



In a corner

What to do when the CAB comes to call

Continuing our series on coping with crisis situations, Mary Keane explains what you should do if officers from the Criminal Assets Bureau call to your office with a warrant

Under section 14 of the *Criminal Assets Bureau Act* of 1996, the Criminal Assets Bureau can obtain a search warrant from a district judge where the judge is satisfied that there are reasonable grounds for suspecting that 'evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts' is to be found in any place.

On occasion, section 14 warrants have been issued in respect of client information held at solicitors' offices. In these circumstances, the usual format is that a number of CAB officers will attend, without notice, at the solicitor's offices, will produce the warrant and will ask to examine the client's file(s) and the accounting/computer records relating to transactions undertaken on behalf of the client. Often, these will be conveyancing transactions and the purpose of the examination is to establish a paper trail in relation to the purported disposal/laundrying of assets derived from criminal activities. In most cases, there is no suspicion that the client named on the warrant was knowingly involved in money laundering, but the CAB may believe that the transaction formed part of a chain of transactions engaged in by a person under investigation.

It is worth noting that the bureau is a multi-disciplinary body and its officers comprise members of the Garda Síochána, officers of the Revenue Commissioners and

officers of the minister for social welfare. Consequently, the criminal activity being investigated can vary across the spectrum from social welfare offences to tax offences to mainstream criminal offences. Non-garda bureau officers have a statutory guarantee of anonymity and do not have to show evidence of identity. However, at least one of the visiting officers must be a member of the gardaí and, on request, must identify himself as such.

The warrant will follow a standard layout, which can be divided into four constituent parts:

- **The introduction.** This will identify the garda member who brought the application, and will contain the statement by the judge that he is satisfied that there are reasonable grounds for suspect-

ing that evidence of or relating to assets or proceeds deriving from criminal activities or to their identity or whereabouts is to be found at the solicitor's offices

- **A description of the material.** This will usually be divided into (i) financial records (cheques, copy cheques, bank drafts, receipts and so on), and (ii) non-financial records (correspondence, notes, memoranda, contracts, requisitions, title documents and so on). Both (i) and (ii) will be qualified so as to exclude items 'subject to legal privilege'. The name(s) of the persons to whom the warrant relates and their address(es) will be listed. In some instances, the warrant will apply to evidence relating to a specific named property; in others, it will apply to evidence relating to 'proper-

ty transactions' on behalf of the named person; in others still, it will apply to evidence relating to 'monies and goods' received by the named person. This part of the warrant will usually conclude with the name and address of the solicitor's offices, being the place authorised to be searched under the terms of the warrant

- **The authorisation.** This part of the warrant will name the garda member authorised to conduct the search and will empower him to enter the premises within one week, to search it and any person found there, and to seize and retain any material which he believes to be evidence of or relating to the proceeds of criminal activities. The warrant will also authorise him to 'exercise the powers contained in section 14(6) of the *Criminal Assets Bureau Act, 1996*', that is, to require any person present to give their name and address and to arrest any person who refuses to give his name and address or who obstructs the officer in carrying out his duties
- **Signature and date.** The warrant will conclude with the signature of the district judge and the date the warrant was issued.

Because it is anathema to the training of a solicitor to disclose any information in relation to his client to a third party, the production of a CAB warrant can cause great consternation in

WHAT SHOULD YOU DO?

If the CAB arrives at your office with a warrant, you should:

- Read the warrant carefully and take a copy
- Check that it has been issued within the last week
- Comply with its exact terms, that is, in relation only to the persons named and the material listed
- Satisfy yourself that there is nothing in the documentation that is subject to legal privilege. If any items are privileged, inform the bureau officer
- If a file or documents are being retained by the bureau officer and if time allows, copy the file. Otherwise, obtain a receipt from the bureau officer
- Take care not to disclose any information in relation to other clients of the office
- Inform your client that you have been required by law to hand over his file/documentation to the authorities
- Prepare and retain an attendance note on the visit
- If in doubt, contact the Law Society.

a solicitor's office. While a warrant issued by a court must be complied with, nevertheless it should be complied with strictly within its terms and not beyond. A warrant does not constitute an authorisation for a general trawl through all and any files in a solicitor's office. It has been issued on the basis of sworn evidence and for a specific purpose. As with any authorisation, it must be exercised reasonably. A solicitor should assist the CAB officers in complying with the terms of the warrant, but should also be conscious of his client's rights and his own professional obligations. In particular, a solicitor should ensure that information in relation to other clients who are not the subject of the warrant are not disclosed to the authorities.

In relation to the exemption for items subject to legal privilege, the CAB will accept a solicitor's assurance that a particular item/document/file is subject to legal privilege and a solicitor should always satisfy himself that there is no privileged item on a file before releasing it.

There has been a question mark over a solicitor's right to notify his client that his file has been seized by the CAB. Under

section 58 of the *Criminal Justice Act, 1994*, any person who makes a disclosure which is likely to prejudice an investigation by the authorities into drug trafficking or money laundering is open to criminal prosecution himself. However, a solicitor's relationship with his client is of a special nature and the section should not be read in isolation.

Section 58 provides for a defence of 'lawful authority or reasonable excuse' to a prosecution for disclosure. In addition, the judgment of Kinlen J in *Michael E Hanaboe & Co v District Judge Hussey, the Garda Commissioner and the Attorney General* indicates that a solicitor served with an order to produce client documents under section 63 of the *Criminal Justice Act, 1994* 'would have been bound or at least entitled' to inform his client. It seems reasonable to conclude that a similar entitlement would apply where a section 14 warrant is involved and the CAB has informally indicated that this accords with its view. As a matter of good practice, a solicitor might indicate to the CAB officers his intention to notify his client. **G**

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