed ex and other postal services, to fictitious names or WOOLEY's family members names to further attempt to disguise WOOLEY's involvement. The packages commonly contained counterfeit and/or legitimate opioid pills. WOOLEY paid approximately $6 to $10 US Dollars for each pill and sold the pills from $10 to $30 a pill. WOOLEY uses several crypto currencies such as Bitcoin, Minero, and KuCoin to purchase the illicit drugs from the dark web. WOOLEY purchases Bitcoin for use on the dark web from CashApp through username $HollyWeinacker and password [redacted] or [redacted]. WOOLEY purchases KuCoin from KuCoin through username 251-404-8047 and 251-753-6453 and password [redacted] or [redacted]. After receiving the illicit drugs, via mail from "intrepidtrips", WOOLEY would contact Jeffrey YATES or Frank YATES on the facebook messenger app and arrange the sale of said shipments. WOOLEY commonly spent $1,000 on 100 opioid pills and sold the 100 opioid pills to Frank and/or Jeffrey YATES for $3,000. WOOLEY would profit $2,000 per 100 opioid pills sold. WOOLEY has made approximately $30,000 in profits through ordering opioid pills on the dark web and reselling said pills. WOOLEY has been receiving 2 to 4 packages of illicit drugs, purchased on the dark web, per month for approximately 6 to 9 months.
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> On January 19, 2023, HSI Mobile sent a collateral request to HSI Ottawa to assist in identify [sic] the Nova Scotia based vendor "intrepidtrips". HSI Ottawa has accepted this collateral request and has been in contact with RCMP Halifax and will provide them the above up to date information.
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> (*Exhibit 1*, p. 7)

[8] The information received by the RCMP from their American colleagues consisted, almost entirely, of the information contained in the Cornerstone emails. At some point, cooperation ceased, and the principal "players" south of the border were not made available for testimony and/or cross-examination with respect to any of the pretrial events in Nova Scotia, including the *voir dires*. They have not produced additional information and/or documents related to the (US) investigation.

[9] On January 30, 2026 the accused brought an application pursuant to s. 7 of the *Charter* seeking disclosure with respect to documentation, notes, and other

materials which were felt to exist on the basis of the information contained in the Cornerstone emails. This application was dismissed for reasons given orally at the conclusion of that hearing. Those reasons included the fact that the Court could not compel the Crown to produce documents with which it, in turn, had not been provided, nor could it compel the US authorities to produce them.

[10] One of the Defence applications with which these reasons deal is related to the earlier s. 7 application. Mr. Allen-Simec asks the Court to look at the effect of the unavailability of these records on his *Charter* protected rights, including his right to a fair trial. He argues, in effect, that if this information had been gathered wholly within Canada, it would be relevant and compellable as *Stinchcombe* disclosure. The accused seeks a stay of proceedings under s. 24(1), or, at the very least, an exclusion of the evidence garnered as a result of the RCMP investigation, relying as it did on information which HSI has provided in the Cornerstone emails. This is because, the argument continues, without these (unavailable) materials, the information supplied by HSI/CBP, and subsequently used in the ITO's by the RCMP to obtain further information cannot be tested and/or its veracity cannot be ascertained. Therefore, the argument continues, his right to a fair trial has been irretrievably compromised.

[11] With respect to the s. 8 application (which, as will be seen, incorporates some of the same arguments noted above), it amounts to an attack on the validity of the ITO's used to either obtain production of certain information and/or authorize searches of his residence and or information storing devices. Although initially expressed as a sub-facial challenge (*Applicant Brief*, para. 53), counsel for the Applicant abandoned this position at the hearing and indicated that it was in fact, a facial challenge to the ITO's which the accused was making. He says that:

> For the purposes of the current application, all of the aforementioned ITO's rely heavily on the cornerstone and dark web emails and build off of evidence gathered from judicial authorizations outlined...above.
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> (*Applicant Brief*, para. 7, emphasis in original)

Issues

A. Has the Court been satisfied that the unavailability of any further disclosure from the US authorities, in these circumstances, amounts to a breach of the Applicant's right to a fair trial in this matter? If yes, should a remedy under s. 24 of the *Charter* be granted? and,

B. Was there sufficient credible and reliable evidence to have permitted the issuing judge to conclude that the statutory criteria for issuance were met? If no, should a remedy be granted under s. 24(1) of the Charter?

Analysis

A. Has the Court been satisfied that the unavailability of any further disclosure from the US authorities, in these circumstances, amounts to a breach of the Applicant's right to a fair trial in this matter? If yes, should a remedy be granted?

[12] Although the *Stinchcombe* issue has been decided, it is helpful to bear in mind the relationship between these principles and those rights protected by s. 7 of the *Charter*. First, we begin by observing that s. 7 protects:

> … the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[13] *Stinchcombe*, or first-person, disclosure is fundamental to these rights. In the well known case of *R. v. Mills*, 1999 CarswellAlta 1055 (SCC), that Court pointed out:

> 5 As this Court maintained in *Stinchcombe*, *supra*, at p. 336, the right of an accused to make full answer and defence is a pillar of criminal justice on which we rely heavily to prevent the conviction of the innocent. It is a principle of fundamental justice protected by ss. 7 and 11(*d*) of the *Charter*. Flowing from the right to make full answer and defence is the Crown's constitutional and ethical duty to disclose all information in its possession reasonably capable of affecting the accused's ability to raise a reasonable doubt concerning his innocence: *R. v. Egger*, [1993] 2 S.C.R. 451 (S.C.C.) at p. 466. This obligation is subject only to the Crown's discretion to withhold disclosure on the basis that the material is irrelevant or privileged.

