

4th IAP NORTH AMERICAN AND CARIBBEAN REGIONAL  
CONFERENCE

Montego Bay, Jamaica W.I.

2 – 4 November 2016

“International Co-operation in the  
Fight Against Cybercrime”

Daniel M Scanlan

Crown Counsel, Criminal Justice Branch, Ministry of  
Justice & the Attorney General British Columbia

# Prosecution Issues Using Foreign Evidence

- Knowing where to look
- How long will it take to get here
- Is it admissible when it gets here
- If admissible, does it prove what I want to prove
- Long term improvements required

# Where is my evidence?

- Which country is it in?
- Proxies, VPNs, Tor
- Sometimes easy but can be made hard to find
- Will local police assist?
- Do we have a treaty?
- Is the evidence in private or public hands?
- How long will it be there?

# When will it get here?

- Once located, process can be time-consuming
- Processes were largely created for paper-based evidence
- Some receiving jurisdictions get a disproportionate portion of requests
- Some have to restrict the types of evidence they will collect
- If accused is in custody and schedules an early trial date, timely disclosure can be an issue

# Will it be admissible?

- Rules of evidence are not uniform
- Statutory affidavits cover most records but not all evidence
- Applications for cross-examination may impair the admissibility or usefulness of the records
- Records for technical evidence may not be self explanatory
- Useful for most instances

# Will it be probative?

- The more technical the evidence is, the less likely it is to be probative
- Records that can be admitted through a local witness work well
- Technical evidence requiring expert interpretation can be difficult; no local experts on proprietary data
- Encryption is increasingly an issue

# Alternatives to the formal route

- Direct police to police contact
- Direct prosecutor to prosecutor contact
- Production orders to web portals
- Commission evidence
- Testimony by video link