

Alberta

Justice and  
Solicitor General

# Alberta Investigator Training Course

## Participant Manual



(1st ed. July, 2012)

© 2012, Government of Alberta, as represented by the Alberta Ministry of Justice and Solicitor General, except where otherwise noted. All rights reserved. No part of these materials may be reproduced (including photocopying), stored in a retrieval system, or transmitted, in any form or by any means, without the written permission of the Alberta Ministry of Justice and Solicitor General.

Please notify the Alberta Ministry of Justice and Solicitor General if any cases of copyright infringement are identified.

Contact Information for copyright requests:

Registrar, Security Services and Investigators Act  
Alberta Ministry of Justice and Solicitor General  
10th Floor, 10365-97 Street  
Edmonton, AB T5J 3W7  
Email: [ssia.registrar@gov.ab.ca](mailto:ssia.registrar@gov.ab.ca)  
Fax: 780-427-4670

Produced by: CKR Global Risk Solutions  
#225 – 17 Fawcett Road  
Coquitlam, British Columbia, Canada V3K 6V2

Course Developer: Mark LaLonde, MA

Instructional Design: Darrell Kean, MA  
Mark LaLonde, MA

Subject Matter Experts: Amy Foggin, BFA, B.Ed  
Wayne Gordon  
Jackie Hastings  
Tim Houghton  
Darrell Kean, MA  
Keith Tucker  
Al Vonkemann  
Craig Yee

Editor: Linda Howell, MA

iStock photos from <http://www.istockphoto.com>. © 2012. Used under licence with iStockphoto®. All rights reserved.

Front cover central photo number: 2751536

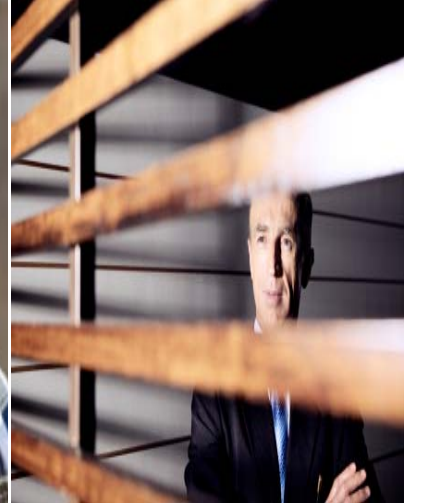
Collage photo numbers: 12759104,19946276,19864778,18813056, 17602893, 10381845

All other front cover and collage photos Copyright © 2004 Microsoft Corporation®, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A.

Clipart reproduced with permission of Microsoft Corporation. All rights reserved.

All Federal Acts & Regulations of the Government of Canada are reproduced by permission of the Federal Reproduction Law Order (S1-97-5).

Produced for: Alberta Ministry of Justice and Solicitor General.





## Table of Contents

### Introduction

- Course Learning Outcomes
- Course Content
- Course Schedule
- Preparing for the Course
- Icons in this Manual
- Materials Needed
- Using Forms
- Getting Started
- Start and End of Each Instructional Day

### Module One: Introduction to the Investigation Industry

- Introduction to Investigators and Investigations
- Roles, Responsibilities and Limitations of an Investigator
- Investigator Job Description
- Principles and Processes in Investigations
- Investigator Licensing in Alberta
- Investigator Professional Development and Professional Designations

### Module Two: Professionalism and Ethics

- Defining Ethics and Professionalism
- Core Principles of Professionalism and Ethics
- Codes of Conduct
- Other Examples of Code of Conduct
- Complaints Process
- Provincial and Federal Privacy Legislation
- Prejudice, Discrimination, Stereotyping, Violence in Relationships and Harassment
- Violence in Relationships

### Module Three: Health and Safety

- Alberta Occupational Health and Safety Act*, Regulations and Code
- Identifying Potential Hazards
- Controlling Hazards
- Response Measures
- Incident Reporting
- Addenda:**
  - Key *OHS Act* Sections, By Number
  - Key *OHS Regulation* Components
  - Key *OHS Code* Components
  - Example Mitigation (Control) Measures

### Module Four: Law and the Canadian Legal System

- The *Canadian Charter of Rights and Freedoms*
- The *Charter* and the Investigator
- Alberta Human Rights Act*
- Criminal Code of Canada*
- Powers of Arrest
- Powers of Search
- Criminal Code* Offences
- Surveillance and Audio Recording
- Evidence Acts
- Addenda:**
  - Further Information on *Criminal Code*
  - Guidance on Covert Video Surveillance in the Private Sector*

**Module Five: Use of Force**

Introduction to Use of Force  
Sec. 25, *Criminal Code of Canada* – Use of Force  
Sec. 26, *Criminal Code of Canada* – Excessive Force  
Sec. 27, *Criminal Code of Canada* – Prevention of a Crime  
Sec. 34, *Criminal Code of Canada* – Prevention of an Unprovoked Assault  
Overview of the Use of Force Continuum Model

**Module Six: Investigations**

Purposes of an Investigation  
Planning an Investigation and Managing Risk  
Cognitive Failures in Investigations  
Managing Investigative Risk  
Investigative Techniques: An Introduction  
Interviewing  
Surveillance  
Collection of Physical Evidence  
Collection of Information from Open and Closed Sources  
Undercover Work  
Confidential Sources  
Investigation File Management and Preservation

**Module Seven: Communications and Report Writing**

Verbal and Non-Verbal Communication  
Challenges to Communication  
Seven Steps for Effective Communication  
Communicating With Uncooperative Persons  
Field Notes  
Report Writing  
Privacy Legislation and Reports  
Common Errors in Writing Reports  
Structure of Reports  
Providing Testimony

**Module Eight: Specialized Investigations**

Introduction to Specialized Investigations  
In-House Investigations  
Regulatory Investigations  
Barrister and Solicitor Investigations  
Location of Persons Investigations  
Corporate and Due Diligence Investigations  
Insurance Investigations  
Occupational Health and Safety Investigations  
Private Client Investigations  
Retail Sector Investigations  
The Use of Experts  
Specialized Professional Development

**Module Nine: Business of Investigations**

Overview of the Business Side of Investigations

The Investigations Business

Licensing: Individuals

Licensing: Companies

Contracts and Agreements

Personnel and Systems

Equipment and Data

Insurance

Databases and Anonymity

Clients

Compliance and Risk Mitigation Systems

Ongoing Professional Development

**Addendum:** Sample Template for Client Service Agreement

**Appendix A:** References and Additional Resources

**Appendix B:** *Security Services and Investigator Act*

**Appendix C:** *Security Services and Investigator Regulation*

**Appendix D:** *Security Services and Investigators Act (Ministerial) Regulation*

# Alberta Investigator Training Course

Welcome to the Alberta Investigator Training Course. Over the next nine days, you will begin to develop the knowledge and skills required of a professional investigator and, upon successful completion of this course, you will be well-prepared to write the provincial licensing exam. You will also be ready to take on a role in the field of investigations.

This course has been designed to provide you with an interactive learning experience. Studies show that individuals learn best when a variety of instructional methods are used. Therefore, in this course, you will participate in classroom lectures, guided discussions, practical exercises and scenarios. The more you engage with the instructional process, the more you will gain.

The goals of this course are to help you gain confidence in your abilities and to prepare you to meet the challenges of working in investigations. The instructional materials and activities have been designed to increase your knowledge of the daily duties and responsibilities of a security professional. To that end, learning activities have been structured to resemble elements of the performance which will be expected of you in the field. Use the opportunities for practice and feedback in this course to develop your skills well before you need to use them.

## Learning Outcomes

At the end of this course, you will be able to

1. Describe the roles of professional investigators, the knowledge and skills required, and the types of investigations typically conducted
2. Explain the licensing rules, regulations and processes for investigators in Alberta
3. Identify the limitations imposed by law on investigative functions, notably the Security Services and Investigators Act, the Criminal Code of Canada, federal and provincial privacy legislation, occupational health and safety legislation and the Canadian Charter of Rights and Freedoms
4. Explain basic principles of professionalism and ethical conduct, including client confidentiality and privacy of information within an investigation
5. Explain the following concepts: prejudice, discrimination, stereotyping, harassment
6. Describe the signs and dynamics of abuse in relationships
7. Describe the Ministry's *Code of Conduct and Complaints* process
8. Identify potential hazards in a workplace and industry-accepted control measures that can mitigate identified hazards
9. Describe typical response measures regarding unsafe workplaces/conditions and/or work practices
10. Discuss and provide examples of a citizen's power of arrest under the Criminal Code

11. Identify the differences between civil law and criminal law
12. Articulate legal , tactical and situational considerations in the decision to use force
13. Explain the Use of Force Continuum and how it applies to professional investigators
14. Assess client needs, plan an investigation and explain how an investigation is managed, including risk management
15. Describe various investigative techniques, including research, surveillance, evidence collection and maintenance, file management and cognitive interviewing
16. Identify legal requirements and client/agency rules impacting electronic surveillance of premises and people
17. Demonstrate the key components of effective verbal communication, including techniques in challenging, aggressive and/or threatening situations
18. Describe the differences between types of reports and demonstrate the ability to write a detailed investigative report and accurate field notes
19. Demonstrate appropriate techniques for providing testimony
20. Identify basic elements of planning and operating a professional investigation business.

This course is delivered in nine modules; each module deals with specific topic areas and there are learning outcomes associated with each. The modules which make up the Alberta Professional Investigator Training course are:

- Module 1: Introduction to the Investigation Industry
- Module 2: Professionalism and Ethics
- Module 3: Health and Safety
- Module 4: Law and the Canadian Legal System
- Module 5: Use of Force
- Module 6: Investigations
- Module 7: Communications and Report Writing
- Module 8: Specialized Investigations
- Module 9: Business of Investigations

In order to receive a certificate indicating successful completion of this course, you must attend all sessions of this training. You are required to provide evidence that you have completed forty (40) hours of training in basic security procedures in order to be eligible to write the provincial licensing exam.

In addition to this course participant manual, you will need the following items:

- Notebook
- Pen



Come prepared for class each day. You will be able to participate more actively and gain more from your attendance if you have the required materials ready and waiting.

In addition to being prepared for each class, please make note of the following:

- Arrive on time and plan to be in class until the designated finish time each day
- Get plenty of sleep each night; having adequate rest will help you learn and retain the materials
- Turn your cell phone off during class time; it is disruptive for you and disrespectful of the facilitator when you frequently check your phone for messages
- Get to know your classmates; they will be your colleagues in the field and great study buddies as the course progresses
- Ask questions! The facilitator wants you to be successful; don't hesitate to seek clarification or additional explanation when you need it. It is YOUR course; make sure it is meeting your needs.
- Review after each class; go over the day's materials while the information is still fresh in your mind, and make notes in case you have questions you'd like to clear up with the facilitator.
- Relax! This is very important material, and it may look like a lot to cover in nine days, but this course has been designed to be interactive; not intimidating. Dive in with your questions, your answers, and your ideas – active participation is a key principle in successful, adult learning.

### Icons in this manual

Throughout this manual, you will see the following icons. Each time you see one of these symbols, you will know a particular type of activity is going to take place.



#### Check Your Knowledge

Test your knowledge about topic areas at the start of each new module.



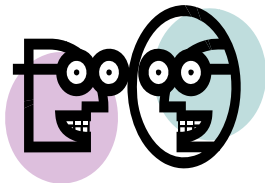
#### Activity

This will be a hands-on activity or class discussion activity for you to complete.



#### Group Discussion Activity

This will be a group discussion based on some aspect of the topic you are studying.



### **Take a Moment to Reflect**

This will be an activity designed to stimulate your critical thinking ability.



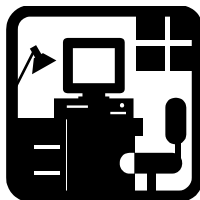
### **Post Test**

This will help you to assess your progress throughout the course



### **References and Additional Resources**

This will direct you to further reading on module topics.



### **Homework**

This indicates homework to be done for next class.

All clipart Microsoft ®

You've made the first step to a career as a security professional by enrolling in this course. Over the next nine days of instruction, you can expect to be informed, engaged and challenged by the material in this course. Consider this practice for your entry into the ever-changing and always interesting role of a licensed professional investigator.

# Module One: Introduction to the Investigations Industry

## INTRODUCTION

As the introductory module in this training course, the following content is meant to introduce learners to the broad field of the professional investigation industry, the roles and limitations of investigators and the types of services they generally provide. Because investigative work is a vast, complex area, not all types of investigations can be addressed in this module or the larger course. Rather, it is a survey of the field and meant as an introduction. Students are encouraged to explore the industry and potential career opportunities on their own. This module and this entire course focus on non-police professional investigators, and more specifically those licensed and regulated by the *Alberta Security Services and Investigators Act*. Throughout these course materials, the term "investigator" will be used to denote this group and the audience for this training.

## LEARNING OUTCOMES

Upon completion of this module, participants will be able to:

1. Describe the role of professional investigators.
2. List the types of investigations typically conducted by investigators.
3. Explain the licensing rules, regulations and processes for investigators in Alberta.
4. Identify the limitations imposed by law on the investigative functions that apply to investigators compared to the police.
5. List unique areas of professional investigations, including such areas as fraud, loss prevention, intellectual property protection and the role of an investigator within such investigations.
6. Explain the investigative process.

**TOPICS**

Introduction to Investigators and Investigations ..... 14  
Roles, Responsibilities and Limitations of an Investigator ..... 15  
Investigator Job Description ..... 19  
Principles and Processes in Investigations ..... 21  
Investigator Licensing in Alberta..... 22  
Investigator Professional Development and Professional Designations ..... 24  
Conclusion ..... 25  
REFERENCES AND ADDITIONAL RESOURCES ..... 29



© Microsoft



## Check Your Knowledge

Test your knowledge of the topic before starting this module.

Traditionally some people may imagine investigators as a shady bunch dressed in raincoats, tailing wayward husbands or cheating wives. Or perhaps some fictionalized television series or movie springs to mind, with investigators racing around in sports cars with unlimited adventure and budgets. In reality these myths could not be further from the truth.

Look at the following statements and select the appropriate answer as True or False for each one. Make a note of your answers.

1. An investigator is allowed to carry a gun while on duty in Canada providing he or she is specially licensed to do so.
  - a. True
  - b. False
2. An investigator has a specific power of arrest but only in the execution of his/her duty.
  - a. True
  - b. False
3. An investigator can legally “bug” cell phones or landlines with listening devices in order to collect evidence in an investigation, providing the investigation pertains to a crime in Canada.
  - a. True
  - b. False
4. An investigator can legally work within any province in Canada, providing s/he holds a valid investigator’s licence issued from the province in which s/he resides.
  - a. True
  - b. False
5. An investigator is legally allowed to drive faster than the posted speed limit and run red lights, providing s/he does so safely and is actively in the course of an investigation or official surveillance.
  - a. True
  - b. False



## INTRODUCTION TO INVESTIGATORS AND INVESTIGATIONS

The role of a non-police investigator is vast, complex and largely unknown by the general public. Perceptions are formed by fictional investigators like those found in the popular media or legendary fictional characters such as Sherlock Holmes.

The *Security Services and Investigators Act* defines an investigator as any person who undertakes the following for remuneration:

investigate, conduct surveillance activities, or seek or obtain information about

- (a) crimes, offences, contraventions of enactments or misconduct or allegations of [same],
- (b) the cause of an accident, incident, property damage, personal injury or damage to premises,
- (c) the activity, conduct, character or repute of a person,
- (d) the location of property, or
- (e) the whereabouts of a person.

Section 2.1, *Security Services and Investigators Act*

©Alberta Queen's Printer, 2008

As in many jurisdictions, any person performing such services in Alberta must be properly licensed.

Investigators make inquiries, collect information and make reports for such groups as:

- private individuals
- lawyers and law firms
- insurance companies
- corporations
- government
- professional associations and regulatory bodies
- out of province and out of country investigators.

Using techniques such as surveillance, targeted interviews and collection of open source intelligence, investigators may become involved in cases that involve:

- private family matters
- allegations of insurance or other financial fraud
- locating stolen property or financial assets
- searching for missing persons
- investigating allegations of harassment, discrimination or human rights violations in the workplace
- investigating incidents of internal theft of property, data or other assets.

Investigators may work for a professional association inquiring into allegations of professional misconduct; for insurance companies looking into possibly fraudulent claims; or for professional investigation firms that offer both general and specialized services. Regardless, investigations can be an interesting, varied and rewarding career.

Good investigators invest in ongoing professional development by consulting with peers and mentors, subscribing to and reading professional trade magazines, attending industry events and participating in ongoing learning through courses, diplomas and designations.

In some contexts, investigators will handle a diverse range of files requiring expansive knowledge and skill sets, including a working knowledge of the different industries and circumstances that investigations will take them into.

A good investigator will have an inquiring mind, possess common sense, be relentless in seeking information, subscribe to thorough processes and at all times be objective.

## **ROLES, RESPONSIBILITIES AND LIMITATIONS OF AN INVESTIGATOR**

Like other parts of the broadly-defined, regulated security industry, licensed investigators play a significant role in the safety and security of Albertans. They do this in part by researching faulty and sometimes dangerous products, protecting workers by looking in to harmful workplace practices and behaviours such as harassment and discrimination, helping companies mitigate the financial risk of fraudulent insurance claims and helping law firms locate missing persons.

According to the Government of Alberta Occupational Profiles directory, investigators may:

- investigate and work to prevent loss caused by theft or fraud in corporations and businesses
- observe disability insurance claimants to see if they are working at another job while they are claiming disability, or to see if their activities are consistent with the claimed disability
- conduct searches for missing persons
- gather information for lawyers about defendants or witnesses in criminal and civil court cases
- gather material or evidence for individuals in divorce or child custody cases
- conduct pre-employment checks
- work with law enforcement agencies to investigate corporate or insurance crimes

To gather the information and evidence they need, investigators may:

- contact law enforcement agencies
- interview employers, friends, relatives and other sources
- take photographs and videotape events
- locate witnesses and obtain statements from them
- search through public or client records
- keep individuals under surveillance

An investigator is expected to independently verify the facts of a situation without bias and report those facts, sometimes with recommendations, to the client.

A good all-round investigator is expected, after suitable training, to perform a variety of duties, which may include:

- planning and conducting investigations - both criminal and civil
- surveillance
- interviewing witnesses and/or victims
- location of assets, information and persons
- collection of evidence to support legal and other proceedings

This training course is designed to provide prospective or new investigators with a foundation of the knowledge and skills required to perform the basic duties of a professional investigator – regardless

of the specialized area they may work in. Depending on the chosen career path, advanced courses are available to further develop knowledge and skills. Some investigators specialize and spend most of their time working on their particular area of expertise. Others prefer variety in their assigned files.

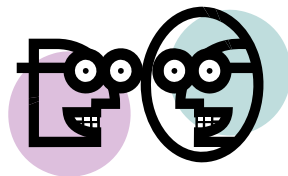
Specialized areas of investigation include, in part:

- Missing persons
- Workplace health and safety events/incidents
- Workplace misconduct
- Environmental incidents
- Insurance
  - Casualty insurance investigations
  - Property insurance investigations
  - Recovery
  - Life and health insurance investigations
- Corporate
  - Economic crime
  - Due diligence and financial background
  - Workplace investigations
  - Theft of proprietary electronic files and data
  - Fraud or theft related to computer files
- Legal (civil and criminal)
  - Corporate and commercial law
  - Litigation support and trial preparation
  - Family and estate law services
  - Civil litigation
- Intellectual property
  - Counterfeit and piracy investigations
  - Copyright and patent investigations
  - Trademark investigations
  - Mareva injunctions and Anton Piller orders

Regardless of the type of the investigation, the tasks of the investigator are typically the same:

- Seek and collect information
- Collate information and evidence
- Analyze and report on information and findings
- Behave in a discreet, ethical, professional manner
- Maintain confidentiality
- Maintain procedural fairness
- Maintain objectivity

In some instances, investigators will simply report their findings. In others, they may be tasked with assessing credibility of facts and/or persons, reaching conclusions on events and their root causes, or making recommendations. Regardless, the responsibility of the investigator is to act in a professional, thorough and lawful manner so that the result of their investigation can stand up to independent scrutiny, such as in a court.



#### Take a Moment to Reflect

Why do you think a client would hire a professional investigator? Think of as many different reasons as you can. Be prepared to share your answers in class.

It is important to know that there are limitations on the role and duties of investigators. Because they are not police officers, licensed investigators have no more lawful authority or privilege to conduct an inquiry than any other private citizen. They cannot access confidential databases such as criminal records, intercept private communications, execute search warrants, carry firearms or break the law.

There may be instances where a client asks an investigator to step outside their lawful authority, or engage in unethical practices. Real life examples include requests to:

- plant surreptitious listening devices in a corporate boardroom
- track down the hiding abused wife for the battering husband
- illicitly obtain the intellectual property of a competing firm

It is the duty of investigators to ensure they are acting lawfully and ethically at all times and to ensure their client has a legitimate and lawful request that can be acted upon.

Pursuant to the *Security Services and Investigators Act and Regulations*, the *Policy Manual* specifies a Code of Conduct for licensed professional investigators. While on duty, every licensee (business or individual) shall abide by the following Code of Conduct:

A licensee will:

- Act with honesty and integrity,
- Comply with all federal, provincial and municipal laws,
- Respect the privacy of others by treating all information received while working as a licensee as confidential, except where disclosure is required as part of such work, by law, or under the *Personal Information Protection Act*,
- Abide by their employer's code of conduct in addition to the provisions of this code of conduct.

A licensee will not:

- Engage in disorderly or inappropriate conduct
- Use unnecessary force
- Withhold or suppress information, complaints or reports about any other licensee
- Willfully or negligently make or sign false, misleading or inaccurate statements
- Consume alcohol,
- Consume controlled drugs or controlled substances under the *Controlled Drugs and Substances Act (Canada)*
- Possess controlled drugs or controlled substances the possession of which is prohibited by the *Controlled Drugs and Substances Act (Canada)*.