[14] As the Applicant has pointed out in his brief, there is no shortage of case law expounding upon this relationship. For example, In *R. v. Guilbride*, 2006 BCCA 392, the Court said this:

> [29] As part of full answer and defence, an accused can challenge the lawfulness of any search or seizure, including any wiretap authorizations, and is entitled to the material upon which such authorizations were obtained, subject to any editing necessary for the protection of informants. In *R. v. Durette*, [1994] 1 S.C.R. 469, 88 C.C.C. (3d) 1 (S.C.C.), Sopinka J. writing for the majority,

recognized the importance of full disclosure of the wiretap affidavit to permit an effective challenge. At p. 53, he wrote:

> The rule requiring that an accused automatically be given access to the sealed packet is based upon the fact that, as part of the right to make full answer and defence, the accused has the right to be given the opportunity to challenge the admissibility of evidence tendered by the Crown. The most effective way of challenging the admissibility of wiretap evidence is to challenge the validity of the authorizations pursuant to which that evidence was gathered. If the authorization is invalid then the admissibility of the wiretap evidence may be challenged on both statutory and constitutional grounds. The validity of a wiretap authorization turns upon whether the affidavit put before the issuing judge, as amplified by any evidence taken on review, provides a basis upon which that judge could have been satisfied that the pre-conditions for granting the authorization exist. The validity of the authorization is heavily dependent upon the contents of the affidavit. Therefore, the accused must be provided with access to the affidavit if he or she is to be given the opportunity to mount an effective challenge to the admissibility of wiretap evidence tendered by the Crown.

[15] So, too, in *R. v. Sandeson*, 2020 NSCA 47, where our Court of Appeal explained:

> [75] By determining the materiality of the undisclosed information using the yardstick of whether that evidence related to the case against the appellant, the judge restricted the meaning of "full answer and defence" to the ability of an accused to respond to the merits of the Crown's case.
>
> [76] In my view, such limiting is a legal error. The right to make full answer and defence includes not only the ability to challenge the Crown's case on the merits but also the ability to advance reasonable *Charter* and/or other process-oriented responses to the charges.

[16] In *R. v. Taillefer*, 2003 SCC 70, it was once again stressed that the right to disclosure:

> 61 … is a constitutional one. It is protected by s.7 of the *Charter*, and helps to guarantee the accused's ability to exercise the right to make full answer and defence ... As Cory J., speaking for this Court, wrote in *Carosella*, at para. 22:
>
> > Where an accused demonstrates a <u>reasonable possibility</u> that the undisclosed information could have been used in meeting the case for the Crown, advancing a defence or otherwise making a decision which could have affected the conduct of the defence, he or she has also established the impairment of his or her *Charter* right to disclosure [Emphasis in original.]

[17] In response to a question from the Court, counsel for the accused clarified that he was not seeking to "re-open" the *Stinchcombe* application, upon which the Court had ruled on January 30, 2026. As counsel put it during oral argument, "that ship has sailed".

[18] Even so, he argues (in substance) that I must consider the effect of the American authorities' failure to disclose (cumulatively) upon the accused and, in particular, his ability to make full answer and defence. If the failure by HSI to disclose has impeded his ability to do so, then Mr. Allen-Simec's rights to a fair trial have also been impaired. Specifically, although Mr. Allen-Simec has not characterized it as such, this impacts both s.7 and s. 11(d) (fair trial) rights. If the Court agrees, he seeks stay of the proceedings under s. 24(1), or at least, exclusion of the evidence gathered as a result of the investigation under s. 24(2) of the *Charter*.

[19] In oral submissions, Mr. Allen-Simec's counsel argued that the situation is one analogous to lost evidence. To be more specific, the Applicant argues that the fact that the Crown has been found not to have violated its *Stinchcombe* disclosure obligations (because it cannot produce what the US authorities will not give) is nonetheless analogous to a situation where some evidence has been lost, albeit through no fault of the Crown or its agents. The effect on the accused's ability to receive a fair trial without it must still be examined.

[20] In *R. v. B.(J.G.) (2001)*, 151 CCC (3d) 363 (Ont. C.A.), the Court explained:

> [6] In assessing the prejudice to the accused's right to make full answer and defence as secured by s. 7 of the *Charter*, it is important to bear in mind that the accused is entitled to a trial that is fundamentally fair and not the fairest of all possible trials. As stated by McLachlin J. in *O'Connor*, *supra*, at pp. 78-79:
>
> > . . . the *Canadian Charter of Rights and Freedoms* guarantees not the fairest of all possible trials, but rather a trial that is fundamentally fair: *R. v. Harrer*, [1995] 3 S.C.R. 562. What constitutes a fair trial takes into account not only the perspective of the accused, but the practical limits of the system of justice and the lawful interests of others involved in the process, like complainants and the agencies which assist them in dealing with the trauma they may have suffered. Perfection in justice is as chimeric as perfection in any other social agency. What the law demands is not perfect justice but fundamentally fair justice.
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> [7] In a similar vein, Justices McLachlin and Iacobucci commented in *R. v. Mills*, [1999] 3 S.C.R. 668 (S.C.C.), at 718 that fundamental justice embraces more than the rights of the accused and that the assessment concerning a fair trial must not only be made from the point of view of the accused but the community and the

