

**STEERING COMMITTEE ON JUSTICE EFFICIENCIES
AND ACCESS TO THE CRIMINAL JUSTICE SYSTEM**

**REPORT ON TELEWARRANTS
AND ON THE ONTARIO
eTELEWARRANT AND eREPORT INITIATIVES**

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INTRODUCTION

This report is presented with the view to encouraging optimal use of technology associated with seeking and issuing search warrants and other similar judicial authorizations and reporting to justice on property seized to improve the efficiency in the criminal justice system*.

The first part of this report identifies two aspects of the *Criminal Code* telewarrant regime that would greatly benefit from legislative reform: the limited availability of the telewarrant process to a number of *Criminal Code* search warrants and the requirement that there be circumstances that make it impracticable for the applicant to attend personally to obtain a search warrant. The second part describes Ontario's experience with enhanced use of technology in relation to two specific initiatives currently in place in the Ontario Court of Justice: the eTelewarrant and eReport processes. Given the advantages gained by implementing such initiatives, other jurisdictions may wish to consider adopting similar models to increase the efficiency of the criminal justice system.

1. BACKGROUND

1.1 The *Criminal Code* Telewarrant Process

Section 487.1 of the *Criminal Code* sets out a procedure that authorizes a peace officer to make an application by telephone or other means of telecommunication before a designated justice to obtain a search warrant in respect of an indictable offence. While section 487.1 specifically refers to the conventional search warrant (section 487 of the *Criminal Code*), the telewarrant process also applies to other warrants with such modifications as the circumstances require (these warrants are identified under section 1.3 of this report).

The telewarrant process provides two ways for an officer to obtain a warrant other than by personal attendance before a justice. The most common method of seeking a telewarrant is by way of a written information sent by fax transmission or other technological means of communication that produces a writing (e.g. email)¹. When transmitted in written form, the information constitutes a record of the basis on which the application is made. The information must be taken on oath or, alternatively, a written statement may be provided indicating that all matters contained in the information are true to the officer's knowledge and belief, which is deemed to be a statement made under oath².

A less frequently used method of obtaining a telewarrant is by submitting an information by oral communication (e.g., telephone call from the applicant to the justice). For oral telewarrants, the information is taken on oath, which may be administered through telecommunication, and recorded verbatim by the justice who receives the application and certified as to its date and time of receipt

* This report does not take into consideration specific procedures put in place within the criminal justice system as a result of the COVID-19 outbreak.

¹ The term "telecommunication" is defined in section 35 of the *Interpretation Act*, RSC 1985, c. I-21, as follows:
35 (1) In every enactment, (...) "telecommunication" means the emission, transmission or reception of signs, signals, writing, images, sounds or intelligence of any nature by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system.

² *Criminal Code*, RSC 1985, c C-46, ss 487.1(1), (3.1).

and content. This record must then be filed as soon as practicable by the justice with the clerk of the court³.

Subsection 487.1(4) of the *Criminal Code* addresses the content of an information submitted by telewarrant and requires that it provide for a statement of the circumstances that make it impracticable for the officer to appear in person before the justice; the indictable offence alleged, the place and the items to be searched for; the grounds for believing the items to be searched for will be found at the place; and, a statement as to any prior applications of which the applicant has knowledge⁴.

To issue a warrant by way of telecommunication pursuant to section 487.1, the justice must be satisfied that it conforms to the requirements set out in subsection 487.1(4) including that it discloses reasonable grounds for dispensing with an information presented personally and in writing⁵. This of course is in addition to the requirement that the justice be satisfied that the information discloses reasonable grounds of belief as set out in the warrant provision that may be sought by telewarrant. Additional procedural requirements are also provided to address particularities of remote issuance of warrants. The *Criminal Code* provides for a Form 5.1 telewarrant, which is completed by the justice who issues the warrant. Where the information is submitted in written form, the justice who issues the telewarrant provides it to the officer by way of telecommunication. Where the information is submitted orally, the officer also completes a 5.1 Form as directed by the justice⁶. In both cases, the justice must file a copy of the warrant with the clerk of the court for the territorial division where the warrant is intended for execution. The officer who executes a telewarrant is required to prepare a facsimile of the warrant and give it to the person ostensibly in control of the place to be searched or otherwise affix it in a prominent place⁷. Relying on the telewarrant process also requires that a Form 5.2 report on property seized be filed with the clerk of the court in the territorial division where the warrant is intended for execution as soon as practicable but no later than 7 days of the warrant's execution and must include specific statements in relation to its execution⁸.

