

CANADA / JUDGMENT

R. v. Cancela

2025 BCSC 2008

COURT

Supreme Court of British Columbia

DECIDED

22 September 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2008 R. v. Cancela

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cancela,

2025 BCSC 2008

Date: 20250922

Docket: 26843-2

Registry: Nelson

Rex

v.

Andrew Lee Cancela

Before: The Honourable Madam Justice Lyster

Corrected Judgment: The text of the Reasons for Judgment were corrected

at para. 70 on October 21, 2025

Oral Ruling re: Defence Challenge to Search Warrant

Counsel for Crown:

M. Aziz

Counsel for Accused:

M. Patterson

Place and Date of Trial/Hearing:

Nelson, B.C.

August 1, 14 and 15, 2025

Place and Date of Judgment:

Nelson, B.C.

September 22, 2025

- [1] THE COURT: This is my oral ruling with respect to the defence application filed May 20, 2025, challenging the search warrant obtained on the basis of an Information to Obtain ("ITO") sworn by Constable Andrew Bachmann on April 21, 2021.
- [2] For the assistance of counsel, I gave counsel a copy of my speaking notes once I rendered this decision. I have since reviewed the transcript for clarity and to ensure all citations and quotations are complete and accurate.
- [3] By way of brief procedural background, this is the third oral ruling I have given in relation to this application. On July 2, 2025, the defence filed the second amended motion in which it sought orders requiring the Crown to demonstrate that the confidential informants referred to in the ITO exist and the production of certain materials related to the investigation. The Crown filed an application for summary dismissal of that application on July 8, 2025. On August 1, 2025, I granted, in part, the Crown's application for summary dismissal of the defence application. Specifically, I granted the part of the Crown's summary dismissal application dismissing the defence's application seeking to require the Crown to prove that the confidential informers exist. I dismissed the part of the Crown's summary dismissal application seeking to dismiss the defence's application for the production of certain material.
- [4] The defence applied to cross-examine Constable Bachmann on the ITO. On August 14, 2025, I granted, in part, the defence's application to cross-examine Constable Bachmann. The cross-examination proceeded that same day, and counsel provided concluding submissions on the underlying application challenging the warrant on August 15, 2025.
- [5] As a result of the cross-examination of Constable Bachmann, certain portions of the ITO were excised. Specifically, the following portions of the ITO were excised:
 - a) The part of paragraph 31.8 referring to having corroborated Informant A's information, "and by other police officers";
 - b) Paragraph 32.1.4, which referred to Informant A telling Handler A that, "MELVILLE works for CANCELA";
 - c) Paragraph 32.2.2, which referred to Informant A telling Handler A that, "CANCELA is the biggest cocaine dealer in Castlegar";

- d) Paragraph 32.2.5, which again referred to Informant A telling Handler A that, "MELVILLE works for CANCELA";
 - e) The part of paragraph 31.8 referring to information provided by Informant B being corroborated through, "and other police officers."
- [6] The ITO was sworn on April 21, 2021, and the search warrant was granted that same date. The search warrant authorized the police to enter two locations: the residence, outbuildings and vehicles located at 2645 - 5th Avenue, Castlegar, B.C. ; and the residence, outbuildings and vehicles located at 208 - 3rd Avenue, Castlegar, B.C. The applicant, Mr. Cancela, lived at the 5th Avenue residence (referred to in the ITO as TR1), together with his mother and father. Lisa Melville lived at the 3rd Avenue residence (referred to in the ITO as TR2). Three vehicles were specifically referred to in the ITO as being located at these two residences: at TR1, a black Honda Accord and a black Ford F150, both registered in the name of Mr. Cancela's mother and operated by Mr. Cancela; and at TR2, a grey Toyota Echo, registered in the name of Ms. Melville.
- [7] In broad terms, Constable Bachmann swore in the ITO that he had reasonable grounds to believe that Mr. Cancela and Ms. Melville had committed the offences of possession for the purposes of trafficking, possession of controlled substances, and trafficking in controlled substances, and that he had reasonable grounds to believe evidence of those offences would be found at the two target locations.
- [8] As set out at paragraph 17 of the ITO, the investigation began on March 9, 2021. Surveillance of the two residences was conducted between March 9 and April 21, 2021. Constable Bachmann swore that that surveillance showed activity consistent with drug trafficking. He said that Ms. Melville routinely visited Mr. Cancela's residence, which was said to be consistent with confidential informant information that Mr. Cancela was supplying Ms. Melville with drugs.
- [9] Constable Bachmann summarized his experience as a police officer, and in particular his experience with drug investigations and behaviour related to drug trafficking at paragraphs 18 through 20. Constable Bachmann has been an RCMP officer since December 2008, and has been posted to the Castlegar detachment since 2013. He worked in General Duty policing until March 2021, when he joined the Castlegar Crime Reduction Unit ("CRU").
- [10] At paragraphs 21 through 22, Constable Bachmann described the two target residences. He had personal experience with both residences, having gone to them in the past. Surveillance and checks on PRIME and CPIC confirmed that TR1 is Mr. Cancela's residence.

