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ANTITRUST PUBLICATIONS & EVENTS

Competition Inspections in 21 Jurisdictions

A Practitioner's Guide

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Foreword by Paul Nihoul

CANADA

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Introduction

1. Competition rules in Canada are legislated under the Competition Act (the “Act”). The Competition Bureau (the “Bureau”) is an independent law enforcement agency headed by the Commissioner of Competition (the “Commissioner”) that is responsible for enforcing both civil competition matters and criminal offences under the Act, as well as the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marketing Act.
2. The Bureau has a wide range of enforcement tools to carry out its investigative role in protecting competitive markets in Canada. One key tool is the power to execute search warrants (sometimes known as “dawn raids”).
3. During the course of an inquiry, the Commissioner may apply to the courts for a search warrant to grant the Bureau the powers to search for and then seize records. Warrants are not authorised automatically, and certain prerequisites must first be met.
4. During 2020–2021, the execution of search warrants appeared to cease due to the COVID-19 pandemic. However, it is expected that the Bureau will return to using this tool on a regular basis in the future.
5. Search warrants may be used by the Bureau to advance criminal investigations against companies and individuals that carry serious penalties (e.g. price fixing, bid rigging and misleading advertising), as well as abuse of dominance and other reviewable practices. In order to obtain a search warrant, it must have sufficient grounds to believe that an offence may have been or may be committed. The possibility of criminal charges or civil proceedings following the execution of a search warrant is high. In addition to penalties for contravening the Act, there may be exposures to private and class actions for damages, as well as reputational damage.
6. It is therefore essential that companies properly prepare for the possibility of a search warrant being executed at their premises. Companies should put into place procedures for employees to follow with respect to record retention and management, classification of privileged material, and responding to the arrival of a search team executing a warrant.

1. Nature and Scope of Competition Inspections

1.1. Enforcement and Investigation Powers

7. The Bureau’s search and seizure powers are contained in sections 15 and 16 of the Act. Section 15 of the Act deals with searches of physical premises and section 16 of the Act deals with searches of electronic devices such as computers or smartphones. (The Bureau may alternatively apply for a search warrant pursuant to section 487 of the Criminal Code of Canada, which involves similar requirements and process for issuance.)

8. When the Commissioner applies to a judge for a search warrant, the application is made *ex parte*. The subject of a warrant will typically not know of the application prior to the execution of the search warrant. The purpose of the *ex parte* process is to prevent the subject of a search warrant from having the opportunity to hide or destroy information or evidence.
9. A search warrant, when granted, will authorise the Bureau to search a premises identified in the warrant and copy or seize records or other things that are identified in the warrant. The subject of a search warrant must comply with the execution of a search warrant. The Bureau may execute the search warrant by force if necessary, and may enlist support from local police to do so.
10. The judge who hears an application for a search warrant protects the subject's rights by ensuring that the information submitted in the application by the Commissioner is sufficient to justify the search warrant sought.
11. The Commissioner may use information or evidence lawfully seized by the Bureau to advance an investigation and in criminal or civil enforcement proceedings.
12. In addition to search warrants, the Commissioner's compulsory investigative powers include subpoenas to produce records or written returns of information, compulsory depositions of witnesses and wiretap orders. The various tools may be used in the same investigation.

1.2. Competent Authorities and Agents

13. Search warrants are executed by staff of the Bureau. Normally multiple Bureau case officers will execute a search warrant. The search team will also include electronic evidence officers. Each premises searched will have a team leader responsible for the overall conduct of the search who will be named in the warrant. Not all of the individuals present need to be named in the search warrant. Members of the search team may come and go at different points as well. If a search takes a long time, searchers may switch on and off teams.
14. In some circumstances, police officers in the relevant jurisdiction (for example, the Royal Canadian Mounted Police) may be required to assist the Bureau search team. The Bureau will make a request for police officer assistance in cases where it has reasonable grounds to believe that access to the premises may be denied or obstructed.