1.2 Requirement that it be Impracticable to Appear in Person

What largely distinguishes the telewarrant process from the in-person application procedure is that in order to obtain a warrant by way of a telewarrant, a peace officer must provide a statement of the circumstances that make it impracticable for the officer to present the application to a justice by personal attendance. The parliamentary record for the *Criminal Law Amendment Act*, S.C. 1985, c. 19, s. 70, which originally enacted what is now section 487.1 provides indications of Parliament's intention with the inclusion of this provision. The then Minister of Justice stated that the telewarrant was, in effect, "*a conventional warrant that is obtained by using a telephone or other means of telecommunication*", and that it included requirements comparable to those applicable to

³ *Supra* note 2, ss 487.1 (2)-(3), (6).

⁴ *Supra* note 2, s 487.1(4). It is noteworthy to mention that some of the requirements found in section 487.1 were drafted with the section 487 search warrant in mind and would apply to other warrant provisions with such modifications as the circumstances require to the specific warrant.

⁵ Subsection 487.1(5) of the *Criminal Code*, *supra*, note 2, also provides that the justice may require the warrant to be executed within a specific period.

⁶ *Supra* note 2, ss 487.1(6).

⁷ *Supra* note 2, ss 487.1 (6)-(8).

⁸ *Supra* note 2, ss 487.1(9), 489.1(3).

conventional warrants⁹. The Minister of Justice also referred to the recommendation put forward by the Law Reform Commission of Canada (LRCC) of a new telewarrant provision¹⁰. The requirement that it be impracticable to appear in person was largely based on a regime designed by the LRCC, which proposed to make the search warrant process more accessible by adapting it to suit the availability of new technology and ensuring that the process remained as judicial and as particular as the process governing conventional warrants¹¹. The requirement to demonstrate that it be impracticable to appear in person was characterized by the LRCC as a dispensation from the usual process, which involved the officer's personal attendance before the justice to submit a written information on oath. According to the LRCC, the telewarrant regime was meant to be available whenever circumstances of time or distance made it impracticable to insist upon the applicant making a personal appearance before the justice¹².

Since the enactment of the telewarrant, the requirement to show that it is impracticable to appear personally has been the subject of numerous judicial decisions regarding the proper meaning and application of the term "impracticable". In a decision of the British Columbia Court of Appeal in *R. v. Clark*¹³, Frankel J.A. stated for the Court that (...) *The impracticability requirement is concerned with whether it is practicable to make an in-person application at the time the application is brought; it does not require that an immediate need for a warrant be demonstrated*¹⁴. The Supreme Court of Canada has confirmed that this threshold is a low one to meet¹⁵.

Since then, courts have generally followed *Clark* and held that while more than mere inconvenience is required, personal attendance does not need to be impossible nor urgency demonstrated to access the telewarrant process¹⁶. The often stated reason for seeking a warrant by way of a telewarrant is that the courthouse is closed or the on-duty justice was too far away to appear in person to seek the warrant¹⁷. Nonetheless, the proper application of the impracticability requirement continues to cause uncertainty within the law enforcement community and to be challenged during the trial process on the basis of an infringement under section 8 of the *Canadian Charter of Rights and Freedoms*. Issues that have been raised before the courts include whether the warrant application could have been postponed until an appearance in person could be made¹⁸, whether there was evidence that the officer purposefully delayed the preparation of the application such that the officer had to resort to the telewarrant procedure instead of attending in person¹⁹, and whether the officer

⁹ *House of Commons Debates*, 33rd Parl, 1st Sess, No 1 (December 1984) at 1389.

