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Tackling Organized Crime through Electronic Surveillance

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Topics

- Overview of Canadian Law
 - Coexisting Contexts - organized crime vs protection of privacy rights
 - Statutory Powers to conduct electronic surveillance
- Role of the Prosecutor in the Investigation
- Challenges for Law Enforcement
- Best Practices for using Electronic Evidence at Trial





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Overview of Canadian law

The co-existing contexts





Increased concern over Criminal Organizations

- Recognize harm to society and threat to public safety and security; international reaches; difficulty to investigate and prosecute
- Legislation intended to make investigation and proof of crim orgs more flexible and penalties increased



Increasing protection of privacy in the electronic era

- Intercepting and recording private communications recognized as the “greatest leveler of human privacy ever known” in 1971
- Notion continues in the era of electronic communication, digital storage and access to the internet



The Privacy Context – Computer searches

“It is difficult to imagine a search more intrusive, extensive, or invasive of one’s privacy than the search and seizure of a personal computer... they scour the entire contents of your hard drive: your emails sent and received; accompanying attachments; your personal notes and correspondence; your meetings and appointments; your medical and financial records; and all other saved documents that you have downloaded, copied, scanned, or created.”

R. v. Morelli, 2010 SCC 8, [2010] 1 SCR 253, paras 2-3.



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Overview of Canadian law

Electronic Surveillance – statutory powers





Types of Authorities

- Interception of Private Communications
- Video surveillance in private places
- Electronic tracking of persons, transactions and things
- Capturing transmission data
- Production orders for historical records
- Other techniques for gathering electronic data that identifies people, associations, communication devices



Interception of Private Communication

- At least one party to the communication must be in Canada – jurisdictional issues
- What is “interception” requiring Authorization?
 - listen to, record or acquire a communication
 - acquire the substance, meaning or purport thereof
 - *R v Telus Communications Co*, 2013 SCC 16 (CanLII) - messages stored on service provider server
 - *R v Mills*, 2013 CanLII 74953 vs *R v Graff*, 2015 ABQB 415 (CanLII) – electronic messaging recorded by method of transmission



Video Observations

- What are circumstances creating expectation of privacy?
 - *Continuum from public to private*
 - *Territorial vs informational*
 - *nature of the information vs what it tends to reveal...*



Tracking transactions, things and persons

- “Reasonable Belief” standard to track people
- “Reasonable Suspicion” standard to track transactions and things



General Warrants – Other techniques

- Authorizes use of a technique or device to do something that is a “search” (engages an expectation of privacy) that provides information about the offence, for which there exists no other authorization
 - Electronic surveillance techniques not contemplated by any statutory provision
 - Necessary to consider terms and conditions to minimize intrusion to extent necessary



Production and Preservation Orders

- Permit production of historical records
 - Trace communications
 - Transmission data
 - Tracking data
 - Financial data
 - Any other records
- Preservation Orders – “do not delete”



Role of the Prosecutor in the Investigation



Role of the Crown in Investigations

- Investigating agency has autonomy in the investigation, but the Crown assists in ensuring the investigation becomes a viable prosecution.
- Statute requires Crown to bring application for Wiretap authorization.
- Wiretap investigations, especially Criminal Organization investigations, will require Crown involvement and advice in all ancillary warrant applications made by police.



The Prosecutor as Minister of Justice

- Duty to Act in the public interest - balance privacy rights with the need to have law enforcement solve crime.
 - Ensure “the best interests of the administration of justice”
 - Ensure financially and legally manageable prosecutions
 - Protect confidential informants, investigative techniques and solicitor client privilege



The Prosecutor as Gatekeeper

- Gatekeeper – ensure statutory preconditions are met
- Screening – ensure the materials put before the Judge meet a standard appropriate for judicial analysis



The Prosecutor's Ethical Obligations

- Obligation not to mislead the Court on *ex parte* application – accurate, candid, comprehensive
 - *Canadian Bar Association Code of Professional Conduct*



The Prosecutor's Role

- Legal advice
- Planning toward manageable prosecution(s)
- Reviewing warrant applications
- Overseeing Disclosure / preparing case for prosecution / protecting privilege.



Prosecutor's Role in Providing Legal Advice

Anticipating the “right answer” in shifting and Uncertain Landscapes...

- Evolving technology
 - how to apply existing legislation?
- Evolving views on privacy
 - Territorial
 - Informational
 - Anonymity
 - Perceived invasiveness of particular surveillance techniques



Challenges for Law Enforcement

Technology and Jurisdiction





Evolution of telecommunication technologies:

- 1876 – Alexander Graham Bell invented the telephone system.
 - 1876 – 1970 very little change in how telephone system works.
 - 1970 – 1980 introduction of digital switches to interconnect central office.
-
- Since 1980 the telecommunications industry has seen extraordinary changes and technological advances.
 - Today telecommunications are increasingly internet based.