1.3. Nature of Inspection Powers

15. The Commissioner may use search warrants to investigate possible violations of the criminal or civil provisions of the Act without a formal inquiry pursuant to section 10 of the Act. The use of other compulsory investigative powers is subject to the Commissioner commencing an inquiry. The Commissioner may commence an inquiry on his own initiative whenever he or she has reason to believe that an offence has been or is about to be committed, or that grounds exist for making an order under the civil provisions of the Act. The Commissioner is also required to commence an inquiry upon the request under oath of any six Canadian residents or when directed to do so by the Minister of Innovation, Science and Economic Development.

16. The Act requires the Bureau to keep records it seizes pursuant to a search warrant confidential. However, the Bureau is permitted to provide seized information to a Canadian law enforcement agency. The records may also be used and disclosed in administering or enforcing the various provisions of the Act (e.g. in a criminal prosecution, or in a civil proceeding before the Competition Tribunal).

1.4. Areas of Competition Enforcement Concerned

17. Search warrants are critical to the Bureau's ability to effectively investigate covert matters such as cartel cases, mass marketing frauds or criminal deceptive marketing offences. To effectively deal with cartels, frauds and marketing scams, the Bureau may need to rely on search warrants to prevent subjects from hiding or destroying records if first given the knowledge that the Bureau is conducting an investigation into their activities. Although section 15 also contemplates the use of search warrants in civil reviewable practice cases, including abuse of dominance and mergers, searches are mainly used where the Bureau suspects that a criminal offence has been committed.

2. The Legal Basis for the Inspection

18. Search warrants must be authorised by a judge in order to be executed by the Bureau. The Bureau selects the court for an application for a search warrant. Typically, the Bureau will bring an application for a search warrant before a judge of a superior court in the province where a charge might be laid for criminal investigations, and before the Federal Court of Canada for civil matters.
19. Before authorising a search warrant, a judge must be satisfied that there are reasonable grounds to believe that
 - either an offence has been committed or is about to be committed, a person has contravened an order made under the Act or there are grounds for an order under the civil provisions of the Act; and
 - there are records that will provide evidence about one of the above at the premises specified in the application.
20. Search warrants will specify who is permitted to carry out the search, where they are permitted to search, what they are permitted to search for and seize, and when they are permitted to carry out the search. Search warrants will also specify the offence or offences that are alleged to have been committed, which provide the basis for the search.
 - Names of individuals who are authorised to carry out the search on behalf of the Bureau will be listed. Individuals are divided between those who are searchers and those who are trained in electronic search procedures.
 - The place or places to be searched will be listed. The warrant may include offices and other commercial places of business or facilities. It may also include ancillary premises, including storage spaces. Residences of company personnel may also be included where there is a basis for expecting that relevant material could be found in such locations.

