

CANADA / JUDGMENT

R. v. Cancela

2025 BCSC 1325

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DECIDED

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2025 BCSC 1325 R. v. Cancela

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cancela,

2025 BCSC 1325

Date: 20250606

Docket: 26849-2

Registry: Nelson

Rex

v.

Andrew Lee Cancela

Before: The Honourable Justice Lyster

Oral Ruling

re Challenge to Validity of Search Warrant

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(by videoconference)

Counsel for the Crown:

M.A. Patterson

(by videoconference)

Place and Date of Hearing:

Nelson, B.C.

June 3-4, 2025

Place and Date of Judgment:

Nelson, B.C.

June 6, 2025

- [1] THE COURT: These are my oral reasons for judgment with respect to Mr. Cancela's challenge to the validity of the search warrant that was obtained by the police in relation to the matter before the court. The basis for the search warrant was an information to obtain ("ITO") that was sworn by Castlegar RCMP Acting Corporal Kyle Plotnikoff, and was submitted on November 9, 2022. The warrant was granted on that same date.
- [2] The search warrant authorized the police to enter the residence, outbuilding, and vehicles located at 2645 5th Avenue, Castlegar, B.C., to search for evidence of drug trafficking offences. The search warrant was executed on November 10, 2022 and, if the evidence is found to be admissible, the Crown intends to establish that the search yielded evidence that would form the basis of the charges against Mr. Cancela.
- [3] Mr. Cancela lived at the target residence, as did his parents. Mr. Cancela was required to live there pursuant to the terms of a release order at the time the ITO was sworn.
- [4] The defence applied for leave to cross-examine Acting Corporal Plotnikoff and, in oral reasons rendered April 17, 2025, I granted the defence leave to do so with respect to two issues. The first was the sources of corroboration that were referred to in paragraphs 28.8 and 32.8 of the ITO, that is, what police officers and what police indices did Acting Corporal Plotnikoff consult that corroborated the two confidential informants' information? The second was with respect to Acting Corporal Plotnikoff's vantage points and ability to observe the incidents he described at paragraphs 37 through 46 of the ITO, which he described as having observed during surveillance at or near the target residence.
- [5] Cross-examination with respect to those two issues occurred on June 3, 2025, followed by counsel's submissions with respect to the validity of the warrant. In challenging the authorization for the warrant, the defence submits that Acting Corporal Plotnikoff's testimony established that he had no notes about and could not identify the police officers whom he spoke to, that insufficient information is provided about the confidential informants' information, in particular when they learned of the matters referred to in the ITO and the sources of their information, and that Acting Corporal Plotnikoff had no notes about or recollection of his vantage points in making his surveillance observations, such that his ability to make those observations has not been established. These issues, in the defence's submission, mean that the confidential informants' information is not sufficiently

corroborated, credible or compelling to be relied upon. The defence further submits that Acting Corporal Plotnikoff demonstrated a cavalier attitude with respect to the information he chose to provide in the ITO, and that the ITO was laced with boiler-plate or cut-and-paste information which could not be relied upon in support of the warrant being issued. The defence challenges the credibility of the entirety of the ITO.

- [6] In general terms, the ITO contains evidence relating to Acting Corporal Plotnikoff's experience as a police officer, in particular in relation to drug trafficking offences; his personal knowledge of Mr. Cancela; a description of the target residence; information gleaned from police indices about Mr. Cancela's criminal record; redacted information about confidential informants referred to as A and B and the information that they provided; and observations made by Acting Corporal Plotnikoff during his surveillance of the target residence.
- [7] My review of the warrant will be based on the ITO, as amplified by the cross-examination of Acting Corporal Plotnikoff.
- [8] The applicable principles in reviewing a warrant are well established. 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 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 relevance is to determine whether there continues to be any basis for the decision of the authorizing judge.
- [9] 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.
- [10] 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.
- [11] In *Belanic*, at para. 32, Justice Riley, then of this court, stated that, in assessing the reliability of confidential informant information, the court must be guided by the totality of circumstances approach set out by the Supreme Court of Canada in *R. v. Debot*, 1989 CanLII 13. 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.