*Security Services and Investigators Act Policy Manual v2.2 (March 2012), s.6.1*

© Alberta Queen's Printer, 2008

Breaches of this Code of Conduct may result in legal consequences, including suspension or cancellation of an investigator's license.

There are additional duties required of licensed investigators, including

- record keeping (s. 6.2 *Policy Manual*)
- reporting loss of licence (s. 4.2)
- reporting charges or convictions under the *Criminal Code, Controlled Drugs and Substances Act* or any other enactment of Canada
- reporting any changes to the information provided to the Registrar at the time of application or renewal of the licence (s. 6.3.1 *Policy Manual*)
- reporting any use-of-force incident (s. 6.3.4 *Policy Manual*)

To help enhance public safety and ensure public confidence in the Act and the investigation industry, the *Security Services and Investigators Act* and *Regulation* provide a mechanism for the reporting, recording, investigation and resolution of public complaints against licensed investigators. This mechanism is addressed in section 11 of the *Policy Manual*, including the notification of individuals that a complaint has been registered and how such complaints are reviewed. The Code of Conduct and complaint processes will be discussed in Module Two: Professionalism and Ethics.



## INVESTIGATOR JOB DESCRIPTION

There is no one single authoritative guide to an investigator's tasks, roles, responsibilities, knowledge or skills. The industry is too varied for this. Human Resources and Skills Development Canada has established a National Occupational Classification system to provide standardized language for describing the work performed by Canadians in the labour market. There is a current initiative to develop a National Occupational Standard for investigators. As of July 2012, a national standard has yet to be developed.

While the specific duties of investigators will vary depending on their focus and specialized field, some generic duties apply. Following is a generic job description for a senior general investigator, who in turn would lead and supervise junior investigators. This will provide some sense of the duties, role and responsibilities of an investigator, in addition to the knowledge and skills required.

The senior investigator will:

1. Accept new assignments either in person, by phone, by mail or via email.
2. Obtain the necessary information, put it to paper and create an assignment file in coordination with the administrative team.
3. Obtain the necessary information or intelligence to assist the assigned investigator(s), as required.
4. Liaise with clients regarding files in a courteous and professional manner.
5. Provide daily/ weekly updates on the current status of all investigations to the assigning client based on the timeline designated upon commencement of the assignment. This will be done verbally or by e-mail.
6. Provide clients with a pre-investigation report before operations commence, outlining any anticipated or foreseeable difficulties and an investigative plan, ongoing progress reports, and concluding update.
7. Cooperate and liaise with both clients and investigators/researchers to meet goals, deadlines and objectives of assignments.
8. Complete assignments within company/client deadlines.
9. Upon completion of assignment review/create the company's evidence package, including a concise report, videotapes, photographs and other collected evidence, and an accurate/competitive invoice.
10. Maintain an accurate list of all ongoing files and their current status.
11. Maintain their own vehicle and equipment in good working condition, suitable for work and functions.
12. When given assignments, be responsible for ensuring that the file objectives and the client's goals are clearly understood.

13. Conduct investigations in a manner that makes strategic sense and that is coordinated with the client's intent.
14. Conduct assignments in a proper investigative sequence including pre-assignment planning, on-assignment assessment and evidence collection, and closing assignment protocol, all of which must be done in consideration of future litigation.
15. Provide assignment progress reports to managers, where necessary, in as close to "real time" as possible to ensure situational awareness and evidence are achieved.
16. Closely monitor assignment timelines and budgets to ensure assignments are completed on time and within budget.
17. Comply with corporate evidence "chain of custody" policy.
18. Produce accurate and detailed notes and reports in compliance with reporting and accounting policy, and in a manner that considers all of the people that may review evidence at the internal and external levels.
19. On a per-assignment basis, complete all mandatory internal forms and submit evidence packages as per policy.
20. Participate in sales and business development initiatives as directed by the regional manager, and in coordination with budgetary planning.

It is important to remember that this position description is for a general investigator. Duties will vary depending on the specialty area involved and whether the investigator is with a private firm, professional association, or quasi-government agency.



© Microsoft

## PRINCIPLES AND PROCESSES IN INVESTIGATIONS

While investigations can vary greatly in focus, strategies and objectives, there are general principles that guide all investigations. These include:

- Professional processes are followed and thoroughly documented.
- Investigations are conducted in a lawful, transparent and professional manner.
- Investigations are conducted in an objective manner, absent of any bias, prejudice or assumption.
- Decision-making and core investigative strategies are supported by sound professional judgment.

Broadly speaking, there are three types of files an investigator will become involved in:

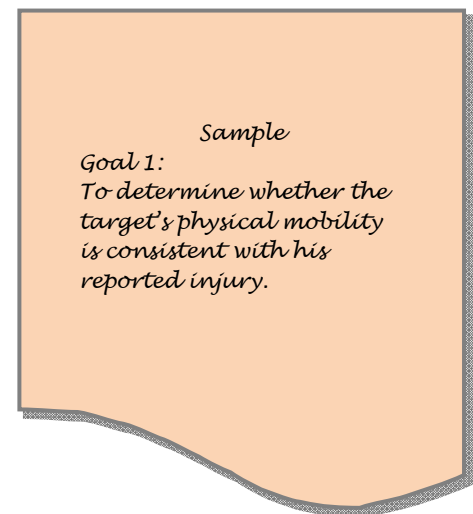
1. Report of an incident/event
2. Suspicion or allegation of misconduct
3. Suspicion or allegation of breach of compliance

The investigator may respond to a report, request from a client or other third party, or act on their own initiative in some circumstances and contexts.

Based on professional experience, integrity, common sense and sound judgment, investigators will typically start any new file/investigation by initiating an investigative plan such as the following:

- Identify the purpose or goal of the investigation, for example:
  - Collect evidence that will support a charge or law suit
  - Simple collection of data or evidence
  - Investigate to help with compliance or an informal resolution of a matter
  - Help make the problem go away
  - Mitigate future risk
  - Other
- Clarify the scope of the investigation
- Identify intended timeline for deliverables/action
- Identify potential challenges and how they will be overcome
- Identify required resources
  - What data sources will need to be accessed
  - Special equipment required
  - Special investigative strategies and techniques required
- Identify budget
- Produce timeline for reporting

We will be using this format for an investigation plan to investigate a case throughout this course.



Common issues an investigator will need to address in an investigation can include:

- Fully understanding the purpose, goal, timeline and budget
- Ongoing and clear communications with the client
- Managing client expectations of what is possible and legal
- Lack of accurate, current or available information needed to conduct or conclude the investigation
- Acknowledging one's own skills, knowledge and resource limitations

When planning and conducting an investigation, professional investigators will ask themselves and their colleagues a series of cyclical questions to ensure that the investigation is thorough, professionally-conducted and can withstand objective outside scrutiny, such as in a court or tribunal hearing. Generally, the professional investigator will answer the Who, What, When, Where, Why and How of an investigation in an objective, fair and ethical manner.

This topic is covered further in Module Six: Investigations

## INVESTIGATOR LICENSING IN ALBERTA

It is the role of the Province, through the Ministry of Justice and Solicitor General, to regulate the investigation industry in Alberta – including both individual investigators and the firms/entities that employ them. The aim is to ensure that minimum standards of training, accountability and professionalism are adhered to in the best interests of all Albertans. This aim is accomplished in part through the *Security Services and Investigators Act, Regulations*, and the accompanying *Policy Manual*, produced by the Ministry. See Appendices B, C and D in this manual for full copies of the Act, Regulation and Ministerial Regulation. For an online copy of the *Policy Manual*, see <http://www.securityprograms.alberta.ca>

As previously noted, *The Security Services and Investigators Act* defines an investigator as any person who undertakes the following for remuneration:

investigate, conduct surveillance activities, or seek or obtain information about
(a) crimes, offences, contraventions of enactments or misconduct or allegations of [same],
(b) the cause of an accident, incident, property damage, personal injury or damage to premises,
(c) the activity, conduct, character or repute of a person,
(d) the location of property, or
(e) the whereabouts of a person

©Alberta Queen's Printer, 2008

Anyone fitting this description, and who is not a police officer, sheriff, bailiff or peace officer, must be licensed as an investigator. There are exceptions to this stipulation, which can be found in the *Act* (s. 10 and 11), *Regulation* (s. 2) and the *Policy Manual* (s. 3.5).



Figure 1.1 Front View of Alberta Investigator's Licence

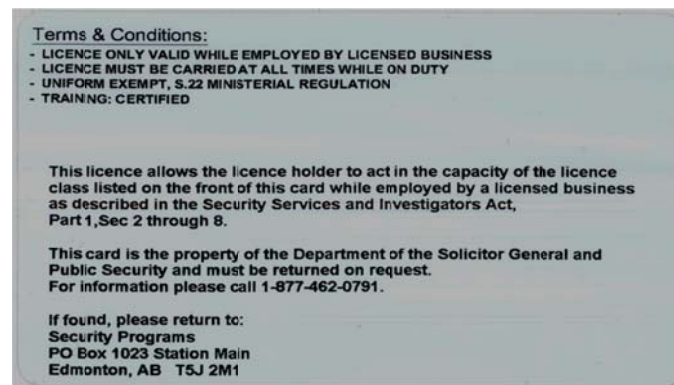


Figure 1.2 Back View of Alberta Investigator's Licence

To qualify for a licence as an investigator under the *Security Services and Investigators Act and Regulation*, individuals must meet the following basic qualifications:

- At least 18 years of age
- A Canadian citizen or legally entitled to work in Canada
- Competent and of good character
- Have no serious criminal record for which a pardon has not been granted
- Have no outstanding criminal charges
- Not the subject of a criminal investigation
- Fluent in speaking English
- Successful completion of training requirements for the class(es) of licence being sought
- Successful completion of baton training if seeking authority to carry a baton

*Security Services and Investigators Act Policy Manual v2.2 (March 2012), s.3.6.1*

© Alberta Queen's Printer, 2008

In addition to providing proof of qualifications, applicants will be required to sign the application form attesting to their qualifications. Providing false information will result in suspension or cancellation of a licence.

Once licensed, an investigator is required by law to carry their licence with them at all times while on duty, and to show proof of licensing upon request by a member of the public, except when doing



so may impede an individual licensee's ability to effectively perform their duties. Members of the public are entitled to know the name of the investigator, their licence number and the name of the investigator's employer in the event they wish to file a complaint (s. 24 – 29 *Act*, s. 4.4 *Policy Manual*).

To withhold this information when requested can be an offence in law and may result in conditions being imposed on the licence, suspension or cancellation.

Visit [www.securityprograms.alberta.ca](http://www.securityprograms.alberta.ca) for application forms, online access to the *Security Services and Investigators Act, Regulation and Policy Manual* and additional information.

## **INVESTIGATOR PROFESSIONAL DEVELOPMENT AND PROFESSIONAL DESIGNATIONS**

There are a number of different professional associations that represent various segments of the broad investigations industry, most of whom offer ongoing professional development opportunities. Some hold conferences and regional meetings and publish regular journals, articles and resources. Others provide national and international networking opportunities and share client leads. Investigators are advised to seek out those associations that best meet their individual ongoing professional development needs. Examples of such associations include the Alberta Association of Professional Investigators and the Canadian Association of Professional Investigators.

In Alberta, a number of public post-secondary institutions offer courses and programs of interest to investigators, including:

- Mount Royal University, Bachelor of Arts in Criminal Justice
- Lethbridge College, Justice Studies Program
- Grant MacEwan University, Insurance and Risk Management Diploma, Diploma in Investigative Studies
- University of Alberta, Bachelor of Arts in Criminology
- Bow Valley College

There are any number of privately run schools offering various general and specialized online training and certifications, for a fee. As with any investment, it is buyer beware. Not all are credible or widely recognized by employers, industry associations or public post-secondary institutions.





## Post-Test

Test your knowledge after completing this module.

1. Soraya is a retired police officer currently working as an investigator. She has carried a firearm throughout her career and wishes to continue to do so. Which, if any, of the following statements are correct?
  - a. As a former police officer, Soraya can carry a firearm providing she obtains a special investigator's licence entitling her to do so.
  - b. Soraya can obtain an investigator's license to carry a weapon within Alberta but cannot carry it out of the province.
  - c. Soraya cannot carry a firearm in Alberta while working as an investigator.
  - d. Soraya cannot carry a firearm in Alberta because she exceeds the age limit for the special licence.
  
2. Sam is a very experienced loss prevention worker. He notices a young man acting suspiciously within the store. He follows the man and correctly keeps him under observation. After around five minutes of watching, Sam is certain the man is trying to steal from the store. The young man is picking up clothing and rapidly looking around but Sam has not yet seen him steal anything. Which of the following should be Sam's next course of action?
  - a. Arrest the young man because he is about to commit a criminal offence.
  - b. Keep observations on him until he leaves the store, and then arrest him so he can be searched to recover any property he may have taken.
  - c. Keep observations on him until Sam witnesses an indictable offence being committed.
  - d. Keep observations on him and arrest him once Sam has enough evidence to reasonably believe a crime has been committed.

3. Khalid holds a valid investigator's license issued in Alberta. He is not licensed in any other province. He is currently conducting an investigation that requires him to travel to British Columbia to conduct a series of interviews. He has around 30 interviews to complete and expects to be in B.C. for two weeks. Look at the statements below and select the correct answer(s).
- a. Khalid cannot conduct the interviews in B.C. unless he holds an investigator's license issued by the province of British Columbia.
  - b. Khalid can conduct the interviews because he holds a valid investigator's license issued in Alberta.
  - c. Khalid can conduct the interviews because he will be working in B.C. for less than 30 days, providing he contacts the B.C. provincial registrar.
  - d. Khalid can conduct the interviews because he will be working out of province for only 7 days.

Choose the correct answer below and circle it.

- 1. a and b
- 2. c and b
- 3. b and d
- 4. b and c

4. Zak is a retired traffic sheriff working as a professional investigator. He is currently assigned to conduct surveillance on a man who has made serious threats to a work colleague. Zak is instructed to keep the subject in sight at all times and report immediately to his manager if the subject heads toward his colleague's home. Zak is following his subject by vehicle and he appears to be heading toward the danger area when the subject runs a red light. What should Zak's correct course of action be?

Read the statements below and select the correct answer(s).

- a. Zak should also run the red light providing it is safe to do so, since losing the subject could have serious consequences.
- b. Zak cannot run the red light because he has no more right to traffic law exemptions than an ordinary citizen.
- c. Zak is a highly trained former traffic sheriff and so may be granted driving law exemptions under the circumstances.
- d. Zak should call his manager and continue in the direction the subject was last seen when traffic signals allow.

Choose the correct answer below and circle it.

- 1. a and c
- 2. b and c
- 3. b and d
- 4. a and d

5. Which of the following statements are true?

- a. An investigator is expected to obtain positive results for their client using any means necessary.
- b. An investigator cannot bug cell phones or landlines.
- c. An investigator is expected to independently verify the facts of a situation without bias and report those facts, with recommendations, to their client.
- d. An investigator's license may be issued even if the applicant has a criminal conviction, providing an investigation company is offering him or her employment and produces a letter stating the same.





©Microsoft



## REFERENCES AND ADDITIONAL RESOURCES

Alberta Learning Information Services (2011.) OCCinfo. Alberta occupational profiles: Private investigator. Retrieved from [http://alis.alberta.ca/occinfo/Content/RequestAction.asp?aspAction=GetHTMLProfile&format=html&occProID=71003126&SNT\\_ID=25](http://alis.alberta.ca/occinfo/Content/RequestAction.asp?aspAction=GetHTMLProfile&format=html&occProID=71003126&SNT_ID=25)

Menary, C. J. (2011). *The Canadian private investigator's professional guidebook*. Toronto: Carswells.

Province of Alberta (2012). *Security Services and Investigators Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/S04P7.pdf>

Province of Alberta (2010). *Security Services and Investigators Regulation*. Retrieved from [http://www.qp.alberta.ca/documents/Regs/2010\\_052.pdf](http://www.qp.alberta.ca/documents/Regs/2010_052.pdf)

Province of Alberta (2010). *Security Services and Investigators (Ministerial) Regulation*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=2010\\_055.cfm&leg\\_type=Regs&isbncln=9780779749072](http://www.qp.alberta.ca/574.cfm?page=2010_055.cfm&leg_type=Regs&isbncln=9780779749072)

Province of Alberta (2012). *Security Services and Investigators Act Security Programs Policy Manual*. Retrieved from <http://www.securityprograms.alberta.ca>

# MODULE TWO: PROFESSIONALISM AND ETHICS

## INTRODUCTION

The professionalism and ethics used by investigators are constantly being scrutinized by courts and others who must determine the outcomes of evidence obtained by investigators. This module will provide an overview of the key principles of professionalism and ethics as well as relevant legislation that governs investigators.

## LEARNING OBJECTIVES

Upon completion of this module, participants will be able to:

1. Explain basic principles of professionalism and ethical conduct, including client confidentiality and privacy of information within an investigation
2. Describe the differences between ethical and unethical industry-specific investigative procedures and behaviours
3. Define the importance of maintaining appropriate ethics
4. Explain the following concepts: prejudice, discrimination, stereotyping, harassment
5. Describe the signs of abuse in relationships and the dynamics indicating why abuse victims may be reluctant to share information about their abuse
6. Describe the Ministry's Code of Conduct and complaints process
7. Describe how federal and provincial privacy legislation impacts investigations and how they relate to professionalism and ethical conduct

## TOPICS

Defining Ethics and Professionalism .....	33
Core Principles of Professionalism and Ethics .....	36
Code(s) of Conduct.....	39
The <i>Security Services and Investigators Regulation</i> .....	39
Other Examples of Codes of Conduct .....	40
Complaints Process .....	41
Provincial and Federal Privacy Legislation.....	44
Alberta: <i>Personal Information Protection Act (PIPA)</i> .....	44
Federal: <i>Personal Information Protection and Electronic Documents Act (PIPEDA)</i> .....	46
Prejudice, Discrimination, Stereotyping, Violence in Relationships and Harassment.....	55
Violence in Relationships .....	57
Conclusion .....	60
References and Additional Resources .....	61



## Check Your Knowledge

Test your knowledge on the topic before starting this module:

1. The concepts of ethics and professionalism are the same.
  - a. True
  - b. False
2. Ethics act as guides for organizational behaviours.
  - a. True
  - b. False
3. You can be personally sued for the decisions you make while investigating.
  - a. True
  - b. False
4. Acting ethically means blowing the whistle on other employees you witness doing unethical things.
  - a. True
  - b. False
5. It is permissible to release personal information about a client to the media concerning an investigation if the information is true.
  - a. True
  - b. False
6. Obtaining consent from the target of the investigation is rarely necessary.
  - a. True
  - b. False
7. The concepts of prejudice and discrimination are the same.
  - a. True
  - b. False
8. Harassment is a violation of the *Criminal Code of Canada*.
  - a. True
  - b. False

## DEFINING ETHICS AND PROFESSIONALISM



### Writing Activity

**Write down two examples of what it means to be a “professional.”**

---

---

---

**Other examples from the class include:**

---

---

---

**What is meant by ethics?**

---

---

---

**Others provided by the class include:**

---

---

---

People defining ethics often refer to morality and ethical behaviour as if they were interchangeable. But they are not.

Morality typically refers to a person's ability to state right from wrong and to make (appropriate) value-based judgments.<sup>1</sup> Value-based principles act as guides for our subsequent decision-making. However, morals do not need to be based on a rational argument. For example, a person could be against abortion on moral grounds but for the death penalty on different moral grounds. Ethics would need to sort out the inconsistency behind the logic of these two positions: "I am against abortion because killing is wrong. I am for the death penalty because killing is wrong."

Ethics typically refers to good or bad conduct.<sup>2</sup>

The philosopher Immanuel Kant referred to a "categorical imperative" which essentially means "duty" to do something as if it were a universal law of nature that applies to all rational thinking people. For example, people have a right to be treated with dignity and people have a right to be free. Some rights, such as freedom, can be taken away by the State.

- Ethics are concerned with your duties as a professional
- Ethics are often reflected in Codes of Conduct



© Microsoft

---

<sup>1</sup> Pollock, J. M. (2012). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth.

<sup>2</sup> *Ibid*





## CORE PRINCIPLES OF PROFESSIONALISM AND ETHICS

### Of Professionalism:

- Act ethically
- Demonstrate highest standards of competence
- Be motivated by professional objectives rather than personal concerns
- Treat co-workers, clients and others with dignity, respect and compassion
- Encourage others to act ethically
- Avoid prejudice, discrimination and stereotyping
- Act as a mentor to others
- Be punctual
- Demonstrate teamwork
- Be prepared to report unethical behaviour

### Of Ethics:

For investigators, core principles include:

Ethical Rule	Questions to Ask Yourself
Duty to not violate people's rights	Does what I am thinking of doing violate anyone's rights?  This is based on an ethical requirement for us to be mindful of the rights of others.
Do not treat people as a means to an end	Do my intended actions require me to "use" people for a specific goal while ignoring their rights to dignity and respect as humans?  This is based on the moral requirement of us as human beings to treat all humans in an ethical way.  (There is a counter-theory that suggests that we balance competing rights by doing things that maximize the benefit for the majority. This is where people argue to do the greatest good for the greatest number of people even though it violates rights of others.)

Ethical Rule	Questions to Ask Yourself
Duty to follow the law	<p>Does what I am thinking of doing violate any laws?</p> <p>This is based on our requirements as citizens to follow the rules established under our democracy. There is also a professional requirement that we uphold laws.</p>
Duty to do no wrong	<p>Is what I am doing going to create more bad than good overall?</p> <p>This is based on the notion that we actually have two responsibilities: to not do bad things and to maximize the good things we do.</p>
Duty to follow organizational rules and policies	<p>Does what I am planning on doing in any way violate the spirit or letter of corporate policies and procedures?</p> <p>This is based on the implicit and explicit duties of you as an employee.</p>

**Table 2.1 Core Principles of Professionalism and Ethics**

Guidelines for conducting ethical investigations include:

- Constantly testing your decisions against the ethical rules
- Knowing and understanding your own biases
- Understanding your legal authority to conduct an investigation and the legal scope or range of that investigation (Note: it is sometimes easy to expand the range of the investigation beyond the original scope but to do this without official, legal authority is unethical)
- Maintaining control of the investigative process and the evidence obtained in light of the legal authority and scope of the investigation.