> complainant. The fact that an accused is deprived of relevant information does not mean that the accused's right to make full answer and defence is automatically breached.[1] Actual prejudice must be established: *Mills*, *supra*, 719-720, citing *R. v. La*, [1997] 2 S.C.R. 680 (S.C.C.), at 693.
>
> [8] The fact that a piece of evidence is missing that might or might not affect the defence will not be sufficient to establish that irreparable harm has occurred to the right to make full answer and defence. Actual prejudice occurs when the accused is unable to put forward his or her defence due to the lost evidence and not simply that the loss of the evidence makes putting forward the position more difficult. To determine whether actual prejudice has occurred, consideration of the other evidence that does exist and whether that evidence contains essentially the same information as the lost evidence is an essential consideration. For example, in *B. (F.C.)*, *supra*, the court held that where the complainant's signed statement was lost, but a typed transcription that was probably accurate existed, the trial judge erred in entering a stay of proceedings. In *R. v. D. (J.)*, a judgment of the Ontario Court of Appeal, delivered (May 30, 1996), Doc. CA C23691 (Ont. C.A.), although the complainant's statement was lost, the officer's notes were available and the court held that it was speculative whether there were any inconsistencies between the complainant's statement and the officer's notes.
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> (emphasis added)

[21] It is certainly true, as the Applicant contends, that it appears that (some) materials from HSI/CBP in relation to their investigation into Intrepidtrips has not been provided to the RCMP, hence, to himself. However, one can also go further. Although it may be inferred that some of the items sought by the accused do exist, it has not been established that all of the items in relation to which the accused seeks disclosure do, in fact, exist.

[22] Moreover, it is not only the accused's responsibility to demonstrate that there likely exists some undisclosed information. He must also demonstrate a reasonable possibility that the undisclosed information could have been used in meeting the case for the Crown, advancing a defence, or otherwise making a decision which could have affected the conduct of the defence, including its ability "to advance *Charter* and/or other process-oriented responses to the charges" (*Sandeson*, para. 76).

[23] In this case, the accused has had a significant amount of disclosure. It is apparent that Mr. Allen-Simec:

> … knows what surveillance occurred, what documents were gathered, what the undercover operator communicated with the individual who sent the drugs. He also knows the results of the searches conducted, and the details of the warrants that were sought to obtain records.

(*Crown Brief*, March 13, 2026, p. 3)

[24] Moreover, in the Cornerstone Emails, the names of a number of both investigative and civilian people are referenced, along with means by which they may be contacted. Notwithstanding this, the Applicant's counsel argues:

> 26. Were Mr. Allen-Simec provided with material disclosure underlying the cornerstone emails, he would be able to assess the evidence to see if HSI violated American law or basic principles of fair play during its investigation, which can lead to exclusion of the illegally-obtained evidence in Canadian proceedings ...
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> 27. This concern is particularly apparent in relation to the evidence of Jordan Wooley, who appears to have been pressured by American investigators from December 7, 2022 to January 13, 2023, until he ultimately provided the Intrepidtrips moniker to the authorities. The discovery of the Intrepidtrips vendor name was the single most important investigative discovery that led to the arrest of Mr. Allen-Simec.
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> 28. The concerns underlying the alleged confession of Mr. Wooley are apparent from a review of agent Conboy's email on February 7, 2023. Agent Conboy writes:
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> > *"Hey Jeff,*
> >
> > *Sorry for the delay on this. Our HSI Mobile Alabama office has been going back and forth with the* ***subject who has finally agreed to speak the truth. The agents were also working on forensics on the subject's devices****. Listed below is a timeline up to date.* ***I can also provide screen shots from the subject's phone who was arrested in Alabama****. Once you look this information over please let me know if you need anything else. I would imagine you all could do a UC buy from this dark web vendor "intrepidtrips"... I am free all day tomorrow to chat and Thursday morning and all day Friday. Please feel free to ask any questions.* ***All seizures and search warrants to date were done lawfully and without any undercover operations****."*
> >
> > [Cornerstone emails, Tab 11, emphasis added].

[25] The Applicant's argument continues:

> Did Mr. Wooly [sic] ever speak to a lawyer before "finally agreeing to speak the truth"? Did HSI ever improperly entice or force Mr. Wooly [sic] to confess? Why haven't the forensic analysis or screenshots from the devices been produced to the RCMP and the defence? Is Mr. Allen-Simec (and, for that matter, this Honourable Court) supposed to take Agent Conboy's unsworn declaration that all seizures were done lawfully at face value?

(*Applicant Brief*, para. 28)

[26] Mr. Allen-Simec extrapolates thus:

> 38. In short, Mr. Allen-Simec has no way to challenge the only information that led to his prosecution. A finding that his section 7 rights have not been breached would be a finding that ignores his constitutional right to fair proceedings. Moreover, it would be a finding would [sic] signify to the public that international interagency cooperation is an informational "wild west" where anything goes and interests of law enforcement trump the *Charter* rights of an accused simply because an alleged crime has a transnational element.
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> (*Applicant Brief*)

[27] However, and with respect, some of these concerns could have been answered, or at least rendered less speculative, had the defence spoken with any of the people whose contact information is provided in the Cornerstone emails.

