DEALING WITH AN INVESTIGATION BY AN OUTSIDE AUTHORITY

When the Securities Commission, the RCMP, or the Transport and Safety Authority come knocking with a warrant, what does one do? This session delivers a step-by-step process of how to cooperate while protecting essential rights, and planning a follow-up strategy to ensure enterprise and board protection.

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## Ten Key Points (Where Search Warrant Involved)

1. Immediately contact the search coordinator and all other relevant individuals, including the in-house legal counsel or external legal counsel. Arrange for an internal IT specialist if the authorities intend to search electronic records.

2. Check the identity of the law enforcement authorities (the “authorities”) involved, ask to see their identification documents, and write down their names.

3. Obtain a copy of the search warrant, and have copies made for the search coordinator and legal counsel, and check to ensure compliance with the terms set out therein, including that the address of the building or place is the address set out in the warrant and that, once the search commences, it is confined to the documents or things specified in the warrant (although note that there may be power to seize other documents or things in certain circumstances set out below). If there is a discrepancy with the terms of the warrant, seek the advice of legal counsel. In the event that legal counsel is not available, politely tell the searchers of the discrepancy, make a written record of the objection you made and the response of the search team, and permit the search to proceed.

4. Ask the authorities executing the warrant to wait to commence the search until the search coordinator and legal counsel are present. Should the authorities refuse to wait to commence the search prior to legal counsel being contacted and present, the authorities should be advised that the company is asserting privilege over all areas of the site where privileged materials might reasonably be expected to be located, including the offices of in-house legal counsel, the legal department,
and other areas within the office where privileged materials could be located. A further specific request should be made that all such materials be “sealed” and not reviewed by the authorities until legal counsel have been contacted and are present. The fact of the request and any refusal by the authorities to comply with this request should be carefully noted.

5. If possible, the search coordinator and legal counsel should attempt to agree with the authorities on a protocol for the search.

6. Legal counsel should, if possible, accompany the authorities and review all search documents to determine whether they are relevant or privileged prior to the authorities reviewing them. Privileged documents should, if permitted, be sealed in a plain envelope, identified on the envelope as subject to a claim for privilege and kept separate from other documents. Any claim of privilege that is denied should be objected to and noted.

7. If possible, list and make copies of the search documents that the authorities want to take with them. In any event, make sure that you have or receive a list of and copies of these documents.

8. Be aware that authorities can and may record all statements made by company employees during the course of the search and nothing is “off the record.” Questions should be directed to the search coordinator or legal counsel if possible. Employees should be instructed to advise authorities that a designated company official will deal with questions related to the conduct of the search.
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9. If authorities produce a report of the search, the company should try to obtain a copy. If asked to sign a report, check it beforehand for any factual errors. In any case it is very important that the company makes a detailed report of the entire search (which should contain a detailed list of documents consulted, copied, and seized).

10. Employees should be advised not to inform third parties that a search has taken place.