- [12] 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. To that end, I will review the contents of the ITO in some more depth, insofar as they relate to the issues raised by the defence's application.
- [13] In the ITO, Acting Corporal Plotnikoff sets out his experience and the knowledge he has gained about drug possession and drug trafficking, including the characteristics of drug transactions. There is no question that Acting Corporal Plotnikoff is an experienced police officer and that he has significant experience in the investigation of drug crimes. He has been an RCMP member since 2009 and has served in the Crime Reduction Unit in Castlegar since February 2017. In his time serving in Castlegar, he has become familiar with the drug culture in Castlegar and the surrounding areas. He handles confidential informants.
- [14] Acting Corporal Plotnikoff had dealt with Mr. Cancela for 13 years at the time of swearing the ITO, and he believed Mr. Cancela to be connected to the drug trade in Castlegar. He has previously executed two search warrants on the target residence, the second of which occurred during the spring of 2021. At that time, Mr. Cancela was living at the target residence with his parents. A large amount of controlled substances and associated items were found at that time. At the time of swearing the ITO, that matter was still before the courts.
- [15] The target residence is described, as is Acting Corporal Plotnikoff's knowledge of it. He has been inside the residence when he executed the previous search warrants. He knows that Mr. Cancela resides there with his two parents.
- [16] Acting Corporal Plotnikoff provides background information about Mr. Cancela, including that he has two convictions for failure to comply with a recognizance from 2020. He has two convictions for possession for the purposes of trafficking in 2011 and 2018.
- [17] Acting Corporal Plotnikoff next sets out, in redacted form, the information about and received from the two confidential informants relied upon in support of a search warrant being authorized. He is the handler for both informants.
- [18] In relation to Confidential Informant A, they have provided information in the past. They are said to be motivated by financial compensation and they have been paid for information in the past. Acting Corporal Plotnikoff has not found Confidential Informant A to have intentionally provided false or misleading information in the past. At paragraph 28.8, Acting Corporal Plotnikoff says that information provided by Confidential Informant A has been corroborated through independent means, including, and not limited to, police indices checks, surveillance, and other police officers. Acting Corporal Plotnikoff has not been able to corroborate all of the information provided by Confidential Informant A. I will return to this paragraph later in my decision, as it was the subject of cross-examination and submissions.

- [19] Information provided by Confidential Informant A has been previously used in other investigations, in particular, other judicial authorizations that led to the arrest of individuals and the seizure of drugs and drug-related items.
- [20] Acting Corporal Plotnikoff sets out the following information, which was redacted in the ITO, and which was said to have been provided by Confidential Informant A:
29. In the late summer of 2022 . . . I received information from Informant 'A'. The following is an accurate summary of the information provided by Informant 'A':
- 29.1. CANCELA sells cocaine;
- 29.2. CANCELA sells cocaine from his parent's house;
- 29.3. People go to CANCELA's house to purchase drugs;
- 29.4. People stop in the alleyway, at CANCELA's house, to purchase drugs from CANCELA;
- 29.5. People go to the front door, at CANCELA's house, to purchase drugs from CANCELA.
30. In the fall of 2022, I received information from Informant 'A'. The following is an accurate summary of the information provided by Informant 'A':
- 30.1. CANCELA sells cocaine;
- 30.2. CANCELA sells cocaine from his residence;
- 30.3. People stop in the alleyway beside CANCELA's house to purchase drugs from CANCELA;
- ...
- 30.5. Michael CONRAD sells drugs for CANCELA.
31. In the fall of 2022 . . . I received information from Informant 'A'. The following is an accurate summary of the information provided by Informant 'A':
- 31.1 CANCELA sells cocaine;
- ...
- 31.4 People go to CANCELA's house to buy drugs;
- 31.4.1. Specifically, people park in the alley near CANCELA's house;
- 31.4.2. Specifically, people park in the driveway at CANCELA's house;
- 31.4.3. Specifically, people park on the street and walk to CANCELA's house.
- 31.5 CANCELA uses paper flaps to package drugs.
- [21] In relation to Confidential Informant B, they too have provided information in the past. They are also said to be motivated by financial compensation and to have been paid for information in the past. Acting Corporal Plotnikoff has not found Confidential Informant B

to have intentionally provided false or misleading information in the past. At paragraph 32.8, Acting Corporal Plotnikoff says, in words identical to those used about Confidential Informant A, that information provided by Confidential Informant B has been corroborated through independent means, including, but not limited to, police indices checks, surveillance, and other police officers. Acting Corporal Plotnikoff has not been able to corroborate all of the information by Confidential Informant B. Again, I will return to this paragraph later in my decision.