- [11] At paragraphs 23 through 24, Constable Bachmann outlined information he learned from CPIC and PRIME checks he conducted on April 8, 2021. He confirmed via these means that Mr. Cancela has a criminal record for two counts of fail to comply with recognizance from 2020. He also confirmed from JUSTIN that Mr. Cancela has two convictions for possession for the purposes of trafficking from 2011 and 2018. Those convictions were not recorded in Mr. Cancela's criminal record due to a failure to take his fingerprints at the time.
- [12] At paragraphs 25 through 26, Constable Bachmann summarized his personal dealings with Mr. Cancela and Ms. Melville. He had dealt with Mr. Cancela for seven-and-a-half years. Constable Bachmann swore that, from investigation and interactions, he is familiar with Mr. Cancela and believes that he is connected with the drug trade in Castlegar. He arrested Mr. Cancela in November 2020, at which time he was found to be carrying cocaine on his person. Mr. Cancela was subsequently charged with possession for the purposes of trafficking. No information is provided about the disposition of that charge. Constable Bachmann says that he has personally witnessed Mr. Cancela making short meets consistent with drug trafficking. He does not specify if this was during the surveillance subsequently outlined in the ITO or at some other time.
- [13] The confidential informant information is laid out at paragraphs 27 through 36. There were two confidential informants. Constable Bachmann is not the handler of either informant. Constable Bachmann does not state if either informant has a criminal record, as he believes that to do so could identify the confidential informants. Constable Bachmann does not identify the handler or handlers of the informants in the ITO. He does not provide any reason for not doing so in the ITO. In most places in the ITO, Constable Bachmann refers to Handler A. At paragraph 33, however, he referred to Handler B.
- [14] In my ruling granting leave to cross-examine Constable Bachmann, I granted the defence leave to cross-examine with respect to why he did not identify the handlers, and, if the reason was not that it was to protect the identity of the informants, to cross-examine with respect to the identity of the handlers. I also granted leave to cross-examine with respect to whether there were one or two handlers.
- [15] In cross-examination, Constable Bachmann testified that there was a reason why he did not name the handlers in the ITO. He testified that it was for the protection of the informants, because the identity of the handlers could reveal the identity of the informants. While initially reluctant to do so, he did clarify that there is only one handler. I find that the reference to Handler B in paragraph 33 was merely a typographical error.
- [16] Turning to the information provided by the confidential informants, the reliability assessment for Informant A is found at paragraph 31. Constable Bachmann says that he met with Handler A on a date in April 2021, which is redacted, and that Handler A provided him with information that Informant A had provided them since a date which is redacted. He says that he cannot identify Informant A for security reasons. He says that the information provided by Informant A is reliable for the following reasons: they provided the information

voluntarily; they are motivated by receiving money (some information is redacted with respect to motivation); they have been previously paid for information provided; they have not received any promises as a result of information provided; there have been no occasions on which Handler A has determined that they intentionally provided false or misleading information; they may or may not have a criminal record; they are not willing to testify in court due to fear for their safety and the safety of their family; their information has been corroborated through independent means, including police indices, checks and surveillance, but Constable Bachmann had not been able to corroborate all of their information; and their information has led to arrests, and a redacted number of drug files being investigated.