- The records or other items that are permitted to be searched for will be listed. They may include corporate records, transaction documents, documents relating to property, correspondence, and other types of documents and data.
 - The dates and hours that the search may be executed will be set out. Typically, the search warrant will provide the Bureau with several calendar days within which to execute the warrant. Search warrants are typically authorised to be executed during daylight hours such as between 6 a.m. and 9 p.m., local time. A search may continue past the time specified in the search warrant, where required.
21. The Bureau is not permitted to search for or seize evidence of offences that are not prescribed in the search warrant, unless the evidence is located in plain view of the officers who are searching in a manner consistent with the scope of the search warrant. In practice, if the Bureau becomes aware of additional possible offences, it may return to the court and seek a supplementary warrant that covers such offences.
 22. Search warrants typically set out in detail the manner in which electronic evidence officers are permitted to search and seize records from computers pursuant to section 16 of the Act. This may include the use of forensic practices to acquire evidence. Electronic evidence officers may also be authorised to require an individual in possession or control of the premises to be searched to make the contents of a computer system accessible to the officer.
 23. Search warrants may also authorise the Bureau search team to be accompanied by police officers and a locksmith, if necessary, to facilitate access to the premises and to use such force as is necessary to access the premises if it is locked.
 24. When applying for a search warrant, the Commissioner may also apply to the judge for a sealing order to prevent disclosure of the contents of the application for a search warrant. A sealing order may be granted where there are grounds to believe that disclosure of the application or the warrant will subvert the ends of justice or might be used for an improper purpose. For example, in cases where disclosure of the information could identify a confidential informant, a sealing order will always be granted. Sealing orders may be time-limited or may be of unlimited duration.
 25. In certain limited cases, the Bureau may be able to conduct a search without first obtaining a search warrant from the courts. Sections 15(7) and (8) of the Act expressly allow the Bureau to conduct a warrantless search where there are exigent circumstances making it impracticable to first obtain a search warrant. Exigent circumstances exist where the delay required to draft and obtain a search warrant would risk the loss or destruction of relevant records. However, subjects of a warrantless search are protected by the same rights as subjects of a search warrant pursuant to the Canadian Charter of Rights and Freedoms. Most notably, the guarantee against unreasonable search and seizure under section 8 of the Charter provides an incentive for investigative authorities to use warrantless searches sparingly.

3. The Start of the Inspection

3.1. The Arrival of Inspectors and Notification of the Decision

26. According to section 15(3) of the Act, a search normally must be executed between 6 a.m. and 9 p.m., local time. If necessary, the issuing judge may authorise the Bureau to execute the warrant during the nighttime hours.
27. The Bureau typically executes search warrants on commercial premises once employees have arrived and the business opens. Execution of a search warrant at the residence of an individual will typically happen sooner, before the individual leaves his residence to attend work.
28. Once a search begins, it may take several hours to conclude. It is not unheard of for a search to continue overnight. However, it is more common for seals to be applied to prevent or make detectable any incursion into premises that are subject to a search until it resumes the following day.
29. When the Bureau search team arrive to execute a search warrant, they will provide a copy of the search warrant to an individual in control of the site. If circumstances permit, the team leader will explain procedures and how the search will take place to a company representative. If the subject has questions for the search team, the team leader may answer them but is not required to do so.
30. The company receptionist will likely be the first individual to deal directly with the Bureau search team. The first few moments after their arrival are critical. Frontline company personnel should be aware of the following:

SEARCH READINESS – GUIDELINES FOR RECEPTIONIST/FRONTLINE PERSONNEL

Receptionist Responsibilities

- Remain calm and polite
- Ask the officers to produce identification
- Ask the lead officer to delay the search until a person in authority arrives
- Hierarchy of management and law department personnel to contact
- Arrange for a boardroom where the officers can wait pending the arrival of counsel
- Do not impede the search
- Do not destroy or delete any material



31. The company being searched should designate a member of management to be the company representative and organise the company's interactions with the Bureau search team. The company representative should be on site at the premises being searched at all times, or have a designate present.
32. The first step for company personnel should be to contact legal counsel immediately. The company representative should ask the team leader to defer the start of the search until counsel arrives. The Bureau search team is not required to wait for legal counsel to arrive before commencing a search, but will typically give counsel a short but reasonable amount of time to arrive. The Bureau will secure the premises in the meantime to avoid the destruction of evidence.
33. The company representative should confirm to the team leader that the company will comply with the requirements of the search warrant and will aid in the locating of records sought by the Bureau that are the subject of the search warrant. If the police officers are accompanying the Bureau search team, the company representative should also ask if anyone is being detained or arrested.
34. Legal counsel should review the warrant at the outset of the search to ensure that the premises to be searched are properly set out in the warrant, to ensure the date/time of the execution is authorised by the warrant, to confirm that the Bureau search team members are authorised by the search warrant to carry out the search, and to check for any other restrictions in the warrant.
35. The company representative should provide the Bureau team leader with a tour of the premises prior to the commencement of the search. It is recommended that the company provide the Bureau search team with a dedicated space to work, such as a boardroom, thereby allowing the company to carry out its normal operations, with as little disruption as possible while the search is ongoing.
36. In exigent circumstances, the Bureau search team may begin searching immediately upon presenting a copy of the search warrant to the individual in control of the site. They may also take steps to ensure that the records they are searching for are not hidden or destroyed.
37. Whether or not exigent circumstances exist, the Bureau search team will secure the site to ensure the records being sought are kept safe. Steps they may take include placing tamper-proof seals upon cabinets, shredders and shredding repositories as well as preventing access to computers and servers.

