

Warrant central to pot case

**Police say they entered grow op only to subdue vicious dogs
But lack of warrant jeopardizes evidence against the accused**

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One officer recalled that the frame of the door was damaged. Another said the closing mechanism was broken. And another never noted anything about the door, and testified that if something had been out of the ordinary he would have noticed. Some had concerns about a possible break and enter.

Behind the door was a marijuana grow operation, and when Durham Region police entered the Highview Rd. home in Pick-

ering on April 20, 2003, they didn't have a search warrant.

Did they need one? If they did, evidence obtained in the home before they charged Edmund Kim — who faces counts of possessing and producing marijuana, possessing it for the purpose of trafficking, and possessing the proceeds of crime — may be thrown out.

Kim, 30, has pleaded not guilty to all charges at a Whitby Superior Court trial. His lawyer, Leora Shemesh, is arguing that his Charter rights were breached

when police entered the home.

Officers were called to the neighbourhood that evening because of complaints that two "vicious" dogs were running loose. Police ended up in a standoff with a growling black Lab and a Rottweiler.

The dogs ran into a home with a door ajar. Police followed, shutting the door to trap the dogs inside, the court was told.

Officers who were on the scene have testified they believed they had "exigent circumstances" to enter and therefore didn't re-

quire a warrant. The fact that they had peeked in the windows, smelled marijuana and heard loud fans had nothing to do with why they went in, they testified.

That information was reported to the drug unit for further investigation, they said. Police needed to get the dogs out and be sure no one was hurt. (In the end, both dogs were killed.)

Const. Bob Elliott said the door wouldn't shut properly and he had to hold the handle to keep it closed. That, coupled with the odour of pot, made him believe there might have been a break and enter in the home, possibly in progress, and that someone could be inside with the dogs.

Elliott's partner, Const. Hermano Dorego, testified something was wrong with the latch.

A "scenes of crime" officer arrived the next day to photograph and videotape the home as part of a grow-op investigation. Const. Martin Franssen said there was nothing significant about the entrance: "It looked like a normal front door."

Technical difficulties kept police from getting a search warrant that night, court was told.

Questioned by Shemesh, Franssen said he arrived at 6:40 a.m. to begin taking shots of the home's exterior. But a warrant wasn't issued until 9:53 a.m.

The trial continues today.