[22] Information provided by Confidential Informant B has been previously used in other investigations, in particular, other judicial authorizations that led to the arrest of individuals and the seizure of drugs and drug-related items.

[23] At paragraphs 33 through 35, Acting Corporal Plotnikoff provides the following information, which was redacted in the ITO, which Confidential Informant B provided:

33. In the fall of 2022 . . . I received information from Informant 'B'. The following is an accurate summary of the information provided by Informant 'B':

33.1. CANCELA sells cocaine;

33.2. People go to CANCELA's house to buy drugs.

34. In the fall of 2022 . . . I received information from Informant 'B'. The following is an accurate summary of the information provided by Informant 'B':

34.1. CANCELA sells cocaine;

. . .

34.3. People stop in the alleyway at CANCELA's residence to buy drugs from CANCELA.

35. In the fall of 2022 . . . I received information from Informant 'B'. The following is an accurate summary of the information provided by Informant 'B':

35.1. CANCELA sells cocaine;

35.2. CANCELA sells drugs from his house;

35.3 People use alley to go to CANCELA's house.

[24] Acting Corporal Plotnikoff then provides information with respect to corroborating the information that he received from the confidential informants by means of surveillance on the target residence.

[25] I will not outline all of Acting Corporal Plotnikoff's recorded observations. In summary, he began the investigation on October 13, 2022, on the basis that it was believed that Mr. Cancela was selling drugs from the target residence. He conducted surveillance on seven dates, being October 26, November 1, 2, 3, 7, 8, and concluding on November 9, 2022.

[26] Observations of note include those recounted as occurring on October 26, 2022, beginning at 4:04 p.m., during which he wrote the following at paragraphs 37.7 to 37.9:

37.7. At [4:05] CANCELA exited the Target Residence and was standing by the alley (formally where CONRAD's Toyota was parked) on his cell phone. CANCELA's cell phone was being held with his right hand as he spoke. It appeared CANCELA was holding small objects in his left hand as he was clenching something with his hand. CANCELA stood by the bushes, near the alley, in the front yard of the Target Residence and appeared to be waiting for someone as he looked back and forth;

37.8. At 4:05 pm, a grey Toyota Corolla sedan arrived at the Target Residence and parked in the alley on the south side of the Target Residence where CANCELA was standing. An unknown male . . . was driving the grey Toyota Corolla. UM1 was a larger male with darker hair. UM1 parked the grey Toyota Corolla right across from CANCELA and CANCELA quickly went around to the passenger side front door and opened it. CANCELA's left hand threw several white paper objects onto the passenger seat and UM1 handed CANCELA green paper bills believed to be \$20 dollar Canadian currency. The whole interaction between UM1 and CANCELA took about ten seconds. UM1 departed east bound in the grey Toyota Corolla (BCLP MH661A) and CANCELA walked back to the front yard of the Target Residence. As CANCELA walked back to the front yard he placed the green bills into his front left short pocket with his left hand. CANCELA stood in the yard by the bushes again talking on his cell phone;

37.9. At 4:09 pm, CANCELA walked out to the alley and met an unknown male . . . as UM2 walked towards CANCELA's location. UM2 was Caucasian, 40's, wearing a dark jacket, jeans and a hat. CANCELA and UM2 interacted with one another and it appeared UM2 exchanged money with CANCELA for a small white paper flap. UM2 then departed on foot and CANCELA went back into the yard of the Target Residence and spoke on his cell phone until 4:31 pm;

[27] On the basis of those recorded observations, Acting Corporal Plotnikoff believed that Mr. Cancela conducted two drug transactions that day.

[28] More briefly, a short-duration visit was observed on November 1, 2022, in which Acting Corporal Plotnikoff observed Mr. Cancela engage in behaviour which he believed was a drug transaction. Four short-duration visits were observed on November 2, 2022, which he believed were consistent with drug trafficking. Three short-duration visits were observed on November 3, 2022, which Acting Corporal Plotnikoff believed were consistent with drug trafficking. Three short-duration visits were observed on November 7, 2022, which Acting Corporal Plotnikoff believed were consistent with drug trafficking. On November 9, 2022, Acting Corporal Plotnikoff observed one short-duration visit which he believed was consistent with drug trafficking.

