Stockwell Day's magic bracelets

The Hill

By Richard Cleroux

Two summers ago, former public safety minister Stockwell Day came up with a real doozy of a scheme.

He put electronic ankle bracelets on 46 of the toughest ex-cons on parole in Ontario and let them loose in Toronto and later across the province for a year. The bracelets pointed the parolees' exact location to a global positioning system based in Nova Scotia. From there, federal officials would keep track of the criminals to see whether they were getting into trouble or breaking court orders.

Forget about any Charter of Rights and Freedoms issues. That's never been a problem for Prime Minister Stephen Harper's government. Ask Omar Khadr.

After all, GPS bracelets are already in use in British Columbia, Saskatchewan, Manitoba, Nova Scotia, and Newfoundland. They work for the most part.

In Sweden and the Netherlands, authorities use so-called anklets instead of jailing people. Florida reserves them for the meanest prisoners of all. In other states, they're for the meekest offenders, including juveniles and those on house arrest. On paper, it was quite a scheme. Day was so proud. The bracelets were part of his government's tough-on-crime agenda, he said. He could keep track of all of the criminals any time of day or night. Call it total control, a notion that means a lot to the Harper government.

But in practice, the bracelets were a disaster, a costly failure in fact. Nearly $1 million went down the tube.

While the parolees kept their noses clean, the recidivism rate didn't go up or down. The bracelets didn't prevent crime, despite the efforts of Correctional Service of Canada staff to watch the GPS screens day and night.

The bracelets were the problem. They were a bust due to bad technology with batteries running down and false alarms going off that scared the monitoring staff while waking parolees up during the night.

"The program was an unmitigated disaster," said Paul Gendreau, an internationally renowned professor *emeritus* at the University of New Brunswick and an expert on bracelets.

But CSC commissioner Don Head spins the issue differently as "a learning experience." Nevertheless, the bracelets sometimes couldn't pinpoint a parolee's exact location. There's a big difference between being inside a bank at night or being on the street 200 metres away. Only one of the 46 parolees tried to tamper with his bracelet, but 18 other devices sounded false alarms because of faulty technology. On average, the parolees were getting one false alarm a day. That's no fun.

The bracelets had some use. They were good for certain court orders, for example. If a judge said, "Stay away from your ex-wife's apartment," the parolee had better not show up on the monitor as being on her front lawn at 2 a.m.

But a GPS isn't a camera. It just points a cursor to a map. If the judge ordered a child molester to stay away from schools and the parolee happened to be on a bus stopped in front of one, the GPS couldn't show that the guy was on public transit. What if he was in a taxi stopped at a red light next to the school or stuck behind a stopped school bus?

But if a parolee under court order not to leave Ontario slipped across the provincial border into Quebec, the bracelet would sound off loudly and clearly. Mission accomplished in that case.

The devices should have been good for monitoring curfews. It's hard to trick the bracelet on that one. But there were still 12 erroneous curfew violations. The bracelets were supposed to help parole officers but they ended up creating more problems. For parolees, the uncomfortable devices were a bad, bothersome joke. They were only useful, they said later, when their families had to reach them in an emergency.

Forty-three of the 46 parolees involved were under court order to avoid "certain persons." On that score, the bracelets were useless as monitors.

At the same time, 40 were to stay away from drugs. Again, the bracelets were useless; ditto for the 30 ordered to avoid booze. There were 16 ordered to stay away from "certain places" and 10 who had to "reside at a specific place." That usually worked well.

The one-year pilot project cost $856,096, which works out to roughly $18,000 a year for each ex-con on the streets again wearing a bracelet.

It would have cost $87,500 for the same time period to keep the same person in a medium-security penitentiary or $65,656 in a halfway house.

So the bracelets were successful in one way: they saved taxpayers a bundle of money by letting prisoners out of jail with the devices. Of course, you'll never hear Day bragging about letting anybody out of jail. LT

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Bloggers beware: anonymity not guaranteed

BY MAANIT ZEMEL
For Law Times

Speaker's Corner

While Google Inc. is grappling with privacy concerns raised by the federal privacy commissioner, Canada's courts have been issuing orders requiring the search-engine giant and Internet service providers to reveal the personal information of people alleged to have posted defamatory statements online. These extraordinary orders pose new challenges to privacy laws and freedom of expression.

The Internet, of course, is a unique mode of communication. It enables people to say whatever they want anonymously with little or no fear of repercussion. The Ontario Court of Appeal has described communication via the Internet as "instantaneous, seamless, interactive, blunt, borderless, and far-reaching. It is also impersonal, and the anonymous nature of such communications creates a greater risk that any defamatory remarks are believed by their readers."