- [17] Constable Bachmann was cross-examined with respect to how he received information from Handler A. He testified that Handler A provided information, and he made notes as they did so. All information was provided verbally. He never saw any written documentation from Handler A.
- [18] Constable Bachmann confirmed that all information relied upon to establish Confidential Informant A's reliability was provided by Handler A, with the exception of information set out at paragraph 31.8, as it was Constable Bachmann who checked the police indices and he conducted surveillance. The reference in paragraph 31.8 to other police officers was excised, as indicated earlier, because Constable Bachmann had no notes of, nor any recollection of, any police officers that corroborated any information.
- [19] Constable Bachmann was cross-examined about the statement in paragraph 31.8, that he had not been able to corroborate all information provided by Confidential Informant A. He testified that he could not corroborate that Mr. Cancela was the biggest cocaine dealer in Castlegar, or that Ms. Melville works for him, which is why those references were excised from the ITO.
- [20] Turning to the specifics of the information said to be provided by Confidential Informant A to Handler A, and in turn to Constable Bachmann, Constable Bachmann says at paragraph 32 that he met with Handler A on a redacted date in April 2021 and that Handler A provided the following information, which they said Confidential Informant A had provided to them:
- a) On a redacted date in February 2021, Informant A told Handler A that Mr. Cancela sells cocaine, he delivers cocaine in his black Ford truck, and he sells drugs from his house. The reference to Ms. Melville working for Mr. Cancela was excised. There are two other redacted pieces of information; and
 - b) On a redacted date in March 2021, Informant A told Handler A that Mr. Cancela sells cocaine, Mr. Cancela delivers drugs in a black F150, Mr. Cancela delivers drugs in a black Honda, and that people go to Mr. Cancela's home to buy drugs. The references to Mr. Cancela being the biggest cocaine dealer in Castlegar and to Ms. Melville working for Mr. Cancela were excised from the ITO.

- [21] Turning to Informant B, the reliability assessment is provided at paragraph 33. I have corrected the typographical error referring to Handler B in that paragraph. It is identical to the reliability assessment for Informant A.
- [22] At paragraph 35, Constable Bachmann sets out the information said to have been provided by Confidential Informant B to Handler A, and in turn from Handler A to him.
- [23] On a redacted date in April 2021, Constable Bachmann met with Handler A, who provided the following information that Informant B had provided them. On a redacted date in January 2021, Informant B told Handler A that: Mr. Cancela sells cocaine; Mr. Cancela drives a black F150 and a black car; Mr. Cancela will deliver drugs in a black Ford and a black car; people go to Mr. Cancela's residence to buy drugs; Mr. Cancela lives with his parents; Ms. Melville sells cocaine; Ms. Melville gets cocaine from Mr. Cancela; Ms. Melville drives a small silver four-door vehicle, and people go to Ms. Melville's house to buy cocaine. There is also a redacted piece of information.
- [24] On a redacted date in February 2021, Informant B told Handler A that: people go to Mr. Cancela's house to buy drugs; Mr. Cancela delivers drugs in a black truck and a black car; Ms. Melville sells cocaine; people go to Ms. Melville's house to pick up drugs, and Ms. Melville will deliver drugs in her four-door silver vehicle. There are also several redacted pieces of information.
- [25] On a redacted date in April 2021, Constable Bachmann again met with Handler A, who provided the following information that Informant B had provided them. On a redacted date in April 2021, Informant B told Handler A that Mr. Cancela sells drugs; Ms. Melville sells cocaine; and Ms. Melville gets cocaine from Mr. Cancela.
- [26] The details of the investigation are set out at paragraphs 37 through 52 of the ITO. At paragraph 37, Constable Bachmann says that on November 15, 2020, he investigated a report of an erratic driver in Castlegar. The driver was Mr. Cancela. When Constable Bachmann searched Mr. Cancela incidental to arrest, he located six flaps of cocaine on his person. Constable Bachmann states his belief that Mr. Cancela continued to traffic controlled substances after that day.
- [27] The surveillance began March 9, 2021. I will not recount all of the surveillance observations recorded in the ITO, but will highlight some, particularly as they relate to the grounds for searching Mr. Cancela's residence. On March 9, 2021, Acting Corporal Plotnikoff engaged in surveillance of both Mr. Cancela and Ms. Melville. The only recorded observations are of Ms. Melville, her residence, and unknown persons going to Ms. Melville's residence for short visits, which Constable Bachmann believes were consistent with drug trafficking in his experience.