Jurisdiction Issues

Internet

- no national / territorial boundaries

Stored Data

- Off-shore Service Providers – non-treaty countries
- Finding the data through maze of off-shore proxy servers



Getting around Jurisdiction

- MLAT – too little too late?
 - Police to Police cooperation can be invaluable
 - Formal MLAT process between states takes time...



Technical Challenges for Law Enforcement

Technical Challenges





Technological Challenges

- Encryption
 - PGP-enabled BlackBerry and other smartphones
 - ‘The Snowden Effect’ = Encryption by default
- Anonymous Services / Authentication
 - Prepaid mobile phone cards
 - Exchangeable SIM cards
 - Public internet access
 - Unsecured private Wi-Fi networks
 - Software for anonymous communication (Tor onion routing)



Best Practices for Using Electronic Evidence



Disclosure

- Electronic
- Self-explanatory, user friendly
- No data dumps – analyzed by investigators; significant evidence highlighted
- Technical implementation information disclosed unless investigative technique privileged
- Vetted for informer, investigative and solicitor client privilege



Presenting Evidence in Court

- Aids to jury:
 - Transcripts of audio
 - Data reduced to charts, graphs and summaries to aid to the jury **if** allowed by court.
 - computer functions used to highlight data
 - PowerPoint presentations to demonstrate navigation
- Have your analysts assist!



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Eg - Cell phone location data (excerpt)

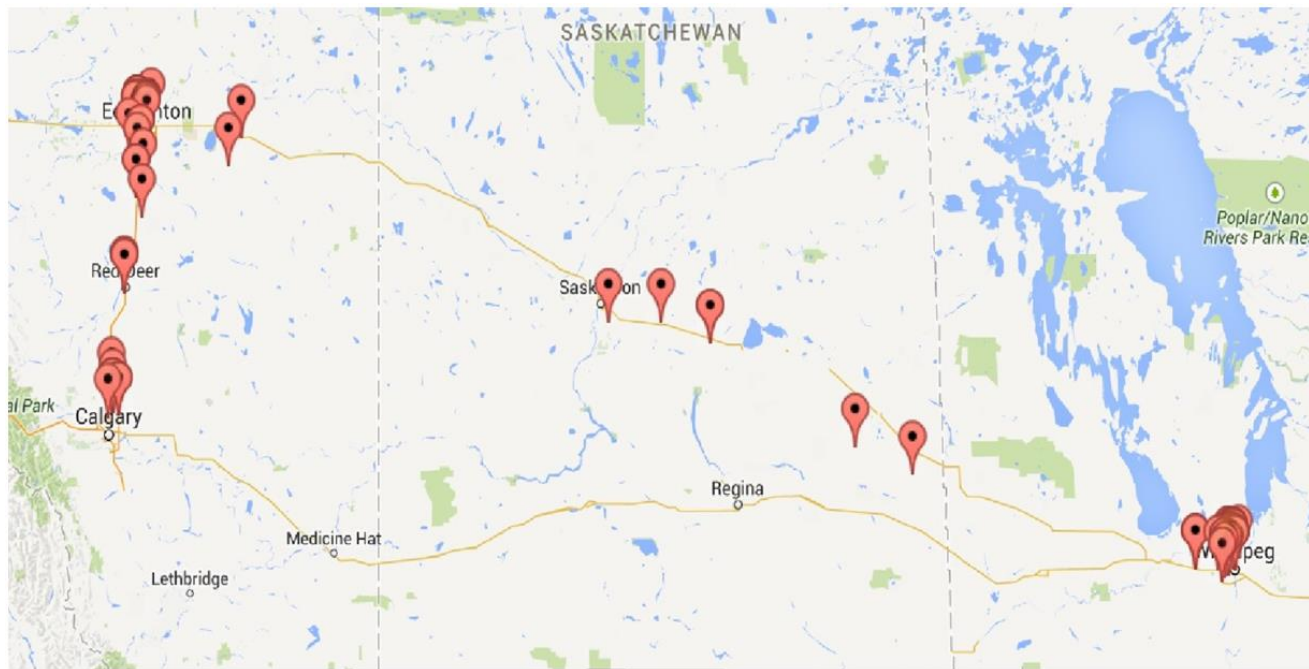
Date & Time	First Cell	Last Cell
25-Apr-14 4:26:52 PM	302720F2A8F804	
25-Apr-14 4:27:30 PM	302720F2A8F804	
25-Apr-14 4:29:51 PM	302720F2A8AE1D	
25-Apr-14 4:33:48 PM	302720F2A8AE19	
25-Apr-14 4:34:00 PM	302720F2A8AE19	
25-Apr-14 4:35:42 PM	302720F2A8AE19	
25-Apr-14 4:35:54 PM	302720F2A8AE19	
25-Apr-14 4:37:26 PM	302720F2A8AE1D	
25-Apr-14 4:38:06 PM	302720F2A8AE1D	
25-Apr-14 4:39:21 PM	302720F2A8AE29	
25-Apr-14 4:40:00 PM	302720F2A8AE19	
25-Apr-14 4:56:41 PM	302720F2A8AE18	
25-Apr-14 5:01:02 PM	302720F2A8B0A0	
25-Apr-14 5:05:11 PM	302720F618AD6A	
25-Apr-14 7:11:21 PM	302720F230C746	
25-Apr-14 7:13:32 PM	302720F230C746	302720F230C746
25-Apr-14 7:17:25 PM	302720F230C746	302720F230F8AE
25-Apr-14 7:21:30 PM	302720F230F8AF	