¹⁰ *Ibid.*

¹¹ Canada, Law Reform Commission of Canada, *Writs of Assistance and Telewarrants: Report 19* (Law Reform Commission of Canada, 1983). The restrictions imposed by the LRCC derived largely from their belief that the decision to dispense with a personal appearance and a written information (for oral telewarrants) should be reserved to the justice. In addition, before making the telewarrant procedure more accessible, the LRCC indicated it would want to be assured that any such changes would not unduly strain the resources on justices (Report on Writs of Assistance and Telewarrants at 102).

¹² *Ibid* at 84.

¹³ 2015 BCCA 488; aff'g [2017] 1 RSC 86.

¹⁴ *R v Clark*, 2015 BCCA 488 at para 66.

¹⁵ *R v Clark*, [2017] 1 RSC 86.

¹⁶ See for example *R v Enns*, 2017 YKTC 42 at para 68; *R v Evans*, 2017 ONSC 3141 at para 44; and *Janvier v R*, 2019 QCCA 889 at para 10.

¹⁷ See for example *R v Francis*, 2020 ONSC 391 and *R v Stinson*, 2017 NLCA 60.

¹⁸ *R v Reid*, 2017 ONCA 430, *R v Millard and Smich*, 2015 ONSC 7500, *R v McKenzie*, 2016 ONSC 245, and *R v Rutledge*, 2015 ONSC 1675.

¹⁹ *R v Persaud*, 2016 ONSC 8110 and *R v Boyd*, [2018] OJ No 7032.

needs to provide evidence to support the belief that the courthouse is closed or whether they can rely on past experience or their knowledge of the court system²⁰.

These recent cases show that the uncertainty surrounding the application of the impracticability requirement continues to be the subject of challenges before the courts. While Parliament initially created a scheme that was meant to set out a special procedure that authorized officers to dispense with the usual in-person application process, since then, the *Criminal Code* has been amended to facilitate the use of technology as an alternative to hard copy delivery or personal attendance at different stages of a criminal proceeding²¹. Given how technologies are already being used to enhance the efficiency of the criminal justice system, there is merit in questioning whether the impracticability requirement provides any added value in these modern times.

1.3 The Telewarrant Regime of the *Criminal Code* is only Available for Certain Warrants

When the telewarrant was first enacted, the only warrants that could be obtained through that process were conventional warrants (section 487 of the *Criminal Code*) and search warrants to obtain blood samples (formerly section 256 of the *Criminal Code*, now subsection 320.29(3)). However, the telewarrant process has subsequently made available to other warrants through other legislative amendments. These additional warrants include the following: general warrants (subsection 487.01(7)), warrants to take bodily substances for forensic DNA analysis (487.05(3)), impression warrants (subsection 487.092(4)), authorizations and warrants to enter a dwelling-house (section 529.5), warrants for breaching a conditional sentence order (paragraph 742.6(1)(f)). Other federal statutes permit the use of telewarrants for search warrants including the *Controlled Drugs and Substances Act* (subsection 11(2)) and the *Cannabis Act* (subsection 87(2)). As for the electronic surveillance regime, it includes its own telewarrant process with respect to judicial authorization for the interception of private communications with consent (section 184.3 of the *Criminal Code*).

While the telewarrant process is available for some warrants, it does not currently apply to a number of other warrants and court orders that are either equally or increasingly relied upon by law enforcement to carry out their investigations, including warrants for tracking devices (section 492.1), warrants for transmission data recorder (section 492.2) or preventative warrants for the seizure of firearms (section 117.04); nor can it be relied upon to apply for investigative orders including, preservation orders (section 487.013) and various production orders (sections 487.014 to 487.018). There does not appear to be a principled basis for precluding the use of technology to seek and issue these additional warrants and court orders.

1.4 Calls for Legislative Changes to the Telewarrant Regime Associated with the Impracticability Requirement and its Limited Availability to *Criminal Code* Warrants

In 2009, Parliament introduced *An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make a consequential amendment*

²⁰ *R v Martins*, 2018 ONCA 315 at para 3, *R v Enns*, *supra* note 16 at para 63, and *R v Reid*, *supra* note 18 at para 54.