Assume that someone posts defamatory statements on a blog about you, anonymously or under a pseudonym. Within a few hours, other web sites pick up the postings and, by the end of the day, the defamatory statements have spread all over the Internet. You don't know the identity of the blogger. All that is known is the identity of the ISP that controls the web site on which the defamatory statements appeared. In such a case, you have access to extraordinary injunctive measures that might assist you in curtailing the defamation and bringing the anonymous blogger to court.

One of them is a Norwich order, a discovery tool granted to a plaintiff before a lawsuit begins. It targets third parties who hold information the plaintiff needs in order to commence the action.

In a seminal case involving York University, York alleged anonymous bloggers were defaming its professors online. The postings originated from someone with a Gmail account. A Norwich order against Google required it to disclose the Internet protocol addresses associated with the Gmail account. Google complied with the order, which revealed the anonymous bloggers were customers of Bell Canada and Rogers Communications Inc. In turn, the court issued another Norwich order against Bell and Rogers compelling them to reveal the bloggers' identities.

When considering the implications such an order might have on privacy laws and freedom of expression, the court, in quoting from an American decision, stated: "In that the Internet provides a virtually unlimited, inexpensive, and almost immediate means of communication with tens, if not hundreds, of millions of people, the dangers of its misuse cannot be ignored. The protection of the right to communicate anonymously must be balanced against the need to assure that those persons who choose to abuse the opportunities presented by this medium can be made to answer for such transgressions. Those who suffer damages as a result of tortuous or other actionable communications on the Internet should be able to seek appropriate redress by preventing the wrongdoers from hiding behind an illusory shield of purported First Amendment rights."

In a decision released in May, the Ontario Divisional Court considered the effect such an order might have on rights guaranteed by the Charter of Rights and Freedoms. It found the Charter applied along with a need for a balance between the plaintiffs' privacy interests and the anonymous bloggers' rights to freedom of expression and privacy. It held that in order to obtain an order for disclosure, the plaintiff must demonstrate a *prima facie* case of defamation. This would ensure the full protection of Charter rights.

Other provinces have followed suit. Norwich-type orders have recently been issued by the Nova Scotia and New Brunswick courts. For example, in a highly publicized case in Nova Scotia, a teenage girl brought an application for a Norwich order and a publication ban arising out of a fake Facebook page. The page was the work of anonymous individuals alleged to have cyber-bullied and defamed the applicant. The Supreme Court of Nova Scotia issued the Norwich order but refused to grant the publication ban requested by the applicant.

As a result, it's clear the anonymity people enjoy may no longer be subject to protection if they go as far as defaming others online. It's significant, therefore, that when the court is dealing with an application for a Norwich order, the person who allegedly posted the statements would likely not be present for the hearing to respond to the claims. For plaintiffs, this means they must ensure the allegations of defamation have some evidentiary basis. The plaintiff might face significant consequences down the road if the identified defendant can later demonstrate that there hadn't been enough evidence for the allegation of defamation and, thus, for the granting of the Norwich order. LT

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Letter to the Editor

FIGHTING CRIME WORTH THE COST: TOEWS

The Truth in Sentencing Act was passed to ensure that convicted offenders serve a sentence that reflects the severity of their crimes. Part of keeping our communities safe is keeping dangerous criminals behind bars, not releasing them into our streets early.

As victims' organizations across the country have repeatedly told us, releasing criminals onto our streets early has a much higher cost than keeping them behind bars. This is why the provinces and police supported our efforts to end double and even triple credit for time served, efforts Michael Ignatieff's Liberals tried to block.

We want to keep offenders, particularly dangerous repeat offenders, off the streets and we are prepared to pay the cost in order to do that.

Our approach will require us to expand existing prisons and replace old facilities, many of which were outdated and due for replacement anyway. This is a small price to pay to ensure dangerous criminals don't create new victims or terrorize previous ones.

The Correctional Service of Canada, the people who will actually be implementing the measures, has determined the cost to be $2 billion over five years. We have no reason to believe their figures aren't accurate. We disagree with the opposition's view that dangerous criminals should be released onto our streets early just to save a buck.

It does cost money to deal with serious criminals (see "Doing the math on 2-for-1," *Law Times*, July 5). But failing to do so comes with significant costs as well, and not just in dollar terms. The impact on victims includes the value of damaged or stolen property, pain and suffering, loss of income and productivity, and health services. Statistics from the Department of Justice indicate that, in 2003, 67 per cent of the estimated $70-billion overall cost of crime in Canada was borne by victims.

The Canadian government will continue to stand up for the rights of victims over those of criminals.

Vic Toews,
Minister of public safety, Ottawa