

Do Government Inspectors Need a Warrant to Search & Seize Evidence?



Question: Do government environmental officials need a warrant to conduct inquiries and seize records and other materials at your workplace? **Answer:** It depends on what kind of inquiry they're conducting. If it's an "inspection" to determine your compliance with environmental laws, the official generally doesn't need a warrant. But if the officials suspect you of a violation and want to gather evidence in a prosecution against you, they're conducting an "investigation" and need a warrant. While it sounds like a simple rule, it's often extremely hard to tell the difference between an inspection and an investigation. Here are 2 cases that will give you a sense of where the line is drawn between inspection and investigation. Although the cases involve OHS infractions, the exact same principles apply to the enforcement of environmental laws.

Warrant Needed Because Inquiry Is an Investigation

Situation: An official from the Ontario Ministry of Labour (MOL) visits a brick-making plant hours after a worker suffers serious injury while operating a dehacking machine. Within 2 hours, the official finds that the machine poses "an imminent danger to workers" and orders the plant to take it out of service until precautions are taken. The official also

suspects that the plant violated machine safety regulations. He returns on 3 occasions to gather evidence to confirm his suspicion without getting a search warrant. The plant claims that these actions violated its right against unreasonable search and seizures under Sec. 8 of the Charter.

Ruling: The Ontario Superior Court of Justice rules that the official was conducting an investigation and thus needed a warrant.

Reasoning: Under OHS and environmental laws, officials may probe, ask questions, and even seize evidence without warrants to verify compliance with the laws and the safety of others in the workplace. Such inquiries constitute “inspections.” But once officials have reasonable and probable cause to believe that a violation has occurred, the inquiry changes to an “investigation” – the purpose of which is to gather evidence for prosecution. Initially, the MOL official was conducting an inspection since his purpose was to make sure that no other workers got hurt by the de hacking machine. But, according to the court, upon determining that the plant had violated the OHS law, the official crossed the “bright line” from inspection to investigation and needed a warrant to continue searching and gathering evidence.

1. [v. Canadian Brick Ltd.](#), 2005 CanLII 24925 (ON SC)

No Warrant Needed Because Inquiry Is an Inspection

Situation: A construction worker suffers serious injury after falling from a scaffold. That same day, 2 officials from the Nova Scotia Department of Environment & Labour (DEL) are on the scene to take photos. Four days later, they order the company to secure the equipment used in the accident. On March 2nd, they go to the warehouse where the equipment is being stored and look it over. Later that day, they seize the items.

At no time do the officials get a warrant. The DEL hires an engineering firm to study the equipment that the officials seized. Based on the conclusions of the engineer report, the Crown decides to lay charges. The company says the DEL conducted an illegal search and seizure on March 2nd.

Ruling: The Nova Scotia Provincial Court says the officials didn't need a warrant to search and seize evidence on March 2nd because they weren't in their "investigative mode" at the time.

Reasoning: Unlike the MOL official in the Ontario case who suspected wrongdoing within two hours, the Nova Scotia DEL officials hadn't yet formed a reasonable and probable suspicion when they seized evidence. Indeed, on March 2nd, there was no "objective basis" for the officials to harbour such a suspicion, the court explained. It was this very uncertainty that caused the officials to seize the evidence in the first place. They needed the evidence to study the cause of the accident and the company's compliance with regulatory standards. It was not until several months later, after the engineer's report came back, that the "bright line" from inspection to investigation was crossed. Consequently, the court ruled that the officials were conducting an inspection and didn't need a warrant to seize evidence on March 2nd.

[Nova Scotia \(Dept. of Env. & Labour\) v. Nova Scotia \(Dept. of Transp. & Public Works\)](#), 2006 NSPC 39 (CanLII)