²¹ See for example, s. 508.1 of the *Criminal Code*, *supra* note 2, which allows an information to be laid by means of telecommunication that produces a writing, sections 841 to 847 regarding electronic documents, as well as sections 502.1, 515 (2.2) (2.3), 714.1 to 714.8, and sections 715.21 to 715.26 providing for remote appearances.

to another Act²² (former Bill C-31). This Bill proposed amendments to provide greater access to the telewarrant regime and included the following: (1) allowing peace officers and public officers to use telewarrants for all warrants and investigative orders; and, (2) removing the requirement that it be “impracticable to appear personally before a justice” in order to apply for a written telewarrant. The Bill would have maintained a modified form of the impracticability requirement for informations received orally (e.g., by telephone) by requiring that the officer demonstrate why it would be impracticable to use a means of telecommunication that produces a writing. Former Bill C-31 died on the Order Paper that same year.

In its 2013 *Report on the Use of Technology in the Criminal Justice System*, the Steering Committee endorsed former Bill C-31’s proposed amendments noting that an increase use of telewarrants allows for speedier access to judicial authorizations and saves resources²³.

There have also been other calls to amend section 487.1 of the *Criminal Code* including by the Canadian Association of Chiefs of Police and the Uniform Law Conference of Canada (ULCC), which has created a Working Group to examine ways to make the telewarrant process more efficient. The Group has considered several issues including amendments proposed by former Bill C-31. The Group’s report will be presented at the upcoming ULCC annual meeting, which will take place in August 2020.

2. THE eTELEWARRANT AND eREPORT INITIATIVES

In Ontario, thousands of times each year, justices consider applications for search warrants and reports to a justice on property seized²⁴. Since the *Criminal Code* telewarrant regime limits the circumstances in which search warrant applications may be submitted by “telecommunication”, most applications must follow the in-person process. Search warrants that are issued by a justice usually involve a peace officer delivering a hard copy to the intake office at the courthouse, which then provides the application to a justice for review. This procedure is time consuming, slows the administration of justice and does not align with modern delivery methods. Until recently, search warrant applications submitted by telewarrant were obtained largely via fax transmission. Yet, courthouse and law enforcement technology currently exists to securely transmit electronically signed documents at no additional cost for all warrants, court orders, and judicial authorizations.

The following sub-sections examine the Ontario Court of Justice’s (OCJ) eTelewarrants and eReports processes, the efficiencies gained with the eTelewarrant process in comparison to the in-person hard copy search warrant application procedure and telewarrants obtained via fax transmission, and other benefits associated with the use of these systems to obtain telewarrants and consider reports to justice.

2.1 eTelewarrants

Peace officers and justices in Canada have largely used facsimile (fax) systems to present and issue

²² Bill C-31, *An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make a consequential amendment to another Act*, 2nd Sess, 40th Parl, 2009 (second reading 27 November 2009).

²³ Steering Committee on Justice Efficiencies and Access to the Justice System, *Report on the Use of Technology in the Criminal Justice System*, June 2013 at 1, online: <<https://icclr.org/publications/report-on-the-use-of-technology-in-the-criminal-justice-system/>>.

²⁴ *Supra* note 2, Form 5.2.

telewarrant documents. With fax transmissions, the quality of the document may depend on the individual equipment that is used and whether it is properly maintained. This may therefore result in a justice not being in a position to consider a true copy of a search warrant application because of the poor image quality. Faxing is also time consuming, sometimes taking 30 to 60 seconds per page, which equates to 12 to 24 minutes to receive the average 24-page application. In addition, fax transmission may not always be a sufficiently secure means of exchanging sensitive information contained in warrant applications.

In 2015, the OCJ leveraged existing technology at no cost to courthouses and law enforcement to modernize the method of submitting telewarrant documents through the implementation of the eTelewarrant process.

The term “eTelewarrant” refers to the use of existing courthouse and law enforcement technology to speed up the process of peace officers obtaining, and justices issuing, an authorized section 487.1 telewarrant. eTelewarrant involves the use of Entrust Public Key Infrastructure certificates to electronically sign telewarrant documents and encrypt emails to securely exchange documents between a justice and a peace officer²⁵. It has been made available for telewarrants issued by justices in respect of section 487 search warrants, warrants to obtain blood samples, search warrants pursuant to section 11 of the *Controlled Drugs and Substances Act* and section 87 of the *Cannabis Act*²⁶.