- [28] On March 10, 2021, Acting Corporal Plotnikoff and Constable Bachmann engaged in surveillance. Again, all recorded observations are of Ms. Melville, her vehicle, her residence, and unknown persons going to her residence for short visits. After a break in surveillance, Ms. Melville's vehicle was seen parked at Mr. Cancela's residence at 1:50 p.m. Ms. Melville departed at 1:54 p.m.
- [29] On March 15, 2021, Acting Corporal Plotnikoff conducted surveillance. At 1:01 p.m., Ms. Melville parked her car at Mr. Cancela's residence and went inside. She left at 1:03 p.m., after which she drove to a parking lot and met an unknown woman, who handed her what appeared to be paper money through the open driver's side window, and who had a small object in the palm of her hand as she removed her hand from Ms. Melville's car. Constable Bachmann states that he believes Ms. Melville's visit to the Cancela residence was consistent with her attending to purchase drugs, as the visit was two minutes long and consistent with a drug buy and Informant B's information. He further states that Ms. Melville's subsequent interaction with the unknown woman at the parking lot was a hand-to-hand drug buy, based on his experience.
- [30] On March 16, 2021, Acting Corporal Plotnikoff conducted surveillance. At 11:29 a.m. Ms. Melville arrived at the Cancela residence. She left her car running as she exited it and went inside the house. At 11:36 a.m. she left the house, got into her car, and sat inside it for approximately a minute until she left. Ms. Melville then had a series of interactions with unknown persons until 11:44 a.m. Constable Bachmann states his belief that Ms. Melville's seven-minute visit to the Cancela residence was related to drug trafficking, based on Informant B's information and the apparent quick nature of the visit. He offers the opinion that her subsequent interactions were consistent with drug trafficking.
- [31] On March 20, 2021, Acting Corporal Plotnikoff conducted surveillance. Ms. Melville left her residence at 9:28 a.m. and arrived at the Cancela residence at 9:35 a.m. She went inside the residence and left it at 9:39 a.m. Surveillance was terminated at that time. Constable Bachmann does not offer any opinions or beliefs with respect to this visit.
- [32] On March 23, 2021, Acting Corporal Plotnikoff conducted surveillance. All of the recorded observations are of Ms. Melville, her residence, her vehicle and her interactions with an unknown male and her visit to another residence. Constable Bachmann says that he believes both were consistent with drug trafficking, based on his experience and corroborated by both informants' information.
- [33] On April 6, 2021, Acting Corporal Plotnikoff and Constable Bachmann conducted surveillance. All of the recorded observations are of Ms. Melville, her vehicle, her residence, and her interactions with an unknown man, who appeared to be a delivery driver, as well as another man who visited Ms. Melville's residence, the latter of which Constable Bachmann believed to be consistent with a drug buy.

