

Prosecuting Internet Child Exploitation Offences

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Expanding the quality of service: Ontario Provincial Strategy

■ Two dedicated, Crown Experts

– Provincial Crown Coordinator

- » Development and implementation of best practices, policies and resources for Crowns engaged in prosecuting ICE cases
- » Provide legal advice on issues and legislative changes related to ICE prosecutions

– Education Coordinator

- » Develop and provide education and training to Crown Counsel, police, victims' service personnel and the public on legal and policy issues related to ICE cases

OUR GOAL

- Expand and maintain the scope and quality of legal service delivered by Crown Counsel in Internet Child Exploitation cases throughout Ontario
 - Delivery of consistently high-quality prosecutions in every region of Ontario, through continued, cutting-edge legal and forensic education for ICE Crowns and continued, meaningful partnerships with LE and victims' support services

BEFORE AND AFTER

■ Before the Strategy

- Less than 5 specialized Internet Child Exploitation Crowns in Ontario

■ With Strategy training

- Over 25 “designated Local Experts” in ICE Prosecutions throughout Ontario
- Plus 2 full-time Provincial Strategy Lead Crowns

Quality of Service

- Standardized **best practices** now in place:
 - Early/ideally dedicated assignment of cases
 - (Limited) disclosure of images via s. 490(15)
 - Handling of images/evidence
 - Sealing of Exhibits
 - Sentencing Practices
 - Referral to Provincial Strategy Victims' support and Counselling services, where appropriate

Shared Resources

- Provincial Strategy Crowns develop and distribute up-to-date legal research materials to assist local prosecutors with:
 - Pre-trial/evidentiary motions/legal facts
 - File /witness preparation
 - Sentencing materials/arguments

Child Pornography
Child Abuse Images:
Prosecutors' Role



Handle (me)
with Care

Not just any picture

- Crime scene photos
- Evidence of a real child's sexual abuse or exploitation
- Unique privacy interests are engaged, and deserving of unique protection
- Often include evidence of who the perpetrator(s) were, and who witnesses might have been

Prosecutor's responsibilities:

Handling Images

- Handle images with respect from the start
- Appropriate, respectful descriptors
- Minimize handling and viewing
- Designated offices, support staff
- Ensure safe storage

Do we disclose?

- R. v. Blencowe (SCJ) = yes
- BUT unique privacy interests + illegality of possessing images means = special protection warranted
- Triage requests for access or copies
- Undertaking, or s. 490(15) Court Order

To view or not to view?



R. v. Kwok, [2007] O.J. No. 457 (S.C.J.) Molloy, J.

The videos include real-time footage of the actual rape and degradation of young children and babies. While the description in words of such disturbing images is shocking, nobody can fully appreciate the sickening horror of such pornography without actually looking at it. And so I have looked at Mr. Kwok's collection. It is vile. The size of the collection, the age of the victims, the depravity of the acts depicted and the bondage associated with some of the images are all extremely aggravating factors.

Tendering Images In Court

- Careful preparation with witness officer to organize and label evidence appropriately
- ‘Wired’ courtrooms for receipt of digital evidence
- Thorough but respectful completion of evidentiary record
- Sealing of Exhibits once tendered

Images and beyond: Chats and writings



- Chatlogs/emails may themselves constitute cp (R. v. Hughes) or may contain highly personal information related to the complainant

Inescapable reality of Luring

- Computer communication is dominant means of communication for +90% of Canadian youth
- Concurrent/multiple platforms = multiple avenues for exploitation
- False sense of anonymity, safety, trust
- Subtlety of contextual communication; powerful influence on youth (grooming) with serious consequences
- Limited opportunity for detection and monitoring of abusive communication (except UC)
- “ladder into the bedrooms of children” (Innes)

Understanding Internet Luring

- a ‘preparatory’ offence: communication via computer with person < 16 for the purpose of *facilitating* an enumerated offence
 - OntCA 2009 Alicandro
 - AltaCA 2008 Legare
- “Facilitate” = to “make easier”....
- Grooming....often towards a subsequent purpose
- Opportunity for early ‘interception’

Testimonial Support

- Internet Luring > Child pornography cases
- Early referral to specialized VWAP support
- Courtroom tours/dedicated waiting rooms
- Child-friendly courtrooms (some jurisdictions)
- Careful witness preparation with Crown: laying technical foundation first, allegations second



TESTIMONIAL AIDS

- Exclusion of the public from the court s. 486
- Support Person s. 486.1
- Testimony outside courtroom/behind screen s. 486.2
- Cross-examination by accused s. 486.3
- Video-recorded evidence s. 715.1/715.2
- Publication bans s. 486.4 (cp), s. 486.5 (all)

Victim Impact Statements

- **Extremely powerful tool – to dispel myth of “victimless” crime**
- **Images of victim must be in the evidence and qualified**
- **Applicable only as aggravating factor on sentence**

VIS Goals

- Formalized system to label/ensure privacy
 - Police agency/year: TPS 2008 #2
 - VIS ‘alert’ built-in to C4P reports
 - Ontario Provincial Strategy building library concurrent with counselling / outreach services
- Notification system to allow victim to maintain control over use of statement
- US model – civil remedies?

Quality of Service for Victims from Prosecutors

- Continued forensic and legal training for investigators and prosecutors of ICE cases
- Continued promotion of provincial, national and international collaboration to solve and prosecute effectively
- Continued/increased controls on management of images
- Sensitivity, meaningful support and advocacy for victims of Internet Luring and Exploitation

Contact Information/questions

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