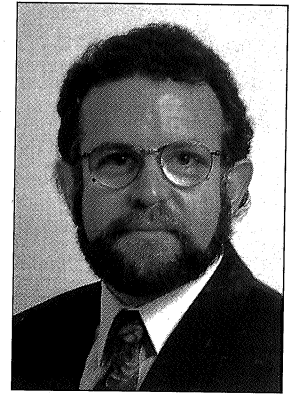


CCTV and the Law

Assisting the Police?

Advice for monitoring stations facing a potential conflict of interest



By Elliott Goldstein

Q: A police force has asked our monitoring station to assist it by not responding to a burglar alarm signal that will result from the police entering our customer's premises late at night pursuant to a valid search warrant. The police say the night entry is necessary to allow them to surreptitiously install video (and audio) surveillance equipment in the premises to monitor suspected criminal activity. What should we do?

A: A monitoring company has the right to see the search warrant and verify that the address shown on the warrant is the address of its customer, so ask the police officers to produce the warrant and provide a copy.¹ Also ask them to reveal their police identification cards and badges to prove their identities. (Do not hesitate to call the local police station to verify their identification — thieves sometimes impersonate law enforcement officers.)

Once a monitoring company is satisfied that the warrant is valid and that it is dealing with "real" police officers, it should be made clear to the police that the company would like to help them but is concerned about its legal liability to the customer. Why? Because a monitoring company has a contractual duty to the customer based on the monitoring agreement signed by the company and that customer.

A monitoring company promises its

customer that it will do certain things if an alarm signal is received from that customer's premises (for example, that the company will call the police and/or the customer, and/or dispatch mobile security guards to respond to the alarm and inspect the premises.) The police are asking the company to not respond. If it fails to respond, however, it may be liable for any loss or damages suffered by the customer.

So how does a monitoring company assist the police and at the same time avoid contractual liability? Ask the police to obtain an assistance order pursuant to section 487.02 of Canada's *Criminal Code*.² This assistance order names a monitoring company and requires it to help the police by providing them with "any and all assistance required to give effect to the (search) warrant and to its execution." That is, the court orders a monitoring company to cooperate in the carrying out of

By getting this assistance order before aiding the police, a monitoring company may have a defence to an action based on non-performance or breach of contract. That is, if a customer sues for failure to respond to the alarm, the company could argue that it would have been in breach of a (criminal) court order had it responded as promised in the agreement with the customer. There are many cases in which courts have granted relief to defendants where performance of a contract becomes illegal.

A monitoring company could also use the assistance order as a defence to a claim made by an installer whose customer (that is, subscriber) was being monitored. In this situation, the customer has a contract with the installer, and the installer has a contract with the monitoring company. If a loss occurs, the customer will sue the installer (in the main action) and the installer will sue the monitoring company (in a third party action).

Bear in mind, too, that a customer cannot sue merely because its contract was breached. The customer must have also suffered a loss. Legally put, the customer must prove both liability and damages.

Whether the customer is "residential" or "commercial," or an owner or a tenant, has no bearing on the issue of liability or damages. If the police cause damage to the customer's premises or its contents, a quantifiable loss has in fact occurred.

To reduce the likelihood of loss

Contest Winners

Remember the quiz in the June/July 1999 issue? Well, we have our winners.

Congratulations go out to Dave Black of King-Reed & Associates in Trenton, Ontario; Edward Kuciak of Toronto, Ontario; and Staff Sergeant J.N. Smith of the Victoria Police Department in Victoria, British Columbia. Each of the three winners will receive a free copy of *Video Surveillance and the Law*, written by Elliott Goldstein, when it is published next year.

Thanks to all who participated. Oh, and for your reference, here are the answers: 1. T, 2. T, 3. F, 4. T, 5. F, 6. F, 7. F, 8. F, 9. T, 10. T.

the search warrant by doing certain things and by not doing other things. (See "Draft wording for an assistance order," on page 17.)

Violation of an assistance order is not a specific offence. However, according to *Martin's Annual Criminal Code*, 1999, "failure to comply could be punished under s. 127 of the aforesaid Code (i.e., Disobeying Order of Court)."³

caused by an inactive alarm, the alarm monitoring company should insist that the police notify it when they leave the premises, so that the alarm may be reset and monitoring can resume. If this is not done, an "unauthorized" entry may go undetected.

In conclusion, in an effort to be careful, monitoring companies should add to their monitoring agreements a clause that excuses them from "non-performance" of contractual duties when "performance" of those duties would result in disobeying a court order.

Elliott Goldstein, B.A., LL.B., is a barrister and solicitor in private practice. He is also author of Visual Evidence: A Practitioner's Manual, which can be obtained from Dean Avola at Sony of Canada Ltd. by calling (416) 495-3389.

Author's Notes

1 You must keep secret the details of the search warrant. For example, you must not inform your customer of the search warrant. However, you can discuss it with your lawyer.

2 Section 487.02 of the *Criminal Code*, R.S.C. 1985, c. C-46, [as amended] reads: "Where ... a warrant is issued under this Act ... the judge or justice who ... issues the warrant ... may order any person to provide assistance, where the person's assistance may reasonably be considered to be required to give effect to the ... warrant"

3 This section reads: "Every one who, without lawful excuse, disobeys a lawful order made by a court of justice ... is ... guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

Draft Wording for an Assistance Order

1. IT IS HEREBY ORDERED THAT <alarm monitoring company>, its officer, directors, employees, agents, and those for whom it is responsible at law (hereinafter referred to as "<reference name>"), provide to the <police force or officers> any and all assistance required to give effect to this warrant (or the warrant issued on <date>) and to the execution thereof. Such assistance may include the following:

- (1) Not notifying the appropriate Police Department in the event that an alarm signal registers at <alarm monitoring company's> monitoring station, where such signal originates at the premises that is the subject matter of this Warrant;
- (2) Not notifying the designated representative of <alarm monitoring company's> Customer in the event that an alarm signal registers at <alarm monitoring company's> monitoring station, where such signal originates at the premises that is the subject matter of this Warrant;
- (3) Not contacting <alarm monitoring company's> Customer's premises by telephone or otherwise to verify that the aforementioned alarm is not false;
- (4) Not dispatching any persons (e.g., security guards) to attend at the premises to investigate the alarm;
- (5) Not disclosing to <alarm monitoring company's> Customer, or its designated representative, or anyone else, that <alarm monitoring company's> assistance was sought and received by the <police force or officers>.

2. IT IS HEREBY ORDERED THAT <alarm monitoring company> SHALL NOT DIVULGE THE EXISTENCE OF THE WARRANT AND THE ASSISTANCE ORDER, UNLESS SAID DISCLOSURE IS NECESSARY TO ENABLE <alarm monitoring company> TO DEFEND ITSELF IN ANY CIVIL PROCEEDINGS.

3. IT IS HEREBY ORDERED THAT the <police force or officers or the persons who are executing this warrant> verbally notify <alarm monitoring company> by telephone that said police have left the said premises immediately after so doing, so that <alarm monitoring company> may reset the alarm system at the premises.



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