[28] In addition, and although a Mutual Legal Assistance Treaty between the United States and Canada is conceded to exist, there is no indication that, ultimately, had the Crown and/or the RCMP chosen to challenge their American counterparts' decision not to provide any further materials under the auspices of that treaty, that a different result would have been obtained.

[29] In any event, the accused's concerns amount to nothing more than speculation. He has not raised a reasonable possibly that the above has negatively impacted his right to a fair trial. His first application is dismissed.

B. Was there sufficient credible and reliable evidence to have permitted the issuing judge to conclude that the statutory criteria for issuance were met? If no, should a remedy be granted under s. 24(1) of the Charter?

[30] The Applicant's argument rests primarily on the basis of an alleged overreliance by the RCMP upon hearsay in the Cornerstone emails, and the corresponding implications that this has upon the sufficiency, or lack thereof, of the ITO's.

[31] In his brief, the Applicant has argued:

> 51. In this case, there is some question whether the defence is mounting a facial or subfacial challenge of the ITO's at issue. After all, the defence

> contention is that material non-disclosure and overreliance on unsworn hearsay evidence effectively *precludes* the ability to engage in a subfacial challenge, which effectively constitutes a breach of the accused's *Charter* rights.
>
> 52. However, it is the position of the defence that the distinction is somewhat immaterial for exactly that reason. By way of example, cross-examination of the Affiant could arguably be a fruitless exercise, as the Affiant would have no ability to testify about the veracity of the information gained from Agent Conboy.
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> 53. Ultimately, it is the position of the defence that this is a sub-facial challenge, as one of the issues to be resolved is whether the Affiant should have been alive to the hearsay dangers posed by the information received (see ***R v Islam*, 2024 BCSC 1025** [Tab 22], at paras 12-19). As a result, the defence seeks leave to engage in a sub-facial challenge, and to potentially cross-examine the Affiant on this issue (or other issues raised by the Crown in its submissions). The *Garofoli* threshold is low (***R v Pires & Lising*, 2005 SCC 66** [Tab 29] at para 40) and has been met in this case.
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> (*Applicant Brief*, emphasis added)

[32] As has already been discussed, however, the Applicant (in oral argument) confirmed that he was, in fact, conducting a facial challenge to the ITO's. He also waived his right to seek leave to cross-examine the Affiant.

[33] What is at issue in these proceedings is often referred to as a "*Garofoli* application", based upon the eponymous *R. v. Garofoli*, [1990] 2 SCR 1421. Although that case specifically dealt with the validity of a wiretap authorization, the principles and procedures outlined therein have been held to equally apply when the validity of any judicial authorization, warrant, or search/seizure order is being assessed. Obviously, ITO's fall into the *Garofoli* "orbit", since they constitute the foundation and source of the record that was before the issuing judge provided in support of the authorization, warrant, or order that was sought.

[34] The substance of a *Garofoli* application is generally a *Charter* motion. Specifically, s. 8 thereof reads:

> Everyone has the right to be secure against unreasonable search or seizure.

[35] Mr. Allen-Simec's argument, generally speaking, alleges that the warrants or orders or other judicial processes obtained were improperly issued because the substance of the ITO (or the written statement under oath setting out the grounds in support of the authorization, warrant, or order under consideration) did not justify such issuance. If successful, what should ensue (he argues) is that the warrant, or

other court process, is quashed, and, for example, if a search was authorized then that search would be considered a warrantless one, rendering it presumptively unreasonable in light of s. 8 of the *Charter*. This application is coupled with an application under s. 24(2) of the *Charter*, seeking the exclusion of the evidence obtained as a result of such an unreasonable search or seizure.

[36] To begin, I observe that the warrants/orders/processes that were issued benefit from a presumption of legality. In addition:

(a) It is clear that a *Garofoli* review does not involve a *de novo* hearing of the *ex parte* application which had been before the issuing judge. The Applicant must persuade me on a balance of probabilities that the issuing judge could not have issued the warrant on the basis of the information that was legitimately contained in the ITO's;

(b) This Court is not to substitute its own views for those of the issuing judge. The question, put differently, is whether the issuing judge could have granted the warrant, on the basis of what was before them, and not whether this Court, itself, would have granted it;

(c) The prerequisites to the issuance of a warrant, authorization, or other order sought would require (for example, in the case of where it is a search warrant that is sought) that the information contained in the ITO provide reasonable and probable grounds for the issuing judge to believe that an offence has been committed, and that evidence of the offence will be found at the place to be searched at the relevant time. I note (parenthetically) that, when what is sought is a "tracking warrant" under s. 492.1(1) a standard of "reasonable grounds to suspect" is substituted.

(In addition to *Garofoli*, see: *R v. Sadikov*, 2014 ONCA 72, para 83; *R. v. Collins*, 1989 48 CCC (3d) 343; *R. v. Crevier*, 2015 ONCA 619, para 66; *R. v. Pires/Lising*, 2005 SCC 66 at paras 8 and 30; *R. v. Campbell*, 2010 ON CA 588 at para 45, aff'd 2011 SCC 32; *R. v. Lachance*, [1990] 2 SCR 1490, at p. 1498; *R. v. Morelli*, 2010 SCC 8, para 40; *R. v. Vu*, 2013 SCC 60, at para 16; *R. v. Araujo*, 2000 SCC 65, at para 51).