Of note, in 2019, 5,100 eTelewarrant applications were submitted by Ontario law enforcement agencies resulting in approximately 122,600 pages weighing 1,200 pounds that did not have to be printed with a cost saving of approximately \$6,130 in paper alone. In addition, approximately 894 facsimile transmission hours were avoided, hundreds of judiciary, and thousands of policing hours were freed up. This allowed police officers to focus on responding to emergencies, carrying out investigations, and conducting neighbourhood patrols, which contributed to the overall goal of protection and safety of the public.

2.2 eReport to a Justice

Building on the success of the eTelewarrant process, the eReport process was implemented in 2018 to enable peace officers within Ontario’s Central East and Toronto court regions to report on unsealed search warrants and warrantless seizures by electronic means in a timelier manner, often within hours of items being seized. Courthouse and law enforcement efficiencies have been considerable and continue to grow with each electronically signed order. For example, 6,600 eReports were filed from October 2018 to December 2019 at Ontario’s Central East and Toronto Region’s 13 courthouses, resulting in some 8,000 officer and 440 court administration staff hours being freed up. Additionally, approximately 26,500 pages weighing 250 pounds did not have to be printed, manually filed and stored at courthouses.

²⁵ The term Public Key Infrastructure (PKI) is used to describe the processes, technologies and practices that are required to provide a secure infrastructure. PKI is made up of five unique attributes, authentication, non-repudiation, confidentiality, integrity and access control. For example, an Entrust PKI certificate is used to ensure that the integrity of the document is guaranteed (authentication, integrity and confidentiality) and as a means of verifying the identity of both the sender and the recipient of the message (digital signatures, non repudiation, confidentiality, and access control). For additional information on PKI infrastructure, see online among others: <https://www.canada.ca/en/revenue-agency/services/e-services/public-key-infrastructure/about-public-key-infrastructure.html>

²⁶ The eTelewarrant may also be relied upon to obtain warrants in accordance with s. 529.5 of the *Criminal Code* and other warrants in relation to provincial offences.

2.3 Inefficiencies with the Personal Attendance Process and Fax Transmission Systems

2.3.1 Delays

The total time required to obtain a search warrant is often impacted by factors such as the location where the peace officer completes the search warrant application, the travel time required to deliver the documents to the courthouse or the reviewing justice and the need to re-attend after the application has been considered. When telewarrants are faxed, delays are also created by slow transmissions, paper jams and justices considering applications with poor image quality. These factors can often lead to lengthy delays and add hours to the process.

Delays in obtaining a search warrant may result in:

- the loss or destruction of evidence that could inhibit the ability of law enforcement to investigate criminal offences or identify potential suspects;
- delays in the identification of suspects, which may allow such individuals to evade justice or commit further offences;
- the loss of personal property that may otherwise be returned to persons lawfully entitled to its possession; and,
- the unnecessary displacement of occupants of search locations and the deployment of police resources to secure such sites while a search warrant is obtained.

2.3.2 Impact on Court Staff Resources and Record Management

The volume of hard copy search warrant related documents results in court staff dedicating valuable time to file, photocopy, search for physically filed warrants and match associated reports on property seized, such as a Form 5.2, to the warrant. Misfiled warrants and related orders or those that are permanently lost due to flood or fire, may risk hindering court proceedings. In addition, there are also high costs associated with utilizing space at the courthouse or other location for the storage and archive of hard copies of numerous search warrants and other judicial authorizations as well as other related documents such as reports to a justice²⁷.

3. RECOMMENDATIONS

3.1 Legislative Proposals to Amend the Telewarrant Process

Technology is relied upon in practically all parts of society and is provided for and relied upon in other instances within the criminal justice system, which continues to struggle to find ways to reduce delays.

²⁷ For a discussion on the challenges and costs associated with storage and keeping of court files in civil matters in the province of Ontario, see online: <<https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/records.php>>.