3.2. Obligations Imposed on the Inspected Undertaking and Penalties Incurred for Obstruction or Lack of Cooperation

38. A search warrant is an enforceable court order. The subject of the order does not have the power to prevent or delay its execution. Section 15(5) of the Act also requires everyone in control of a premises to be searched to allow the Bureau search team to enter the premises, search it and copy or seize records. However, aside from this statutory obligation, there is no obligation for the company or any employee to assist or cooperate with the Bureau. There is no obligation to answer any question posed by Bureau officers.
39. Individuals and corporations may be criminally charged under the Act or the Criminal Code of Canada for offences relating to impeding the Bureau in executing

a search warrant. Criminal charges brought under the Act and Criminal Code charges that may accompany them are decided upon and prosecuted by the Public Prosecution Service of Canada (“PPSC”).

40. Under section 65(1) of the Act, failure to permit the Bureau access to the premises to be searched pursuant to a search warrant issued under section 15 of the Act, or access to computer systems therein, by an individual or corporation is an offence that can be proceeded with by two modes of prosecution – summarily or by indictment. Where the offence is proceeded with summarily, a fine of up to \$100,000 may be imposed, and/or an individual offender can also be sentenced to imprisonment for up to two years. Where the offence is proceeded with by indictment, a fine can be imposed without a maximum quantum, and/or an individual offender can also be sentenced to imprisonment for up to ten years.
41. Under section 65(3) of the Act, destruction or alteration of a record or other thing that is the subject of a search warrant is an offence that may also be proceeded with summarily or by indictment. The possible sentences for a conviction under section 65(3) are the same as a conviction under section 65(1).
42. Section 65(4) of the Act specifies that officers, directors or agents of a corporation who committed an offence under section 65 who either directed, authorised, assented to, acquiesced in or participated in the commission of the offence are parties to the offence, and therefore guilty of the offence as well. Notably, the corporation does not need to be convicted, or even prosecuted, for officers, directors or agents of the corporation to be convicted. The possible sentences for a conviction of an officer, director or agent as a party remain the same as under section 65(1) and 65(3).
43. Under section 64 of the Act, impeding with or preventing an inquiry or examination under the Act, by either an individual or a corporation, which includes the execution of a search warrant issued under section 15 of the Act, is an offence that may also be proceeded with summarily or by indictment. The possible sentences for a conviction under section 64 are the same as a conviction under section 65(1) and 65(3).
44. The PPSC may also charge an individual or a corporation with the offence of obstruction of justice under section 139(2) of the Criminal Code. Section 139(2) is a broadly worded offence that encapsulates action that obstructs, perverts or defeats the course of justice. The offence may be proceeded with summarily or by indictment. If proceeded with by indictment, the possible sentence for an individual may include imprisonment for up to ten years. A corporation could also receive a substantial fine.

3.3. The Premises Subject to the Inspection

45. A search warrant issued pursuant to section 15(4) of the Act can be executed anywhere in Canada. However, the precise location to be searched must be specified in the search warrant. The Bureau cannot use a search warrant as a broad licence to search premises not specified in the warrant. As a matter of policy, the Commissioner obtains a separate search warrant for each address to be searched.