## Group Discussion Activity

### Introduction to Investigative File on Whiz Bang Computers and Electronics

Participants will be actively investigating a file throughout the entire course and will be asked to conduct investigative activities at various points in the course

*Whiz Bang Computers and Electronics is a retail store that is has numerous locations in a city. Recently the accounting department has noted a problem with the petty cash in a particular location. It appears that money has been disappearing from petty cash for some time. Accounting believes that at least \$1200 has gone missing in the past 3 months. This organization also sells a product with a unique logo which they have the exclusive rights to sell in the province. Recently the Marketing Director has seen this or a similar product advertised in another store that is close to the location of the store with the petty cash problem. The Marketing Director and the Vice President of Operations believe there may be a link between this and the possible theft of the money.*

#### Questions to consider:

1. **List the possible aspects of this case you think could be pursued:**

---

---

---

---

---

---

---

---

---

---

2. **List any ethical challenges that an investigator or the company (client) could face in this investigation.**

---

---

---

---

---

---

---

---

---

---

## CODE(S) OF CONDUCT

Principles of ethics and professionalism are reflected in organizational codes of conduct.

### **The Security Services and Investigators Regulation**

**Section 20(1) of the Security Services and Investigators (Ministerial) Regulation  
(Alberta Regulation 55/2010)**

- 20 (1) Every business licensee must establish and maintain a code of conduct for individual licensees it employs or engages the services of.
- (2) The code of conduct must include provisions applicable to the duties and responsibilities of individual licensees the business licensee employs or engages the services of, including
- a) requiring individual licensees to act with honesty and integrity,
  - b) requiring individual licensees to comply with all federal, provincial and municipal laws,
  - c) requiring individual licensees to respect and use all property and equipment in accordance with the terms and conditions of the individual licensee's licence,
  - d) requiring individual licensees to comply with the terms and conditions of the individual's licence,
  - e) requiring individual licensees to comply with the business licensee's code of conduct for individual licensees,
  - f) prohibiting individual licensees from engaging in disorderly or inappropriate conduct,
  - g) prohibiting individual licensees from withholding or suppressing information, complaints or reports about any other licensee,
  - h) prohibiting individual licensees from making or signing false, misleading or inaccurate statements,
  - i) respecting when confidentiality must be maintained,
  - j) prohibiting individual licensees from consuming alcohol while on duty, except in the performance of the individual licensee's duties,
  - k) prohibiting individual licensees from consuming controlled drugs and controlled substances under the *Controlled Drugs and Substances Act* (Canada), and
  - l) except in the performance of the individual licensee's duties, prohibiting individual licensees from possessing or consuming alcohol.

© Alberta Queen's Printer 2008



© iStock Photo # 19911317

## Other Examples of Codes of Conduct

### Alberta Association of Private Investigators

#### Disclosure of Conflicts

Members shall, at the first opportunity, disclose to a client any influence, interest or relationship, pertaining to an investigative engagement, which, in the judgment of a reasonable person may impair the member's professional judgment or objectivity.

#### Terms of Engagement

Members shall ensure that, prior to accepting an engagement, the objectives of the client are fully understood and that the client has been informed of anticipated costs and the time required to complete an assignment.

#### Unqualified Opinions

Members shall not provide opinions for which they are not professionally qualified.

#### Reports

Reports to clients shall be complete, objective and unbiased. Reports should not provide opinions without a factual foundation. Members shall be forthcoming, truthful, and professional in disclosing investigative findings.

### Private Corporation

While engaged in investigative work a corporation or an investigator:

- must act with honesty and integrity
- must respect and use all property and equipment in accordance with the conditions of his or her licence
- must comply with all federal, provincial and municipal laws
- must treat all persons equally, without discrimination based on a person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic or social status
- must not use profane, abusive or insulting language or actions
- must not use unnecessary force
- must not engage in behaviour that is prohibited by law
- must respect the privacy of others by complying with privacy legislation and treating all information received while working as confidential, unless disclosure is required as part of such work or by law
- must cooperate with police if it is required by law
- must not be unfit for duty, while working, through consumption of alcohol or drugs
- must not conspire with another person or aid or abet another licensee to contravene a provision of the provincial act or regulations or a condition of a licence
- must not wilfully or negligently make a false statement or false complaint, and
- must not misrepresent to any person the type or conditions of his or her licence or the nature of his or her authority under the law.

## COMPLAINTS PROCESS

In order to maintain the integrity of the legislation, complaints about investigators are covered under Part 4 of the *Security Services and Investigators Act*:

- Any person may make a complaint in writing within 90 days.
- Employer must respond.
- Employer may deem the complaint frivolous and vexatious or made in bad faith.
- Employer may deem that no investigation is necessary.
- Employer has 90 days to conduct investigation and notify complainant, the licensee, of the outcome and the right to appeal plus notify the Registrar.
- There can be subsequent reviews by the Registrar and the Director of Law Enforcement.

### Part 4 of the *Security Services and Investigators Act*

24 Any person may make a complaint in writing about an individual licensee to the individual licensee's employer within 90 days after the action or circumstance giving rise to the complaint occurs.

#### Investigation and disposition of complaints

25(1) Subject to subsection (2), where a complaint is made under section 24, the employer must investigate and dispose of the complaint in accordance with the procedures set out in this Act and the Regulations.

(2) An employer may refuse to investigate or may discontinue the investigation of a complaint if, in the opinion of the employer,

(a) the complaint is frivolous, vexatious or made in bad faith, or

(b) having regard to all of the circumstances, no investigation is necessary.

(3) If the employer refuses to investigate a complaint or discontinues the investigation of a complaint under subsection (2), the employer must notify the complainant of the refusal or discontinuance in writing, with reasons, within 90 days of receiving the complaint.

(4) The employer must, within 90 days of receiving a complaint, notify the complainant, the individual licensee who is the subject of the complaint and the Registrar in writing of

(a) the employer's disposition of the complaint and

(b) the reasons for the disposition, and the right of the complainant to have the employer's disposition of the complaint reviewed by the Registrar.

#### Review by Registrar

26(1) Within 30 days of receiving notice of the employer's disposition of the complaint under section 25, the complainant may, in writing, request the Registrar to review the employer's disposition.



(2) If the employer has not completed the investigation of the complaint in accordance with section 25, the complainant may, in writing, request the Registrar to review the complaint.

(3) The Registrar must conduct a review of the employer's disposition if the Registrar receives a request from a complainant under subsection (1) or investigate the complaint if the Registrar receives a request from a complainant under subsection (2).

(4) The Registrar may refuse to investigate or may discontinue the investigation of a complaint if, in the opinion of the Registrar,

(a) the complaint is frivolous, vexatious or made in bad faith, or

(b) having regard to all of the circumstances, no investigation is necessary.

(5) If the Registrar refuses to investigate a complaint or discontinues the investigation of a complaint under subsection (4), the Registrar must notify the complainant of the refusal or discontinuance in writing, with reasons, within 90 days of receiving the complaint.

(6) After completing an investigation of the complaint or a review of the employer's disposition of a complaint, the Registrar may vary the terms and conditions of or cancel or suspend the individual licensee's license or the employer's business license.

(7) The Registrar must, in writing, notify the complainant, the individual licensee who is the subject of the complaint and the individual licensee's employer of the Registrar's decision and the reasons for the decision.

#### Review by Director

27(1) Within 30 days from the date that the complainant is notified in writing of the Registrar's decision under section 26, the complainant may, in writing, request the Director to review the Registrar's decision.

(2) The Director must, within 30 days of receiving a request under subsection (1), inform the complainant in writing of the Director's decision confirming, reversing or varying the Registrar's decision.

(3) The Director may direct the Registrar to suspend or cancel the individual licensee's license or to impose additional terms and conditions on the individual licensee's license, and the decision of the Director is final.

(4) Notwithstanding subsection (2), the Director may, on notice to the complainant, extend the time referred to in subsection (2) if additional time is required to review the Registrar's decision.

#### Complaints about a business licensee

28(1) Any person may make a complaint in writing about a business licensee to the Registrar within 90 days after the action or circumstance giving rise to the complaint occurs.

(2) The Registrar may refuse to investigate or may discontinue the investigation of a complaint if, in the opinion of the Registrar,

- a) the complaint is frivolous, vexatious or made in bad faith, or
- b) having regard to all of the circumstances, no investigation is necessary.

(3) If the Registrar refuses to investigate a complaint or discontinues the investigation of a complaint under subsection (2), the Registrar must notify the complainant of the refusal or discontinuance in writing, with reasons, within 90 days of receiving the complaint.

(4) After completing an investigation, the Registrar may vary the terms and conditions of the business licensee's license or cancel or suspend the business licensee's license.

(5) The Registrar must, in writing, notify the complainant and the business licensee who is the subject of the complaint of the Registrar's disposition of the complaint and the reasons for the disposition.

#### Review by Director

29(1) Within 30 days from the date that the complainant is notified in writing of the Registrar's decision under section 28, the complainant may, in writing, request the Director to review the Registrar's decision.

(2) The Director must, within 30 days of receiving a request under subsection (1), inform the complainant in writing of the Director's decision confirming, reversing or varying the Registrar's decision.

(3) The Director may direct the Registrar to suspend or cancel the business licensee's license or to impose additional terms and conditions on the business licensee's license, and the decision of the Director is final.

(4) Notwithstanding subsection (2), the Director may, on notice to the complainant, extend the time referred to in subsection (2) if additional time is required to review the Registrar's decision.

© Alberta Queen's Printer, 2008

It should be noted that

- employers and licensees are bound by this legislation
- employers are expected to have created some internal complaint resolution process that is consistent with current labour practices
- the public complaints process is further outlined in Section 11 of the *SSIA Policy Manual* and assistance is available from the Public Complaints Coordinator

## PROVINCIAL AND FEDERAL PRIVACY LEGISLATION

Privacy legislation is complex. This section is not meant to be an exhaustive description of privacy legislation. Investigators need to familiarize themselves with privacy legislation and adhere to corporate policies concerning access to and dissemination of private information.

There are two primary sources of law governing privacy:

1. Provincial legislation, specifically the *Alberta Personal Information Protection Act (PIPA)*,
2. Federal Legislation, specifically the *Personal Information Protection and Electronic Documents Act (PIPEDA)*

Both have the same main purpose:

To govern the collection, use and disclosure of personal information by private sector organizations in a manner that recognizes both the right of the individual to have his or her personal information protected and the need of organizations to collect, use and disclose personal information for purposes that a reasonable person would consider appropriate.<sup>3</sup>

Generally, determining what is “reasonable” is situational. A common rule of thumb is to ask if all the evidence and various perspectives were presented to normal, cautious and prudent people, what would they decide. Due to the somewhat subjective nature of this word, it is important that investigators do not hastily make decisions that could later be found to be inappropriate, resulting in jeopardized cases.

### **Alberta: *Personal Information Protection Act (PIPA)***

Employee information held by provincially-regulated organizations in Alberta and B.C. is covered by the provincial *PIPAs*. Alberta’s *Personal Information Protection Act* Chapter P-6.5 outlines some of the key restrictions regarding accessing and/or releasing private information.

#### **Application:**

The *Personal Information Protection Act* does not apply if collection of information is for:

- personal reasons
- artistic or literary reasons
- journalistic purposes with exceptions noted in 4(3)(c)
- the purpose of contacting the individual for business
- personal information is held by an organization where that information is governed by the *Freedom of Information and Protection of Privacy Act*
- health information

---

<sup>3</sup> Office of the Privacy Commissioner of Canada (2011) *Questions and answers regarding the application of PIPEDA, Alberta and British Columbia’s Personal Information Protection Act* Retrieved from [http://www.priv.gc.ca/leg\\_c/p\\_principle\\_e.asp](http://www.priv.gc.ca/leg_c/p_principle_e.asp)

Caution: privacy issues are complex. Consult your employer to ensure an individual's rights to privacy are not compromised by your investigation.

*Personal Information Protection Act Chapter P-6.5*

4(1) Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information.

(2) Subject to the regulations, this Act does not apply to a public body or any personal information that is in the custody of or under the control of a public body.

(3) This Act does not apply to the following:

(a) the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for personal or domestic purposes of the individual and for no other purpose;

(b) the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for artistic or literary purposes and for no other purpose;

(c) the collection, use or disclosure of personal information, other than personal employee information that is collected, used or disclosed pursuant to section 15, 18 or 21, if the collection, use or disclosure, as the case may be, is for journalistic purposes and for no other purpose;

(d) the collection, use or disclosure of an individual's business contact information if the collection, use or disclosure, as the case may be, is for the purposes of enabling the individual to be contacted in relation to the individual's business responsibilities and for no other purpose;

(e) personal information that is in the custody of an organization if the *Freedom of Information and Protection of Privacy Act* applies to that information;

(f) health information as defined in the *Health Information Act* to which that Act applies;

(g) the collection, use or disclosure of personal information by the following officers of the Legislature if the collection, use or disclosure, as the case may be, relates to the exercise of that officer's functions under an enactment:

(i) the Auditor General;

(ii) the Ombudsman;

(iii) the Chief Electoral Officer;

(iv) the Ethics Commissioner;

(v) the Information and Privacy Commissioner;

(vi) the Child and Youth Advocate;

(h) personal information about an individual if the individual has been dead for at least 20 years;

(i) personal information about an individual that is contained in a record that has been in existence for at least 100 years;

(j) personal information contained in any record that

(i) was transferred to an archival institution before the coming into force of this Act where access to the record

(A) was unrestricted before the coming into force of this Act, or

(B) is governed by an agreement entered into by the archival institution and the donor of the record before the coming into force of this Act, or

(ii) is transferred to an archival institution after the coming into force of this Act where access to the record is governed by an agreement entered into by the archival institution and the donor of the record before the coming into force of this Act;

(k) personal information contained in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master in chambers of the Court of Queen's Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the *Justice of the Peace Act*, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;

© Alberta Queen's Printer, 2012

Note: There are other restrictions but these are here to highlight the main ones and to point out the need to be more familiar with corporate policies.

## **Federal: *Personal Information Protection and Electronic Documents Act (PIPEDA)***

Application:

- *PIPEDA* applies to federal works, undertakings or businesses.
- *PIPEDA* applies to the collection, use and disclosure of personal information in the course of a commercial activity and across borders. *PIPEDA* also applies within provinces without substantially similar private sector privacy legislation.
- *PIPEDA* applies to employee information only in connection with federal works, undertakings or businesses.
- The provincial *PIPA*s apply to provincially-regulated private sector organizations.<sup>4</sup>

## ***PIPEDA* Principles**

The following principles are outlined by the Office of the Privacy Commissioner of Canada:

### **Principle 1 – Accountability**

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

### **Principle 2 – Identifying Purposes**

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

### **Principle 3 – Consent**

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

**Note:** In certain circumstances personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent. For example, seeking consent may be impractical for a charity or a direct-marketing firm that wishes to acquire a

---

<sup>4</sup> Office of the Privacy Commissioner of Canada (2011) *Questions and answers regarding the application of PIPEDA, Alberta and British Columbia's Personal Information Protection Act* Retrieved from [http://www.priv.gc.ca/leg\\_c/p\\_principle\\_e.asp](http://www.priv.gc.ca/leg_c/p_principle_e.asp)

mailing list from another organization. In such cases, the organization providing the list would be expected to obtain consent before disclosing personal information.

#### **Principle 4 – Limiting Collection**

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

#### **Principle 5 – Limiting Use, Disclosure, and Retention**

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.

#### **Principle 6 – Accuracy**

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

#### **Principle 7 – Safeguards**

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

#### **Principle 8 – Openness**

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

#### **Principle 9 – Individual Access**

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

#### **Principle 10 – Challenging Compliance**

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.<sup>5</sup>

---

<sup>5</sup> Office of the Privacy Commissioner of Canada (2011).



## Group Discussion Activity

Working in groups, read Case Study #1 and answer the questions below.

### Case Study # 1: PIPEDA

The individual was on long-term disability. At the time he submitted his complaint to this Office [Office of the Privacy Commissioner of Canada] he was involved in a dispute with his employer's insurance company, which had terminated his benefits.

According to him, someone came to the door of his home and handed him a copy of a magazine. This person asked the individual to sign a form stating that the magazine was a "thank you" for completing a telephone survey. However, he did not recall ever completing such a survey.

The next month he received a letter from his insurance firm informing him, among other things, that an investigation firm had been hired to conduct surveillance on him. Included in the letter was a copy of the investigation report, which contained a photo of him, accepting the magazine. He contacted the magazine to ask whether a promotion had been conducted on that date. The magazine responded that it was not involved with the insurance company or with any private investigators, and that no telephone surveys had been conducted on the date in question.

© Office of the Privacy Commissioner of Canada. *Findings under the Personal Information Protection and Electronic Documents Act (PIPEDA): PIPEDA case summary #2008-392*

On behalf of the insurance company, the private investigators did the following:

1. conducted a search of motor vehicle records to determine the insured's address, name of spouse and daughter
2. obtained telephone numbers
3. undertook three days of surveillance on the house to determine the insured's "activities and movements"
4. made a pretext call<sup>6</sup> to determine if the insured was home
5. took a photo of him receiving the magazine

<sup>6</sup> A pretext call occurs when an investigator contacts a person of interest to an investigation by using deception in order to gain some information from that person.

Questions	Answers
<ul style="list-style-type: none"> <li>• What key principles does this case centre on?</li> </ul>	
<ul style="list-style-type: none"> <li>• Did the investigator obtain the insured's private information (the photo) properly?</li> </ul>	
<ul style="list-style-type: none"> <li>• Why not ask for consent for taking the photo?</li> </ul>	
<ul style="list-style-type: none"> <li>• What did the insurance company ask the investigator to do and how is this relevant?</li> </ul>	
<ul style="list-style-type: none"> <li>• What was the purpose of the pretext?</li> </ul>	

Read the following statements and based on your analysis, circle the correct response:

**Overall findings of the Assistant Commissioner**

1. The Assistant Commissioner who heard the case *did or did not?* believe that the pretext call was necessary in order to get a photo since the identity of the individual was not yet in dispute
2. The investigator acknowledged that the pretext call was *sufficient or insufficient?* to determine whether the insured was home especially since telephone calls could be forwarded. The Assistant Commissioner believed there was *sufficient or insufficient?* evidence without the use of pretext calls to determine the individual was home
3. The Assistant Commissioner believed the investigators *did or did not?* meet the requirements under 7 (1)(b):  
*7. (1) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if:*  
*(b) it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for*



*purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province<sup>7</sup>*

**Note:** The Office of the Privacy Commissioner of Canada has on their website, [http://www.priv.gc.ca/cf-dc/index\\_e.asp](http://www.priv.gc.ca/cf-dc/index_e.asp), many examples of actual cases concerning privacy issues. Participants are encouraged to visit the website to further their knowledge about the application of Canada's privacy laws.



### **Group Discussion Activity**

Working in groups, read Case Study #2 and answer the questions below.

#### **Case Study # 2**

Investigator Sam has just started out as a professional investigator. He is working in a relatively small metropolitan area. Unfortunately, the Investigation Company 'A' that has hired him does not have full-time work for Sam. Sam has what is termed a "portable" investigator licence that allows him to work with other investigation firms while working with Company 'A'. Sam manages to obtain additional work with Investigation Company 'B'. Companies 'A' and 'B' know and accept Sam's choice.

Sam is conducting investigative work for Company 'A' where a client of a company suspects that one of his employees is faking a work-place injury to his knees that apparently makes it too difficult to stand or walk for any length of time. Sam's job is to follow the employee for a few days to see the level of physical abilities he has.

In Sam's other job with Company 'B', he is assigned to investigate a claim of negligence for a law firm where they allege a local store has very poor lighting in their parking lot which has resulted in a number of people falling and injuring themselves. As Sam starts to investigate the file for the law firm he realizes that one of the claimants is the employee that Company 'A' has asked Sam to follow.

<sup>7</sup> Government of Canada (2011). *Personal Information Protection Act*. Reproduced with permission by Federal Reproduction Law Order

Questions	Answers
<ul style="list-style-type: none"><li>• <b>Ethical problems include:</b></li></ul>	
<ul style="list-style-type: none"><li>• <b>Can he use this information for Company 'A'? If so, why? If not, why not?</b></li></ul>	



## Group Discussion Activity

Working in groups, read Case Study #3 and answer the questions below.

### Case Study # 3

Investigator Rebecca has been with Company 'A' for 15 years. Her work has been outstanding until recently. Rebecca and her husband of 20 years are divorcing and there's a significant dispute about asset distribution. Rebecca can be occasionally heard in heated arguments with her estranged husband about "who gets what." Her husband is a well known labour leader and works for the largest manufacturing plant in the community.

A file is assigned to Rebecca that involves a significant fraud occurring at her future estranged husband's manufacturing company. The file does not involve him. The file is assigned to Rebecca because she knows how this company operates, knows the key players in management and has expertise in investigating these types of cases.

Questions	Answers
<ul style="list-style-type: none"><li>• Ethical problems include:</li></ul>	
<ul style="list-style-type: none"><li>• What should Rebecca do?</li></ul>	



### Group Discussion Activity

Working in groups, read Case Study #4 and answer the questions below.

#### Case Study # 4

Investigator Wolfgang is handed a file by his company to investigate the source of seafood that a local chain of restaurants has been receiving. A government office responsible for monitoring restaurants has asked Wolfgang's firm to determine whether the seafood (clams and mussels) has been caught legally.

To conduct this investigation, Wolfgang seeks employment at the restaurant as a dishwasher where he is hoping to determine through conversations, gossip and some "poking around" where the seafood is coming from.

During his time there, Wolfgang finds out the following: one manager is skimming a considerable amount of money from the evening receipts, bartenders are in a habit of giving free drinks to their friends, and approximately half of the seafood is coming from a friend of the owner. Wolfgang has seen receipts for the some of the seafood but the seafood supplied by the owner's friend does not have receipts. In fact, the friend has complained to the owner that getting the quantities of seafood the owner wants has been difficult because the Department of Fisheries and Oceans has increased their patrols to combat illegal poaching of clams and mussels.