- [34] On April 7, 2021, Acting Corporal Plotnikoff and Constable Bachmann conducted surveillance. At 2:04 p.m. they observed the black Honda Accord registered to Silvina Cancela, Mr. Cancela's mother, parked at the Cancela residence. At 2:52 p.m. Mr. Cancela left the residence in the Accord. At 2:53 p.m. he arrived at the Cedar Manor Apartment building and parked, leaving the car running. At 2:54 p.m. an unknown male got into the passenger seat of the Accord. At 2:57 p.m. Mr. Cancela left and drove towards the Cancela residence as the lone occupant. He parked the Accord at the residence at 2:59 p.m. Constable Bachmann says that he believes this was a drug buy, based on his experience that the about-three-minute visit was consistent with a drug buy, and that it corroborates both informants' information.
- [35] It is notable that this is the first recorded observation of Mr. Cancela during the surveillance.
- [36] On April 8, 2021, Acting Corporal Plotnikoff conducted surveillance. At 12:53 p.m. surveillance started at the Cancela residence. Both the black Accord and a purple Mazda truck were parked there. At 1:09 p.m. Mr. Cancela drove away, I infer in the Accord, and parked it in a parking lot near an A&W at 1:14 p.m. An unknown male got in the passenger seat and left it at 1:16 p.m. Mr. Cancela drove away towards his residence. At 1:20 p.m. the Accord was parked in the Cancela residence driveway. At 1:45 p.m. a truck parked at the residence and an unknown male went inside the residence. At 1:54 p.m. the unknown male drove away in the truck. At 2:16 p.m. Silvina Cancela arrived at the residence in the black Ford F150. At 2:34 p.m. Mr. Cancela left the residence in the F150. At 2:35 p.m. he parked the F150 at the Cedar Manor parking lot and an unknown male got inside the front passenger seat. At 2:36 p.m. Mr. Cancela drove away, again as the lone occupant. He pulled into the middle stall of a car wash and an unknown person jumped into the passenger seat. At 2:37 p.m. that person exited and Mr. Cancela drove away. At 2:49 p.m. the Honda and two other vehicles were parked at the Cancela residence. The Ford F150 was not there. At 3:08 p.m. Mr. Cancela arrived back at the residence in the Ford F150 and unloaded some boxes. Constable Bachmann states that he believes Mr. Cancela's two encounters were consistent with drug purchases, based on the length of the meetings and to be consistent with both informants' information about him delivering drugs or cocaine.
- [37] This is the second recorded observation of Mr. Cancela.
- [38] On April 12, 2021, Acting Corporal Plotnikoff and Constable Aimoe conducted surveillance. At 10:59 a.m. they started surveillance on Mr. Cancela. At 1:25 p.m. the Ford F150 was seen driving on 6th Avenue. An unknown female was driving and an unknown male was in the front passenger seat. All other observations related to Ms. Melville. Constable Bachmann states that the three short visits by unknown persons at her residence were consistent with drug trafficking.
- [39] On April 13, 2021, Acting Corporal Plotnikoff and Constable Bachmann conducted surveillance. At 10:21 a.m. surveillance moved to the Cancela residence. At 10:36 a.m. Ms. Melville arrived at the Cancela residence in her car. She went inside. At 10:44 a.m. a Canada

Post delivery person arrived and they left at 10:45 a.m. At 10:50 a.m. Ms. Melville left and arrived at her residence at 11:00 a.m. All other observations related to Ms. Melville and her interactions, including one with a person known to be a user of cocaine. Constable Bachmann states his belief that Ms. Melville's various interactions with unknown people were consistent with drug trafficking. He does not offer any belief with respect to Ms. Melville's visit to the Cancela home.

[40] On April 20, 2021, Acting Corporal Plotnikoff and Constable Bachmann conducted surveillance. At 10:02 a.m. the Accord and the Ford F150 were both parked at the Cancela residence. At 1:55 p.m. they were both seen to be parked at TR2, Ms. Melville's residence, as was another vehicle registered to Silvina Cancela, an Audi. Constable Bachmann was not cross-examined about this, but given the context I think the reference to TR2 is likely a typographical error and that these vehicles were parked at TR1, the Cancela residence. At 2:33 p.m. the Audi turned left onto 24th Street. Albert Cancela, Mr. Cancela's father, was in the passenger seat. The driver is not identified. Constable Bachmann does not offer any opinions or beliefs about these or the other observations made on April 20.

[41] On April 21, 2021, Acting Corporal Plotnikoff and Constable Bachmann conducted surveillance. At 9:31 a.m. the Accord, the Ford F150, and the Audi were all parked at the Cancela residence. At 10:28 a.m. Ms. Melville arrived in her car with her dog. Ms. Melville and her dog went into the Cancela residence and left at 10:34 a.m. All other recorded observations relate to Ms. Melville.

[42] Constable Bachmann states that he believes Ms. Melville went to the Cancela residence to get drugs, based on the short length of the visit and Informant B's information, as well as a short visit an unknown person made to Ms. Melville's residence after she returned from the Cancela residence.

[43] At paragraph 52 of the ITO, Constable Bachmann summed up the surveillance as follows.

Surveillance of CANCELA and MELVILLE and TR1 and TR2, between March 9, 2021, and April 21, 2021, was sporadic, sometimes with days in between. Each day surveillance was conducted activity consistent with drug trafficking was observed by myself and other surveillance members. I believe CANCELA and MELVILLE are trafficking drugs on a daily basis. I base this belief on surveillance which shows consistent daily drug trafficking when surveillance was conducted.

