



# Guidelines

## Recommended terms for law office search warrants

1. [Insert Name] is appointed as Referee. The Referee shall:
  - i. Under the direction of the officer in charge of the search, search for and seize documents, including electronic documents and images of data stored on computer equipment, and computer equipment itself, that are authorized to be seized by this Warrant, in the manner authorized by this Warrant (collectively referred to as “Documents” in this Warrant),
  - ii. Maintain the continuity and the confidentiality of the Documents in accordance with this Warrant, and
  - iii. Examine and handle the Documents in accordance with the procedures established in this Warrant.
2. Before attending at the law office named in this Warrant, the investigating authority shall advise the Law Society of British Columbia (the “Law Society”) of the existence of this Warrant and the expected time and date of the search, without disclosing the place to be searched, unless the officer in charge is of the opinion there is a benefit to providing the Law Society with the precise location. This will permit the Law Society to designate a representative to be available to provide guidance in connection with the lawyer’s professional obligations and to liaise, as necessary, with the officer in charge of the search, the Referee, and the lawyer whose office is to be searched. The Law Society will keep any information given to it by either the prosecuting or investigating authority confidential.
3. The officer in charge of the search shall, at the time of the execution of this Warrant, ensure that reasonable efforts are made to contact the lawyer whose law office is named in this Warrant, to advise the lawyer that a search is being done and that he or she may contact the Law Society for guidance regarding the lawyer’s obligations resulting from the execution of this Warrant.
4. No acts authorized by this Warrant shall take place until the terms 2 and 3 are complied with and until the Referee has had an opportunity to attend the law office, save and except that the investigating authority, acting under the supervision of the officer in charge of the search, may enter the law office to permit the investigating authority to secure the premises to prevent the destruction or removal of any things from those premises.

The following part dealing with the Forensic Expert, if necessary, perhaps should follow right after the appointment of the Referee.

5. [Insert Name] is appointed Computer Forensic Expert. The Computer Forensic Expert shall, under the direction of the Referee and as provided by this Warrant, discharge any and all requirements relating to:
  - i. Searching of all computers, computer systems or other electronic devices included in the terms of this Warrant;
  - ii. Creating forensic images of the physical drives of original computers;
  - iii. Searching of forensic images to identify things subject to this Warrant, including the placing of such Documents on external storage devices; and
  - iv. Maintaining the continuity and the confidentiality of the Documents in accordance with this Warrant.

OR

6. The Referee may retain the services of a Computer Forensic Expert who shall, under the direction of the Referee and as provided by this Warrant, discharge any and all requirements relating to:
  - i. Searching of all computers, computer systems or other electronic devices included in the terms of this Warrant;
  - ii. Creating forensic images of the physical drives of original computers;
  - iii. Searching of forensic images to identify things subject to this Warrant, including the placing of such documents on external storage devices; and
  - iv. Maintaining the continuity and the confidentiality of the documents in accordance with this Warrant.
7. All Documents seized by the Referee pursuant to this Warrant shall be placed by the Referee in packages, sealed, initialed, and marked for identification without being examined or viewed by the investigative authority or anyone else.
8. Upon completion of the execution of this Warrant, the Referee shall deliver the seized Documents into the custody of the Court.
9. After the Documents have been delivered to the custody of the Court, and upon reasonable notice being given to the officer in charge of the search, and to the prosecuting authority, the Referee and the Computer Forensic Expert may be given access to the Documents for the purposes of:

- i. Identifying individuals who must be given notice that things have been seized over which they may wish to assert privilege, and
  - ii. To inspect the Documents for the purposes of determining if the things seized fall within the scope of this Warrant.
10. After the Documents have been delivered to the custody of the Court, and upon reasonable notice being given to the officer in charge of the search and to the prosecution authority, counsel for the lawyer whose office has been searched shall, under supervision to be determined by the Court as necessary, be given access to the items to determine:
  - i. Whether privilege attaches to any of the Documents, or
  - ii. Whether any of the Documents fall outside the scope of this Warrant,and shall advise the officer in charge of the search or the prosecuting authority of the nature and general description of any such documents identified without allowing the documents to be viewed by counsel for the investigating or prosecuting authority. If counsel for either the investigating or prosecuting authority, as may be, agrees that Documents are privileged or fall outside the scope of this Warrant, those documents shall be segregated and may be returned to the lawyer whose office was searched.
11. With regard to the remaining Documents, reasonable efforts must be made by the Referee to contact all clients of the lawyer whose solicitor-client privilege may be affected by the execution of this Warrant. The Referee shall advise the clients of the following:
  - i. That a Warrant was executed at a stated location and that things were seized that may be subject to solicitor-client privilege;
  - ii. Those things are in the custody of the Court and have not been viewed by the investigating or prosecuting authority; and
  - iii. The individual has the right to object to the release of the things to the investigating or prosecuting authority and a court hearing will be set down in order to determine the issue.
12. Where the Referee cannot contact a potential privilege holder, the Referee will recommend to the Court the proper process for notifying all clients whose solicitor-client privilege may be affected by this Warrant, which may include a recommendation that advertisements be placed in the relevant media, or other such alternate methods of notification as approved by the Court, if the Referee is of the view that such a step is necessary.
13. The Referee shall report to the Court the efforts made to contact all potential privilege holders, who will then be given a reasonable opportunity to assert a claim of privilege

over the seized Documents and, if that claim is contested, to have the issue decided by the Court in an expeditious manner.

14. If a claim of privilege is not made after a reasonable opportunity has been given to any potential privilege holders to assert a claim of privilege, the Court may hear an application by counsel for either the investigating or prosecuting authority, as may be, for the release of Documents seized pursuant to this Warrant that remain in the custody of the Court.
15. The prosecuting or investigating authority may make submissions to the Court on the issue of privilege, but shall not be permitted to inspect the Documents for the purposes of making the application.
16. Where the Documents are determined by the Court not to be privileged, they shall be released to the officer in charge of the search or another peace officer and may be used in the normal course of the investigation, subject to any direction by the Court.
17. Where the Documents are determined by the Court to be privileged, they shall be returned to a person designated by the Court.
18. All fees and disbursements of the Referee and the Computer Forensic Expert shall be borne by the investigating authority that obtained this Warrant.