Wolfgang has also been telling all his friends to avoid eating at this local seafood chain because of its illegal practices.

Questions	Answers
<ul style="list-style-type: none"><li>• <b>What evidence can Wolfgang use?</b></li></ul>	
<ul style="list-style-type: none"><li>• <b>Are there any ethical conflicts?</b></li></ul>	



### Group Discussion Activity

Review the following scenarios and determine any of the professional or ethical issues that might be present.

Scenario	Possible Ethical or Professional Issues
1. Taking video through people's windows at night or even just when they are visible during the day.	
2. Leaving a surveillance to go to the washroom – do you document that in your notes?	
3. Videotaping someone in their backyard if you can see through a hole in the fence.	
4. On personal/family law related cases or cases concerning injuries where you are investigating for an insurer, videotaping people having sex in a car or other public place. Is it legal, professional, ethical? Do you video tape then?	
5. Covert video in a gym change room – if someone is partially dressed and you are undercover with a covert camera, when do you start/stop filming? What if there is a sign on the door of the gym that says “no cameras”? Is it permissible of the camera is hidden camera?	

## PREJUDICE, DISCRIMINATION, STEREOTYPING, VIOLENCE IN RELATIONSHIPS AND HARASSMENT

The following section is not intended to be an exhaustive examination of violence in relationships, harassment, prejudice, discrimination or stereotyping. It is intended more as a guide to the main concepts and an opportunity to apply this awareness to case studies. Its relevance to investigative work is that investigators will receive information (statements or other forms of evidence) from people who may base their opinions on prejudice, discrimination or stereotyping. As a result, investigators should know the difference between these concepts.

*Prejudice* is defined as follows:

*The concept of prejudice refers to negative, often unconscious, and preconceived notions about others. Prejudice arises because of our tendency to prejudge persons or situations for imposing definition and order on the world around us.*<sup>8</sup>

In essence, prejudices are our “thoughts” about something.

*Discrimination* is defined as follows:

*Prejudice refers to attitudes and beliefs; by contrast, discrimination consists of the process by which these prejudgments are put into practice.*<sup>9</sup>

In essence, discriminations are “actions.”

*Stereotyping* is defined as follows:

*Stereotypes are essentially generalizations about others, both unwarranted and unfounded on the basis of available evidence. Stereotyping reinforces a universal tendency to reduce a complex phenomenon to simple (or simplistic) explanations that are generalized to a whole category without acknowledging individual differences.*<sup>10</sup>

In essence, stereotypes are simplified generalizations that people apply to a whole group that may or may not be based on any objective evidence.

---

<sup>8</sup> Fleras, A. and J.L. Elliott (1999). *Unequal relations: An introduction to race, ethnic and aboriginal dynamics in Canada*. 3<sup>rd</sup> ed. Scarborough, Ont., Prentice-Hall, pg. 73.

<sup>9</sup> *Ibid*, p. 75

<sup>10</sup> *Ibid*, p. 75



## Group Discussion Activity

Examine the following statements and identify, using a ✓ mark, whether the statements are based on prejudice, are discriminatory or reflect a stereotype. In some cases, several answers may be correct.

	Prejudice	Discrimination	Stereotype
People from this culture always lie so I am going to frame my questions in a way that ensures I catch them lying.			
Women who don't want to leave abusive relationships should not be taken seriously by investigators.			
She should not be given access to this specialized training course since she's probably going to go on maternity leave anyway.			
This individual is probably not going to be a great private investigator because they were never a police officer.			

## VIOLENCE IN RELATIONSHIPS

Violence in relationships is all too common and while it might not be directly within the purview of private investigators, the dynamics of how the abuse takes place may be of interest.

To begin, the underlying dynamics of physical or sexual abuse occurring in a relationship are the same, regardless of whether the relationship is heterosexual, gay, or lesbian.

Essentially, the abuse occurs because the violent suspect has managed to compromise the confidence of the other person through a series of emotional and psychological abuses such as:

- Emotional abuse: telling the individual that they lack intelligence, are not attractive, are under-achieving
- Psychological abuse: belittling, putting them down in public, humiliating them
- Intimidation: threatening to leave the person; threatening to publically embarrass them; destroying items around them (the hidden message is that the destructive acts could have been focused on the other person)
- Using children: saying that if the person leaves the suspect, the suspect will ensure the kids never see the other person again; blaming the other person for children's behaviours
- Isolation: preventing the person from seeing their friends or family; physically isolating them from access to friends and family
- Economics: controlling the money; preventing them from getting a job or going for promotions; preventing them from upgrading their occupational skills.

While it is unlikely there is a conscious effort to do all of the above activities for the purpose of physical or sexual abuse, the abuse is enabled through a pattern of treating others with this level of disrespect and indignity.

Because of the individual's lowered self-esteem and self-confidence, when the abuse occurs the individual has a reduced ability to respond appropriately by reporting the abuse to police or even cooperating with the police.

Some facts about violence in relationships are supplied by Statistics Canada (2012):

- women are approximately 5-6 times more likely than men to be killed by their
- ex-partners
- when men are killed by spouses or ex-spouses, the majority of the time the men attacked first and the women were acting in self-defence
- women are at increased risk after a split in a relationship
- 7% of women reported being physically or sexually assaulted by their partners
- over a five year period
- when a woman has been attacked by her partner or ex-partner, there is a
- 63-66% chance there will be another attack

While women also physically attack men, the degree of injury caused by a female is often significantly less than the injury caused by a man. Left unstopped, the intensity and frequency of the violence will increase.

In partial response to the issues reflected above, the Canadian government made sweeping changes to the *Criminal Code of Canada* in 1983, making it much easier for police agencies to assist victims of domestic violence and prosecute perpetrators.



Another step in this direction took place in 1994 with the passing of new criminal harassment legislation as follows:

*Criminal Code of Canada, s. 264*

264. (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

(2) The conduct mentioned in subsection (1) consists of

(a) repeatedly following from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) besetting or watching the dwelling house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.

(3) Every person who contravenes this section is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction

© Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order.

In the criminal harassment legislation, there are three critical elements that need to be proven prior to a successful prosecution. These elements take the form of questions:

1. Is there sufficient conduct?
2. Are the behaviours done “knowingly” or “recklessly”?
3. Does the victim fear for their safety?

Interpretations of these critical elements are given below:

Critical Elements	Interpretation
Is there sufficient conduct?	The emphasis is on “repeated” behaviours in (a) and (b), and sub-section (c) only implies the need for repeated behaviours. Sub-section (d) does not stipulate that the behaviours need to be repeated and there have been some provincial courts that have found that a single incident, in proper context, can constitute criminal harassment. <sup>11</sup>
Are the behaviours done “knowingly” or “recklessly”?	<p><i>The complainant should not be faulted for not being more forceful in his/her rebuff of the appellant.</i></p> <p>Accused should have known from the lack of interest on the complainant’s part that his/her actions were unwanted</p>
Does the victim fear for their safety?	“... [T]he concept of ‘safety’ in the context in which it is used ... is not to be limited to freedom from anticipated, actual bodily harm or physical harm, but also must be taken to include ... freedom from harm or anticipated harm which is psychological in nature.”

© Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order

<sup>11</sup> See *R v Zienkiewicz* Vanc. Prov. Ct Info.# 71784K, April 6, 1994; *R v Thomas* North Vanc. Prov. Ct File #26520 April 19, 1995; *R v Arango* Provincial Division, Brampton, Ont Oct. 21, 1993



## Post-Test

Test your knowledge after studying this module.

1. Why are ethics and professionalism important to an organization?
2. What are some of the consequences for an investigation if done unethically or unprofessionally?
3. Describe four (4) guidelines for conducting ethical investigations.
4. The Federal privacy legislation, *PIPEDA*, refers to nine core principles. Three of them are: *accountability*, *consent* and *limiting collection*. Explain what these principles mean and how they apply to investigations.
5. How does *prejudice* differ from *discrimination*?
6. Describe how violence occurring in a relationship is often more than just the physical violence. What other forms of abuse are most often also present?

## CONCLUSION

This module has introduced the participant to some complex concepts that impact their investigative career on a daily basis. The implications for acting unethically or unprofessionally can be devastating to the client, the investigative company and the investigator.

In addition, this module also clarified the concepts of prejudice, discrimination and stereotyping. While the professional investigator might not act with discrimination or base investigative conclusions on stereotypes, the investigator needs to be aware of the existence of these concepts in the evidence the investigator obtains.

Finally, this module introduced the investigator to violence in relationships. This subject is incredibly important to understand both from an investigative perspective and an educative one since the investigator may be in a position to assist victims of violence by providing them with background information as to how the violence is often perpetuated and why it is so important to intervene and involve police.



## REFERENCES AND ADDITIONAL RESOURCES

Fleras, A. and J. L. Elliott (1999). *Unequal relations: An introduction to race, ethnic and aboriginal dynamics in Canada*. 3<sup>rd</sup> ed. Scarborough, Ont., Prentice-Hall.

Government of Canada (1985). *Criminal Code* (R.S.C., 1985, c. C-46). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/>

Government of Canada (2000). *Personal Information Protection and Electronic Documents Act, SC 2000, c 5*. Retrieved from <http://www.canlii.org/en/ca/laws/stat/sc-2000-c-5/latest/sc-2000-c-5.html>

*Hutt v. The Queen*, [1978] 2 S.C.R. 476.

Office of the Privacy Commissioner of Canada (2011). *Questions and answers regarding the application of PIPEDA, Alberta and British Columbia's Personal Information Protection Act*. Retrieved from [http://www.priv.gc.ca/leg\\_c/p\\_principle\\_e.asp](http://www.priv.gc.ca/leg_c/p_principle_e.asp)

Office of the Privacy Commissioner of Canada (2011). *Legal information related to PIPEDA*. Retrieved from [http://www.priv.gc.ca/leg\\_c/p\\_principle\\_e.asp](http://www.priv.gc.ca/leg_c/p_principle_e.asp)

Office of the Privacy Commissioner of Canada (2011). *Findings under the Personal Information Protection and Electronic Documents Act (PIPEDA)*. PIPEDA case summary #2008-392: Individual objects to being photographed by private investigation firm. Retrieved from [http://www.priv.gc.ca/cf-dc/2008/392\\_20080227\\_e.asp](http://www.priv.gc.ca/cf-dc/2008/392_20080227_e.asp)

Pollock, J. M. (2012). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth.

*R v Zienkiewicz* Vanc. Prov. Crt Info.# 71784K, April 6, 1994.

*R v Thomas* North Vanc. Prov. Crt File #26520 April 19, 1995.

*R v Arango* Provincial Division, Brampton, Ont. Oct. 21, 1993.

Schulman, M. (1979). *A survey of spousal violence against women in Kentucky*. Washington DC: Department of Justice, Law Enforcement as cited in Dutton, Donald G. (1995). *The domestic assault of women: Psychological and criminal justice perspectives*. Vancouver, BC: UBC Press.

Statistics Canada. *Measuring violence against women: Statistical trends* (2006). Retrieved from <http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf>

# Module Three: Health and Safety

## INTRODUCTION

A thorough understanding of applicable occupational health and safety (OHS) legislation and knowledge of various work site hazards is critical in keeping you (and others) safe from harm, in complying with relevant regulations, and in performing your role and responsibilities as a professional investigator.

Your investigative role may expose you to potential hazards at a work site that, if not properly mitigated, can cause serious harm to you and others. It's not just about personal safety; it is part and parcel of your work. Protecting yourself and others within the regulatory requirements is important to assist your employer in also minimizing their safety liabilities/risks and practically complying with the laws of the land (whether you are an investigator and/or as a key area of your investigative work). In fact, it is law to comply with safety requirements and to address all known and foreseeable hazards.

You may also encounter situations, while performing your work, where there are unsafe conditions and/or work practices that may require immediate corrective actions to prevent injuries or accidents. As an investigator, it is not only your legal, but also your ethical duty to address those circumstances to protect people and property as assigned by your employer and the client.

Furthermore, when you are involved as an investigator in a workplace incident or accident investigation, you must understand (and follow) the relevant occupational health and safety laws regarding reportable situations and reporting requirements. You are expected to work with other stakeholders such as police and Alberta lead investigation officers in a collaborative manner.

## LEARNING OUTCOMES

Upon completion of this module, students should be able to fulfill the following learning objectives:

1. Describe health and safety regulations that may be applicable to private investigators
2. Identify potential hazards that may be encountered in a workplace
3. Know about industry-accepted control measures that can be implemented to mitigate identified hazards
4. Describe typical response measures regarding unsafe workplaces/conditions and/or work practices
5. Describe what constitutes a "reportable incident," investigation requirements and typical report components

## TOPICS

Alberta <i>Occupational Health and Safety Act, Regulations and Code</i> .....	65
Key <i>Occupational Health and Safety Act</i> Components .....	65
Key <i>Occupational Health and Safety Regulation</i> Components .....	66
The <i>Occupational Health and Safety Code</i> .....	66
Identifying Potential Hazards .....	66
Potential Hazards .....	66
Key <i>Occupational Health and Safety Code</i> Components .....	68
Hazard versus Risk .....	69
Pre-job Hazard Assessment versus On-Site Assessment .....	69
Enlisting Assistance from Qualified Professionals/Experts .....	72
Controlling Hazards .....	73
Hierarchy of Control .....	73
Elimination vs. Minimization .....	75
Example Mitigation (Control) Measures .....	75
Response Measures .....	78
Unsafe Workplaces, Conditions or Work Practices .....	78
Incident Reporting .....	80
Serious Injuries and Accidents .....	80
Investigation Requirements .....	80
Typical Investigation Process and Report Components .....	80
Conclusion .....	84
Addendum: Key <i>OHS Act</i> Sections, By Number .....	85
Addendum: Key <i>OHS Regulation</i> Components .....	86
Addendum: Key <i>OHS Code</i> Components .....	87
Addendum: Example Mitigation (Control) Measures .....	89
References And Additional Resources .....	94

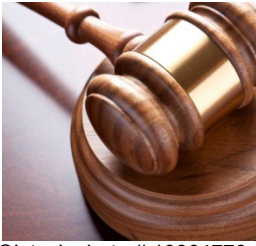


## Check Your Knowledge

Test your knowledge of the topic before starting this module:

1. You are required by occupational health and safety law to identify hazards through an assessment and prepare written reports outlining mitigation measures, prior to commencing work at a site.
  - a. True
  - b. False
  
2. Everyone has responsibilities under the *OHS Act, Regulations* and *Code* and “not knowing” is not a viable excuse or reason to not follow the law.
  - a. True
  - b. False
  
3. You do not have to follow the “Hierarchy of Controls” (elimination, engineering, administrative, personal protective equipment) because you are going to solely rely on your client to do this for you.
  - a. True
  - b. False
  
4. You do not have any obligation to stop unsafe work conditions or practices at a workplace because that is your client’s responsibility.
  - a. True
  - b. False
  
5. On your client’s behalf, you may have to report a fatality at their work site to WorkSafe Alberta, and possibly work together with an assigned Alberta lead investigating officer during the investigation.
  - a. True
  - b. False

# ALBERTA OCCUPATIONAL HEALTH AND SAFETY ACT, REGULATIONS AND CODE



©Istock photo # 19864778

Every person who conducts tasks on provincially-regulated worksites is required to follow the respective legislative requirements outlined in the *Alberta Occupational Health and Safety (OHS) Act, Regulations and/or Code*. It is the responsibility of all employers (and their workers) to continually review and gain knowledge of the safety laws regarding their work, which includes mobile or transient workforces (such as investigators). Not knowing about your safety legislative duties is not an acceptable reason or excuse to not follow the law.

Investigators who conduct workplace accidents or injuries may be working side-by-side with WorkSafe Alberta officers (e.g. investigators, safety officers) during their investigations. Cooperating and working together with these government representatives (and other stakeholders such as police and fire departments) is key to maintaining positive working relationships and successful investigative outcomes.

Finally, as an investigator, you are likely to be held to a higher standard of *OHS* legislative compliance than other employees or workers, given the nature of your investigative work activities and required knowledge base (in your respective specialty).

## Key Occupational Health and Safety Act Components

The *OHS Act* covers primary responsibilities of various groups (e.g. employers, workers, suppliers, prime contractors) as well as the required duties of government officers. It is important to understand the general responsibilities of these stakeholders and to know that officers have several obligations and powers to prevent unsafe conditions or acts from occurring or worsening. Example legislation includes, but is not limited to the sections of the Act shown in Table 3.1:

Section 2 Obligations of employers, workers, etc.	Section 18 Serious injuries and accidents
Section 3 Prime contractor	Section 19 Investigation of accident
Section 8 Inspection	Section 25 Regular inspection of work sites
Section 9 Order to remedy unhealthy or unsafe conditions	Section 32 Written health and safety policies
Section 10 Danger to persons on work site	Section 33 Code of practice
Section 11 Order stopping the use of unsafe tools, appliances, etc.	Section 35 Existence of imminent danger
Section 12 Improper storage and handling	

©Alberta Queen's Printer, 2010

**Table 3.1: Key Legislation Under *Alberta Occupational Health and Safety Act***



## Key Occupational Health and Safety Regulation Components

The *OHS Regulations* cover further general safety requirements for employers, workers and others who conduct work in Alberta and who are subject to provincial OHS laws. Examples include but are not limited to the following:

- Section 5—Hazardous work site
- Section 7—Availability of specifications
- Section 8—Critical documents available
- Section 12—Equipment
- Section 13—General protection of workers
- Section 14—Duties of workers
- Section 15—Safety training

It is important to know the difference between being qualified, being trained and being competent. They are not all the same. For instance, would you let a newly trained tower crane operator perform a “critical lift” if s/he had just received training and passed with a high grade? Or would you have him/her at least observe a very qualified, experienced and competent operator perform this lift a few times, then have that new operator conduct lifts under the direct guidance and supervision of the competent supervisor until someone says s/he can perform such lifts without supervision?

### The Occupational Health and Safety Code

The *OHS Code* is the “meat and potatoes” of the safety legislation, where the relevant laws regarding various hazards (e.g. fall protection, Workplace Hazardous Materials Information System (WHMIS), confined space, violence in workplace) can be found. Note that these hazards and the associated *Code* can apply to many different industry types (e.g. a fall from a commercial building versus a fall into a hopper is still a fall) and that it really does not matter which industry you perform investigations in. Hazards are still hazards.

## IDENTIFYING POTENTIAL HAZARDS

### Potential Hazards

Several types of hazards can exist or develop in different industries. Some hazards are specific to the type of industry such as oil and gas, chemical processing, or manufacturing. However, hazards, regardless of the industry sector, are still hazards and whenever they pose a risk to worker health and safety, they must be identified and controlled. It is critical for investigators to build their hazard awareness skills by learning about risks that may be present at their client sites. Critical thinking about potential hazards is essential for protecting yourself (and others) from harm. Not researching and knowing about these hazards can put yourself at great risk and affect your investigative duties (especially if you get hurt on the job).

The Canadian Centre for Occupational Health and Safety (CCOHS) defines a hazard as “any source of potential damage, harm, or adverse health effects on something or someone under certain conditions at work.”<sup>12</sup> In essence, a hazard is something that can result in harm or cause adverse effects, whether it is to people or property.

---

<sup>12</sup> Canadian Centre for Occupational Health and Safety (2012). *Hazard and risk*.

The CCOHS identifies several types of hazards that can be encountered at a workplace, as shown in Table 3.2 below:

Workplace Hazard	Example of Hazard	Example of Harm Caused
Thing	Knife	Cut
Substance	Benzene	Leukemia
Material	Asbestos	Mesothelioma
Source of Energy	Electricity	Shock, electrocution
Condition	Wet floor	Slips, falls
Process	Welding	Metal fume fever
Practice	Hard rock mining	Silicosis

© Canadian Centre for Occupational Health and Safety (2012). *Hazard and risk*.

**Table 3.2: Hazard Examples and Their Potential Effects**

More commonly in industry, hazards are generally classified into several category types including:

- Chemical: gases/vapours, dusts, fumes, mists related to the physical state of the specific chemical
- Biological: pathogens, bacteria, viruses, mould, fungi etc. that can be associated with humans, organic matter (e.g. plants), and animals (e.g. rodents, birds)
- Physical: noise, vibration, temperature extremes (e.g. hot, cold),
- Radiation (non-ionizing, ionizing), magnetic fields etc.
- Ergonomic: repetitive strain disorders, musculoskeletal disorders, awkward or static postures, positions.
- Psychosocial: workplace stress, heavy workloads, fatigue, violence, harassment etc.
- General safety: falls, slips and trips, equipment safeguarding, housekeeping, lighting etc.