Parliament's intention in introducing telewarrants was to make the search warrant process more accessible to peace officers. The statutory pre-condition for seeking a warrant by telewarrant that requires the officer to state why it is "impracticable to appear personally" may have been warranted at the time section 487.1 of the *Criminal Code* was first enacted. Parliament took a cautious approach to dispensing with the usual process by requiring judicial officers to make the determination on the use of telecommunications in accordance with that provision. However, after all these years, any concern with the use of reliable and secure technologies over personal appearance by police officers who obtain search warrants may no longer be present today. In particular, the distinction between the in-person and electronic processes may be rendered less meaningful in those jurisdictions where hand delivery of the search warrant application is given to an intake office. In addition, when unplanned court closures occur (e.g., power outage, extreme weather or pandemic), relying on alternative means of receiving applications and issuing warrants is a key part of maintaining a proper functioning of the criminal justice system.

RECOMMENDATION 1

A) IMPRACTICABILITY REQUIREMENT

Given the gains achieved by the increased use of technology in seeking and issuing search warrants and other investigative orders in a manner that respects the essential constitutional elements of judicial authorization prior to search, the requirement to show that it is impracticable to present a written application by appearing before a justice should be removed for electronic applications.

B) AVAILABILITY OF TELEWARRANTS TO OTHER SEARCH WARRANTS AND SIMILAR JUDICIAL AUTHORIZATIONS

In addition, peace officers should be authorized to make use of telecommunications in seeking all search warrants and investigative orders to facilitate investigations. As section 487.1 of the *Criminal Code* is only available for certain warrants, legislative amendments ensuring its accessibility for all investigative warrants, judicial authorizations and orders should be introduced to contribute to greater efficiencies in the criminal justice system.

3.2 Benefits of Adopting the eTelewarrant and eReport Processes

3.2.1 Availability from Any Location

The eTelewarrant process allows peace officers with access to email to instantaneous apply for a telewarrant from anywhere, such as the location to be searched, a police car or a police station. Similarly, incoming emails are strategically accessible to specific judicial officers, with the advantage of permitting secure access from a networked device whether the judicial officer is situated at the courthouse or at another location. Such a system would increase the opportunity for officers to make full use of the telewarrant regime by enhancing its accessibility in cases where search warrant applications were previously submitted by way of fax transmission, which can only be transmitted from specific locations where fax systems are available. In particular, those carrying out enforcement duties in remote locations, where challenges associated with time and distance may be exacerbated, would equally benefit from an accessibly secure method to obtain judicial authorizations.

The eReport process has the advantage of allowing a Form 5.2 to be submitted, within hours of a search warrant being executed, through a system that is available twenty-four hours a day. Access

to this system also removes the need for officers to travel to the courthouse and present the report to a justice during the limited courthouse’s hours of operation, which may not align with the officers scheduled shift. In addition, this system assists officers in complying with the requirement to present a report to a justice within 7 days of the execution of the warrant where the associated search warrant is obtained by way of a telewarrant²⁸. The eReport process also permits timely filing so that publicly accessible court documents are readily available to those with an interest in the case or in the property seized including the media.

3.2.2. Scalability, Compatibility and Sustainability

In Ontario, the eTelewarrant and eReport processes are currently used for telewarrants that can be considered by justices and Form 5.2 reports. They are both scalable to include additional judicial authorizations. For instance, the eTelewarrant process could include search warrants that are issued by judicial officers of another level of court, or, should the *Criminal Code* be amended to permit it, additional judicial authorizations such as production orders and tracking warrants. They also have the potential capability of expanding Canada-wide.

The eTelewarrant and eReport processes allow for secure and consistent information exchange, and experience less malfunction than fax transmission equipment. Both processes use standard Microsoft Word and PDF documents, making them compatible with all law enforcement record management systems, and are supported by a law enforcement website.

Finally, the eTelewarrant and eReport processes are sustainable and responsible methods of obtaining court orders since they reduce or eliminate paper, the space required to store orders and the need for officers to physically travel to and from courthouses. This has not only a cost and environmental benefit, it is also a more efficient and effective way to both obtain search warrants and other judicial authorizations and to consider reports to a justice.

The following comparative chart highlights the efficiencies gained with the Ontario model, which contributes to addressing some of the challenges described in this report.

