

## SUMMARY OF JURISPRUDENCE ON THE KNOCK AND ANNOUNCE RULE

The mandate of the Office of the Independent Police Review Director (OIPRD) includes a statutory obligation to monitor and respond to policing issues that signal systemic failings. In this context, the OIPRD has issued a Notification Letter to all Ontario Police Services and Police Services Boards on the issue of Dynamic Entries and the Knock and Announce Rule.

Section 8 of the *Canadian Charter of Rights and Freedoms* states that everyone has a right to be secure against unreasonable search or seizure. To safeguard this right during the execution of search warrants at residences, the police must, as a general rule, knock and announce their presence before entering a home.

This document contains summaries of cases that address the principles of the knock and announce rule and the requirements of the police when they depart from the “knock and announce” rule.

## CASE SUMMARIES

### ***Eccles v. Bourque*, [1974] SCJ No 123, 1974 CanLII 191**

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E brought a claim against the respondent police officers for damages for trespass. The police officers entered E's apartment to apprehend another individual (E.C). Upon entry, the police officers did not locate E.C.

The Supreme Court of Canada found that entry can be made against the will of the householder only if: (a) there are reasonable and probable grounds for the belief that the person sought is within the premises; and (b) proper announcement is made prior to entry. The fact that E.C. was not in the apartment at the time of the police entry did not make the officers' entry unlawful as they had reasonable and probable grounds for believing that E.C. was in E's apartment.

The Court also concluded that police officers must make an announcement prior to entry unless exigent circumstances exist. The Court noted that there are compelling reasons for such a rule, stating, "[a]n unexpected intrusion upon a man's property can give rise to violent incidents." Accordingly, in the ordinary case, police officers, before forcing entry, should give: (i) notice of presence by knocking or ringing the doorbell; (ii) notice of authority, by identifying themselves as law enforcement officers; and (iii) notice of purpose, by stating a lawful reason for entry. Minimally, police officers should request admission and have admission denied although it is recognized there will be occasions on which, for example, to save someone within the premises from death or injury or to prevent destruction of evidence or if in hot pursuit, notice may not be required.

### ***R v Cornell*, 2010 SCC 31 (CanLII)**

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The police obtained a warrant to search for drugs in C's residence. C was not the target of the police investigation; rather the police were investigating a "dial-a-dope" operation run by two members (N and T) of a violent criminal gang. It was thought that C's residence was being used in the operation. Police believed that the gang had been engaged in a violent way with another criminal gang that had resulted in a number of shootings and deaths. The police had a concern that the individuals who frequented C's residence could pose a real threat to the police. In the Information to Obtain a Search Warrant, it was noted that the tactical team would be required to enter the residence to avoid the destruction of evidence, and for the safety of the public and the police due to N and T's history of violence and association with an organized crime group.

The police used a "hard entry" or "dynamic entry" into the home where they rammed the door open and did not knock or announce their presence. A tactical team of nine officers entered the house with their weapons drawn, wearing body armor and balaclavas. Once

they were inside C's residence, the police yelled: "Police, search warrant." The police found cocaine in C's bedroom.

The Supreme Court of Canada stated that when police depart from the "knock and announce" principle, they have an onus to explain why they thought it necessary to do so. The Crown must show that the police had reasonable grounds to be concerned about the possibility of harm to themselves or occupants, or about the destruction of evidence. The evidence to justify the departure from the "knock and announce" principle must be apparent in the record and available to the police at the time they acted. The Crown cannot rely on *ex post facto* justifications.

The Court found that the police had "well-grounded concerns that the use of less intrusive methods would pose safety risks to the officers and occupants of the house and risk the destruction of evidence." 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. The police should not be judged by how things turned out after the execution of the search warrant.

The Court concluded that the dynamic entry was reasonable.

