



SEARCH ORDERS

CHECKLIST FOR THE INDEPENDENT SOLICITOR

This checklist should be read in conjunction with the guidelines for the independent solicitor.

It is strongly recommended that the independent solicitor meet with the applicant's lawyers and the search party, at the independent solicitor's office or other neutral territory before the search is conducted. The meeting can take place before or after the Search Orders are made.

At the pre-search briefing

The independent solicitor should make it clear to the applicant's representatives (and the applicant, if present) and the search party that:

- they may not disclose the existence of the Search Orders to anyone until at least 4.30 pm on the return date;
- the independent solicitor's role is limited to supervision of the search and execution of the Search Orders, that you have a duty to report all that transpires to the Court in your post-search report and that you will attend Court on the return date to provide any additional information in Court as may be required of you; and
- no item searched for will be handed to the search party or the applicant's lawyers at the time of the search. All items removed will remain in your custody, securely at your office, until further order of the Court.

If the search team includes a computer expert, get some information from them about their requirements and ensure that these will be or have been adequately addressed by the Court orders.

Consider whether a translator is required and, if so, have the applicant's solicitor make the necessary arrangements.

Consider whether it is appropriate that the police be informed prior to execution of the search and, if so, have the applicant's solicitor make the necessary arrangements.

Materials for the search

The independent solicitor's kit should include:

- business cards (to enable you to identify yourself to the respondent);
- several copies of all Court documents to be served (to be provided to you by the applicant's lawyers);
- a USB loaded with all Court documents to be served (for example, to enable an email to be sent to the respondent's lawyer if required);
- information for the respondent that explains the Search Orders, legal professional privilege and the privilege against self-incrimination;
- time sheet;
- blank inventory to list all items to be removed headed by the proceeding number, date and premises of the search and containing a table comprising columns for:
 - item number
 - item description
 - a description of the place where the item was located
 - space for signing;
- the following declaration:
I have been given a reasonable opportunity to check the correctness of this list and confirm that the items listed are to be removed by [name of independent solicitor] in accordance with the terms of the Search Order in these proceedings date [date];
- A3 envelopes marked "Privileged";



- plentiful stationery supplies (eg pens, envelopes, sticky notes, bull dog clips, boxes and labels);
- phone with camera function – it may be helpful to photograph equipment such as computers to be searched to enable identification at a later date. It may also serve as a useful aide memoire for writing up the post-search report to show where each item was located;
- laptop computer in case you need to communicate to your own office, or with the applicant’s lawyers to clarify any aspect of the orders and to be able to send copies of documents to the respondent’s lawyer;
- possibly, a recording device (your phone may have this functionality) to dictate notes as you go in conjunction to noting times and details on the time sheet;
- telephone numbers of the nearest police station in case emergency assistance is required, and of the duty judge in case judicial guidance is required; and
- a list of contact details of each member of the search party, the applicant’s lawyers and solicitors close to the premises to be searched, in case the respondent does not have their own solicitor.

The independent solicitor will not be able to leave the premises while the search is being conducted. Take food and water.

During the search

- Keep a close eye on all that is happening – don’t allow more than one separate activity (e.g. review of hard copy documents, review of electronic material, examination of equipment) to take place at any one time unless you are reasonably able to monitor all the activities and are confident that you know what is going on.
 - Keep a close eye on the applicant’s party – your report to the Court must include your observations of their conduct of the search.
 - Ask questions of the applicant’s solicitor and/or independent computer expert if you do not understand what is happening, or why.
 - Try to help the parties find workable compromises to any dispute. Unnecessarily returning to Court to argue what may ultimately be a minor point is very expensive for all involved – use common sense.
- Ensure that you are the repository for all things that the applicant’s solicitor says should be taken. If anything clearly falls outside the scope of the Search Orders, direct that they be returned to the respondent.
 - If there is an arguable dispute about anything, identify and place it in a separate envelope/box so that it can be identified later, in particular in relation to any subsequent application.
 - Keep a note of any concerns/issues you have with the execution of the Search Orders.
 - List all things to be taken away, and have each party review, verify the accuracy of and sign the list.
 - Be mindful of the time constraints imposed for execution of the Search Orders and keep a record of the time during the search for obtaining independent legal advice and other matters as the day unfolds.

After the search

- Remove all things identified by the search as falling within the scope of the Search Orders into your possession.
- Promptly prepare your report to the Court, in the form of an affidavit, describing all activities undertaken and identifying any concerns/issues you have with the execution of the Search Orders. The report must be comprehensive and accurate. It should give the Court a complete account of all events of significance that occurred during the execution of the Search Orders. This includes matters such as:
 - service of the Court documents;
 - whether the occupant required an explanation of the Search Orders;
 - whether the respondent obtained independent legal advice;
 - whether there were any disagreements between the search party and the respondent;
 - what materials were seized;
 - any unusual events that may have occurred;
 - confirmation of your compliance with the Practice Note; and
 - the time at which activities and events occurred.
- Attend Court on the return date of the application with all seized material, or a copy of that material in case of computers or hard drive.