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A Briefing Guide to

Dawn Raids, Search And Seizure: Why Knowing How To Respond Is So Important

RAHMAN RAVELLI

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Any raid on a premises can have a major impact on the person or company that is being raided. The raid may lead to the agency that carried it out taking away large amounts of material - material that it hopes to use as evidence in any future prosecution.

The seizure of any data or documentation – even if such seizure is temporary - can make it extremely difficult for the subject of the raid to continue in business. Which is why companies and individuals in business must know what to do if and when a raid is carried out.

Having appropriate procedures in place and knowing when to make the right legal challenges can ensure a company can keep trading after a raid and prevent the agency conducting the raid from exceeding its authority.

The Importance Of Having Raid Procedures In Place

Devising procedures in the event of a raid is not something that can be done quickly or without expert assistance. The legal issues surrounding a raid are many and varied and have to be addressed appropriately if the subject of the raid wants to minimise its impact.

At Rahman Ravelli, we have the expertise and years of experience in dealing with all the issues that need to be resolved if a dawn raid is carried out. Whether it is a single raid or a number of coordinated raids on premises here or abroad we will advise on everything, from the validity of search warrants, what can and cannot be seized and issues of legally-privileged material through to what measures can be taken to ensure a company keeps functioning.

Our specialists are adept at devising procedures so that companies of all types know exactly how to respond if the prospect of a raid becomes a reality. And when a raid has been conducted, we are on hand to do everything that is necessary. This may range from conducting an internal investigation to assess the strength of the allegations that prompted the raid through to examining what has been taken, ensuring it is returned as soon as possible and advising individuals who are to be interviewed as part of the investigation.

Using Procedures In A Raid

There are benefits to be had from devising procedures so that company personnel who may be in contact with those conducting a raid know their roles should one be carried out. It will make it easier to prevent the enforcement agency doing more than it is legally entitled to, which will mean the business is then in a stronger position to both defend itself and keep functioning during the investigation.

Checking matters such as whether the search warrant was issued properly, if the investigators have permission to search that particular premises and that they are the people named on the warrant can reduce the scope for them going beyond their legal remit. Comprehensive notes of all questions asked and answers given during the raid should be kept, as should a record of all materials taken or copied. Those carrying out the raid should also be told in the clearest possible terms what cannot be taken or copied because it is legally-privileged material

A company's legal representative should be present during the raid to advise and assist in making such checks. Requesting that the raid does not start until the representative arrives is a logical request. But in the tension of the moment, such a request could be forgotten. That is why companies should be proactive and prepare procedures for the likelihood of a raid rather than simply react if and when it happens. If you are facing major allegations it will not be possible to devise a strategy the moment a raid commences. Such procedures can be the difference between a company continuing to function effectively and failing to keep doing business because they lack materials and computer equipment.

Legal Challenges To A Raid

Challenging the validity of the search warrant is not an option in every case. But a proper challenge, in the right circumstances, can be worthwhile. Our specialists can devise procedures to minimise the problems caused by a raid. But they are also experts in identifying challenges to the legality of a raid.

Disclosure of material is another area where the authorities can be challenged. The Attorney-General's Guidelines on Disclosure 2013 place obligations on investigating agencies to disclose the material they have obtained – including that taken during a raid – that is relevant to a case. A shrewd legal defence team can ensure that an investigating agency does not hold on indefinitely to material that was seized in a raid.

Grounds for a Raid

Most warrants are issued under the Police and Criminal Evidence Act 1984 (PACE) or under the Proceeds of Crime Act 2002. Applicants must state the object of the search and provide sufficient information to satisfy the Court that it is necessary.

There must be reasonable grounds for believing that an offence has been committed and that there is material on the premises likely to be of substantial value to the investigation. There are numerous other

procedural rules that must be followed regarding both the application for the warrant and the conduct of the search. If these rules are not followed the warrant may be quashed and the property returned because the proper procedure was not adhered to – which can be the end of the authorities being able to use what was taken in a search in any subsequent prosecution.

Notable Cases Involving Challenges to Raids

Raids and the searches and seizures that result from them have led to a number of case that have established precedents regarding the conduct of those applying for warrants and conducting raids.
Unlawfully Seized Material

In R (Cook) v Serious Organised Crime Agency (2011), it was held by the High Court that the unlawful seizure of material could not be rendered lawful by its subsequent re-seizure.