### ***R v Thompson*** 2010 ONSC 2862 (CanLII)

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Police utilized a dynamic entry and deployed an explosive device to enter T's residence. The manner of entry was not mentioned in the search warrant Information to Obtain. The police indicated that they used a dynamic entry because the object of the search was drugs, which are easily disposed of when prior notice of police presence is given; the target of the search had a prior conviction for manslaughter so police believed that he may have a propensity for violence; there was information that a pit bull was kept on the premises and the police had experience with pit bulls aggressively defending their territory; and the home was located in a neighborhood that was known for firearms and gang-related activity.

The Court concluded that the dynamic entry was reasonable, and that prior judicial authorization was not required for this type of entry. However, the Court noted that some police services did have a practice of seeking prior judicial authorization for an unannounced entry and noted that it would be "wise practice" to disclose the manner of execution in the search warrant Information even though the police are not legally required to obtain judicial approval in advance.

### ***R v Chungkuong*, 2012 ONSC 3488 (CanLII)**

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Police executed a search warrant at C's residence. The police entered with a battering ram and attended C's bedroom with guns drawn. One of the issues before the Court was whether the police ought to have obtained prior judicial authorization for dynamic entries. The Court concluded prior judicial authorization was not required for dynamic entries.

The Court also noted that in assessing whether the police had reasonable grounds to enter a premise without first announcing their presence, there were three significant factors to consider: (1) the decision by the police must be judged by what was, or reasonably should have been known to them at the time the decision was made and not in light of information subsequently obtained; (2) the police are to be granted a certain amount of latitude in the manner in which they decide to enter and not with the nuanced precision of a "Monday morning quarterback"; (3) section 8 of the *Charter* does not require the police to put their lives or safety on the line if there is even a low risk of weapons being present.

The Court stressed that speculation or conjecture about the possibility of a firearm being present will not justify a dynamic entry. There must be an evidentiary basis that supports the reasonableness of a concern about the possibility of harm to the officers executing the warrant.

### ***R v Bahlawan*, 2020 ONSC 952 (CanLII)**

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The police broke down B's door with a battering ram and threw a distraction device into the home. The distraction device exploded loudly, gave off a blinding flash of light and created a haze of smoke. The officers then ran into the house, yelling, "Police, don't move!" The officers were executing a *Controlled Drugs and Substances Act* search warrant.

The Court noted that although officers identified themselves and told the occupants that they were executing a search warrant, they did so only after they were inside. The police accordingly bear a heavy onus to justify their methods.

The Court stated that the evidence must show that the police considered the possibility of a non-dynamic entry. In particular, the evidence should show that police contemplated and discussed the possibility of knocking on the door and announcing that police have a warrant to search the premises.

The Court concluded that the police operated based on a practice that assumes that a non-dynamic entry is a rare exception as opposed to the rule. The Court concluded that

the search of the residence was unreasonable and violated B's section 8 *Charter* rights but determined that the evidence would not be excluded.

### ***R v Pileggi*, 2021 ONCA 4 (CanLII)**

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Police executed a *Controlled Drugs and Substances Act* search warrant. Without knocking, officers forcibly entered P's home. P argued that in employing a forced entry, the police used more force than was reasonably necessary and acted in accordance with a blanket policy not to knock and announce when executing drug warrants.

The Court reiterated the principles set out in *Eccles v Bourque* and *R v Cornell*. The Court noted that public safety (including the safety of police officers), as well as preventing the destruction of evidence, may relieve the police of the "knock and announce" requirement. Courts should afford police a certain amount of latitude when they decide to enter residential premises, based on the information that is reasonably available to them.

In executing a search warrant for drugs, police can consider the size and layout of the location to be searched, as well as the nature of the drugs, in assessing whether there is a real likelihood that drugs can be destroyed quickly and with ease. In the case at hand, the police considered the fact that P's home had two levels with washrooms on both levels; it was these types of homes where police noted that drugs are flushed down the toilet when police are executing warrants.

The Court also noted that the police must make an individualized assessment about the appropriate manner of search in each case and can draw on their collective experience when making such assessments. For instance, in the case at hand, the Court noted that while there was no information available to the police which suggested that firearms would be located at P's residence, the allegations involved serious drug charges, and the typical combination of drugs and guns were well known to the police and the courts.

The Court concluded that the dynamic entry was reasonable.