- [29] Acting Corporal Plotnikoff also described a number of observations occurring on several days of people arriving at the target residence which he did not believe were consistent with drug trafficking. To take just one example, on November 7 at 2:42 p.m., he saw an unknown male arrive in a FedEx delivery van and drop off a box at the target residence and leave. He believed that this and two other short duration visits that day were consistent with a delivery driver dropping off packages.
- [30] With that by way of an outline of contents of the ITO, I return to a consideration of the defence's arguments concerning the validity of the warrant.
- [31] I will deal first with paragraphs 28.8 and 32.8, and the corroboration of the confidential informants' information by references to police indices and other police officers. Acting Corporal Plotnikoff testified that the police indices referred to were JUSTIN and CPIC, and no real issue is taken with that testimony or the ability to corroborate, at least to some extent, the confidential informants' information by reference to Mr. Cancela's relevant criminal record.
- [32] The real issue has to do with the reference to other police officers. Acting Corporal Plotnikoff testified that he had no notes of any conversations with other police officers in which they provided information that corroborated the confidential informants' information. Nor could he recall the names of any particular police officers, when he spoke with them, or what they told him that was corroborated. He described in general that he would speak to other police officers who would pass information in passing in conversation. He would not make a note of such information and he did not do so in the present case.
- [33] Given the complete absence of any detail in the ITO about what other police officers told him and Acting Corporal Plotnikoff's equally complete lack of present recollection of who those police officers were, what they may have told him, or when, I find that it is appropriate to excise the phrase "and other police officers" from paragraphs 28.8 and 32.8. I accept that Acting Corporal Plotnikoff likely received corroborating information from other police officers, but in the absence of any evidence of the substance of that information, who provided it, and when, it is appropriate to excise the references to it in the ITO. Accordingly, my review of the warrant will be based on the ITO as excised.
- [34] The defence argues that I do not have sufficient information about either confidential informer to assess their credibility or reliability. In this regard, the defence relied on the recent decision of the Court of Appeal in *R. v. Khamvongsa*, 2025 BCCA 33. I am not going to review *Khamvongsa* at length. I recently did so in another warrant review decision in which defence counsel relied on *Khamvongsa* at length, and I would adopt that review here.

- [35] In brief, Khamvongsa was an appeal of a trial judge's ruling under s. 24(2) of the Charter. The trial judge had found that there were insufficient grounds for a warrant to be issued but, in the ruling under appeal, the trial judge held that the admission of the evidence would not bring the administration of justice into disrepute. The Court of Appeal found that there was a material error in the trial judge's s. 24(2) analysis and, on that basis, allowed the appeal, quashed the convictions, and ordered a new trial.
- [36] The Court of Appeal did not rule on or comment on the correctness of the trial judge's s. 8 analysis. The decision is not of assistance to me in determining the issue before me, which is whether the totality of the circumstances before the issuing justice in this case were sufficient for the warrant to be issued.
- [37] I turn to the information provided about Informer A, which I have already read. Informer A has provided information to Acting Corporal Plotnikoff in the past. That information was corroborated where possible, and they have not been shown to have intentionally provided information that was false or misleading. Informer A's information has been used in other investigations, in particular to obtain judicial authorizations that resulted in people being arrested and drugs seized. Informer A is motivated by financial considerations and has been paid for information in the past.
- [38] Likewise, Informer B has provided information to Acting Corporal Plotnikoff in the past which was corroborated where possible, and they have not been shown to have intentionally provided information that was false or misleading. Informer B's information has been used in other investigations, in particular to obtain judicial authorizations that resulted in people being arrested and drugs seized. Informer B is motivated by financial considerations and has been paid for information in the past.
- [39] The defence argues that the information provided is insufficient for me to assess the credibility of either informer and that the information provided by them is not compelling, in particular because no information is provided about their sources of information, such as whether they are in the drug world, and because no information is provided about the recency of the information they provided. Further, the defence submits that the information provided by Informant A and B is the same, or at least very similar, submitting that this is part of a pattern of cut-and-paste material in the ITO and that, as a result, the court cannot find their information corroborates one another. Further, the defence submits that the information provided by both informants is non-specific and a matter of public knowledge, given Mr. Cancela's past convictions for drug-related offences, rendering it non-compelling.
- [40] I find that both informers are credible sources of information. They are known to Acting Corporal Plotnikoff, who is their handler, so they are not anonymous tipsters, and they have provided useful and reliable information in the past. It is true that no information is provided about the source of either informer's information. In my view, it is likely that to do so could potentially identify them. Both informants are said to fear for their personal safety and that of their family if their identity were to become known. In circumstances where an

