

# KNOCK & ANNOUNCE REVIEW



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*September 2022*

# *OIPRD Knock & Announce Review: Hamilton Police Service Response*

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## *Executive Summary:*

In July 2022 the Office of the Independent Review Director (OIPRD), resulting from an inquiry into the Provincial standards applied in the execution of search warrants, requested feedback from Ontario policing agencies regarding their decision making process in determining the appropriate techniques in executing search warrants (Knock & Announce vs. No Knock / Dynamic Entry).

As part of the review, the OIPRD provided nine recommendations for consideration, in the context of execution of judicial authorizations. Members of the Hamilton Police Service (HPS), representing areas prone to execute such authorizations, consulted and formulated feedback relevant to the present inquiry. This document constitutes a summary of the organization's response.

## *OIPRD Recommendations:*

*Note: In an effort to simplify and add clarity to the document, in some instances, the feedback for two or more recommendations has been combined into one paragraph.*

- i – Review of Existing Policy:
- ii – Update of Existing Policy:

In line with the recommendations, the Hamilton Police Service reviewed the current policies and compared them with both the Peel Regional Police Service and Halton Regional Police Service policies. Despite some nuances, it is our opinion that the policies in place at the HPS are consistent with both

statutory and common law rules, and adequately address issues arising when a departure from the “knock and announce” rule is warranted.

The HPS will continue its commitment to continually review and re-assess policies to ensure congruence with the current state of the law.

iii – Creation of Operational Plan & Risk Assessment:

iv – Criteria for Departing from Knock & Announce Process:

Independently from this review, the HPS recently analysed and amended its operational planning form, a document utilized in respect of the execution of judicial authorizations. This self-initiated review resulted in modifications and expansion to better address an area of concern, namely, risk assessment. The re-structured document compels the author to provide (more) ample detail, much in line with the concerns raised by the OIPRD in their review.

The HPS feels that the recent improvements will provide an effective tool in determining the circumstances that will justify a deviation from the “knock and announce” rule.

v – Post Action Process:

In recent months, issues associated to the judicial rule of disclosure exposed a gap in the policy with regards to post action articulation. As a result, following a policy review, the HPS adopted a novel approach to capture details about the decision-making process. Moving forward, the supervisor in charge of the operation (Emergency Response Unit (ERU); or other specialized units) will submit a document articulating the approach as part of the disclosure material. This will include details addressing the departure from the “knock and announce” rule.

vi – Advanced Judicial Disclosure of Operational Plan & Risk Assessment:

The OIPRD recommends that, as a best practice, operational plans and risk assessments be disclosed when seeking judicial authorization for a search. The OIPRD correctly acknowledges that this is not a practice that is mandated in law.

The Information to Obtain a Search Warrant is a point-in-time document. It is prepared in advance of the execution of the warrant, sometimes well in advance. Officers are required, in law, to provide “full and frank” disclosure of material, known facts available to them at the time of applying for the warrant. In contrast, the Operational Plan is a dynamic document which changes based on information gleaned, often up to the last moment before the execution of the warrant is made.

It would be problematic for any Operational Plan, especially one that is evolving, to be placed before an issuing justice. Any scrutiny in respect of the granting of a warrant must necessarily include an

examination of the affiant's grounds for issuing the warrant. However, any scrutiny in respect of the execution of a warrant is a different exercise. As the Supreme Court of Canada held in R. v. Cornell, the decisions made by the police as to how to conduct an entry to a residence must be assessed in light of the information reasonably available to them at the time the decision was made (i.e. at the time of entry). The inclusion of the Operational Plan and Risk Assessments in the ITO has the potential to confuse these issues.

#### vii – Disclosure of Departure from Knock & Announce Process to Occupants:

The HPS is committed to following and respecting rules associated to the judicial process. Accordingly, the approach preferred include abstaining from disclosing investigative material to individuals not involved in the judicial process. Such individuals may have access to details that are publicly available.

In accordance with the position enunciated above, the HPS believes that informational responsibility to the occupants is minimal and is addressed through the post-execution document. Further disclosure could have adverse effects on the prosecution.

#### viii – Tracking of Dynamic Entries and Knock & Announce Warrants:

The current tracking system is compartmentalized and less than efficient. In fact, the impracticality of the system in place has the potential to yield inaccurate statistical data. Some specialized units such as ERU are tracking the information, but the methodology is not standard and lacks rigor.

Insofar as rectifying the situation, recent internal discussion led to the identification of gaps in best practice. A working group is currently exploring options to standardize the process, using the Hamilton Police Service Records Management System.

#### ix – Charter Obligation Training:

Officers involved in the execution of search warrants are mandated to receive dynamic entry training. As part of the curriculum, candidates are trained on the most common Charter-related issues arising in the context of the execution of search warrants. Consideration is given to expand this training to all sworn officers.