[37] In *Araujo*, the Supreme Court of Canada reminded us why this review, among other things, is both important and nuanced:

> 29 In the final analysis, the potentially competing values in this area must be acknowledged. The words of the *Code* must be read with some common sense

> having regard both to the nature and purpose of the particular investigation which the police wish to undertake. A pure last resort test would turn the process of authorization into a formalistic exercise that would take no account of the difficulties of police investigations targeting sophisticated crime. But the authorizing judge must look with attention at the affidavit material, with an awareness that constitutional rights are at stake and carefully consider whether the police have met the standard. All this must be performed within a procedural framework where certain actions are authorized on an *ex parte* basis. Thus, the authorizing judge stands as the guardian of the law and of the constitutional principles protecting privacy interests. The judge should not view himself or herself as a mere rubber stamp, but should take a close look at the material submitted by the applicant. He or she should not be reluctant to ask questions from the applicant, to discuss or to require more information or to narrow down the authorization requested if it seems too wide or too vague. The authorizing judge should grant the authorization only as far as need is demonstrated by the material submitted by the applicant. The judge should remember that the citizens of his country must be protected against unwanted fishing expeditions by the state and its law enforcement agencies. Parliament and the courts have indeed recognized that the interception of private communications is a serious matter, to be considered only for the investigation of serious offences, in the presence of probable grounds, and with a serious testing of the need for electronic interception in the context of the particular investigation and its objects (*cf. Smyk*, *supra*, at p. 74). There must be, practically speaking, no other reasonable alternative method of investigation, in the circumstances of the particular criminal inquiry. [emphasis in original]

[38] In *Sadikov*, as Watt, J.A., succinctly observed:

> [88] It is no part of the reviewing judge's mandate to determine whether she would issue the warrant on the basis of the amplified record. Nor is it the reviewing judge's role to draw inferences, or to prefer one inference over another. The inquiry begins and ends with an assessment of whether the amplified record contains reliable evidence that might reasonably be believed on the basis of which the warrant *could* have issued: *Morelli*, at para. 40. [emphasis in original]

[39] It has been noted earlier that the challenge in this case is a facial one. Facial review requires a consideration of the ITO as the issuing judge saw it. Sometimes, what is presented when a challenge is mounted, is a redacted ITO, where redactions have been necessary, for example, to protect confidential informer privilege. These were not the situations in the case at bar. Moreover, the record has not been amplified with respect to any of the ITO's. I have before me exactly what the issuing judge had for consideration in each and every instance.

[40] This simplifies the process significantly. As the court noted in *R. v. Boussoulas*, 2014 ONSC 5542, aff'd 2018 ONCA 222:

> [9] When the applicant attacks the facial validity of an ITO, the reviewing judge is required to examine the entire ITO and determine whether, on the face of the information disclosed within its four corners, the justice could have issued the search warrant. The record that is examined for the purpose of determining the facial validity of the search warrant is the ITO - and only the ITO. The record is not enlarged or amplified by any additional evidence. [authorities omitted]
>
> (emphasis added)

[41] Or, as Brothers, J. put it in *R. v. Carvery*, 2026 NSSC 113:

> [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.

[42] As has been noted, what the Applicant has specifically complained of in this case is the extent of the use of hearsay evidence by the RCMP in the various ITO's. He argues:

> … the [RCMP] Affiant was never part of the investigation, and therefore totally dependent on [American HSI] Conboy – therefore avoiding all judicial review of reliability …[As a result] the judicial authorizations at issue must be quashed.
>
> (*Applicant Brief,* para. 68)

[43] With respect, I disagree. I begin with the observation that hearsay evidence is admissible in an ITO to support reasonable grounds for either the search or other type of order or authorization being sought. As we see in *Canada (AG) v. Ni-Met Resources Inc.*, 2005, 195 CCC (3d) 1 (ONCA):

> [18] However, it is well-established that hearsay evidence is admissible on an application for a search warrant and that the deponent may rely on unsworn information provided by others to establish reasonable grounds for the search. Although hearsay is admissible, the authorizing judge is required to assess the nature and quality of the sources for the deponent's evidence to ensure that reasonable grounds have been made out: *R. v. Debot* (1989), 52 C.C.C. (3d) 193 (S.C.C.), at 214-15; *Garofoli* , *supra* at 191.
>
> (emphasis added)

[44] The RCMP's obligation was to present the issuing judge with "credibly based information". This was not a case where they simply accepted what was in the Cornerstone emails *simpliciter* and proceeded to lay the charges which the Applicant faces, without more. Rather, the police used the information provided by their American counterparts (including that obtained from Jordan Wooley's statement) to draft ITO's whose object was to obtain their own (concrete) information upon which they could found their investigation. These ITO's, and the information obtained by the RCMP as a result of the orders or other processes granted on the basis of them, in turn furnished more information for the later ITO's, which ultimately culminated in the search of the accused's premises, and the "buy operation" which the RCMP themselves conducted.