The above examples and category types are not meant to be a comprehensive list of all hazard types one could encounter in one's work. However, in general, there are two primary categories under which hazards fall: 1) unsafe work practices or acts and 2) unsafe conditions. Some examples of each can be found in Table 3.3 below:

Unsafe Work Practices or Acts	Unsafe Conditions
Making safety devices inoperable Failure to use guards provided Using defective equipment Servicing equipment in motion Failure to use proper tools Operating equipment at unsafe speeds Failure to use personal protective equipment (PPE) Operating without authority Lack of skill or knowledge Unsafe loading or placing Improper lifting lowering or carrying Unnecessary haste Influence of drugs and/or alcohol Physical limitations or mental attitude Lack of information or thought about hazards	Inadequate guards or protection Defective tools or equipment Unsafe machine conditions Congested work areas Poor housekeeping Unsafe floors, walkways, stairways etc. Improper material storage Inadequate warning systems Fire or explosion hazards Hazardous atmospheres Hazardous substances Radiation exposures Excessive noise Confined spaces Inadequate illumination

**Table 3.3: Examples of Unsafe Acts and Conditions**

**Key Occupational Health and Safety Code Components**

The Alberta *OHS Code* breaks down legislative requirements per major hazard category, which are listed in alphabetical order. It is important to understand that within each part of the *Code*, several types of hazards can apply to that specific topic. For instance, under Part 6 Cranes, Hoists and Lifting Devices, associated hazards could include falling objects, struck by injuries, crush, etc. Example parts include, but are not limited to those noted in Table 3.4:

Part 4 Chemical Hazards, Biological Hazards and Harmful Substances Part 5 Confined Spaces Part 6 Cranes, Hoists and Lifting Devices Part 7 Emergency Preparedness and Response Part 8 Entrances, Walkways, Stairways and Ladders Part 9 Fall Protection Part 10 Fire and Explosion Hazards Part 11 First Aid Part 12 General Safety Precautions Part 14 Lifting and Handling Loads (Ergonomics) Part 15 Managing the Control of Hazardous Energy	Part 16 Noise Exposure Part 17 Overhead Power Lines Part 18 Personal Protective Equipment Part 19 Powered Mobile Equipment Part 20 Radiation Exposure Part 22 Safeguards Part 23 Scaffolds and Temporary Work Platforms Part 25 Tools, Equipment and Machinery Part 27 Violence Part 28 Working Alone Part 29 Workplace Hazardous Materials Information System (WHMIS)
--	--

©Alberta Queen's Printer, 2009

**Table 3.4: List of Key Alberta *OHS Code* Components**

## Hazard versus Risk

While the terms “hazard” and “risk” are often used interchangeably in industry, they are not the same thing. The Canadian Centre for Occupational Health and Safety defines each term as follows:

- Hazard: “any source of potential damage, harm or adverse health effects on something or someone under certain conditions at work.”
- Risk: “the chance or probability that a person will be harmed or experience an adverse health effect if exposed to a hazard. It may also apply to situations with property or equipment loss.”

13

While there are several factors that must be considered to determine risk (e.g. severity of injury/damage, frequency, degree of exposure), the most important thing to remember is that no matter how big or small the hazard, if it can cause potential harm, it needs to be controlled through specific measures.

## Pre-job Hazard Assessment versus On-Site Assessment

It is a legal requirement for employers and their representatives (e.g. employees, investigators) to identify potential hazards before commencing work at a workplace. Legal requirements are clearly outlined in Section 2 of the *OHS Code*, “Hazard Assessment, Elimination and Control.” Written reports must be prepared with associated control measures outlined. Workers must be informed of hazard assessment results, and controls – according to the “Hierarchy of Controls” – must be implemented to address identified hazards.

In general, there are two types of hazard assessments that can be performed at different times: 1) pre-job and 2) on-site. A pre-job hazard assessment is typically conducted prior to site arrival and is normally completed by the employee (e.g. the investigator), reviewed with any involved co-workers and signed off by a knowledgeable supervisor or manager. See Figure 3.1 for an example of a pre-job hazard assessment tool.

An on-site hazard assessment is usually performed upon arrival at the site and typically involves the client representative who should be knowledgeable about the site-specific hazards at that particular workplace. On-site assessments can also (and should) be ongoing throughout required site work. This requirement is in line with being “hazard aware” at all times while conducting your tasks, because there can be several hazards that exist at any given moment at a workplace.

---

<sup>13</sup> *Ibid*

## PRE-JOB HAZARD ASSESSMENT

Assessment Date: \_\_\_\_\_

1. ASSESSMENT DETAILS		
<b>COMPANY:</b>		<b>MANAGER:</b>
<b>SITE ADDRESS:</b>		<b>PROJECT #:</b>
<b>WORK DESCRIPTION:</b>		

2. HAZARD IDENTIFICATION <small>(Indicate YES or NO for all potential hazards that may present risks to Employee(s))</small>		
HAZARDS	Y/N	NOTES/COMMENTS
<b>CHEMICAL AGENTS</b> <small>(List all dusts/fumes/mists/gases/vapours that could be present and their route of entry: INH; SA; ING)</small>		
IDLH Condition		Specialist (e.g. IH) MUST BE consulted and specific work procedures developed.
<b>BIOLOGICAL AGENTS</b>		
Bacteria		
Human Fluids		
Mould		
Rodent/Bird/Bat Droppings		
<b>PHYSICAL AGENTS/HAZARDS</b>		
Electrical Shock		
Energized Processes		
Ergonomic (lifting, work station, etc.)		
Falling Objects		
Fire/Explosion		
Lighting		
Occupational Noise (>85 dBA)		
Radiation		
Slips/Trips/Falls		
Sharps/Needles		
Temp. Extremes (heat/cold stress)		
Violence		
Wildlife		
<b>SITE/WORKING CONDITIONS</b>		
Acting as Prime Contractor		MUST ENSURE hazard assessments are provided to ALL contractors/employers on site.

Page 1 of 4

© Craig Yee, OHS Global Risk Solutions Ltd. 2012. Reproduced with permission.

**Figure 3.1 Example Pre-Job Hazard Assessment Tool**



## Exercise

Come up with advantages and disadvantages for each type of hazard assessment and write them in Table 3.5 below.

Pre-Job Hazard Assessment	
Advantages	Disadvantages
On-Site Hazard Assessment	
Advantages	Disadvantages

**Table 3.5: Advantages and Disadvantages of Pre-Job vs. On-Site Hazard Assessments**

Regardless of when an assessment is conducted, note that there are many types and formats of forms like the one depicted in Figure 3.1 that exist in industry. These can be downloaded from the internet for guidance or reference. One could also request from one's client a copy of their hazard assessment to get a better idea of the types of hazards at that particular work site. Whatever type or format is utilized, the assessment tool should ideally be customized and tailored to the investigator's specific field, client base and/or worksites

An investigator, more often than not, may have to perform both pre-job hazard and on-site assessments in order to address, cover and mitigate all possible hazards/risks and potential harm to him/herself and others prior to and during investigative work. This especially applies to complex or unique industrial or construction work sites. It is also important to note that these documents may be required for workplace safety and injury investigations. As a general rule of thumb (and industry-accepted practice), an investigator should ALWAYS be thinking about and addressing hazards before and during their tasks.

### **Enlisting Assistance from Qualified Professionals/Experts**

While it is sometimes not possible to identify all potential hazards that an investigator could encounter, there are several steps that one could undertake to better prepare oneself prior to conducting any site work. These include, but are not limited to:

- “Doing your homework” by discussing hazard issues with your clients and learning about hazards specific to their work sites, prior to investigative work or a site visit (hopefully prior to)
- Using pre-established tools such as a pre-job hazard assessment or field level risk assessment and developing hazard assessment skill sets
- Obtaining necessary on-site hazard information (usually from an on-site representative), prior to conducting your work
- Constantly being aware of and assessing the work environment (conditions, practices etc.) for potential hazards and developing or implementing measures to minimize both personal and other worker risks.

When you are in doubt or unsure of hazard types in a specific industry or client site, try to enlist assistance from qualified, experienced and competent safety professionals (if they are available) or other experienced client representatives to help you identify hazards (and controls) that could affect you or the incident you are investigating.

It is critical not to take your (or others') safety for granted. Knowing about safety and various industry hazards is not “common sense.” If you need to investigate an environmental chemical spill, would you automatically know through common sense what protective equipment you would need? Would common sense tell you how the chemical could affect your health if it got onto your skin or in your eyes? Would you “just know” and understand its physical and chemical properties to determine how it may interact with the environment (such as water, air etc.)? It is in the investigator's best interest to not assume anything or underestimate a hazard, nor to put safety and life at risk just to get the job done.

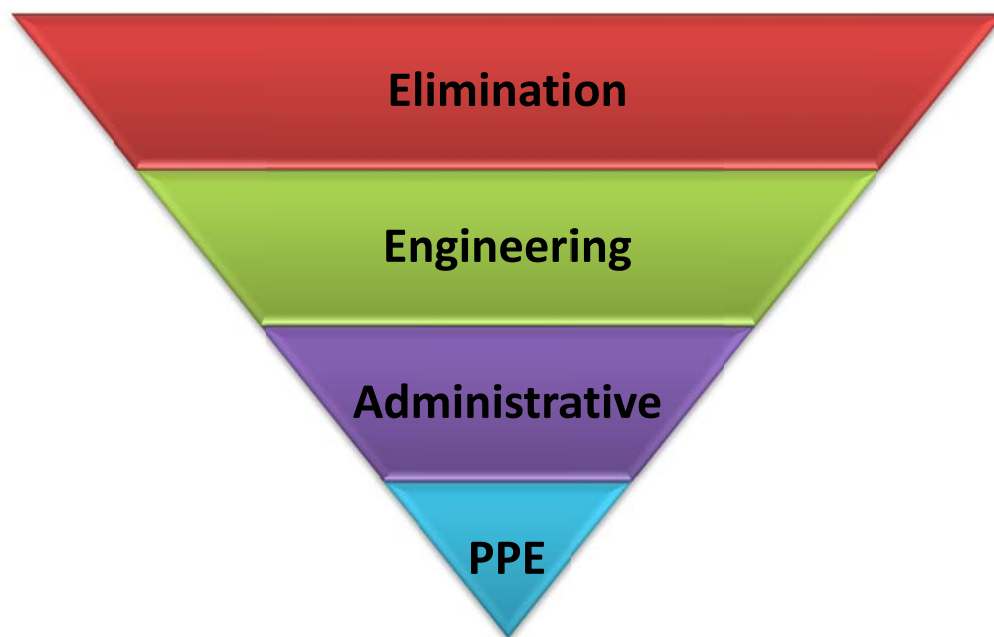
Use the industry-accepted principle of S.T.O.P. to ensure you take a step (or many steps) back to critically think and address how to best mitigate hazards. The acronym stands for:

- STOP** before you do anything (minimize “rushing”)
- THINK** about the hazard or condition, how it can harm you
- OBSERVE** the circumstances and evaluate/assess the situation
- PLAN** your next action step(s), including required mitigation measures

## CONTROLLING HAZARDS

### Hierarchy of Control

When determining the types of controls needed to mitigate identified hazards, you and your employer must follow the hierarchy of control principle. This is a ranking (priority) order of control strategies that must be followed – from top to bottom – by everyone who works under provincial safety laws; in fact, following this principle is a legislative requirement under Section 2 of the *OHS Code*.



© Craig Yee, OHS Global Risk Solutions Ltd. 2012. Reproduced with permission

**Figure 3.2: Hierarchy of Control**



**1. Elimination – Completely removing the hazard or the hazard source.**

Examples:

- Bleeding out a chemical process line, purging it with an inert substance, and disconnecting (isolating) the line so that no chemicals can be processed through the line or enter the area/equipment/machine
- Completing removal of a chemical storage tank that may be leaking and cleaning up leaked materials

**2. Engineering – Design, construction or modification to materials, equipment, processes or the site to reduce exposure to source(s).**

Examples:

- Performing lockout on a piece of equipment/tool/machines
- Using ventilation (hood fans, cabinets, confined space fans etc.) to dilute the air of potential chemical contaminants
- Design/modification to equipment/tools
- Implementing sound dampening materials to control noise

**3. Administrative – Controls that address work methods (e.g. timing of work, work rotation, policies), work practices (e.g. training, procedures, protocols) and/or work areas (e.g. restricted work zones) to minimize potential worker harm/exposures.**

Examples:

- Developing/training workers in safe work procedures/protocols.
- Work rotation and rest schedules
- Inspection, maintenance and documenting results
- Preparation, in written form, and maintenance of key documents
- Posting warning signs

**4. Personal Protective Equipment (PPE) – Specialized clothing or equipment worn by individuals for protection of body parts from identified health and safety hazards/risks. Personal protective equipment is considered as a last line of defence and should be utilized in conjunction with engineering, substitution and administrative controls. The “last line of defence” principle means that the hazard source(s) or hazards are not eliminated or removed and there is (usually) only one last barrier between the hazard and the person (e.g. a respirator).**

Examples:

- Safety headgear (e.g. hard hats).
- Safety eyewear (e.g. glasses, splash goggles, face shields).
- Respiratory protective equipment (e.g. half facepiece air-purifying, supplied air, SCBA).
- High visibility/reflective clothing (e.g. vests, coveralls, suits)
- Impermeable suit (e.g. chemical, water/dust)
- Safety footwear (e.g. ankle high leather boots, rubber boots).
- Body protection (e.g. aprons, leather chaps, knee pads, gloves)

As an investigator who travels to different work sites, you may not find it practical to personally implement elimination or engineering controls. Expenses, knowledge and time are prohibitive

factors (especially with urgent investigative responses). Therefore, more often than not, the investigator will have to work with the client in implementing site-specific elimination/engineering controls, and personally rely more on administrative and PPE controls.

### **Elimination vs. Minimization**

Eliminating a hazard should always be the goal and first option; the hazard is completely removed and doesn't exist and, therefore, other controls (administration, PPE) may not be necessary (depending on site conditions and other hazards).

Conversely, minimizing a hazard does not remove the hazard or its source; it only serves to reduce the impact on workers, which still may be significant, depending on the hazard type.

For example, let's say there is a potentially toxic chemical in the atmosphere that is being emitted from a heated storage vat. By removing the chemical vat (source/eliminating) or using a powerful hood fan to suck out generated gases (engineering/removing), you are taking the hazard away from the work area. If you only use a respirator (no other controls) as the only barrier to protect yourself from chemical exposure, the harm is only minimized and not removed (eliminated). If that protective equipment (barrier) fails, there would be no other controls in place to prevent potential exposure.

### **Example Mitigation (Control) Measures**

There are several types of control measures that can be implemented to protect oneself and others from potential harm. Below is a list of example controls per major hazard category listed in the Alberta *OHS Code*. Example controls include, but are not limited to, the following: (See Addenda for further information.)

- Avoid hazardous work locations
- Be trained in specific safety subject matter (e.g. fall protection, respirators, WHMIS etc.)
- Follow established safe work procedures
- Wear personal protective equipment
- Engage qualified safety experts to conduct exposure/risk or hazard assessments
- Conduct air quality testing if entering hazardous atmosphere areas
- Avoid being near suspended/moving loads
- Stay on designated/safe pedestrian pathways
- Conduct lockout of energized equipment
- Avoid pinch points
- Safely/properly use equipment, tools etc.
- Don't use non-explosion-proof equipment in areas with flammable/explosive atmospheres



The above controls are not a comprehensive list of all types of measures that can be implemented to protect yourself and others. It is not within the scope of this training module to discuss all possible controls that exist in industry and, in fact, control technology is an ever-changing field with new and improved (and less expensive) options being developed and brought to market every day.






## Class Activity: Hazard Analysis/Control Implementation

Refer to the pictures located below for this exercise. Now that you have learned more about hazards that you may encounter, complete the table below by coming up with some practical/required controls for each of the listed hazards. Record your control answers in the table below. Be prepared to share your answers with the class.

Hazard 1: Mobile Equipment	
Example Picture	Controls
 <p>© SSAB Hardox Ltd. 2012. Reproduced with permission</p> <p><b>Figure 3.3 Forklift</b></p>	     
Hazard 2: Working Alone	
Example Picture	Controls
 <p>©iStock Photo # 19638157</p> <p><b>Figure 3.4: Working Alone</b></p>	   

Hazard 3: Radiation	
Example Picture	Controls
 <p>© Fraser River Pile and Dredge (FRPD) 2012. Reproduced with permission</p> <p><b>Figure 3.5: Welding Work</b></p>	

## RESPONSE MEASURES

### Unsafe Workplaces, Conditions or Work Practices

All workers have the legal right to refuse unsafe work, if they feel (with good reason) that they (or others) may be put in harm's way. However, one cannot simply walk away, ignore the problem and leave the area or site. It is not only a legal duty to stop or correct the unsafe situation, but also an ethical one (especially for an investigator whose line of work can involve protection of life, environment, community, equipment etc.)

It is equally important (and legally required) to report the problem to a superior so that prompt mitigation measures can be implemented to prevent potential harm. So what do you do when you, as an investigator are faced with observing an unsafe act or condition?

First, understand that you are a guest/visitor to the worksite and need to respect your client's rules and policies. Do some pre-planning by asking your client about their internal protocols if someone on-site encounters an unsafe condition/practice. Each client may have a slightly different communication/reporting system that would need to be followed. It is very critical that professional courtesy and respect are given to your client (and their workers) and that you strictly follow their requirements to maintain good teamwork and relations.

In general, an investigator could follow the protocols below to address such situations. However, it is important to get to know your respective client's specific requirements, so the following are intended as an initial guide only.

1. Upon encountering an unsafe condition/act, **S.T.O.P.** what you are doing and observe.
2. If danger is not imminent (immediate), promptly inform/contact a nearby supervisor or your client representative and forward your observations/notes.

**CRITICAL NOTES:** It is important, as a guest to the worksite, to take notes subtly (covertly). You may upset the workforce if you take notes in front of them; some may get personally offended. If you need their help in your investigation or you are investigating them, this may compromise your work.

**INVESTIGATIVE TIP:** A simple solution is to observe the situation, take mental notes, and when you are out of sight and away from the area, write down your notes in a log book or notebook. Follow industry standard investigative note-taking protocols: include date, time, detail of observations, number pages, who was involved etc.

Forward notes to the client representative and then take a step back. The client will deal with the situation according to their internal protocols/requirements. This is their job site and they are in charge. Assist them if they ask you to get involved.

If you are not sure of imminent danger, or if it is a situation of imminent danger, promptly act to stop, correct or mitigate the situation. Follow the general steps below:

1. If not properly trained or equipped to handle the correction, immediately contact your client representative or a nearby supervisor to inform them of the condition and assist them (if requested).

**CRITICAL NOTES:** Some clients will not permit you to directly mitigate the problem. Their internal protocol may be to promptly inform them of the situation. Be respectful of this and follow their wishes.

2. If you are equipped, trained and have the skills to address the situation, or if you believe immediate harm can be caused to you or others and there is not enough time to call for help, professionally approach the worker(s), introduce yourself and kindly ask them to stop what they are doing. Explain what you believe the problem is. Normally asking them questions about their work and your concerns about your safety in a polite manner will defuse possible conflicts/confrontations.

**CRITICAL NOTES:** Do not come across as the “safety police.” The site employees know their work best. If you are unsure if it really is an unsafe act or condition, immediately inform your client representative or a nearby supervisor and ask them for further clarification and guidance. The act or condition may, in fact, not be.

It is very important to “know your place” when on site. Workplace violence, harassment and conflict hazard situations often arise when dealing with unsafe acts/conditions and interacting with the people involved. Maintain high levels of professionalism and respect and implement conflict resolution skills throughout the above process.

# INCIDENT REPORTING

## Serious Injuries and Accidents

There are several types of incidents that should be reported to WorkSafe Alberta. This applies, but may not be limited, to investigators who may be involved in OHS/Environmental related investigations. Requirements are found in Section 18, "Serious Injuries and Accidents" of the *OHS Act*. These include:

- Fatalities
- Worker admittance to hospital for greater than two days (called "lost time incident/accident" or LTI or LTA for short)
- Unplanned/uncontrolled explosion, fire, flood that causes serious injuries (or potential for)
- Crane, derrick or hoist collapse
- Collapse or failure of any building or structural component (required for structural integrity of that building or structure).<sup>14</sup>

If you are requested to act as a client's investigating representative, you must follow the above safety laws and possibly communicate with a WorkSafe Alberta officer such as a lead investigation and/or safety officer.

## Investigation Requirements

If you or your client is involved with any of the above reportable incidents, then you (and the employer) will be required to:

- conduct a thorough investigation into the events and circumstances around the injury or accident
- prepare a detailed report (that includes the "who, what, when, where, why, and how" details of the accident, as well as recommendations to prevent recurrence)
- ensure a report copy is available for review by stakeholders, including officers
- keep a report copy for a minimum of two years after the accident/injury.

## Typical Investigation Process and Report Components

The typical process involved in an investigation follows similar industry-accepted standards and criteria. In general the process involves:

1. Reporting the incident or accident to an assigned representative within the company and/or WorkSafe Alberta
2. Providing first aid and/or medical attention to injured parties
3. Preventing further injuries or damage by addressing immediate hazards/risks (without compromising the scene)
4. Securing the scene and restricting access to only authorized persons
5. Investigation (determine events, circumstances, involved people, equipment, tools etc.)

---

<sup>14</sup> *Occupational Health and Safety Act*, Section 18, "Serious Injuries and Accidents"

6. Identifying cause(s) (root and symptomatic)
7. Reporting the findings (document)
8. Developing recommendations and/or corrective action plans and implementing them in a timely manner
9. Conducting follow-up regarding corrective action efficacy
10. Adjusting controls, and putting into place additional measures to improve the process, if necessary.

Typical report components also follow industry-accepted reporting standards, including:

- Date/time/location of accident/injury
- Who was involved
- Events (and time order) leading up to injury/accident
- Identification of unsafe conditions, acts or procedures
- Equipment/processes/tools/machinery involved
- Witness interview results/statements
- Cause(s), including root (main) and symptomatic (contributing factors)
- Recommended corrective actions to prevent similar reoccurrence
- Investigator/stakeholder review and signoffs

It is critical to work in professional collaboration with other involved stakeholders such as internal safety professionals, supervisors, operations personnel and of course, assigned WorkSafe Alberta investigation and/or safety officers. Teamwork and relationship maintenance are key to success, with the common end goal of ensuring the prevention of any further similar (or other) injuries/accidents.

Finally, following up after completion of the investigation is key. Follow-up may include stakeholder reviews, meetings, discussions, implementation of corrective actions, and safety bulletins to other similar facilities/operations who can use the shared information to prevent similar occurrences.





## Class Activity

### Case Study – Hazard Identification and Control

Carefully review the picture below for this exercise. Use your newly-acquired hazard awareness skills to identify potential hazards you see in the photograph and then come up with practical controls in relation to those risks. (Case parameters are indicated after the picture.) Write your answers in the table below.