[44] With that by way of an overview of the contents of the ITO, I turn to a consideration of the challenge to the warrant. A search warrant is presumed to have been properly issued and an accused bears the burden of proving otherwise: *R. v. Wilson*, 2011 BCCA 252 at para. 63. The reviewing judge does not stand in the same place as the authorizing judge. I am not to substitute my view for that of the authorizing judge. If, based on the record which was before the authorizing judge, as excised and as amplified on review, I conclude that the authorizing judge could have granted the warrant, then I should not interfere: *R. v. Araujo*, 2000 SCC 65 at para. 51. The presence of matters such as fraud, non-disclosure, misleading evidence and new evidence are relevant, but their sole impact is to determine whether there

continues to be any basis for the decision of the authorizing judge.

- [45] There must be sufficient reliable information in an ITO to support an authorization. There must be at least some evidence that might reasonably be believed on the basis of which the authorization could have been issued by the justice: Araujo at para. 51.
- [46] I am required to consider the totality of the circumstances, and not just each aspect of the grounds in isolation. I must consider whether, in light of all of the grounds viewed cumulatively, the issuing judge could have issued the warrant: *R. v. Belanic*, 2019 BCSC 1411, at para. 9.
- [47] In *Belanic*, at para. 32, Riley J., then of this court, stated that in assessing the reliability of confidential informant information the court must be guided by the "totality of the circumstances" approach as set out by the Supreme Court of Canada in *R. v. Debot*, [1989] 2 S.C.R. 1140, at para. 53. I must consider the extent to which the information is compelling in its detail; the credibility of the informer; and the extent to which the informer's information is corroborated. Weaknesses in one area may be overcome by strengths in the other two.
- [48] It is with these principles in mind that I assess whether the issuing justice could have issued the warrant on the basis of the ITO.
- [49] I will start by considering the information provided by the confidential informants, via Handler A, and assess it in relation to the "three Cs" identified in *Debot*.
- [50] The first "C" is whether the information predicting the commission of a criminal offence was compelling. In making this assessment, the court must consider the degree of detail of the tip: *R. v. Garofoli*, 1990 CanLII 52 at para. 68. In *R. v. Maton*, 2005 BCSC 330, at para. 43, the court quoted the judgment of Martin J.A. in the Ontario Court of Appeal, in *R. v. Debot*, (1986) 30 C.C.C. (3d) 207, where the learned Justice wrote:

On an application for a search warrant, the informant must set out in the information the grounds for his or her belief in order that the justice may satisfy himself or herself that there are reasonable grounds for believing what is alleged: ... Consequently, a mere statement by the informant that he or she was told by a reliable informer that a certain person is carrying on a criminal activity or that drugs would be found at a certain place would be an insufficient basis for the granting of the warrant. The underlying circumstances disclosed by the informer for his or her conclusion must be set out, thus enabling the justice to satisfy himself or herself that there are reasonable grounds for believing what is alleged. I am of the view that such a mere conclusory statement made by an informer to a police officer would not constitute reasonable grounds for conducting a warrantless search ... Highly relevant are whether the informer's "tip" contains sufficient detail to ensure that it is based on more than mere rumour or gossip...

- [51] The information provided by Confidential Informant A was not highly detailed. As redacted, it amounts to the assertions that Mr. Cancela sells cocaine and that he delivers it in his black Ford F150 and a black Honda, and that people go to his house to buy drugs. The assertion that Mr. Cancela sells cocaine is highly generalized. That he delivers cocaine using his black

Ford F150 and a black Honda is somewhat more specific, but anyone who knows Mr. Cancela is likely to know what vehicles he drives. Similarly, the assertion that people go to Mr. Cancela's house to buy drugs is quite general in nature.