General Process Comparison in the Ontario Court of Justice	
eTELEWARRANT APPLICATION & FORM 5.2 REPORT TO JUSTICE via eREPORT	IN-PERSON SEARCH WARRANT APPLICATION & FORM 5.2 REPORT TO JUSTICE
<ul style="list-style-type: none"> a) The officer sends an email to the Telewarrant Centre seeking permission to submit the search warrant application via telewarrant b) The justice sends a reply encrypted email granting permission. c) The officer sends an electronically signed Information to Obtain a telewarrant to search. 	<ul style="list-style-type: none"> a) The peace officer delivers the search warrant application to the court intake office. b) The court intake office provides the application to the reviewing justice. c) The justice considers the application and returns it to the court intake office. d) The court intake office advises the officer to re-attend.

²⁸ *Supra* note 2, s 487.1(9).

<p>d) The justice considers the application, and if granted, sends a reply encrypted email with an electronically signed authorized telewarrant to search.</p> <p>e) The officer executes the warrant. If an *unsealed Form 5.2 report to justice is required as a result of the warrant being executed:</p> <p>f) The officer emails an electronically signed eReport to the court region having jurisdiction.</p> <p>g) The justice considers the application, and if granted, sends a reply email with an electronically signed authorized eReport.</p> <p>h) The justice saves the eReport into a computer system.</p> <p>i) Court staff moves the saved eReport into the relevant courthouse computer system folder.</p> <p>* A sealed Form 5.2 report must be filed in person.</p>	<p>e) The officer re-attends and obtains the authorized order where granted.</p> <p>f) The officer executes the warrant.</p> <p>If a Form 5.2 report to justice is required:</p> <p>g) The officer attends the court intake office of the courthouse having jurisdiction in the matter and waits his turn for an available justice.</p> <p>h) The officer presents a Form 5.2 report to the justice and verbally provides the supporting information.</p> <p>i) The justice audio records the proceeding.</p> <p>j) The justice considers the application, and if approved, authorizes the Form 5.2 report.</p> <p>k) Court staff provides the officer with a copy of the authorized Form 5.2 report.</p> <p>l) Court staff locates the authorized search warrant, attaches the original Form 5.2 report and manually files the documents.</p>
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RECOMMENDATION 2: IMPLEMENTATION OF ONTARIO’S e-TELEWARRANT AND e-REPORT PROCESSES IN ALL JURISDICTIONS

The advantages of the Ontario model are apparent for both the enforcement community and judicial officers who make use of the eTelewarrant and eReport processes in that jurisdiction. To address the challenges set out in this report and enhance efficiencies in the telewarrant and report on property seized procedures, it is recommended that the Ontario model, or a similar one, be adopted in all jurisdictions.

4. CONCLUSION

As proposed in this report, legislative changes to enhance accessibility and availability of the telewarrant regime for all search warrants, judicial authorizations and investigative orders would contribute to improving efficiencies in the criminal justice system. An in-person application to obtain search warrants is time consuming and slows the administration of justice. For the most common search warrant applications, it renders the usual process unnecessary where courthouse and law enforcement technology exists to securely transmit electronically signed documents at no additional or incremental cost. The eTelewarrant and eReport processes result in time and cost

savings, delivering efficiencies while offering other critical benefits including accessibility, scalability and compatibility.

APPENDIX: SUMMARY OF RECOMMENDATIONS

1. a) Given the gains achieved by the increased use of technology in seeking and issuing search warrants and other investigative orders in a manner that respects the essential constitutional elements of judicial authorization prior to search, the requirement to show that it is impracticable to present a written application by appearing before a justice should be removed for electronic applications.

b) In addition, peace officers should be authorized to make use of telecommunications in seeking all search warrants and investigative orders to facilitate investigations. As section 487.1 of the *Criminal Code* is only available for certain warrants, legislative amendments ensuring its accessibility for all investigative warrants, judicial authorizations and orders should be introduced to contribute to greater efficiencies in the criminal justice system.
2. The advantages of the Ontario model are apparent for both the enforcement community and judicial officers who make use of the eTelewarrant and eReport processes in that jurisdiction. To address the challenges set out in this report and enhance efficiencies in the telewarrant and report on property seized procedures, it is recommended that the Ontario model, or a similar one, be adopted in all jurisdictions.