46. Special considerations exist for searches of private residences. Individuals have a greater expectation of privacy in their home. Typically, the judge will limit the number of officers that can be present in the residence during the search.
47. Law offices are also particularly sensitive due to the risk of breaching solicitor-client privilege in searching for and seizing records. Communications between a lawyer and client made in confidence for the purposes of giving or receiving legal advice are subject to privilege and cannot be accessed by the Bureau. The law society in the jurisdiction where the search will take place may have rules in place for searches of law offices, and the search warrant should carefully set out a procedure for such searches.
48. Pursuant to section 16(2) of the Act, electronic records may be searched for on the premises specified in the search warrant, even though the data on the computer may be stored at a server offsite. The Bureau's position is that it has the power to search a computer system or server outside of Canada if it can be accessed from a device located in Canada.
49. A search warrant may set out that personal property or belongings on site at the premises to be searched are subject to search and seizure by the Bureau search team. This may include such items as briefcases, purses, and backpacks, as well as personal computers, cellphones and storage devices.

4. The Search, Review and Copy of Relevant Information

4.1. Searches and Copies of Documents and Data

50. A search warrant will describe in general terms (or specific terms) the items or records for which the Bureau may search, copy and/or seize. A search warrant does not provide the Bureau search team with a carte blanche to search for anything and everything. The search must be limited to gathering evidence related to the offences specified in the search warrant. However, the warrant will usually provide the Bureau with a wide scope to gather information that the search team consider may be relevant to the investigation. A supplementary warrant may be sought if the investigation expands.
51. Paper records that may fit the terms of the search warrant are gathered together as the search progresses. A final decision on which records are to be seized will be taken by the team leader. Any paper records that the team leader decides are not required will be returned to where they were found.
52. The company representative or a designate should carefully observe the Bureau search team and keep a record of the locations searched and any items gathered/seized. However, company staff must not obstruct the Bureau search team's activities.
53. The company representative should ask permission to photocopy any physical records that will be removed by the Bureau search team. The Bureau may comply if doing so will not disrupt or delay the process, or may agree to photocopy the seized records at a later time for a fee.

54. Electronic evidence officers are trained by the Bureau to use accepted forensic practices and procedures in searching for electronic records. They may either make an electronic copy of electronic records, print a copy of electronic records, or seize the entire computer or storage system on which the electronic records reside.
55. Just as the Bureau has officers dedicated to electronic evidence gathering, the company should identify an IT manager to coordinate the company's provision of assistance to the search team with respect to electronic records. While the Bureau is entitled to use computers on the premises being searched to access records or databases that may physically be located elsewhere, the search warrant will not authorise searches of physical premises outside of Canada. The Bureau may be able to search electronic records stored on servers outside of Canada if they are accessible through electronic devices on the premises being searched.

SEARCH READINESS – IT SYSTEMS

- Identify IT Manager who will provide assistance with respect to computer searches and ensure they have the Search Readiness Guidelines
- Create segregated storage for privileged documents
- Determine what systems / servers outside Canada can be accessed from within Canada
 - Provide password if demanded but specify that you are not waiving any of your legal rights
 - Consider establishing process by which non-Canadian affiliate can block access to systems/servers outside the jurisdiction



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56. The company representative should advise the Bureau search team that certain records are subject to solicitor-client or other legal privilege claims. Solicitor-client privilege will equally apply to in-house counsel in addition to external legal counsel, as long as the communications relate to requests for and provision of legal advice. Care should be taken to identify all records that may be subject to the privilege. Special consideration needs to be given by the Bureau search team for records that may be subject to solicitor-client privilege. The best course of action is to claim solicitor-client privilege over any records that could be privileged, and have counsel work out the exact scope of the privilege later, rather than allow the Bureau to treat documents that could potentially be privileged as non-privileged.