©Pedre Contractors Ltd. 2012. Reproduced with permission

**Figure 3.5: Cofferdam (Excavation)**



## CONCLUSION

Understanding your duties under the OHS legislation, the potential hazards that can harm you and the controls you can implement to protect yourself and others from undue risks is a critical part of your role as an investigator. Thoroughly understanding your client's place/nature of work and the hazards/risks that exist in those facilities, pre-planning control measures, and coordinating on-site safety requirements with your client will be key to ensuring safe performance of your required investigative work. After all, as an investigator, you may be engaged to protect people and property as part of your investigative work and therefore will likely be held to a higher standard than most others.

If you are retained by your client to assist in a workplace accident or injury investigation, you may be required to report the incident to WorkSafe Alberta, and conduct your work according to the prevailing safety laws. Work in a professional and courteous manner with other involved stakeholders such as police and lead investigating officers to achieve, as a team, the overall common goal of preventing future similar occurrences.



### Post-Test

Check your progress. How much do you recall?

1. When you are working by yourself at night while conducting a covert investigation, the hazard is called: \_\_\_\_\_.
2. Using the Hierarchy of Control principles, name, in rank order, three controls you would implement to protect yourself from fall hazards (over 10 feet) during an investigation.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
3. Pre-\_\_\_\_\_ your required protective equipment and controls is critical in maintaining your (and others) safety, prior to conducting an on-site investigation.
4. Personal protective equipment should be the first option to mitigate a hazard.
  - a. True
  - b. False

## ADDENDUM: KEY OHS ACT SECTIONS, BY NUMBER

- 2 Obligations of employers, workers, etc. – General OHS responsibilities of employers, workers, suppliers and contractors
- 3 Prime contractor – Assignment of primary OHS responsibility to a single prime contractor where two or more employers are simultaneously involved at a work site
- 8 Inspection –OHS Officer inspection duties/powers at a work site, including making copies of documents, seizing/taking samples, photography, interviews etc.
- 9 Order to remedy unhealthy or unsafe conditions – OHS Officer<sup>15</sup> duties/powers to stop unhealthy/unsafe work, and/or to take measures to ensure work is conducted safely.
- 10 Danger to persons on work site – OHS Officer duties/powers to stop dangerous situations that may cause harm to employees at work site.
- 11 Order stopping the use of unsafe tools, appliances, etc. – OHS Officer duties/powers to stop use/supply of unsafe/improperly functioning tools, equipment, machinery etc.
- 12 Improper storage and handling – Officer duties/powers to stop practices, order use of control measures, and/or stop supply of unsafe substances etc.
- 18 Serious injuries and accidents – Reportable accident/incident types (e.g. fatality, lost time and hospitalization over 2 days, unplanned explosions etc.), and requirement to conduct investigations and prepare reports
- 19 Investigation of accident – OHS Officer accident investigation powers/duties to determine cause(s), and ability to obtain/seize materials etc.
- 25 Regular inspection of work sites – Outlines the power of a Director to require employers to conduct regular workplace inspections and the methods to be used.
- 32 Written health and safety policies – Employer requirements to write, implement and inform workers of OHS policies if required by Regulation or *Code*
- 33 Code of practice – Employer requirements to write, implement, inform and train workers in “codes of practice” (programs, plans), and safe procedures
- 35 Existence of imminent danger – Worker responsibility to refuse or stop work or use of tools/equipment if there are “reasonable/probable” grounds that imminent (immediate) danger or harm could exist, including employer responsibility to investigate

---

<sup>15</sup> The use of the word “officer” refers to occupational health and safety officers.

## **ADDENDUM: KEY OHS REGULATION COMPONENTS**


- 5 Hazardous work site – Outlines that restricted areas are considered “hazardous work areas” (including blasting sites)
- 7 Availability of specifications – Where work must be done according to manufacturer’s/ professional engineer specifications, employers must provide copies of documents to workers and ensure they are followed/used
- 8 Critical documents available – Where required under the Act, employers who prepare plans, reports, and procedures must do so in writing, and make available copies to affected/involved workers
- 12 Equipment – Any equipment used by workers must be maintained in good condition, must safely perform required functions, and must be properly used and/or worn
- 13 General protection of workers – If work is performed where workers can be harmed, it must be done by a competent/trained worker or be supervised by a competent/trained worker. Workers must be trained in implemented procedures, controls, and proper selection, inspection, use, care and maintenance of protective equipment etc.
- 14 Duties of workers – Workers not competent are not permitted to perform work, unless directed by a competent supervisor. Includes employee reporting requirements regarding unsafe equipment and stoppage of use
- 15 Safety training –Employees must be trained in safe operation of equipment used and related hazards. If they may be exposed to harmful substances, employers must establish safe work procedures, and train workers in specific protocols and health hazards of the particular substance contaminant

## ADDENDUM: KEY OHS CODE COMPONENTS

- Part 4 Chemical Hazards, Biological Hazards and Harmful Substances – Work near/with harmful substances (including biohazardous materials); when inhaled (or with skin contact) can have adverse acute (itchy skin, coughing, headaches etc.) or chronic health effects (occupational disease like cancer, e.g. asbestos, silica, hexavalent chromium, nickel)
- Part 5 Confined Spaces – Entry/work in spaces/areas such as manholes, vessels, tanks, containers, pits, crawlspaces, tunnels, silos, vats, pipelines etc.
- Part 6 Cranes, Hoists and Lifting Devices – Work around/under/close by or use of lifting/rigging equipment that lifts and moves loads on site (e.g. overhead cranes, tower cranes, lifting hoists on flat deck trucks etc.)
- Part 7 Emergency Preparedness and Response – Exposure to disaster consequences (e.g. earthquake, flood, hurricane, chemical spills etc.) and requirement for response protocols, procedures, plans, kits (supplies/equipment)
- Part 8 Entrances, Walkways, Stairways and Ladders – Work in areas where entrances/exits and pathways/walkways are not properly maintained. Also details work requirements off ladders or ladder systems
- Part 9 Fall Protection – Potential work from heights and fall hazards/risks (>3 metres (10 feet), <3 metres and unusual injury risk) in the workplace (e.g. work off ladders/elevated work platforms such as scaffolds, moving equipment platforms such as scissor lifts, telescoping boom lifts, elevated platforms/mezzanines with no guardrails or deteriorated guard systems).
- Part 10 Fire and Explosion Hazards – Work in areas where there is a risk of fire and/or explosion and/or where there are flammable/combustible products present (e.g. oil and gas refineries, chemical processing plants)
- Part 11 First Aid – Personnel trained in first aid (or have access to trained First Aid attendant), first aid supplies/equipment availability, documenting injuries on reports/logbooks etc.
- Part 12 General Safety Precautions – Potential for slip/trip hazards from items (e.g. materials, boxes, electrical cords, equipment at floor level in foot passage walkways (housekeeping)); lighting issues; storage/securing of materials/ equipment, etc. Also includes traffic control requirements
- Part 14 Lifting and Handling Loads (Ergonomics) – Work requirements regarding situations, tasks or practices that may result in bodily injury (e.g. lifting heavy boxes, materials) and/or repetitive strain disorders/musculoskeletal issues (e.g. carpal tunnel syndrome)
- Part 15 Managing the Control of Hazardous Energy – Requirements for conducting work on/around (close to) equipment, tools, machinery that can pose hazardous energy issues (e.g. electrical, mechanical, kinetic, potential)

- Part 16 Noise Exposure – Working around/near elevated noise levels (>85 decibels, A-weighting (dBA)). Loud noises may exist in facility from tools, equipment, and/or machinery. A key indicator of noise over this limit (without having testing equipment) is using the “shout” principle; if you have to yell or speak very loudly to be heard during conversation, then levels are likely exceeded
- Part 17 Overhead Power Lines – Potential for work under, around or near high voltage overhead power lines or nearby “downed” lines and electrical shock risk
- Part 18 Personal Protective Equipment – Use of protective equipment (e.g. hard hats, boots, glasses, respirators, hearing and fall protection etc.) and training requirements. Could also involve more sophisticated gear such as chemical rated suits, supplied air respirator systems, SCBA
- Part 19 Powered Mobile Equipment – Requirements for work around/in close proximity to mobile equipment (e.g. forklifts, excavators, backhoes)
- Part 20 Radiation Exposure – Exposure to radioactive substances (ionizing) (e.g. x-ray equipment etc.) or non-ionizing radiation (UV, infrared light etc.) from nearby tasks (e.g. welding, torching)
- Part 22 Safeguards – Work in close proximity to equipment, tools, machinery with exposed moving parts (needs proper guarding) where workers can get caught or trapped (hair, clothing, jewelry etc.) or which could eject materials
- Part 23 Scaffolds and Temporary Work Platforms – Use of/work on/from mobile equipment platforms (e.g. scissor lifts, telescoping boom lifts)
- Part 25 Tools, Equipment and Machinery – Use of/work around tools, machinery and equipment that could cause bodily harm/injury (e.g. grinders, powder-actuated tools, welding equipment, abrasive blasting equipment etc.)
- Part 27 Violence – Workplace harassment or violence requirements, including interactions/confrontations with the public, facility/building/work site employees, contractors, suppliers, vendors etc
- Part 28 Working Alone – Work after hours by yourself or in isolated parts of a site/facility where there are no other workers in immediate vicinity. Call or check-in procedures may be required to check up on worker status/well being
- Part 29 Workplace Hazardous Materials Information System (WHMIS) – Work nearby or use of, storage, handling, transportation and exposures to chemicals (“controlled products”) (e.g. solvents, paints, fuels, degreasers). Includes safety information requirements (Material Safety Data Sheets (MSDS), supplier labels etc.)

## ADDENDUM: EXAMPLE MITIGATION (CONTROL) MEASURES

Example Controls (per Hazard Category)	
Part 4 Chemical Hazards, Biological Hazards and Harmful Substances	
<ul style="list-style-type: none"><li>• Do not enter (where possible) areas where chemicals are present</li><li>• Follow established, written safe work procedures</li><li>• Review and follow MSDS, supplier labels</li><li>• Wear a respirator (must be trained, fit-tested, use proper cartridges)</li><li>• Use protective clothing (chemical suits, rubber boots, chemical-rated gloves)</li><li>• Wear safety glasses/goggles/face shields</li><li>• Be trained in infectious disease controls</li><li>• Wear proper safety equipment (puncture-resistant gloves, splash goggles etc.)</li></ul>	 <p>© Microsoft</p>
Part 5 Confined Spaces	
<ul style="list-style-type: none"><li>• Have competent person conduct hazard assessment/develop procedures or review written/available assessment/procedures</li><li>• Ensure client has trained confined space team, including rescue on site (and within close proximity to space you are entering)</li><li>• Have someone trained to conduct air testing with gas monitor</li><li>• Ensure you are trained in confined spaces before you enter</li></ul>	
Part 6 Cranes, Hoists and Lifting Devices	
<ul style="list-style-type: none"><li>• Do not work under/near moving loads and stay well clear</li><li>• Stay "out of the bite" (pinch/struck by points)</li><li>• Communicate with operators of cranes/hoists</li><li>• Ensure equipment shut down/locked out and not operating while doing your work</li><li>• Wear high visibility gear, stick to designated pathways</li></ul>	
Part 7 Emergency Preparedness and Response	
<ul style="list-style-type: none"><li>• Be trained in spill response measures/controls and procedures</li><li>• Review MSDS and other chemical information</li><li>• Wear/use proper and specific PPE, relevant to chemical(s) spilled</li></ul>	
Part 8 Entrances, Walkways, Stairways and Ladders	
<ul style="list-style-type: none"><li>• Have client clear entrances/walkways of potential slip/trip hazards</li><li>• Follow established ladder safety protocols: three point contact, 4:1 H:D ratio, side rails extending 3 feet (1 metre) above upper most work platform, use fall protection over 10 feet, tie off top and bottom to prevent inadvertent movement etc.</li></ul>	
Part 9 Fall Protection	
<ul style="list-style-type: none"><li>• Install or work behind guardrail system</li><li>• Be trained in fall protection (how to properly inspect, use, care for gear)</li><li>• Follow safe work procedures</li><li>• Properly wear fall protection harness, use lanyard of appropriate length, tie off to approved anchor points of sufficient strength (e.g. 5,000 lbs. etc.).</li></ul>	



#### Part 10 Fire and Explosion Hazards

- Eliminate all potential ignition sources
- Do not use cell phone or other non-intrinsically safe equipment
- Use gas testing equipment (for combustible/explosive gases) to monitor LEL levels
- Be trained in emergency procedures and protocols



© Microsoft

#### Part 11 First Aid

- Be first aid trained
- Have first aid kit in car/truck
- Have access to client's first aid attendants/supplies/equipment
- Report injuries and document on required forms

#### Part 12 General Safety Precautions

- Have client perform housekeeping
- Bring additional lighting (flashlights, head lamps etc.)
- Be trained in traffic control techniques (and wear appropriate high visibility gear) and/or use client's trained traffic control workers, etc.



© Microsoft

#### Part 14 Lifting and Handling Loads (Ergonomics)

- Avoid lifting/moving heavy loads
- Get assistance
- Minimize awkward/static postures by taking rest breaks
- Stretch prior to conducting work

#### Part 15 Managing the Control of Hazardous Energy

- Have client lockout/tagout
- Be trained in lockout/tagout techniques and obtain/use personal locks/key system
- Review client lockout procedures/methods
- Apply your personal lock/tags to equipment that requires lockout and don't remove until you've completed your work and are out of the "line of fire"

#### Part 16 Noise Exposure

- Wear hearing protection devices (HPD) such as ear plugs/muffs
- Avoid doing work in “noisy” and loud work areas or by tools/equipment/machinery that generate loud noises
- Have client lockout/shutdown equipment to eliminate noise source(s)



©SSAB Hardox Ltd.  
2012. Reproduced with  
permission

#### Part 17 Overhead Power Lines

- Do not conduct work near overhead or downed power lines
- Be trained how to work near overhead power lines
- Maintain safe limits of approach
- Minimize/avoid use of tools that can touch live power lines (including anything that can extend or telescope)

#### Part 18 Personal Protective Equipment

- Be trained in proper selection, inspection, use and care of assigned/utilized PPE

#### Part 19 Powered Mobile Equipment

- Avoid areas where powered mobile equipment is operated
- Know that mobile equipment has “right of way”
- Maintain line of sight with operators of mobile equipment
- Never walk on “blind side” of equipment, or between equipment
- Use proper communication signals with operators; verify they can see you/know where you’re going
- Wear high visibility apparel
- Stay on designated pedestrian walkways, areas

#### Part 20 Radiation Exposure

- Avoid areas where there may be equipment that can emit ionizing radiation or where radioisotopes may be used
- Be trained in radiation and safe work/protective equipment controls
- Do not look at arcs/flashes from welding/torching/cutting activities
- Wear UV rated safety glasses/goggles or helmets
- Ensure client erects welding screens or has work done in enclosed welding bays



©SSAB Hardox Ltd. 2012.  
Reproduced with permission

#### Part 22 Safeguards

- Avoid or do not conduct work in close proximity to equipment, tools, machinery that have exposed moving parts
- Ensure safeguards are in place prior to working near equipment/machinery
- Have client perform lockout/tagout (shut equipment down) and apply personal lock/tag (see above Part 15 for more info) if no safeguards in place and must conduct work near equipment etc.

#### Part 23 Scaffolds and Temporary Work Platforms

- Ensure scaffolds are safe (erected, inspected by qualified/competent person/company)
- Ensure scaffold is tagged for safe use (“green” tag)
- Do not use scaffold if tagged with “yellow” (unless hazard/issue remedied) or “red” tags
- Ensure scaffolds have proper guardrail systems (top rail, mid rail, toeboards) prior to work/use and especially over 10 feet (fall protection hazards), or less than 10 feet (if unusual risk of injury below)

#### Part 25 Tools, Equipment and Machinery

- Avoid working in areas or coming close by areas where tools, machinery and equipment are utilized
- Wear safety protective clothing (long sleeves, boots, hard hat, glasses, face shield, respirators etc.) if need to work nearby operating equipment etc.

### Part 27 Violence

- Ensure risk assessment conducted for potential violence/harassment situations
- Establish written policy, program and procedures/protocols to deal with related situations
- Be trained in the above
- Implement training/techniques/methods to diffuse potential conflict situations

### Part 28 Working Alone

- Develop written policy, procedures to address this hazard
- Develop call or check in procedures/protocols and regular intervals of “check up” on worker status/well being
- Establish appropriate communication protocols and devices (e.g. radios, GPS tracking systems, alarms, cell phones etc.)
- Assign supervisor or “buddy” to whom communication would occur for call ins
- Develop proper emergency response protocols in case of contact loss
- Work together in teams or with buddies



© Microsoft

### Part 29 Workplace Hazardous Materials Information System (WHMIS)

- Be WHMIS trained in how to deal with controlled products
- Wherever possible, do not store, handle, use or transport chemical products or work nearby
- Wear appropriate PPE (as per MSDS)
- Review MSDS, supplier labels



©SSAB Hardox Ltd. 2012. Reproduced with permission



## REFERENCES AND ADDITIONAL RESOURCES

Canadian Centre for Occupational Health and Safety (2012). *Accident investigation*. Retrieved from <http://www.ccohs.ca/oshanswers/hsprograms/investig.html>

Canadian Centre for Occupational Health and Safety (2012). *Hazard and risk*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/hazard\\_risk.html](http://www.ccohs.ca/oshanswers/hsprograms/hazard_risk.html)

Canadian Centre for Occupational Health and Safety (2012). *Hazard control*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/hazard\\_control.html](http://www.ccohs.ca/oshanswers/hsprograms/hazard_control.html)

Canadian Centre for Occupational Health and Safety (2012). *Risk assessment*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/risk\\_assessment.html](http://www.ccohs.ca/oshanswers/hsprograms/risk_assessment.html)

Province of Alberta (2010). *Alberta Occupational Health and Safety Act*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=O02.cfm&leg\\_type=Acts&isbncln=0779749200](http://www.qp.alberta.ca/574.cfm?page=O02.cfm&leg_type=Acts&isbncln=0779749200)

Province of Alberta (2009). *Alberta Occupational Health and Safety Regulations*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=2003\\_062.cfm&leg\\_type=Regs&isbncln=077971752X](http://www.qp.alberta.ca/574.cfm?page=2003_062.cfm&leg_type=Regs&isbncln=077971752X)

Province of Alberta (2009). *Alberta Occupational Health and Safety Code*. Retrieved from [http://employment.alberta.ca/documents/WHS/WHS-LEG\\_ohsc\\_2009.pdf](http://employment.alberta.ca/documents/WHS/WHS-LEG_ohsc_2009.pdf)

# Module Four: Law and the Canadian Legal System

## INTRODUCTION

Professional investigators are governed by Canada's legal system in the same manner as everyone else. The rights you have as an individual are the same rights you are expected to observe while conducting investigations for your client. This module will examine those rights as well as the legal authorities and limitations which apply to you in your work as a professional investigator. You will study various pieces of legislation which provide guidelines and limitations under which professional investigators must act.

## LEARNING OUTCOMES

1. Describe how the *Criminal Code of Canada* and the *Canadian Charter of Rights and Freedoms* relate to the work of a professional investigator.
2. Identify the legal authorities, rights and limitations of a professional investigator as compared to a peace/police officer.
3. Discuss and provide examples of a citizen's power of arrest under the *Criminal Code*.
4. Identify the differences between civil law and criminal law.
5. Discuss and provide examples of the following:
  - a. Sections of the *Criminal Code* which affect surveillance
  - b. Tort law
  - c. Burden of proof in criminal court
  - d. Burden of proof for civil court
6. Describe the consequences when a security professional exceeds his/her authority
  - a. under the *Alberta Security Services and Investigators Act*
  - b. Under the *Criminal Code of Canada*
  - c. Civilly
7. Identify and explain additional legislation with respect to security professionals, including:
  - a. *Alberta Human Rights Act* and related legislation
  - b. Privacy Acts
  - c. *Alberta Petty Trespass Act*
8. Identify the requirements of an investigator under the *Alberta Security Services and Investigators Act*.

## TOPICS

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS .....	100
THE CHARTER AND THE INVESTIGATOR .....	104
Alberta Human Rights Act .....	104
CRIMINAL CODE OF CANADA .....	109
POWERS OF ARREST .....	111
POWERS OF SEARCH.....	116
CRIMINAL CODE OFFENCES .....	118
CRIMINAL OFFENCES CONTINUED .....	127
SURVEILLANCE AND AUDIO RECORDING .....	130
EVIDENCE ACTS.....	133
CONCLUSION.....	137
Addendum: Further Information on Criminal Code.....	139
Addendum: Guidance on Covert Video Surveillance in the Private Sector .....	147
REFERENCES AND ADDITIONAL RESOURCES.....	152



## Check Your Knowledge

Test your knowledge of the topic before starting this module:

1. Being a professional investigator provides you with additional powers of arrest under the *Criminal Code of Canada*.
  - a. True
  - b. False
2. Being a licensed investigator allows you to search anyone on the premise of the organization you are representing.
  - a. True
  - b. False
3. If you arrest someone under the *Criminal Code of Canada* you do not have to worry about the *Canadian Charter of Rights and Freedoms*.
  - a. True
  - b. False
4. You may arrest an individual that you know previously committed a crime in relation to your premise.
  - a. True
  - b. False
5. You must turn all persons you arrest over to the police as soon as possible.
  - a. True
  - b. False
6. If you use excessive force you can be both criminally and civilly responsible.
  - a. True
  - b. False



As a professional investigator, your goals are different from those of other security professionals. Your job is to compile and examine evidence as it relates to a client-requested investigation. In a sentence, the job is to discover the truth in such a way that it can be acted upon. Usually there would be two specific divisions of activity assigned to an investigator:

1. surveillance, where the prime objective of the investigator is to observe and record observations.
2. general investigations, where the investigator makes inquiries looking for facts, witnesses, and evidence to assist in the case.

This module will provide the foundation in law that allows the truth to be gathered in such a way that it is admissible in a court of law. That evidence could be needed for court, and that court could be criminal or civil. It may be that the evidence gathered has the effect of changing the case in such a way that the other party no longer wishes to proceed to court; even so the evidence gathered is of little value if it cannot be used as evidence.

Even if the participant comes to this course with some expertise in the area of investigations, this module will provide a good review and hopefully expanded expertise.

