

## Unannounced Inspections in Canada

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### Sections 15 and 16 of the *Competition Act*

- The Competition Bureau is responsible for the administration and enforcement of the *Competition Act*
- Section 15 of the Act outlines the Commissioner's powers of search and seizure
  - The section provides that the Commissioner may apply to a judge of a superior or county court, *ex parte*, for a search warrant
- Section 16 of the Act sets out the Commissioner's powers to search computer systems



## When to Seek a Search Warrant

- For the majority of domestic criminal investigations, a search warrant will be the investigative tool of choice
- The serious and clandestine nature of the conduct in question, and the possibility that records could be altered, concealed or removed, can make searching the best means of securing the required information
- A search warrant allows the Bureau to establish exactly where the records are located on the premises and who may have been in possession of them



## Requirements to Obtain a Search Warrant

- To obtain a search warrant under section 15 of the Act, a judge must be satisfied that there are reasonable grounds to believe:
  - That a person has contravened an order made pursuant to the Act, an offence has been or is about to be committed, or grounds exist for the making of an order under the civil provisions of the Act
  - That there are, on the premises to be searched, records that will afford evidence relating to one of the three above specified situations
- Section 15 sets out requirements regarding the content of the search warrant and the manner in which the search warrant will be executed



## Search Teams

- Searches are conducted by Bureau staff
- Polices officers may also be required
- A minimum of two staff members will execute a search warrant at each premise
- Every search team will include a “team leader”, who is the person responsible for the overall conduct of a search at any given search premise



## Electronic Evidence

- The Bureau has on staff trained electronic evidence officers
- They have specialized knowledge and skills which allow them to access computer systems to search for, examine, retrieve, reproduce and seize electronic data
- The Bureau’s electronic evidence officers adhere to accepted forensic practices and procedures designed to ensure the integrity of the evidentiary process for obtaining and maintaining electronic records



## Other Formal Tools Available to the Bureau

- Wiretaps
  - The *Criminal Code* allows the Bureau to intercept electronic communications for certain offences, including price fixing, bid-rigging and deceptive telemarketing.
  - The Bureau must prepare an affidavit to support an application that complies with statutory requirements, including facts justifying investigative necessity
- Section 11 orders
  - Orders issued under section 11 of the Act can require parties to attend oral examinations, produce records or provide written returns of information
- MLATs
  - Canada's Mutual Legal Assistance Treaties may be used to seek evidence of criminal activity located in other jurisdictions

## Case Example: Quebec Gas Cartel

- Investigation of retail gas stations who conspired to fix prices in local communities in Quebec
- Many different investigative tools used, including wiretaps and searches
- The Bureau searched 88 premises in two weeks, the largest search ever undertaken by the Bureau.
- The matter is currently before the courts
  - 39 individuals and 15 companies have been charged
  - 33 individuals and 7 companies have pleaded or were found guilty, with fines totalling over \$3 million
  - 6 individuals have been sentenced to terms of imprisonment totalling 54 months



### **Case Example: Polyurethane Foam Investigation**

- Investigation of price fixing in the polyurethane foam industry
- Following the use of wiretaps, searches were conducted in coordination with international partners
- Bureau officers searched five sites, and seized thousands of documents
- In January 2012, a party pleaded guilty to conspiracy and was fined a total of \$12.5 million for its involvement in the cartel



### **Case Example: Bid Rigging in the Construction Industry**

- Earlier this year, the Bureau conducted searches at 19 premises in two different cities in connection with an investigation of bid-rigging in the construction industry
- The Québec provincial police force, the Sureté du Québec, and the Royal Canadian Mounted Police assisted Bureau officers in conducting the search
- The investigation is still ongoing