informant has provided useful and reliable information in the past, as in this case, the source of their information may be of less importance than if this was an anonymous or untested informant. In this regard, I refer to the judgment of Mr. Justice Martin of the Ontario Court of Appeal in *R. v. Debot* (1986), 30 C.C.C. (3d) 207, which was cited in *R. v. Maton*, 2005 BCSC 330 at para. 43, where the learned justice is quoted as having written:

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 or for making an arrest without warrant. Highly relevant to whether information supplied by an informer constitutes reasonable grounds to justify a warrantless search or an arrest without warrant are whether the informer's "tip" contains sufficient detail to ensure that it is based on more than mere rumour or gossip, whether the informer discloses his or her source or means of knowledge and whether there are any indicia of his or her reliability, such as the supplying of reliable information in the past or confirmation of part of his or her story by police surveillance. I do not intend to imply that each of these relevant criteria must be present in every case, provided that the totality of the circumstances meets the standard of the necessary reasonable grounds for belief.

- [41] In the present case, the ITO does not provide the source of either informant's information, but there are indicia of their reliability, in particular, the fact that they have provided information in the past which was relied upon for search warrants and arrests, and that their information has been corroborated where possible and has not been found to be intentionally false or misleading.
- [42] In terms of the recency of the information, paragraph 29 states that in the late summer of 2022, Acting Corporal Plotnikoff received information from Informer A that Mr. Cancela "sells cocaine". Similarly, in paragraph 30, it states that in the fall of 2022, Acting Corporal Plotnikoff received information from them that Mr. Cancela "sells cocaine", and in paragraph 31, it states that in the fall of 2022, Acting Corporal Plotnikoff again received information from Informant A that Mr. Cancela "sells cocaine".
- [43] Similarly, in the case of Informer B, paragraph 33 states that in the fall of 2022, Acting Corporal Plotnikoff received information that Mr. Cancela "sells cocaine". Paragraph 34 says the same again, as does paragraph 35. In each paragraph, additional information is also provided.
- [44] The defence argues that this is insufficient to establish the recency of either informer's information. The Crown argues in response that the use of the present tense "sells" is sufficient to infer that the information was current at the time it was related to Acting Corporal Plotnikoff. In reply on this point, the defence submits that this amounts to an impermissible parsing of the ITO, and that the court should not be relying upon the tense which an affiant happens to use to describe information.

- [45] In Belanic, Riley J. wrote the following at para. 11 about how to approach the drafting of ITOs by police officers:
- [11] With regard to quality of drafting, I am guided by R. v. Sanchez [citations omitted], wherein Hill J. stated that: "[t]he specificity and legal precision of drafting expected of pleadings at the trial stage is not the measure of quality required in a search warrant information". To the same effect are the remarks of Gibbs J.A. in R. v. Melenchuk . . . explaining that it would be "impractical to expect of an officer swearing an information in these circumstances the precise prose of an Oxford grammarian, the detailed disclosures of a confessional and the legal knowledge of a Rhodes scholar." To paraphrase the remarks of Campbell J. in R. v. Boussoulas . . . while "reasonable latitude" should be accorded to the drafter of an ITO, considering the precision of the language, such latitude can never be extended so far as to relieve the affiant of his or her duty to act with "integrity and reasonable diligence", mindful of the duty to make full and frank disclosure in an ex parte proceeding.
- [46] The plain meaning of the language used in the relevant paragraphs of the ITO is that Informant A and Informant B told Acting Corporal Plotnikoff that Mr. Cancela sells drugs in the late summer and in the fall of 2022. I accept that the information provided was current at the time it was relayed. While more precision with respect to when each informant learned this information may have been helpful and may have strengthened the basis upon which the warrant was granted, in my view it is proper to afford Acting Corporal Plotnikoff reasonable latitude in terms of the manner in which he drafted these paragraphs.
- [47] I turn to the defence's submission that the information stated to have been provided by each of the two informants is the same or nearly so, such that it should be concluded that Acting Corporal Plotnikoff merely cut and pasted the same information, and that the information about Mr. Cancela is public knowledge which would have been well known in the community of Castlegar due to his previous convictions.
- [48] The core of the information provided by the two informants is certainly the same. It is that Mr. Cancela sells cocaine and that he does so from his residence. Both informants also provided the same or very similar information about people going to Mr. Cancela's house to buy drugs, and parking in the alley or the driveway or on the street to do so. That information is not identical, however, as only Informant A refers to people parking in the driveway or on the street, as opposed to the alley, which both informants referred to. In addition, Informant A provided two pieces of information that Informant B did not, that being that Michael Conrad sells drugs for Mr. Cancela and that Mr. Cancela uses paper flaps to package drugs.
- [49] It is not surprising that the information provided by two informants about the same alleged drug dealer would overlap. They are both talking about the same person and the same alleged criminal behaviour. The additional information provided by Informant A about Mr. Conrad's role and about drug packaging has some significance, as it provides additional details that are not present in Informant B's information. Those details are corroborated in