57. Once a claim of solicitor-client privilege has been made, the Bureau search team are not permitted to review or make copies of any records that potentially contain privileged material. Instead, the Bureau search team will place the paper records in a sealed packet. Sealed packets are then placed into the custody of a court official or other person agreed upon by the Bureau search team and the privilege claimant. Electronic records that may contain solicitor-client material will be segregated without review by the Bureau search team.
58. For electronic records, a designated electronic evidence officer will provide the company's counsel with a copy of the images made in the course of the search. User access restrictions will be employed to prevent access by the Bureau's case team to any potentially privileged records. Counsel will then provide the officer with a list of keywords to assist the officer with locating the potentially privileged records and providing a copy to the company's counsel. This allows counsel to identify those records over which a claim of solicitor-client privilege is made.
59. The Act sets out a procedure by which a judge will hear an *in camera* application to decide whether sealed or segregated records are in fact protected by solicitor-client privilege. However, the Bureau and the claimant typically choose to settle the privilege claims out of court.
60. If an agreement can be reached between the Bureau and the company's counsel, a protocol governing the review of seized records over which a claim of solicitor-client privilege has been made will be set out. The protocol establishes a process to identify records that are subject to claims of solicitor-client privilege, and to authorise a referee (an independent arbiter) to review and make a determination as to which records (or parts of records), if any, are subject to solicitor-client privilege.
61. If such a process is adopted, the records subject to a claim of solicitor-client privilege will be provided to a referee agreed upon by the parties. The parties will agree to further terms that govern the review by the referee. The referee will give the claimant's counsel an opportunity to provide clarifications if the referee believes that a record is not privileged. If the company's disagreement persists, the referee may then refer the matter to the court for final determination. Unless the referee refers a matter to the courts, a final determination of privilege will be made by the referee and will be binding.

4.2. Questions and Interviews

62. The Bureau search team may speak with individuals at the premises during the course of the search for various reasons. One of the primary reasons is the facilitation of their search, and other administrative matters, since the Bureau search team may not know where records are kept and the layout of the premises. These interactions are normally not controversial.
63. Company personnel may also be asked to participate in substantive interviews with the Bureau search team, or may volunteer to do so. If an individual is a potential target of the investigation, he or she will be advised of their legal rights in the form of a caution prior to any interview. Interviews are voluntary, absent obtaining a separate court order for compulsory examination under oath (pursuant to

section 11 of the Act). Bureau officers do not have the power to require responses, or to detain or prevent anyone from departing the premises.

64. Employees should be informed by company management or legal counsel of their right not to answer questions. However, it is ultimately the individual's decision whether to participate in an interview.
65. Importantly, the Act contains provisions (section 66) to protect the identity of whistleblowers who provide information about offences to the Bureau. These provisions also prohibit retaliation by the company against a whistleblower.
66. As soon as possible after a search commences, the company representative and counsel should meet with all personnel on site and instruct them to preserve all electronic and paper records, including correspondence. Employees should be advised of the consequences for obstruction of justice if any evidence is altered, hidden or destroyed. In order to maintain confidentiality, employees should also be promptly advised about the importance of keeping the matter confidential, and their right to silence or to speak with the Bureau if requested to do so.

IMMEDIATE RESPONSE – INTERACTING WITH EMPLOYEES

- Deal with uncertainty by speaking to employees promptly
- Avoid possible actions that could constitute obstructions of justice
- Carefully handle approaches from whistleblowers
- Give Warnings regarding right to silence prior to substantive communications with Bureau staff
- Consider possible requirements or desire for employees to access independent counsel
- Respond to authorities' efforts to question or detain



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4.3. Night Seals

67. It is not always possible for the Bureau search team to complete a search in a single day. Where the Bureau search team need to return to complete a search, there are multiple options available to ensure that records to be searched will remain protected. The Bureau search team may choose to seal the records in a secure container. The subject will be advised that any tampering with the sealed records could result in criminal charges under the Act.

68. Alternatively, the Bureau search team may temporarily remove records that are not finished being searched from the premises when they depart or may arrange for the premises to be guarded overnight. It is more likely that the Bureau will take these extra steps to safeguard records if there is a perceived risk that the records could be hidden or destroyed.