The Serious Organised Crime Agency (SOCA) was investigating a fraud allegation so warrants were applied for and issued and the searches were undertaken. The warrants only provided details of the relevant addresses in schedules to the warrant – and those schedules were not then left at the searched premises, in contravention of the rules. Although the officers were lawfully at the premises, the actual seizures were rendered unlawful and SOCA agreed to pay damages and certain legal costs. But when the suspect asked for the return of his property he was told that SOCA were re-seizing the items under powers in PACE. Cook started a civil judicial review action. The High Court held that the unlawful seizure could not be made lawful by the material being re-seized – and so Cook had his items returned.

But in R (Cummins) V Manchester Crown Court (2010), the court said it found no reason why an enforcement agency carrying out a raid where material was seized improperly should be in a worse position than if the warrant had never been sought or why the subject of an unlawful warrant should be better off because of it. In this case, SOCA had again improperly seized material and was forced to return it. But SOCA then obtained a Production Order under the Proceeds of Crime Act 2002 compelling Cummins to deliver to SOCA the material that had been returned to him. This was possible because of the particular offence being investigated.

Full and Frank Disclosure in Warrant Applications

The case of R (R. Tchenguiz & R20 Ltd) v Serious Fraud Office (SFO) and others (2012) emphasised that all the material relating to the granting of a warrant must be provided to the judge, who must be personally satisfied that there are proper grounds for suspicion. The application should never be a rubber-stamping exercise.

Once the suspect has sight of the information presented to the judge there is then the opportunity to go through it to see if the judge has been given everything and been painted a fair and accurate picture – or whether the Crown has just picked out its favourite bits.

In considering the SFO's duty of disclosure in the Tchenguiz case, the court stated that there must be full and complete disclosure to the judge, including disclosure of anything that might reduce the chances of a warrant being granted. On this point, the court referred to the leading case of Re Stanford (2010), in which Lord Justice Hughes said that the advocate must "put on his defence hat and ask himself, what, if he was representing the defendant or a party with a relevant interest, he would be saying to the judge."

In the Tchenguiz case, two joined judicial review actions resulted in search warrants being quashed and the court heavily criticising the SFO. Robert and Vincent Tchenguiz were wealthy businessmen who had banked with the Icelandic bank, Kaupthing. When Kaupthing collapsed, a committee set up to ensure the return of as much debt owed to the bank as possible instructed the accountancy and insolvency practice Grant Thornton to investigate. Grant Thornton's report suggested that the lending by the bank to the brothers was highly irregular. The SFO was given Grant Thornton's report and then applied to a judge sitting at the Old Bailey to secure search warrants. The brothers' premises were searched and they were both arrested. But the judicial review challenges which followed examined in detail both the complex commercial arrangements that the brothers engaged in and how the SFO presented its case to the Old Bailey judge. The SFO had relied completely on the Grant Thornton report, which meant it had not considered – or notified the judge of – plausible, innocent explanations for a movement of money that the report had viewed as a possible attempt to dishonestly remove funds. As a result, the SFO was criticised for a clear lack of understanding and at least one factual omission.

After a Warrant is Quashed

If the High Court quashes a search warrant the seized material is usually returned, which can be a fatal blow to the investigation. But Parliament came up with a way for the police or other enforcement agency to keep their investigation ongoing even if a warrant has been quashed.

Under s59 of the Criminal Justice and Police Act 2001 Act, the enforcement agency can apply to the High Court for permission to retain the material for a short time while it re-applies to the Crown Court for, in effect a new Order justifying the old seizure. In those circumstances, the Crown Court has the discretion to authorise the retention of the material seized - despite the unlawfulness of the original search - if, were the material to be returned, it would be immediately appropriate to issue a warrant under which it would be lawful to seize the property. This gives the police what amounts to a second chance to get their application right. In R (Chatwani) v NCA [2015] it was held that it would be rare for the High Court to refuse permission for temporary stay of the quashing of a warrant while the police made an application to the Crown Court – such stay applications would only be refused if there had been bad faith on the part of the police in securing the warrant.

But while this section of the Criminal Justice and Police Act does give enforcement and prosecuting agencies another attempt to "get it

right", there remains the scope to bring a legal challenge to their activities. It is still possible to ensure that the agencies are not allowed to retain what they have taken improperly.

Ensuring the Effects are Minimised

Any raid can be a major issue for the company or individual that is the subject of it. But at Rahman Ravelli we work with you to prepare for any possible raid, ensure that any raid is carried out in complete accordance with the law and minimise the disruption it can cause.

The authorities often use raids to further their investigations. We make sure you are in the best possible position to manage the effects of a raid before it happens, while it is happening and after it has happened.

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