

Facilitator's Guide Research Case Study

Criminal Law

Scenario

Two undercover police constables enter a bar where they believe drugs are being sold. They notice two young men (the accused and a friend) who look suspicious, approach them and ask to buy some cocaine. The accused then sells them a small amount of powder cocaine. The next day the constables arrest the accused and charge him with drug trafficking. Given that the police asked to buy drugs, is entrapment a viable defense?

Objectives

1. This scenario involves a legal question that has a clear line of authority. It is best suited to locating relevant law in secondary resources (textbooks, articles & digests) available through the Members Section, then identifying case law authorities from there.
2. It is also instructive in forming a basic keyword search strategy – but because there are so many cases on point, using textbooks is far more efficient.
3. Using the Abridgment (digests) is more efficient for finding case law than the WestlawNext global search.

Textbooks

- WestlawNext (CriminalSource) – MacFarlane, Frater, Michaelson: *Drug Offences in Canada*, Part V – Defences, Chapter 26 – Entrapment
- WestlawNext (CriminalSource) – Ewaschuk, *Criminal Pleadings & Practice in Canada*, Part VII (Chapter 21) – GENERAL DEFENCES, 21:8000 – ENTRAPMENT
- Irwin Law – Roach: *Criminal Law*, Chapter 2, The Criminal Law and the Constitution, B(1)(d) Entrapment. This is not the best source on entrapment, but it is a good exercise for searching in Irwin books.
- Emond Montgomery – Rock & Hoog: *Foundations of Criminal and Civil Law in Canada* (3rd) – brief section on Entrapment at pg.132. This is not the best source on entrapment, but it is a good exercise for searching in Emond books.

Encyclopedia

- *Canadian Encyclopedic Digest*, Criminal Law – Defences, V – Procedural Defences, 3 – Entrapment

Articles

- Articles are not very helpful for this question, as it is textbook law – but it's still a worthwhile exercise to conduct an article search
- Search in: ICLL (WestlawNext), HeinOnline
- *Entrapment defence succeeds in drug case: stay granted*, by Patricia Chisholm (1986) 6 Lawyers Wkly. No. 13, 12
- *Judge OKs police "opportunity drug purchases,"* by Kirsten McMahon (Sept. 2004) 15 L. Times No. 26, 2

Digests

- Canadian Abridgment Digests > CRM Criminal law > V Defences - CRM.V.10 Entrapment (278 digests)
- Search within above or use "Search within results" for "trafficking" (149 digests). Then narrow the number of digests using combination of date, jurisdiction, and court level filters.

Keyword Searching – Suggested Process

Step 1: Brainstorm for keywords

undercover, police, bar, drugs, suspicious, ask, request, cocaine, powder, trafficking, guilty, entrapment, dealing, selling, narcotics, controlled substances

Step 2: Identify concepts, group keywords

- Concept 1: drugs, controlled substances, narcotics, cocaine
- Concept 2: trafficking (as "trafficking" is official name of charge, additional synonyms (dealing, selling) are not needed)
- Concept 3: entrapment (no synonyms)

Step 3: Identify Connectors and Create search query

- Connectors and Expanders are listed in WestlawNext on "ADVANCED" search page
- Possible initial search: (drugs or "controlled substances" or narcotics) & trafficking & entrap!

Step 4: Execute search and analyze results

- Initial searches will likely yield a high number of cases
- May need to add a concept or filter results
- Look at a few hits – likely there are some cases on point
- In the best results – are there other terms that appear which should be added to the search? If "controlled substances" (the statute terminology) was not in the original search, the researcher should identify it in the results and add it to the query
- Are there related Abridgment headings?

Step 5: Reformulate search

- To find similar fact cases, consider adding concept 4: officer, police – or concept 5: ask, request, solicit
- Concepts 4 & 5 may need to be searched using proximity operators (e.g., /2 means “within two words of”)
- Possible new search: (drugs OR “controlled substances” OR narcotics) AND trafficking AND entrap! AND ((officer! OR police!) /2 (ask! OR request! OR solicit!))
- For some scenarios, iteration of steps 3-5 is the correct strategy, but for this scenario, where there are a high number of hits, but very little to use in terms of additional parameters, filtering is the best option. The goal is to find the most authoritative cases on the entrapment defense to a drug trafficking charge.
- Look at the “Related Resources” in the right-hand pane – identify Abridgment headings on entrapment, then navigate within abridgment to best headings to locate key authorities

Step 6: Authorities

- Once supreme court authorities are located, use note-up feature or citing references to find recent and higher-court Saskatchewan judicial interpretations.