4.4. Minutes

69. The company representative should make written notes of all his or her substantive interactions with the Bureau search team. Where there are specific procedural matters that are agreed upon by the Bureau search team and the company representative, it is useful to request the Bureau team leader to sign a written memo or minutes recording the agreement.
70. The company representative should coordinate and collect notes taken by company staff who observe the search and seizure process. A summary of how the search took place, including what records were copied or seized, should be provided to legal counsel as soon as possible.

4.5. Continued Inspections

71. Once the search is completed, the Bureau is not permitted to search the same premises again without obtaining a further search warrant. The Commissioner may occasionally obtain supplementary search warrants to re-search a premise (e.g. for a broadened scope of documents) or to search additional premises.

5. Judicial Review

72. The court maintains a supervisory role over the search warrant it issues and any seizures that flow therefrom.
73. Pursuant to section 17 of the Act, the Commissioner must, as soon as practicable, complete and file a report to the judge that issued the search warrant. The report will list the records seized by the Bureau. The judge may then permit the Bureau to maintain custody over the records if satisfied that the records are required for either an investigation or a proceeding. Orders are generally for sixty days, but can be for longer duration in certain cases.
74. Following the commencement of the search, counsel should ask the Bureau's legal counsel for a copy of the application, including the supporting "information to obtain" ("ITO") in respect of the search warrant. The court application is not subject to a sealing order; these materials normally will be provided promptly. Counsel will be able to review the application and ITO in order to determine whether the search warrant was appropriately issued and to obtain an understanding regarding the scope and status of the Bureau's investigation.
75. There is no direct mechanism by which to appeal the issuance or execution of a search warrant. However, there are three points in time at which the validity of a search warrant can be challenged in court.
76. The superior courts have inherent jurisdiction to review search warrants under a judicial review mechanism known as certiorari. A search warrant issued by the

Federal Court of Canada can also be reviewed by the Federal Court of Canada. The standard for a successful challenge of a search warrant is high, as there is an initial presumption that a prior judicial authorisation is valid, particularly since the Bureau is obliged to provide information to the court with candour and accuracy. A party subject to a search may bring an application of certiorari before any charges are laid. A search warrant that was invalidly issued may be quashed by the court. The court also has the discretion to return records seized pursuant to an invalid search warrant to their owners.

If enforcement proceedings are commenced by the Commissioner (civil matters) or the PPSC (criminal matters), the validity of the search warrant can be challenged in court. A pretrial application can be brought, in which the applicant seeks the immediate return of records. However, an application to challenge a search warrant is not usually brought until the trial, and is most appropriately heard by the trial judge. In such a case, an improperly issued or executed search warrant may result in not only the return of records, but the exclusion from the proceeding itself of some or all of the evidence seized by the Bureau search team.

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A Practitioner's Guide

Nathalie Jalabert-Doury

Foreword by Paul Nihoul



This is the third volume in this series. The first volume addresses inspections in France, and the second volume addresses the European Union.

Nathalie Jalabert-Doury brings together distinguished practitioners from around the world to provide an in-depth analysis of the legal and practical aspects of competition inspections across 21 major jurisdictions. Each country chapter comprises a series of questions and answers outlining the legal basis and scope of powers under relevant local legislation, the key stages of a dawn raid, the rights and obligations of a company subject to an inspection, and the prospects of judicial review. Illuminated by the expertise of the authors, the chapters outline steps which should be taken to ensure that a company facing an inspection may respond in an efficient manner while minimising legal risk.

The book is a necessary and essential guide for both in-house and outside counsel to ensure that an effective internal response strategy is put in place before being confronted with an inspection.

The jurisdictions covered include Austria, Brazil, Canada, China, the Czech Republic, the European Union, France, Germany, Hong Kong, India, Japan, Korea, the Netherlands, Russia, Singapore, Spain, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

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