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Same location data made meaningful through charting





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Eg - Investigator's PowerPoint to present intercept logs

Pertinent Communications (per Crown)

Tab/Video Number	Date of Interception of Private Communication	Approximate Start Time of Interception of Private Communication (CST/CDT Unless Noted)	Place Where Private Communication Occurred	Originating Telephone Number	Recipient Telephone Number	Parties to Private Communication	Session Number
1	December 5, 2011	11:02 am	2042924992	(204) 668-8990	(204) 292-4992	Unknown Female to Kuitis Scott	69

Analytical Report
(Original Data)

Session	Start Date/Time	Duration	Direction	Associate DN	Content	Target DN
69	2011/12/05 11:02:28 CST	0:01:03	Incoming	(204) 668-8990	Audio	(204) 292-4992





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Eg - Investigator's PowerPoint to present PGP messages





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Eg - Create an Intercept / Data / Event timeline

2011 Oct Search Crawley, Hugh - r v scott (2) (Ctrl-E)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep-25 \$3,500 paid to Sweeney	26	27	28 UC buy from Manzuik and Rocha on 898-0275	29 \$9000 paid to Sweeney, balance \$40,200 Scott first observed in flattened	30	Oct-1
2 \$8000 paid to Sweeney, balance \$32,200	3 UC buy from Ziesmann on 898-0275	4	5 Sweeney Supplies 21 ounces of cocaine via Scott UC Buy from manzuik on 898-0275	6 Wall buys mops and Redlined members clean clubhouse \$10000 paid to Sweeney	7	8
9 \$11500 paid to Sweeney, balance \$33,800	10	11 \$11000 paid to Sweeney, balance \$22,800	12 UC Buy from Colbert on 294-4690 UC buy from Manzuik on 898-0275	13 Wall advises Manzuik that he is now cooking the cocaine	14	15
16 Sweeney arranges for cocaine shipment \$17,500 paid to Sweeney, balance \$5,300 PGP evidence	17 Kilo - 10 ounces supplied via Gerula UC Buy from Ziesmann on 898-0275	18 Gerula delivers stash to Scott UC buy from Linaker on 294-0275 (am) UC buy from Wood on 898-0275 (pm)	19 Sweeney asks about the new cocaine quality	20 \$9000 paid to Sweeney, balance... Sweeney meets with Scott Wall reloads Barnecki and cook...	21	22
23 \$7,000 paid to Sweeney, balance \$65,100	24 MacLeod and Wall discuss dial-a-dealers	25 UC buy from Wood on 898-0275	26 Wall reloads Barnecki	27 MacLeod and Sweeney meet UC buy from Colbert on 294-4690 UC buy from Manzuik and Rocha on 898-0275	28 \$16,500 paid to Sweeney, balance \$48,600 wall reloads Barnecki	29
30 \$10,000 paid to Sweeney, balance \$38,000 Wall checks up on dial-a-dealers	31	Nov-1 Scott agrees to pick up Benzocaine Wall reloads Barnecki and collects cash	2 Moncton covert entry #1 Scott picks up Benzocaine UC buy from Manzuik on 898-0275	3 \$21,500 paid to Sweeney, balance \$17,100 Wall Reloads Barnecki	4 Scott delivers 1 kg and 10 oz to Wall Wall and Stevens discuss going out wearing their jackets Wall Reloads Barnecki	5





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Questions?