part in the surveillance observations in which Mr. Conrad is identified as being at the target residence on a number of occasions, and the October 26 observations which I have already read in which Mr. Cancela is seen throwing several white objects onto the passenger seat of a car in exchange for what appear to be green \$20 paper bills, and later exchanging a small white paper flap for money with a second unknown person.

- [50] The court has no evidence about whether information about Mr. Cancela's previous drug convictions is common knowledge in Castlegar. According to the ITO, the two previous convictions were in 2011 and 2018, so I am doubtful that those convictions would have been common knowledge at the time this ITO was sworn in 2022. In the absence of any evidence that knowledge of Mr. Cancela's previous convictions was widely known, or that knowledge of his convictions would clothe a person with knowledge of his means of and location for selling drugs, I am not prepared to find that the information provided by the two informants was simply a repetition of public knowledge.
- [51] In conclusion on this point, I find the information provided by the two informants to be somewhat compelling.
- [52] I turn to the question of corroboration, and specifically the extent to which the surveillance observations can be relied upon as corroboration of the informant's information. In this regard, the defence argued that the observations were not credible because Acting Corporal Plotnikoff did not have any notes or include within the ITO any information with respect to the vantage points from which he made his observations.
- [53] In cross-examination, Acting Corporal Plotnikoff could not say where he made his observations from, except to say that he would have been on the west side somewhere, and that he estimated he would have been between 10 and 100 feet away. He testified that he sometimes used surveillance aids, but he did not testify on which occasions he did so or what aids he may have used. He testified, however, that he was in a position that he could observe what he saw and to make notes on what he saw.
- [54] The defence argued quite forcefully that Acting Corporal Plotnikoff simply could not have seen things in the detail that he claims, such as the little white packages being thrown on the passenger seat in exchange for money, unless he was very close to the target residence, so close that he would have been seen and would have been recognized by Mr. Cancela.
- [55] I do not agree with those defence submissions. It is true that Mr. Cancela and Acting Corporal Plotnikoff are acquainted and that each would recognize the other if they saw them. I note that Acting Corporal Plotnikoff's descriptions, particularly of unknown persons, are sometimes quite detailed. For example, at paragraph 37.6, he describes a person referred to as Unknown Female 2 as Caucasian, brown hair, twenties, wearing a red hoody with a thin build. At paragraph 37.9, he describes an Unknown Male 2 as Caucasian, forties, wearing a dark jacket, jeans, and a hat. At paragraph 41.4, he describes an Unknown Male 2 as Caucasian, wearing a blue-green sweater, backwards hat, and scruffy goatee, and he identifies him as the same unknown male that he saw on another date. He does not

include such detailed descriptions of Mr. Cancela or other people he is readily able to identify, which makes sense as it is unnecessary. He knows Mr. Cancela, as he knows Mr. Cancela's parents and Mr. Conrad.

