

5

Proceedings

1 Now, having found that the warrant was  
2 improperly issued, the search therefore, without  
3 an authorized search warrant, was, in my view,  
4 unreasonable as defined in the Charter of Rights  
5 and Freedoms. A person has a right to be free  
6 from unreasonable search and seizure. The  
7 remedies are set out in Section 24(2) of the  
8 Charter  
9 There is also an opportunity, if I chose, to  
10 use the extreme remedy of a stay of proceedings.  
11 That remedy, in my view, is only available in the  
12 most extreme of cases and should be reserved for  
13 those cases. This is not one of those cases, in  
14 my view.  
15 It is a case in which, in my view, all of  
16 the evidence obtained from the time of the search  
17 warrant, from that point on, should properly be  
18 excluded. It is evidence which would never have  
19 been obtained had it not been for the unlawful  
20 search warrant and, therefore, I exclude any  
21 evidence from the point of the issuance of the  
22 search warrant onwards.  
23 There is some evidence left to consider as  
24 to what the witnesses saw at the time, leading up  
25 to the search warrant. There is obviously some  
26 holes in the Crown's case in that the Crown was  
27 relying on certain things which took place  
28 following the search, but I will hear argument  
29 with respect to whether or not there should be a  
30 conviction on the merits.  
31 With respect to the letter written to the  
32 accused, I did not hear Mr. Wool's argument other  
33 than the case which he provided. I am prepared,  
34 if you want me to, to decide that issue based on  
35 what you have told me so far, based on the case  
36 put before me and based on the Crown's  
37 submission, or if you wish to make further  
38 argument on that point of an abuse of process, I  
39 will allow you to do that.  
40  
41 (SUBMISSIONS BY COUNSEL)  
42  
43 THE COURT: Thank you. I do not have to hear from the  
44 Crown further because you made your points  
45 earlier on this issue.  
46 With respect to the suggestion of defence,  
47 the submission that I should, in essence, stay