[45] The Applicant references an earlier case, *R. v. Future Électronique*, 2000 151 C.C.C. (3d) 403 (QCCA), and specifically, the following:

> [27] Hearsay is not prohibited (*R. v. Garofoli*, p. 1456 and, *R. v. Debot*, p. 1167), but on the condition that it is accompanied by sufficient evidence which can reassure the issuing judge of the reliability of the information: the informant must be able to answer for it. In this regard, the Supreme Court of Canada, in

> G*reffe*, *supra*, approved a statement from *R. v. Cheecham* (1989), 51 C.C.C. (3d) 498 (Sask. C.A.), that there can be no judicial review of information if the court merely relies on the last person in the chain of hearsay: the fact that a police officer who received information from an informer, communicated it to his colleague does not justify the latter claiming that he had reasonable grounds to act as a result of this information. [translation]

[46] Another case cited by the Applicant is *R. v. Vaz*, 2015 BCSC 728, to the following effect:

> [14] While it is preferable that the facts set out in the material before the justice be based on personal knowledge, hearsay is permissible: *R. v. Araujo*, 2000 SCC 65 (S.C.C.) at para. 48. Indeed, the case at bar is of the sort that one would expect the ITO affiant to resort to hearsay. It was necessary to summarize evidence in relation to eight alleged robberies. In such a case practicality demands that much of the material to be placed before the justice be sworn on information and belief.
>
> [15] However, when hearsay is resorted to by the affiant, it is critical that it be properly sourced. In *Hutchison's Search Warrant Manual 2015* (Toronto: Carswell) at p. 50, the learned author described the necessity of setting out the sources of the applicant's information as the "single most important substantive requirement in relation to search warrants," and carried on to explain why this is so:
>
> > This requirement is driven by the judicial officer's role in the process. The issuing judicial officer is expected to independently assess whether the applicant's belief is a reasonable one. This requires a weighing of the evidence that gives rise to the police officer's belief.
>
> The same point was made in *R. v. P. (K.)*, 2011 NUCJ 27 (Nun. C.J.) at para. 83:
>
> > The ITO for a search warrant often contains hearsay evidence. This is permissible as long as the evidence is adequately sourced. The officer swearing the ITO might rely upon information from a witness, an accomplice, a fellow police officer, a forensic expert, or an occurrence report. Each of these sources must be identified along with any information bearing on their credibility. This is essential so that the issuing Justice of the Peace can independently assess whether it is safe to rely upon the information presented.
>
> [16] This approach is consistent with *Canada (Director of Investigation & Research, Combines Investigation Branch) v. Southam Inc.* and with a substantial body of case law that has developed in its wake. See *Restaurant Le Clémenceau Inc. v. Drouin*, [1987] 1 S.C.R. 706 (S.C.C.) at 710; *R. v. Agensys International Inc.* (2004), 71 O.R. (3d) 515 (Ont. C.A.) at 526; *R. c. Future Électronique inc.* (2000), 195 D.L.R. (4th) 575 (C.A. Que.) at 585; *R. v. Sipes*, 2009 BCSC 612 (B.C. S.C.) at paras. 13-14; *Criminal Code, Re*, [1997] O.J. No. 4393 (Ont. Div. Ct.) at para. 8.

> [17] With specific reference to an investigator's sourcing of hearsay information, in *R. v. Bui*, 2005 BCPC 210 (B.C. Prov. Ct.) at para 57, Jardine P.C.J. summed up the law thus:
>
> > A review of the case law raises a number of points for discussion as to source information, informant information, the use of hearsay and the use of double hearsay. The failure of the investigator to set out the source of the information may make that part of the Information to Obtain defective. In my view, it is incumbent upon the investigator in the Information to Obtain to disclose the source of the evidence so its weight can be assessed. If the source is the note or report of other investigators, the informant should provide details outlining the nature of the report, how the information was obtained and why it should be considered credible and reliable. If the source of the information is a written statement from a witness, then the witness should be identified and the details of the witness' involvement provided.

[47] Next, Mr. Allen-Simec relies on the following in *Araujo*:

> [48] Finally, while there is no legal requirement for it, those gathering affidavit material should give consideration to obtaining affidavits directly from those with the best firsthand knowledge of the facts set out therein, like the police officers carrying on the criminal investigation or handling the informers. This would strengthen the material by making it more reliable. In the present case, it might have prevented this case from turning into the mess it is now, still in appeal, after years of litigation on preliminary matters, without any final judgment on the guilt or innocence of the appellants.

[48] The Applicant has also pointed to the Telus ITO, the FedEx ITO, the Canada Post ITO, and the Tracking Warrant (*Applicant Brief*, Tabs 4, 5, 7, and 8) and objects that the Affiant relied almost exclusively on hearsay evidence from HSI in drafting them. The information is contained in the Cornerstone emails, which are unsworn and contain "next to no confirmation or independent investigation of the information provided by Agent Conboy" (*Applicant Brief*, para. 62). At best, the argument continues, "all of the information from Sgt. Conboy is third or fourth-hand hearsay" (*Applicant Brief*, para. 64).

[49] However, if the RCMP can rely on evidence, including hearsay evidence, from confidential informers in appropriate circumstances (see *R. v. Debot*, 1989 CanLII 13 (SCC) and the line of authorities following in its wake), surely they can do so with respect to information provided by an American police force, particularly in circumstances such as these, where (as noted above) the RCMP, in addition, took the time to conduct their own investigations to test the reliability of the information with which they had been provided.