- [56] The cross-examination of Acting Corporal Plotnikoff did not lead me to believe that he did not actually see what he saw and recorded in the ITO. Evidence about his vantage points and the use of surveillance aids might have assisted the court in evaluating his observations more closely, but I can appreciate that the police may be reluctant to include such information in case it reveals "trade secrets", particularly in the case of a target who has been under repeated police surveillance.
- [57] The activities seen and recorded at the target residence go beyond raising a mere suspicion that Mr. Cancela was selling drugs from the target residence. Acting Corporal Plotnikoff's observations provide a body of evidence that stands to corroborate the information provided by the confidential informants, and that might reasonably be believed on the basis of which the authorization could have been issued by the justice.
- [58] I must examine the totality of the circumstances. In doing so, in addition to the issues I have already canvassed, I have considered the defence's argument that Acting Corporal Plotnikoff has used boiler-plate language, that this is "nothing but a cut-and-paste job", and that the court must dissociate itself from Acting Corporal Plotnikoff having done so.
- [59] It was in Araujo at para. 47 that the Supreme Court of Canada expressed concern about boiler-plate language as follows:
- [47] A corollary to the requirement of an affidavit being full and frank is that it should never attempt to trick its readers. At best, the use of boiler-plate language adds extra verbiage and seldom anything of meaning; at worst, it has the potential to trick the reader into thinking that the affidavit means something that it does not. Although the use of boiler-plate language will not automatically prevent a judge from issuing an authorization (there is, after all, no formal legal requirement to avoid it), I cannot stress enough that judges should deplore it. There is nothing wrong - and much right - with an affidavit that sets out the facts truthfully, fully, and plainly. Counsel and police officers submitting materials to obtain wiretapping authorizations should not allow themselves to be led into the temptation of misleading the authorizing judge, either by the language used or strategic omissions. [Emphasis in original]
- [60] It is not as clear as it might be what the Court was referring to there as "boiler-plate language". At para. 6 of Araujo, referring to the proceedings at trial, the Court stated that:
- [6] It became clear that the affidavit contained a number of errors of varying importance. In a number of places, boiler-plate language used in the affidavit might have created a mistaken impression that certain statements had been confirmed in ways that they had not. However, the most important problem with the affidavit concerned references to some of the sources.

- [61] At para. 9 of Araujo, the Court referred to the trial judge's decision, in which he was stated to have "criticized the boiler-plate language in the affidavit, calling it potentially confusing but not characterizing it as so confusing as to call for rejecting the authorization if it had been the sole problem."
- [62] The Concise Oxford Dictionary defines "boiler-plate", so far as is relevant to this issue, as "standardized pieces of text for use as clauses in contracts or as part of a computer program".
- [63] I can see nothing objectionable in an affiant using a template containing standardized pieces of text as the basis for an ITO, provided that they take ample care to ensure that everything that is actually included in the final sworn version is true and accurate. Some standardization, or best practices, as Acting Corporal Plotnikoff referred to it in his cross-examination, is likely helpful insofar as it makes drafting more efficient and ensures that nothing is said that could, for example, inadvertently breach informant privilege. I am thinking here, for example, of some of the paragraphs in the reliability assessments such as "Informant A may or may not have a criminal record." There is no need for such statements to be drafted from scratch every time an officer sits down to draft an ITO. This is a court document, not a piece of literature.
- [64] Nor do I view the fact that the information provided by the two informants was very similar to be an example of the use of inappropriate boiler-plate language. I accept that the fact is that the two informants did provide very similar information and it is unsurprising that that information would be summarized in very similar language.
- [65] The only examples in this ITO which, in my view, tend to show a mistaken reliance on what might be called inappropriate boiler-plate language are the paragraphs already discussed about informer information being corroborated "through independent means, including but not limited to police indices checks, surveillance, and other police officers". I have already discussed the difficulties in this case related to the reference to other police officers, and I will not repeat myself. In my view, greater care needs to be taken to ensure that template language such as this is not used in the absence of a factual foundation, as it does have the potential to mislead the authorizing justice. That problem has been satisfactorily addressed in this case by excising the reference to other police officers. The inclusion of these paragraphs by Acting Corporal Plotnikoff does not lead me to doubt the credibility and reliability of the ITO more generally.
- [66] Considering the totality of the circumstances, and with the reference to corroboration from other police officers excised, I conclude that there was at least some evidence that might reasonably be believed on the basis of which the search warrant could have been issued by the authorizing justice. The information contained in the ITO, looked at in its totality, takes the circumstances beyond mere suspicion to establishing a reasonable probability that Mr. Cancela was dealing drugs from the target residence, and that there were reasonable grounds to believe that controlled substances, offence-related property, and other evidence

with respect to a drug-trafficking offence would be found at the target residence.

[67] I therefore dismiss Mr. Cancela's challenge to the validity of the search warrant.

"L.M. Lyster J."

LYSTER J.

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