According to the *Security Services and Investigators Act* of Alberta, you are an investigator under section 2(1) if you:

for remuneration, investigate, conduct surveillance activities or seek or obtain information about

- a) crimes, offences, contraventions of enactments or misconduct, or allegations of crimes, offences, contraventions of enactments or misconduct,
- b) The cause of an accident, incident, property damage, personal injury or damage to premises,
- c) The activity, conduct, character or reputation of a person,
- d) The location of property, or
- e) The whereabouts of a person

© Alberta Queen's Printer, 2008

In *The Canadian Private Investigator's Professional Guidebook*, Christopher Menary (2011) states:

A private investigator is a person who is paid by an individual, agency or corporation to gather facts or materials that can be used as evidence in the Canadian court system. A private investigator's primary function is to research, locate, verify and gather evidence that pertains to an investigation he or she is hired to conduct.

Unlike other security professionals who are hired to detect or deter crime, the job of the investigator is to collect evidence. In-depth examination of powers of arrest, search and seizure will not be examined in this module. The investigator, distinct from other security professionals, relies on a broader scope of law and documents to be successful in the profession. As an investigator your job will be to examine source documents to determine what the expectations were and if a breach has occurred.

The investigator's source documents could be law, statute, contract or policy and will vary from case to case.

The federal laws to be examined in this module are:

- *Canadian Charter of Rights and Freedoms*
- *Criminal Code of Canada*
- *Controlled Drugs and Substances Act*
- *Canada Evidence Act*
- *Personal Information and Protection of Electronic Documents Act (PIPEDA)*

Once an understanding of the federal law is in place, the module will discuss:

- *Personal Information and Privacy Act (PIPA)*
- *Alberta Evidence Act*
- *Security Services and Investigators Act (SSIA)*

Although the list of acts to be covered is less than comprehensive, it will provide foundational knowledge. The profession of an investigator is not about knowing but it is about discovering. Knowing everything is an impossible task; it is of greater advantage to know where to go to get the information. The job of the investigator is more about the right question than the right answer.

“I don't need to know everything, I just need to know where to find it,  
when I need it”

— attributed to [Albert Einstein](#) in [www.goodreads.com](http://www.goodreads.com)

# THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The rights and freedoms of all Canadians are set out in the 34 sections which form the *Charter*. This act and these rights came into existence in 1982 and provide the foundation of all other legal authority in Canada. The rights defined in sections 7 through 15 are most important to you as a professional investigator. In addition to these sections, the investigator should be aware of the limitations of the *Charter* as listed in section 1 and the consequences of breaching an individual's rights and freedoms as listed in section 24.



## Group Discussion Activity

In your groups, review the following sections of the *Charter* and:

- interpret what the section means
- identify words and phrases that appear vague

Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

---

---

---

---

---

Section 8. Everyone has the right to be secure against unreasonable search or seizure.

---

---

---

---

---

Section 9. Everyone has the right not to be arbitrarily detained or imprisoned.

---

---

---

---

---

Section 10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Note: *habeus corpus* basically means that all relevant evidence shall be reviewed to determine the legality of the action in question

---

---

---

---

---

Section 11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment

---

---

---

---

---

Section 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

---

---

---

---

---

Section 13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

---

---

---

---

---

Section 14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

---

---

---

---

---

Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

---

---

---

---

---

Section 24 (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

---

---

---

---

---

## THE CHARTER AND THE INVESTIGATOR

The *Charter* outlines both your protections and your limitations as a professional investigator. If the way you collected evidence was found to breach the *Charter* it is likely your evidence will not be allowed into court.

You should never confuse your position as a professional investigator with the powers granted to a police or peace officer as appointed and sworn to enforce the laws of Canada and the provinces. However like the police or peace officer, your primary focus is to legally discover the truth.

Your job is to discover, observe and report, leaving the job of enforcing the law to the police and the courts.



### Class Discussion Activity

Review the *Charter* sections and determine which, if any, sections might apply in the following case:

An investigator has come across a victim of a robbery. The victim is injured but points to the suspect who is running away. The investigator has chosen to make a citizen's arrest, even though it is against his/her company's policy. After the suspect is subdued, the investigator pushes the suspect very hard against the side of a building and demands to know what he thinks of being violently assaulted. The suspect suddenly says that he was sorry for trying to rob the victim. This statement the investigator later gives the police.

Answer:

---

---

---

---

---

---

## ALBERTA HUMAN RIGHTS ACT

In this section we will look at issues that affect the workplace and individual attitudes that are protected areas under human rights law. The *Alberta Human Rights Act* is built upon principles that are laid out in the *Canadian Charter of Rights and Freedoms*. It is natural to follow the *Charter* section with the details of human rights as found in the Act. All individuals have biases; as an investigator it is important to recognize your internal biases and treat all people with dignity.

Combined, the *Alberta Human Rights Act* and the *Charter* impact investigators in the way they:

- \_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_

The Act outlines five areas where it applies. The five areas are:

1. Statements, publications, notices, and signs
2. Tenancy
3. Employment practices, applications and ads
4. Goods, services and accommodations
5. Membership in trade unions, employers' organizations, or occupational associations

Of the five areas listed, employment practices and services are likely the two areas to be of concern for the investigator. As an investigator you are affected by these areas in two ways; your own conduct in dealing with those that are members of protected groups, and interaction with clients and witnesses whose actions or comments show they are motivated by prohibited actions.

The *Act* states:

7(1) No employer shall  
a) refuse to employ or refuse to continue to employ any person, or  
b) discriminate against any person with regard to employment or any term or condition of employment, because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

© Alberta Queen's Printer, 2009

The terms described in section 7(1) are defined as follows:

- Race: belonging to a group of people related by common heritage
- Religious Beliefs: system of beliefs, worship and conduct (includes native spirituality)
- Colour: colour of a person's skin. This includes, but is not limited to, racial slurs, jokes, stereotyping, and verbal and physical harassment
- Age: Age is defined in the *Act* as "18 years or older." Persons who are 18 years or older can make complaints on the ground of age in all of these areas:
  - statements, publications, notices, signs, symbols, emblems or
  - other representations that are published, issued or displayed before the public
  - employment practices
  - employment applications or advertisements
  - membership in trade unions, employers' organizations or occupational associations
- Gender: being male, female or transgender. Also included under gender are pregnancy and sexual harassment
- Physical Disability: any degree of physical disability, deformity, malformation or disfigurement that is caused by injury, birth defect or illness. This includes, but is not limited to, epilepsy; paralysis; amputation; lack of physical coordination; visual, hearing and speech impediments; and physical reliance on a guide dog, wheelchair or other remedial appliance or device
- Mental Disability: any mental disorder, developmental disorder or learning disorder regardless of the cause or duration of the disorder



- Ancestry: belonging to a group of people related by a common heritage
- Place of Origin: place of birth
- Source of Income: source of income is defined in the *Act* as lawful source of income. The protected ground of source of income includes any income that attracts a social stigma to its recipients, for example, social assistance, disability pension, and income supplements for seniors. Income that does not result in social stigma would not be included in this ground.
- Family Status: being related to another person by blood, marriage or adoption
- Sexual Orientation: This ground includes protection from differential treatment based on a person's actual or presumed sexual orientation, whether homosexual, heterosexual or bisexual. In addition to the areas and grounds discussed above, the *Act* protects Albertans in the area of equal pay. When employees of any gender (female, male or transgender) perform the same or substantially similar work, they must be paid at the same rate
- Marital status: the state of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship outside marriage



## Class Discussion Activity

Review the following case and answer the questions below.

You receive a phone call from a person looking to hire an investigator. The person is a manager in an electronics store. He wants to hire you to investigate employees which he believes are conducting a side business while working at the store. Although the store has an ethnically diverse workforce he is convinced that it is a particular ethnic group of employees that are the issue. He wants you to focus only on their shifts and their actions. He is only willing to provide you with employee information for these employees. When you ask why he suspects them and not others, he replies, "That's what their kind do!"

Questions:

What is the problem with this situation?

Can you take this job?

Answer:

---

---

---

---

---

The penalties for violating the *Alberta Human Rights Act* are significant, with fines of up to \$10,000 against those that hinder, obstruct or interfere with the Commission investigations. This fine can be imposed against the organization or an agent of the organizations or both.

In regard to a complaint, the Commission Tribunal has the following authority:

### 32(1) A human rights tribunal

(b) may, if it finds that a complaint has merit in whole or in part, order the person against whom the finding was made to do any or all of the following:

- i. to cease the contravention complained of;
- ii. to refrain in the future from committing the same or any similar contravention;
- iii. to make available to the person dealt with contrary to this Act the rights, opportunities or privileges that person was denied contrary to this Act;
- iv. to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;
- v. to take any other action the tribunal considers proper to place the person dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act.

©Alberta Queen's Printer, 2010



## CRIMINAL CODE OF CANADA

The professional investigator has no additional rights to make arrest or search than are granted any other citizen under the *Criminal Code of Canada*. You will need to know your legal powers to arrest. Remember your primary duty as an investigator is to discover what happened in such a way as to provide legal opportunity to take appropriate action.

The *Criminal Code of Canada* defines behaviours considered to be criminal. The Code does not cover all illegal and unlawful acts. Those offences which contravene the *Criminal Code of Canada* or other federal statutes are considered crimes. Therefore in order for the offence to be a crime, the law broken must have been made by Parliament. These are the only offences that a person would receive a criminal record for. The enforcement of these laws is the primary jurisdiction of the police.

### Terminology

The criminal system has its own rules and its own language. These cases are always between the *Crown* (Canada, as represented by the Queen), and prosecuted by *Crown Counsel* (lawyers representing the government) and the individual charged who becomes the *accused* or the *defendant*.

The laws are made federally by Parliament and apply to all citizens of the country. In breaking these laws a *crime* is committed. The two main groups of federal law for the investigator to be aware of are the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act*.

The process of being accused of a crime is being *charged*. When the accused goes to court and the courts find the person has committed the offence, the person is found *guilty*. When the courts find the person did not commit the offence, they are found *not guilty*.

If the courts authorized the search for a person or for property a *warrant* is issued. The warrant can be an *arrest warrant* for a person or a *search warrant* for a premise or property. In most cases it is the police and the Crown Counsel that apply for the warrants.

*Criminal Code of Canada* investigations have set the standard for investigations. Previous decisions made by the courts on criminal cases have defined or limited the powers in which the police or professional investigators operate. These decisions are called *case law*. There is also a system of guidelines that have emerged from the decision-making process of the courts. These have been adopted as law but not written into statutes. They are also called *case or common law*. Only police and peace officers have special powers related to the *Criminal Code of Canada* and federal law; however the laws can be investigated by anyone.

The laws set out in the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act* fall into three categories and into two levels: minor and serious. The minor level of offence is called *summary* and the serious is referred to as *indictable*. There are some offences where the Crown may elect to proceed by way of indictment or summary conviction rules of evidence, depending on the circumstances of the case. These offences are sometimes referred to as *hybrid* or *dual* offences.

There are three classifications of offence identified in the *Criminal Code*:

- Summary conviction
  - Considered to be a “less serious offence”
  - Punishable by jail time, fine, or both
  - Maximum of up to 6 months in jail, or up to \$2000 or any combination of the two to the maximums
  - Statute of limitation of six months
  - Examples are indecent act, unlawful assembly, causing a disturbance, loitering, trespassing by night, obtaining food or lodging by fraud
  
- Indictable Offence
  - Offences defined in federal law, where punishments are more serious
  - Maximums are set out in each particular offence
  - No statute of limitation to lay charges.
  - Examples are weapon or imitation dangerous to the public peace, aggravated assault, assault with a weapon, theft over \$5000, robbery, break and enter with the intent to commit an indictable offence, arson, possession of counterfeit money
  
- Hybrid (also called dual procedure)
  - The charge is the same but the difference is in the options for trial procedures and the penalty the individual may receive upon conviction
  - Examples are possession of a prohibited weapon, public mischief, failure to stop at the scene of an accident, sexual assault, theft or possession of stolen property under \$5000
  - For the purposes of arrest these are considered indictable offences with no statute of limitations.

These distinctions are important to remember as we move into the powers of arrest.

## POWERS OF ARREST

As a professional investigator your primary function will be the investigation and collection of factual information for legal action and proceedings. The arrest and detention of individuals should be a rare exception to your primary duties. However, it is important to understand the law around arrest.

Arrest is the process of detaining an individual for the purposes of investigating the individual's possible involvement in a criminal activity. It is important to realize that an individual who has been arrested still has rights, and you must be respectful of those rights. Our justice system calls for a presumption of innocence.

Under the *Criminal Code of Canada*, anyone may arrest a person or persons as follows:

Section 494, *Criminal Code*

494. (1) Any one may arrest without warrant
- a) a person whom he finds committing an indictable offence; or
  - b) a person who, on reasonable grounds, he believes
    - i. has committed a criminal offence, and
    - ii. is escaping from and freshly pursued by persons who have lawful authority to arrest that person.
- (2) The owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest a person without warrant if they find them committing a criminal offence on or in relation to that property and
- (a) they make the arrest at that time; or
  - (b) they make the arrest within a reasonable time after the offence is committed and they believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.
- (3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.
- (4) For greater certainty, a person who is authorized to make an arrest under this section is a person who is authorized by law to do so for the purposes of section 25.

© Government of Canada. *Criminal Code of Canada* (1985). Reproduced by Federal Reproduction Law Order

### Arrest Terminology

“May arrest” --- there is no requirement to arrest; arresting someone under this section is optional and most investigative firms will have policies that restrict your ability to exercise section 494.

“Finds committing”— to perceive through your senses that a crime is being committed, that is to see, smell, hear a situation that would leave no doubt that the individual has just committed a crime. Currently, this term means that investigators cannot deduce the occurrence of a crime for the purposes of an arrest.

“Indictable Offence”— Not only does it have to be criminal but it also has to be a serious criminal offence that is listed in the *Criminal Code* as being an indictable or hybrid offence.

“Reasonable grounds”— defined in the *Criminal Code of Canada* as a set of facts or circumstances which would cause an ordinary, cautious and prudent person to believe beyond a mere suspicion.

“Criminal offence”— defined as any violation of specific federal statutes, including the *Criminal Code of Canada*.

“Is escaping and being freshly pursued and is being chased by a person who has lawful authority to arrest”— this is a very narrow scope. It would apply to a peace/police officer who is chasing someone when it is obvious that he or she is a peace/police officer and gives indication of an offence (for example, yelling “Stop that person who robbed a bank!”). There is a legal expectation that the pursuit is being done directly after the crime was committed.

In all cases the person arrested would have to be turned over to a peace/police officer as soon as possible.

Let’s look at the main factors relating to citizen powers of arrest:

First you must find them committing. To “find someone committing an offence” means you must catch them in the act. It is not enough to see the start of the criminal act or the end result - you must witness the act itself. If you witness an individual committing a serious offence, you are within your rights to arrest that person at that moment. To find committing is more than to see it. It is to perceive through your senses. Sight is only one of your senses, although it is likely your primary one.

The second main factor is that the offence must be an indictable offence which is a crime of a serious nature, under the *Criminal Code of Canada* or other federal legislation such as the *Controlled Drugs and Substances Act*.

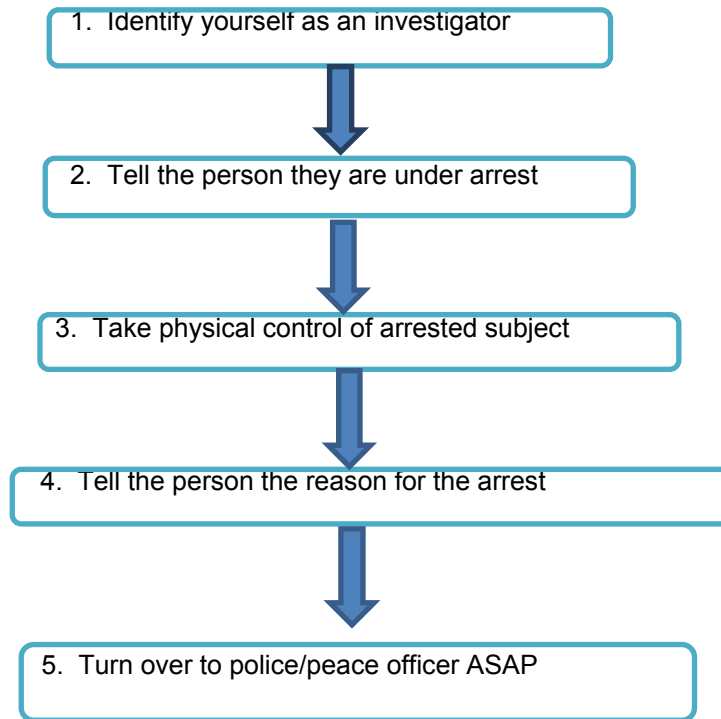
Lastly, any arrest made under s. 494 requires you to deliver the arrested person to a peace/police officer forthwith.

Recent changes to s. 494 have significantly altered the abilities of private citizens to make arrests in Canada. Section 2 has an added subsection that allows citizens who are the owners of the property, in lawful possession of the property or someone who has been authorized by the lawful owner of the property, to make arrests after a reasonable time has elapsed between the time when they found the suspect committing the crime and the time at which the citizen makes the arrest. In the past, the arrest needed to be immediately after the suspect was found committing a criminal offence.

Another added section (4) clarifies that citizens can use force to effect an arrest as per section 25 of the *Criminal Code*, providing they use no more force than is necessary.

Providing you have the grounds to arrest, you then need to be aware of the requirements of arresting someone.

## Five Steps to a Lawful Arrest



Lawfully arrested individuals are afforded specific rights under the *Charter*. Specifically, they are entitled to access to legal counsel and the right to remain silent. Police officers making arrests are required to read “*Charter* warnings” to arrested parties. The law is ambiguous about whether private citizens are required to read these same rights to people they have arrested. Loss prevention workers make private citizen arrests and, even though not required to, loss prevention companies embrace a best practices approach and have their loss prevention worker read the *Charter* warnings to the lawfully arrested person. Any investigator who believes they will be in a position to arrest anyone might want to consider carrying with them text that provides the suspect their rights under Section 10 (a) and (b) of the *Charter of Rights and Freedoms*. The position of the Alberta Ministry of Justice and Solicitor General is to not use the official *Charter* text and instead advise the suspect that they are under arrest and why.





## Class Discussion Activity

Read the following case study and discuss the answers to the questions with others in your group.

You see a person that you do not know walking into your office. You see him act suspiciously before going through a co-worker's jacket pocket. You see him remove your co-worker's wallet and quickly turn to leave. As you approach the individual, he starts running away. You chase him and as you are leaving the building you see the corporate security guard for the building. You yell, "Stop him! He just stole my co-worker's wallet!"

Identify the:

- Main elements of the offence
- Issues that might arise and how they might be resolved

Answers:

---

---

---

---

---

---

---

---



## Class Discussion Activity

Review the following two case studies and respond to the questions.

If we go back to the last example of the security guard who was able to arrest the suspect that you were chasing, would this security guard have been able to arrest the person if you were not chasing them? Let's say the wallet has been stolen as before. You observed but were not able to catch them, losing them in a crowd going down the stairs. The security guard is informed that a wallet has been stolen in the building by a man thirty years old with his hair in a ponytail and a dark jacket. The security guard sees a male matching this description come into the lobby from inside building. He or she has the authorization of the building owners to act in relation to events on the property.

Question:

Can the security guard arrest the person?

Answer:

---

---

You are working for a company that has a manager suspected of possible misuse of the company credit card and/or possible fraud in managing his expense accounts. The company Vice President and head of Human Resources have called you in to look into the allegation. The company is looking to both possibly discipline the individual as an employee and to turn any evidence over to the police if you believe that fraud can be proved.

As you embark on your investigation you are given access to the company expense records and credit card statements. As you investigate you find that the employee in question has been using his corporate credit card to fuel his personal car, even though he has a company vehicle. You also find that this subject has a boyfriend that he meets frequently at local business hotel for a believed sexual liaison. Yesterday you observed the employee buy his personal groceries on his company credit card, which you are able to prove was a fraudulent purchase.

You relay these findings to the head of Human Resources, who in turn tells the Vice President of Operations. The VP of Operations contacts you and wants you to sit in on a meeting where this employee has been called in to Human Resources to explain his actions. The VP states that she wants you to arrest this person at the end of the meeting.

Question:

Do you have the power of arrest in this situation? If so, why and if not, why not?

Answer:

---

---

## POWERS OF SEARCH

Powers of search for the Canadian citizen, therefore the investigator, are very limited. They are based on the *Canadian Charter of Rights and Freedoms* and common law. These search provisions are usually associated to arrests made by police or peace officers. Case law has linked some of these search powers to individuals who make citizen arrests.

Canadian Charter of Rights and Freedoms Section 8:

Everyone has the right to be secure against unreasonable search or seizure.

For the investigator the powers of search break down into two areas: incidental to arrest, and with consent. However it is generally held that even though a subject is arrested, that does not provide civilians grounds to search for evidence. This is deemed to be the realm of the peace/police officer. However this is further qualified in that evidence of the offence the subject was arrested for would be admissible, but evidence of other offences most often is not. The case most often cited as defining this is *R. v. Lerke*, 1986 ABCA 15 (CanLII).

In common law, arrest allows the citizen to search for items that are:

- Weapons or items that could be used as a weapons
- Items or tools which would aid in escape

The Supreme Court of Canada has held that for a search to be reasonable it must be

(a) Authorized by law;

(b) The law itself must be reasonable; and

(c) The manner in which the search was carried out must be reasonable

*R. v. S.A.B.*, [2003 SCC 60 \(CanLII\)](#)

The questions to consider are as follows:

- Are you treating the person with respect and dignity?
- Can you do this in a place that provides privacy?
- Are you being reasonable in your approach?

## Consent Search

Search with consent is exactly what it implies. The subject has to provide consent. Consent can be gained by asking the individual if they are willing to be searched or to have something they are carrying searched. Consent can be provided by an agreed term in a purchase contract. An example would be buying a ticket for a concert or an airline flight in which you agree to a security search before entering or boarding.