[50] I observe that the court in *Shaporov* (albeit within the context of an allegation that the Affiant had provided less than "full frank and fair disclosure" to the issuing judge within the context of an authorized search which yielded downloaded child pornography) said much the same thing:

> [63] The appellant argues further that the affiant breached his duty of candour by "failing to provide the issuing justice with any information as to how Homeland Security determined that the child pornography had been downloaded by the 'flydaze' account". The trial judge considered and rejected this argument, writing that:
>
> > I do not agree that the [Homeland Security] information presented reliability concerns or that the affiant was obligated to conduct further investigation to enhance reliability. [...] The affiant was entitled to accept what the special agents conveyed, particularly when there was nothing to suggest that [Homeland Security] personnel were misleading the affiant.
>
> [64] The duty of candour does not require an affiant to go behind and verify every significant fact reported by a fellow officer. A warrant is to be "judged on the basis of the grounds that are set out in an ITO, not on the basis of what steps the police could have taken to acquire additional grounds": *R. v. Vu* 2011 BCCA 536, 285 C.C.C. (3d) 160, at para. 45, aff'ed *R. v. Vu* 2013 SCC 60, [2013] 3 S.C.R. 657. In this case, even though the affiant could have asked Homeland Security to explain exactly how they knew "flydaze" had downloaded the videos, that does not mean he was required to do so. The information was provided by a trusted law enforcement partner, and there was no reason to doubt its accuracy or seek further clarification. The information was detailed and specific, including the videos themselves and an indication of when they were downloaded. It was reasonable for the affiant to infer that the videos originated from the W2V server. And it was reasonable for the issuing justice, and the trial judge (as the reviewing justice), to be satisfied by it.
>
> (emphasis added)

[51] The Applicant has emphasized *Future Électronique* as central to his argument:

> [26] In itself, evidence of information from an informant is insufficient to meet the reasonable grounds standard (*R. v. Garofoli*, p. 1456). It is as a function of the "*totality of the circumstances*" (1) that the reliability of the informer must be assessed (*R. v. Garofoli*, p. 1457), and (2) that it can be determined whether the information is compelling (*R. v. Debot*, p. 1168). In this regard, various factors must be examined, including the following:
>
> (a) the degree of detail of the "tip";
>
> (b) the informer's source of knowledge;

> (c) indicia of the informer's reliability such as past performance or confirmation from other investigative sources. [*R. v. Garofoli*, p. 1457.]

[27] Hearsay is not prohibited (*R. v. Garofoli*, p. 1456 and, *R. v. Debot*, p. 1167), but on the condition that it is accompanied by sufficient evidence which can reassure the issuing judge of the reliability of the information: the informant must be able to answer for it. In this regard, the Supreme Court of Canada, in *Greffe*, *supra*, approved a statement from *R. v. Cheecham* (1989), 51 C.C.C. (3d) 498 (Sask. C.A.), that there can be no judicial review of information if the court merely relies on the last person in the chain of hearsay: the fact that a police officer who received information from an informer, communicated it to his colleague does not justify the latter claiming that he had reasonable grounds to act as a result of this information.

…

[32] As it appears from the whole of the allegations contained in the affidavit that the information which would establish the commission of the offences alleged is based on the statements of three former employees of the appellant, para. 8 is therefore of crucial importance in the case at bar.

[33] We are here faced with double hearsay, but again one must ask oneself about the reasonableness of the grounds. Informant Bossé bases his reasonable belief on that of Kendall who, in turn, only says to Bossé that he believes his informers; we do not know why Bossé believes Kendall. We do not know what Kendall relies on to believe his informers. Kendall's affidavit could have been produced along with Bossé's, or Bossé could also have indicated what elements in Kendall's eyes, go to prove the credibility of his informers. It could have been indicated where the informers corroborated each other. We must not forget that Bossé was never involved in the police investigation, which makes him ultimately totally dependant on Kendall, thereby avoiding all "judicial review" of reliability. Bossé, questioned by the issuing judge, would not have been able to satisfy him of reliability: furthermore none of the parties called Bossé as a witness in the review at first instance, which reminds me here of the comments of Lamer C.J. in *R. v. Greffe*, *supra*, p. 790.

[34] It is Bossé who declares that he has reasonable grounds. Nothing in his affidavit would allow us to believe that he is personally aware of the facts of the investigation. This affidavit could only be a mere formality which repeats what his American colleagues had told him. Bossé could not act as a screen for Kendall who, in reality, remains the only one who had reasonable grounds.

[35] Bossé does not allege any fact explaining why the information provided by the "former employees" should be considered reliable, apart from the affirmation to the effect that agent Kendall should be believed. He does not produce the statements of the former employees for the issuing judge or indicate the information transmitted by agent Kendall which could permit agent Kendall to answer to the issue of the credibility of the informers and the truth of their information. There are therefore no facts which would allow the issuing judge to

> determine *himself* the reliability of the information provided because the "Information" never related explicitly or implicitly the facts alleged to the statements of the former employees, except one single time (in paragraph 36) and regardless, does not provide any facts which explain why these informers should be considered reliable (to quote here from the appellants' factum).
>
> (emphasis added)

[52] It must be borne in mind, however, specifically what was at issue in *Future Électronique*. This is described as follows:

