

***The Law of Electronic Surveillance in Canada*, David Watt, Toronto: Carswell, 1979. Pp. xxxix, 402. \$42.50 (cloth).**

The Law of Electronic Surveillance in Canada, an exhaustive treatment of the topic, is both overdue and premature. Overdue because a deceptively simple piece of legislation¹ has in five short years developed into a complicated area of the criminal law; yet premature in the sense that out of a plethora of cases the first appeals are only now (1979) reaching the Supreme Court of Canada. Of necessity, therefore, this book is a stop-action, comprehensive review of an area of the criminal law still in its early stages of development.

Mr. Watt, Senior Crown Counsel with the Ontario Department of the Attorney General, provides a refreshingly objective approach to his topic, despite the potential bias arising out of his employment. Although he does not address the larger issue of whether or not electronic eavesdropping should ever be allowed, an issue which colours the objectivity of other authors, he is quick to point out legislative changes which would be favourable to defence counsel. This means that the work may be referred to with confidence by all potential users; in this respect it is truly outstanding.

In Chapter 1 the author immediately places in context the electronic eavesdropping provisions of the *Criminal Code* by including a description of the various sections, their scope and their relationship to other enactments. In Chapter 2, entitled "Electronic Surveillance Without Judicial Authorization", he looks at those aspects of electronic intrusion lying beyond the reach of Part IV.1 of the *Code*, that is, at electronic surveillance as *permitted* by the original *Protection of Privacy Act*. In particular, he draws attention to the extent to which officially instigated consensual use of electronic eavesdropping can undermine the original purpose of the legislation,² and how private consensual use can make the protection of privacy of conversation somewhat illusory.³

The third chapter takes us beyond the introductory stage and into the "newspeak" world of conventional authorizations, emergency authorizations and renewals, a world where the provisions of Part IV.1 bear little resemblance to the conventional procedures to obtain search warrants and where even the *manner* of conducting an electronic search is spelled out.⁴

¹*Protection of Privacy Act*, S.C. 1973-74, 21-22 Eliz. II, c. 50, as amended, now largely found in Part IV.1 of the *Criminal Code*, comprising 23 sections.

²Watt, at 49. The original purpose was to place most law enforcement use under judicial supervision.

³Watt, at 51-52.

⁴Watt, at 109.

Chapter 4, "The Execution of Surveillance Orders", deals with legitimate electronic eavesdropping, from the initial provisions for secrecy,⁵ to eventual notification. A succinct description of the mechanics of interception is provided, a glimpse into the clinical methodology of modern, electronic police investigation. Comparing the popular conception of a clandestine wiretapper with reality is like comparing a "backroom" abortion to one conducted in the operating room of a modern hospital.

Chapter 5, a book in itself,⁶ describes in great detail how evidence obtained through electronic eavesdropping may be introduced in court. The author's practical experience with cases involving electronically acquired evidence⁷ eminently qualifies him for the task and this extensive discussion will be of great benefit to Crown and defence counsel alike.

In Chapter 6 the new criminal offences of interception of private communications, possession of prohibited devices and unlawful use or disclosure of intercepted information are analyzed in some detail. Chapter 7 contains a brief résumé of the potential and scope of civil liability for wrongful interception, use or disclosure.

Chapter 8, the last chapter, delves into national security surveillance, a secretive area where the new provisions of the *Criminal Code* do not reach, and where warrants for electronic search are issued by the executive branch of government beyond the control of judicial supervision.

Finally, the Appendices contain the American equivalent of our electronic eavesdropping legislation,⁸ the legislative history of the American Act, and the brief Regulations passed under the new *Code* provisions.

There are many superlatives with which one could describe "The Law of Electronic Surveillance in Canada". The one I have used, and prefer, is "outstanding". This is a book of superb value to counsel, academics and interested parties alike, destined to become the "bible" of electronic eavesdropping in Canada from the moment the first copy is sold. The author has combined the insight of the practitioner with the talents of an academic to provide an outstanding contribution to Canadian criminal law literature.

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⁵As the author points out (at 152) warrants are normally executed in the presence of the person whose premises are being searched; the goals of an electronically conducted "search" can only be obtained if the subject remains totally unaware.

⁶114 pages.

⁷Many of the major cases originating in Ontario bear his name as representing the Crown.

⁸*The Omnibus Crime Control and Safe Streets Act of 1968 (Title III)*.

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