- [52] The information provided by Informant B is very similar, although they also provided information about Ms. Melville. Informant B's information amounts to the following: Mr. Cancela sells cocaine; he drives a black F150 and a black car and will use them to deliver drugs; people go to Mr. Cancela's house to buy drugs. Informant B adds the information that Mr. Cancela lives with his parents and information about Ms. Melville selling cocaine, which she gets from Mr. Cancela, and that she drives a small silver four-door vehicle, which she uses to deliver drugs, and people go to her house to buy drugs.
- [53] So far as Mr. Cancela is concerned, the additional details provided by Informant B are that he lives with his parents and that he supplies cocaine to Ms. Melville. The fact that Mr. Cancela lives with his parents is again likely to be known to anyone acquainted with Mr. Cancela. The alleged fact that he supplies cocaine to Ms. Melville, who in turn sells cocaine, is a more detailed piece of information.
- [54] Overall, I would assess the information provided by the two informants via Handler A, as not very compelling. Much of it consists of bald conclusory statements, such as "Cancela sells cocaine", or may be nothing more than rumour or gossip or common knowledge among those acquainted with Mr. Cancela, such as that he lives with his parents and the vehicles he drives.
- [55] The second "C" in Debot is "where that information was based on a tip outside of the police, was the source credible?" As stated by Martin J.A. in Debot in the Court of Appeal, it is highly relevant "whether the informer discloses his or her source or means of knowledge."
- [56] The ITO provides very little information about the two informants which would allow the court to assess their credibility. What is stated is that they provided information voluntarily and they are motivated by receiving money. They have both been paid for information in the past, but no information is provided about when or for what information, or what the financial arrangements may have been. No promises have been made to either of them by the police as a result of the information provided. There are no occasions on which Handler A has determined that they intentionally provided information that was false or misleading. There is no information provided about whether the information they provided in the past was accurate. Both informants may or may not have a criminal record. Neither of them is willing to testify due to fear for themselves and their families. They have both provided information that has led to arrests and controlled substances files being investigated. No information is provided with respect to how many arrests or files had been investigated nor the ultimate disposition of those files.

- [57] No information is provided about how the informants learned of the information they provided. It is not known whether they knew the information they provided to Handler A first-hand or second-hand, or even at further remove. Constable Bachmann did not know whether the informants' information was first or second-hand.
- [58] In *Garofoli*, at para. 68, Mr. Justice Sopinka held that hearsay statements of a confidential informant can provide reasonable and probable grounds to justify a search. As summarized in the *R. v. Enns*, 2021 NSPC 45 at para. 16:
- [16] The informant's belief does not have to be based on personal knowledge. Hearsay is permitted, but it must be sufficiently sourced to allow the issuing justice of the peace to carry out her constitutionally-mandated role, to independently assess whether the informant's belief is reasonable and grounded in credible and reliable information.
- [59] It is the norm that confidential informants are not identified in ITOs due to the protection afforded by informer privilege. The unique aspect of the case at bar is that the handler is not identified and the hearsay in question is, at a minimum, double unattributed hearsay. Counsel were unable to find any other cases in which the handler of the confidential informants was also unidentified. The court has no information about Handler A. It is reasonable to infer that Handler A is a police officer, although that is not stated in the ITO. Nothing is stated about Handler A's experience as a police officer in drug investigations or as a confidential informant handler.
- [60] As in the *R. v. Herta*, 2018 ONCA 927, at para. 32, there is no information about how long either informant has been in an informant/handler relationship with Handler A. The issuing justice had no evidence upon which they could assess the credibility or reliability of Handler A, who is the vital conduit between the confidential informants and Constable Bachmann.
- [61] I find that the unique circumstances of this case, in particular the unidentified handler about whom nothing is known, mean that the information provided by the confidential informants via the unidentified handler is of low credibility and reliability.
- [62] The third Debot "C" is whether the information was corroborated by police investigation. In this case, some degree of corroboration is provided by the fact that Mr. Cancela has two past convictions for trafficking in controlled substances, but the court must look to the surveillance evidence to determine to what degree the information provided by the confidential informants is corroborated.
- [63] It is noteworthy that Mr. Cancela was only observed on two occasions, on April 7 and 8, 2021. I have already summarized the police observations of Mr. Cancela on those two days. They amount to a short meeting with an unknown male in the black Honda Accord at the Cedar Manor Apartment buildings on April 7, a short meeting with an unknown male in the Accord in the rear parking lot of the A&W on April 8, a short meeting with an unknown male in the black Ford F150 in the Cedar Manor parking lot on April 8, and a short meeting with an unknown male in a car wash in the Ford F150 on April 8.