> [13] To make things more easy to follow, I will reproduce all the paragraphs on the *reasonable grounds* [translation]:
>
> > 4. On 97-09-15, we in the Commercial Crimes Section, Fraud Section, of the R.C.M.P., Montreal, received from Tim Nestor, U.S. Legal attaché, Ottawa, information that the company Future Électroniques Inc. (F.E.), located at 237 Hymus Boul., Pointe-Claire, Province of Quebec, had defrauded its suppliers of several millions of dollars.
> >
> > 5. On 97-09-15, a check of the Central Business Registry revealed that the company Future Électroniques Inc. was in fact located at 237 Hymus Boul., Pointe-Claire, Province of Quebec. Our investigation showed that this company operated at that address under the name of Future Électroniques Inc. On 99-04-27, a check made with the Inspector General of Financial Institutions revealed that this place of business is registered under the name of Corporation Internationale d'Électronique Future and that its president is Robert G. MILLER.
> >
> > 6. On 97-09-19, a meeting took place between Sgt. Martin Mottard of the R.C.M.P. and the American authorities, Anne Ryan, U.S. Attorney's Office N.Y. and Kathleen M. Diskin, F.B.I. agent, N.Y., to discuss the merits of this investigation. According to the notes on file, it was established that the allegations of fraud against F.E. came exclusively from a former employee of F.E. and that it was necessary to obtain other information which could corroborate his statements in order to justify the issuance of a search warrant; the R.C.M.P. requested further investigation by the Americans.
> >
> > 7. On 99-02-22, we received an official request for mutual legal assistance from the United States Department of Justice, Criminal Division, Washington, D.C., in the context of a criminal investigation conducted by the United States Attorney General for the Northern District of Texas, the Dallas F.B.I. Field Office, and the Federal Grand Jury for the Northern District of Texas, in relation to Robert G. MILLER and other persons. I personally reviewed this request.
> >
> > 8. Agent Jim Kendall of the F.B.I., Dallas, Texas, who is in charge of the investigation of the allegations of fraud against F.E., reported interviewing three former F.E. employees respectively on 98-09-23/99-01-28, 98-11-05

> and 98-10-08, copies of these interview reports were sent to me personally by their author on 99-04-22. I personally discussed with Kendall the information and he confirmed to me that it was true and also that the witnesses were credible.
>
> 9. Two of these former employees were employed by F.E. They participated in the commission of the fraudulent activities on behalf of F.E. and in particular at the request of the upper management of F.E.
>
> 10. F.E.'s main business is the purchase and resale of electronic components. Robert MILLER, president of F.E., and the members of his exclusive group known as "The A Team" act on behalf of F.E. to defraud its suppliers, and in particular American companies. The fraudulent activities orchestrated by "The A Team" under the command of MILLER are committed by producing two types of reports: an "Actual" version for the internal purposes of F.E. and a "Reported" version which contains false information which is transmitted to the suppliers/manufacturers. These fraudulent actions by MILLER and "The A Team" made F.E. substantial profits and resulted in the loss of several millions of dollars to its suppliers, Motorola, Texas Instruments and others.
>
> 11. On April 30, 1999, a letter was sent to Jay C. Johnson of Texas Instruments by Danny A. Defenbaugh, F.B.I. agent, Dallas, Texas, advising him that Texas Instruments was the victim of a significant fraud in and outside of the United States and that a criminal investigation was presently being conducted by the F.B.I. in collaboration with foreign police authorities.
>
> 12. On April 30, 1999, Jim Kendall, F.B.I. agent, Dallas, Texas, in charge of the file advised me that he personally met with Jay C. Johnson, Vice President and Assistant General Counsel of Texas Instruments, who had indicated to him that he had no knowledge that Texas Instruments was the victim of a fraud which caused it loss. He offered his full co-operation, if required.
>
> (emphasis alleged)

[53] It is apparent that, in the above case, most of the specifics of the alleged fraud were relayed to the US authorities by the unnamed and "former employee of [the accused company] and … it was necessary to obtain other information which could corroborate his statements in order to justify the issuance of a search warrant; the RCMP requested further investigation by the Americans" (*Future Électronique*, para 13(6)).

[54] In the case at bar, the hearsay information came from US authorities themselves. The substance of this information was provided to the RCMP and became the basis for the investigations which they undertook, and the ITO's which

the RCMP, in turn, prepared. Prior to the RCMP investigation, the US authorities themselves, had intercepted and searched parcels mailed internationally, executed search warrants, and interviewed suspects. Much of what they obtained was hard evidence, i.e. contents of parcels intercepted or names and contact information with respect to sender and intended recipient of the contraband which they seized. The names of the officers who collected the information in the US, dates of seizures and details of the sender of the parcels from Canada was important to the eventual investigation in Canada. All of this was in even the earliest ITO.

[55] Moreover, (and to repeat) the RCMP took steps to corroborate that information in Canada prior to seeking the warrants, including seeking Production Orders to determine phone numbers, the identifications of senders shown on the package, relevant addresses, and then augmented this by conducting their own investigations, including their own “buy operation”.

[56] There was more than enough information in each and every one of the ITO’s upon which a judge could have issued the processes in question. There is no substance to Mr. Allen-Simec’s application under s. 8 of the *Charter*.

Conclusion

[57] Mr. Allen-Simec’s Applications are dismissed in their entirety.

Gabriel, J.