- [64] Constable Bachmann states that he believes that each of these four short meetings was consistent with a drug purchase. I accept that these meetings were consistent with drug purchases. However, in none of them did the surveilling officers see anything in Mr. Cancela's hands, such as money or a flap that might contain cocaine, nor anything be exchanged between the hands of Mr. Cancela and the unknown persons who entered the vehicles, nor were any of the persons Mr. Cancela interacted with known to police to be users of drugs.
- [65] Mr. Cancela was not observed in any of the other recorded observations made during the 13 days of surveillance. The vast majority of the observations involved Ms. Melville, who was frequently observed to engage in conduct consistent with drug trafficking.
- [66] Ms. Melville was observed to go to the Cancela residence on (by my count) six occasions. Constable Bachmann states that he believes three of these (again by my count) were consistent with drug trafficking. I infer that when he does not make such a statement he does not believe the visit was consistent with drug trafficking. There is no direct evidence that Mr. Cancela was at home on any of the occasions Ms. Melville visited the Cancela residence, and the evidence is clear that Mr. Cancela was not the sole resident, as he lived there with his mother and father.
- [67] I find that the surveillance evidence provides some measure of corroboration of the information provided by the confidential informants via the anonymous handler. Mr. Cancela was observed on four occasions on two days engaging in behaviour consistent with short meeting drug transactions, and doing so in both the Ford F150 and the Accord, which provides some corroboration of both informants' information.
- [68] Ms. Melville was observed on a greater number of occasions involved in behaviour consistent with short meeting drug transactions. In my view, however, the evidence does not rise to the level of corroborating that Mr. Cancela was supplying drugs to Ms. Melville. The number of visits she made to the Cancela residence is suspicious, but no more, especially when viewed in light of the absence of any evidence that Mr. Cancela was home when she went there.
- [69] The surveillance does not corroborate that people go to Mr. Cancela's house to buy drugs. The only person observed to go to the Cancela residence beyond members of the Cancela family and delivery drivers, was Ms. Melville.
- [70] It is of concern that Constable Bachmann knew that certain specific pieces of information provided by the informants could not be corroborated, namely that Mr. Cancela is the biggest cocaine dealer in Castlegar and that Ms. Melville works for Mr. Cancela, but he did not state that in the ITO. In my view, where a police officer knows a particular piece of relevant information provided by an informant could not be corroborated, that should be specifically stated in the ITO. The failure to do so falls short of the obligation on an officer seeking a search warrant to "discharge the special duties of candor and full disclosure that attach in ex parte proceedings": *R. v. Morelli*, 2010 SCC 8, at para. 102. The failure to do so

risks misleading the issuing justice into thinking the evidence in support of the warrant being issued is stronger than it, in fact, is.

- [71] The extent to which the surveillance corroborates the informants' information was also overstated in the ITO. I have already quoted the passage where Constable Bachmann stated that he believed Mr. Cancela and Ms. Melville were trafficking drugs on a daily basis, a belief he based on surveillance, which he said showed daily drug trafficking when surveillance was conducted. The difficulty with this statement is that surveillance was not conducted on a daily basis, and even on some days that it was there was no evidence of behaviour consistent with drug trafficking. Constable Bachmann may well have had a suspicion that Mr. Cancela and Ms. Melville were involved in daily drug trafficking, but the evidence contained in the ITO did not establish that to the level of a credibly-based probability.
- [72] In sum, the surveillance evidence provides some corroboration of some, but by no means all, of the informants' information.
- [73] I am required to consider the totality of the circumstances and not just each aspect of the grounds in isolation. I must consider whether, in light of all of the grounds viewed cumulatively, the issuing judge could have issued the warrant.
- [74] I have concluded that, viewed in its totality, the information provided in the ITO did not provide a sufficient basis upon which the issuing judge could have issued the warrant. I appreciate that weaknesses in one area may be overcome by strengths in the other two. Here, the weaknesses with respect to the reliability and credibility of the informants are significant. While the informants provided some information, it was not particularly compelling in its detail. There was some corroboration of some of the information, but that corroboration is not strong enough to overcome the absence of sufficient information about the informants, or any information about the handler, which would allow the issuing justice to assess the reliability of the informants' information and thus, whether Constable Bachmann's belief that Mr. Cancela was engaged in drug trafficking was reasonable and grounded in credible and reliable information.
- [75] For these reasons, I conclude that the issuing justice could not have issued the warrant, and the search warrant must be set aside. To that extent, Mr. Cancela's s. 8 Charter rights have been infringed.

"L.M. Lyster J."

LYSTER J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/20/2025BCSC2008cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-cancela-2025-bcsc-2008>

Prepared on 27 October 2026 · Esheria