There are two things to remember with consent searches:

- \_\_\_\_\_
- \_\_\_\_\_



### Class Discussion Activity

Read and answer the questions in the two case studies.

#### Case Study 1

A male subject arrested for shoplifting (theft) is carrying a bag or a backpack that may contain items of concern. Identify the correct answer:

- Check the bag for weapons, items to aid escape and evidence
- Check the bag for weapons and items to aid escape
- Take the bag and set it aside a side, away from the subject, and wait for police

#### Case Study 2

You are working a paid attendance event for your company. A female whom you know to vocally disagree with company public policy and has made veiled threats, arrives with a ticket. The ticket includes consent search as a term of purchase. You ask to search her purse, which she hands to you. Inside you find a second makeup- type bag. When you take it out to search it she states you can't search that. What are you options?

Answers:

Case Study 1:

---

---

---

---

---

Case Study 2:

---

---

---

---

---

## CRIMINAL CODE OFFENCES

Each criminal offence has important elements that need to be proven in court; however in almost all offences, two elements are critical: *mens rea* and *actus reus*.

### *Mens Rea*

There are two broad categories of intent:

- General intent
- Specific intent

General intent means the person committing the crime actually intended to do something to another as opposed to having accidentally done so. For example, the suspect punched the victim in the face because the suspect was angry with the victim. In this case, the victim's injuries could be a broken nose and black eyes. The same injuries could occur as two people accidentally bump into each other. In the first case, there was an intention to do harm but in the second there was not.

Most offences in the *Criminal Code of Canada* require the Crown to prove general intent. In fact, the intention of the suspect can often be inferred by the suspect's action.

Specific intent requires the Crown to prove what the suspect was thinking at the time of the commission of the offence. Specific intent is often required for very serious offences such as murder, robbery and breaking and entering. Specific intent can be very difficult to prove, at times, because it is something that cannot be inferred from the suspect's actions.

Following are two descriptions of criminal offences where one requires general intent and the other specific intent.

Example of General Intent—Assault	Example of Specific Intent – Break and Enter
<p>265. (1) A person commits an assault when</p> <p>(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;</p> <p>(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or</p> <p>(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.</p>	<p>348. (1) Every one who</p> <p>(a) breaks and enters a place with intent to commit an indictable offence therein,</p> <p>(b) breaks and enters a place and commits an indictable offence therein, or</p> <p>(c) breaks out of a place after</p> <p>(i) committing an indictable offence therein, or</p> <p>(ii) entering the place with intent to commit an indictable offence therein, is guilty</p> <p>(d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and</p> <p>(e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.</p>

© Government of Canada (1985). *Criminal Code* of Canada. Reproduced by Federal Reproduction Law Order

The concept of “intent” in law is very complicated and many cases are lost in court because Crown is unable to demonstrate this component of a case.

*Mens rea* can also include someone who ignores the likely outcomes of an action. An example is the fight where a person punches another, who falls down hits their head and dies. Another example would be the impaired driver who kills someone while driving home drunk. There was not a desire to kill the person but a reasonable person would believe there was a strong probability that death could result from driving while impaired. In this case, the suspect would be charged with criminal negligence causing death. Canada does not have the offence of vehicular homicide.

#### *Actus reus*

Latin for the “guilty act,” *actus reus* refers to the specific behaviours or actions that lead to the criminal act being committed. The action does not have to be the crime in its fulfillment. The thought is not enough without some action, a call to someone to put a plan into action in this case.

A person may want to harm another (*mens rea*) but until they have taken steps to actually implement the plan, there is no crime.



## Group Discussion Activity

In groups, refer to the following offences in the *Criminal Code* Addendum starting on page 48 and answer the following questions.

- 1) Write a short summary as to how the section might apply to an investigator.
- 2) What actions does the section speak to? Provide other examples.
- 3) Is general or specific intent required?
- 4) What is the penalty for breach? Is it an indictable, summary or hybrid offence?
- 5) What challenges do you see as an investigator dealing with this type of offence?

Section	Description
21	Party to offence
130	Personating a peace officer
131	Perjury
136	Contradictory evidence
137	Fabricating evidence
139	Obstructing justice
423(1)	Intimidation
342.1	Unauthorized use of a computer

Answers:

### Parties to offence

---

---

---

---

---

### Personating a Peace Officer

---

---

---

---

---

**Perjury**

---

---

---

---

---

**Witness giving contradictory evidence**

---

---

---

---

---

**Fabricating evidence**

---

---

---

---

---

**Obstructing justice (focus on 139 (2))**

---

---

---

---

---

**Intimidation**

---

---

---

---

---



## Unauthorized use of computer

---

---

---

---

---

### Additional Sections

#### Offences relating to affidavits

138. Everyone who

(a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or declared, as the case may be, by the affiant or declarant or before a person authorized in that behalf, or

(c) signs as affiant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by him, as the case may be, when the writing was not so sworn or declared,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. R.S., c. C-34, s. 126.

#### Additional Information:

The investigator's evidence is usually presented in one of two manners: direct evidence in court or sworn affidavit evidence. Frequently the affidavit evidence is put together by a lawyer based on a written report provided by an investigator. Often a lawyer, especially in civil court, will take the investigation report and ask that it be sworn by the investigator to become a court document on which other court actions, like an Anton Piller order, will be based. If this is the case and the report has areas that have not been fully disclosed, the investigator needs to clarify these with counsel before swearing something that may be a criminal offence. Being as honest and complete as possible is the investigator's best defence against any issues that may arise. Once the document is sworn, the offence has been committed.

If a document was truthfully sworn and new information comes to light that contradicts the original information given, the investigator needs to advise counsel and the courts. The protection is always in the intent. If there was no intent to deceive there is no *mens rea*. If however the situation changes and truth is not disclosed, the hiding of this change will be looked at as intent to deceive.

#### An example:

You have provided a report to a client which they are very happy with. You have included critical evidence which came from another investigator as evidence coming from yourself. The client is not aware you have engaged the assistance of another investigator. The client wants you to swear the report as an information. What do you do?

Answer: you need to advise the client and include where the information came from. You will likely have to break the report into two documents. The first is the part you did and will swear to and the second is the part the other investigator did and will have to swear.

Offences relating to intercepting communication, specifically sections:

- 184(1)
- 191(1)
- 193.1 (1)

### **Section 184: Interception**

184. (1) Everyone who, by means of any electro-magnetic, acoustic, mechanical or other device, willfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) Subsection (1) does not apply to (a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;

### **Section 191: Possession**

191. (1) Every one who possesses sells or purchases any electro-magnetic, acoustic, mechanical or other device or any component thereof knowing that the design thereof renders it primarily useful for surreptitious interception of private communications is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

193.1 (1) Every person who wilfully uses or discloses a radio-based telephone communication or who wilfully discloses the existence of such a communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years, if

(a) the originator of the communication or the person intended by the originator of the communication to receive it was in Canada when the communication was made;

(b) the communication was intercepted by means of an electromagnetic, acoustic, mechanical or other device without the consent, express or implied, of the originator of the communication or of the person intended by the originator to receive the communication; and

(c) the person does not have the express or implied consent of the originator of the communication or of the person intended by the originator to receive the communication.

### **Additional Information:**

Section 184 applies in particular to the surveillance investigator. Unless you are part of the conversation or have direct consent to record you cannot electronically capture the communications of others including e-mails and text messages. It also refers to using electronics to amplify sound such as parabolic microphones to intercept conversations over considerable distance such as across a playground or in a house.

A great risk in surveillance is unexpectedly capturing the communications of others as part of your surveillance. The best way to avoid this is to disable the audio on any video equipment.

Overhearing conversations without using audio aids is permitted.

The added section refers to the offence of even having equipment that is designed specifically to intercept communications. Section 193 goes further and speaks to offences relating to disclosing information that has been captured.

An example:

You are doing video surveillance on an insurance policy investigation. The subject is working at two jobs and has filed an insurance claim with Company 'A' as a result of an injury he allegedly suffered while working there. You decide to conduct surveillance at his second place of work, Company 'B'.

You are working with a partner and set up outside Company 'B's workplace, a plant store where his duties involve moving rocks and heavy bags of potting soil. The subject has not appeared for work yet. You decide to go into the centre and take a closer look and see if you could get some audio statements from other employees. You pretend to be a former customer and ask an employee about this guy you dealt with before (the target subject) and if he still works there. The employee tells you that he does and is just late, as usual. The subject shows up while you are talking to the guy. The employee waves him over and tells the guy how you had seen him before and were impressed by how much he could lift. The subject becomes part of the conversation and begins to brag about his physical strength.

**Question: Can you record this conversation?**

Answer:

---

---

---



## Class Discussion Activity

### Elements of Theft Example 1:

Person 'A' is invited to a neighbour's yard and while there takes a power saw that he believed he had loaned to the neighbour and brings it home. The neighbour calls the police to report a theft when he sees it is gone. When Person 'A' returns home he finds his own saw is in the garage and goes back to the neighbour's to return the saw he mistakenly took. Can he be charged with theft?

Answer:

---

---

### Elements of Theft Example 2:

An employee works at a company with a strict policy against personal use of company assets. He is doing a home renovation project and returns to the employer's premise on Saturday while the business is closed and borrows a ladder from the yard. He returns the ladder on Sunday. An investigator, while reviewing the security videos for the premise, finds the footage where the ladder is removed. On Sunday, the yard is checked by the investigator and the ladder is back in its place. Did the employee commit a theft?

Answer:

---

---



## Group Discussion Activity: Whiz Bang Computers and Electronics

Refer to the *Criminal Code* Addendum starting on page 48 and review the following sections to determine whether they might be related to the Whiz Bang Computers and Electronics case:

- s. 322: theft
- s. 354: possession of property obtained by crime
- s. 380: fraud
- s. 366: forgery
- s. 343: robbery

Record your answers and rationale, based on what you know to date about the Whiz Bang case.

## CRIMINAL OFFENCES CONTINUED



### Class Discussion Activity

Refer to the *Criminal Code Addendum* starting on page 48, specifically the following sections, and answer the questions listed below.

Section	Description
265	Assault
348	Break and Enter
430	Mischief
361	False Pretence

- 1) Describe the important elements of their offence.
- 2) Provide a description of any term that is not obvious.
- 3) Provide an example of an offence an investigator might encounter.
- 4) State what other offence it is linked to (for example robbery is a theft with violence or weapon.)

#### Assault

---

---

---

---

---

---

---

#### Break and Enter

---

---

---

---

---

---

---

## Mischief

---

---

---

---

---

---

## False Pretence

---

---

---

---

---

---

## Additional Legislation

### Trespassing and Trespassing Offences

There is only one trespass charge that is criminal and it is trespassing by night. This is a summary conviction offence and is rarely used. You cannot prowl around a dwelling at night without being in breach of the *Criminal Code*.

#### Trespassing at Night

177. Everyone who, without lawful excuse, the proof of which lies on him, loiters or prowls at night on the property of another person near a dwelling-house situated on that property is guilty of an offence punishable on summary conviction.

© Government of Canada (1985). *Criminal Code of Canada*. Reproduced by Federal Reproduction Law Order

Key elements in this section include:

- “without lawful excuse” – this is often very broadly interpreted by the Courts
- “night” – is defined as 9:00 p.m. until 6:00 a.m.
- “on or near” – is determined based on each set of circumstances but it must be related to a dwelling house

Most of the trespassing offences for the investigator will be under provincial law as detailed below.

## ***Petty Trespass Act***

There are times investigators need to get out and do the footwork. Often this entails looking around a public space but could as likely be private property. As an investigator you are not entitled to enter land that is clearly marked as being private and has the appearance of keeping people out. Entry onto this type of property could be deemed as trespassing under the *Petty Trespass Act* and any information or evidence gained is likely to be non-admissible. This does not mean you cannot take pictures of items that are in sight on the land.

The two main relevant sections of the *Petty Trespass Act* are as follows:

2(1) Every person who

- a) without the permission of the owner or occupier of land enters on land when entry is prohibited under section 2.1, or
- b) does not leave land immediately after he or she is directed to do so by the owner or occupier of the land or a person authorized by the owner or occupier is guilty of an offence

2.1(1) Entry on land may be prohibited by notice to that effect, and entry is prohibited without any notice on land

- a) that is a lawn, garden or land that is under cultivation,
- b) that is surrounded by a fence, a natural boundary or a combination of a fence and a natural boundary, or
- c) that is enclosed in a manner that indicates the owner's or occupier's intention to keep persons off the land or to keep animals on the land



## SURVEILLANCE AND AUDIO RECORDING

One of the main tools in the toolkit of the investigator is surveillance. Often in security organizations investigators are split into two categories: general investigations and surveillance. Here we will look at how specific laws affect the surveillance component of investigations. There are two aspects of law which we will see applied.

The *Criminal Code of Canada* has two sections which directly affect the investigator engaging in surveillance. The first is Section 184 which states that it is an offence to willfully intercept the private communications of an individual. If this is the case, then how can conversations be recorded and presented in court? The answer is found in the saving provision of Section 2, where conversations can be recorded if they meet one of two conditions. The first is that you have consent. The second is that you are part of the conversation, meaning that if one of the parties in the conversation agrees to the recording, it can be recorded. So if you are the person who is originating the conversation or the person for whom the conversation is intended, you can record it.

### **Section 184: Interception of Communications**

184. (1) Everyone who, by means of any electro-magnetic, acoustic, mechanical or other device, willfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) Subsection (1) does not apply to

(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it; (R.S.C., 1985, c. C-46)

A great risk in surveillance is capturing unexpectedly the communications of others as part of your surveillance. The best way to avoid this is to disable the audio on any video equipment. Audio disabling is considered a best practice.



## Class Discussion Activity

An investigator is watching a target person who is meeting with friends in a public park. This target has made an insurance claim claiming a bad back. The investigator is videotaping this individual playing football in the park with his friends. The individual is diving for balls and being tackled. During the football game the investigator hears the target bragging to his friends about this false injury claim so he can get some money back from his insurance company, your client.

When the investigator downloads the video he finds the entire conversation was captured along with the video.

Is this audio admissible in court?

If not, have you created any risk for yourself?

Can you present evidence of the conversation in court?

### Answers:

Is this audio admissible in court?

---

---

---

If not, have you created any risk for yourself?

---

---

---

Can you present evidence of the conversation in court?

---

---

---



## Group Discussion Activity on Whiz Bang Computers and Electronics

### Privacy Issues in Covert Video Surveillance

The Federal Office of the Privacy Commissioner has drafted a report entitled: *Guidance on Covert Video Surveillance in the Private Sector* (page 55 in this module), which will be used in the following activity:

The report is based on the following statements:

“The capturing of images of identifiable individuals through covert video surveillance is considered to be a collection of personal information.”

“Organizations that are contemplating the use of covert video surveillance should be aware of the criteria they must satisfy in order to collect, use and disclose video surveillance images in compliance with *PIPEDA*.”

In your small groups review one of the following italicized sections:

1. *Demonstrable, evidentiary need*
2. *Information collected by surveillance achieves the purpose*
3. *Loss of privacy proportional to benefit gained*
4. *Less privacy-invasive measures taken first*

For the purposes of this exercise, imagine you want to establish covert surveillance in the Whiz Bang Computers and Electronics case. As a group, decide where or who you might want to conduct surveillance on and then make a case using your assigned section (1-4) above from the *Guidance on Covert Video Surveillance in the Private Sector*.

Each group will make a presentation about its arguments.

## EVIDENCE ACTS

The *Criminal Code* defines which illegal behaviours are criminal and can be processed through the criminal court system. The process and the evidence requirements for cases that go through the criminal courts are laid out in the *Canada Evidence Act*. The *Canada Evidence Act* provides rules of evidence but only for federally-regulated cases. If you are an investigator who will be doing criminal or federally-related investigations, you will need to know the rules of evidence as they apply.

Other investigations will fall under the rules of the *Alberta Evidence Act*. Although the rules differ in some aspects, they are essentially the same. This section will provide an overview of the basic rules that apply to the investigator. It will cover burden of proof required to prove a case, types of evidence, and competent and compellable witnesses. In criminal law the level or standard of proof is beyond a reasonable doubt.

### ***Canada Evidence Act***

“applies to all criminal and civil proceedings and other matters whatever respecting which Parliament has jurisdiction.” (s. 2 CEA)

### ***Alberta Evidence Act***

This Act extends and applies to evidence offered or taken

- a) orally,
- b) by interrogatories,
- c) by affidavits,
- d) by the production of documents or things, or
- e) otherwise,

by or before a court in an action. (S.2 AEA)

Some key terms relating to the rules of evidence:

**Competent** – refers to the fact that one is able to provide evidence. Example: A person seeing a crime is a competent witness. Rules of note in relation to being competent are:

- A person is not considered incompetent to testify by means of being involved or having an interest in the crime. (s. 3 CEA)
- A person not having the mental abilities or communications skills needed to understand and present evidence to a court may not be competent

**Compellable** – refers to the ability to force one to provide evidence. One is compelled to testify by way of subpoena. Rules of note that apply to being compellable are:

- A spouse is cannot be compelled to testify about communications made with their spouse during marriage. (s. 4(3) CEA) (s. 4(2) AEA) (there are some exceptions for some offences)
- An accused cannot be compelled by the prosecution to testify (s. 4(1) CEA) s. 4(3) AEA)
- Privileged conversations (with legal counsel) are not compellable.

**Burden of Proof:**

In a criminal case, the party who bears the burden to prove the case is the Crown.

In a civil case, the burden rests with the plaintiff (the person who is initiating the case)

**Standard of Proof:**

During a criminal trial, the Crown prosecutor needs to prove beyond a reasonable doubt that the accused committed the offence. This should not be interpreted as proof beyond any doubt, but once it crosses the threshold of “reasonable” doubt, then the Courts must acquit the defendant. The term “reasonable” refers to a set of facts and circumstances which cause an ordinary, cautious and prudent person to believe something that goes beyond mere suspicion.

The standard of proof in a civil matter is less. Here the obligation is for the plaintiff to prove the case based on a balance of probabilities. This is a sliding scale. For minor matters the balance of probabilities may be reached when approximately 51% of the evidence lies in favour for the plaintiff. As the potential penalties increase in severity, Courts will want to see higher standards met although they will rarely meet the criminal standard. Administrative hearings will often use the civil standard.

**Best Evidence Rule:**

The expectation is that the original evidence will be produced. If not, the best evidence available will be produced. However the further removed that evidence is from the original evidence, the more doubt can be cast on its admissibility. For example, the original traffic intersection where an injury accident took place obviously cannot be brought into court. Best evidence would be photographs of the intersection that were taken at the time of investigation. There are exceptions in the law; an example would be business records, where a notarized copy can be considered best evidence.

**Opinion Evidence:**

Opinion evidence is usually an opinion offered by an expert regarding the matter in question. An expert is who the court decides is an expert.

**Civil Law**

Civil law deals with matters that are not criminal or do not relate to an offence against society. In civil law the offence is a private matter, not an offence against the public.

This area of law deals with disputes between private parties. Its purpose is to provide compensation for individuals or organizations for wrongs done.

Frequent areas of civil claims (and investigative work) include:

- Injuries (use e.g. use of force by bar personnel)
- Accidents (e.g. insurance investigations)
- Breach of contract (e.g. employment contracts)
- Breach of duty (e.g. service contracts)
- Family matters (e.g. divorce, wills)
- Improper work (e.g. constructions contracts)
- Intellectual property (e.g. copyright or trademarks)

## **Powers to Search in Civil Law**

There are two court-ordered search provisions related to property. In both provisions the investigator may help in obtaining the information but it will be a lawyer that will need to apply for the court order. The first is an Anton Piller Order, which is a civil search warrant. The second is a court-ordered release of documents related to a case before the courts. This latter provision could apply to organizational records or police reports, which would then be made available.

## **Common or Case Law**

Common or case law is also known as precedent law. Principles and interpretations of law from previously adjudicated cases are used by judges in deliberating current cases. These judgments provide the standards of expectation and outcome on future court actions. The higher the level of the court that sets the precedence, the more binding that judgment is on the lower courts.

## **Tort Law**

A tort is a civil wrong that can be addressed through legal action to provide remedy to the individual(s) whose person or property has been affected. It is defined in *Black's Law Dictionary* (online) as follows:

A tort is a legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual.

Tort legal actions are major sources of work for the professional investigator. In tort cases frequently a lawyer or law firm representing the individual is the client who is trying to right a wrong they believe their client has suffered. In many of these cases the lawyer will be the one to direct the elements of the case.

### **Examples of a tort**

1. A manager works for a company that builds and refits machinery. As part of the production process there is much scrap steel. Instead of selling the scrap steel to a salvage yard and putting that money into the company accounting system, the manager starts a side business where he sells the used parts and steel through an online auction site and pockets the money. This is a case where the courts would hold that the manager's enterprise is competing with his company.
2. While walking past the front of an office space a person is hit by ice that slides off the roof and causes injury. Although there was no intent to injure, a wrongdoing (tort) may be deemed to have happened to the passerby.



## Class Activity: Matching Exercise

Match the terms in the left-hand column with the appropriate words or phrases in the right-hand column.

The document used to search property in a civil case	Defendant
A wrong-doing	Respondent
Person in charge of presenting a criminal case at court	Balance of probabilities
Standard of proof at a civil trial	Beyond a reasonable doubt
Document used to search in a criminal case	Plaintiff
Name of the person who is alleged to have done something wrong in a criminal trial	Prosecutor
Standard of proof at a criminal trial	Tort
Person wronged in a civil trial	Anton Pillar Order
Person who is alleged to have committed the wrong at a civil trial	Search warrant
	Accused

## CONCLUSION

You should now have a good idea of what is expected of a security professional and the ways in which you can best strive to meet those expectations. The legislation provides the legal framework in which you must perform your duties. Your employer defines where you do your work and under what circumstances it should be performed. But the choice to be exemplary in your field is yours alone. By demonstrating professionalism and respect for the law and your organization, you are setting an example for the clients and community you will serve.





## Post-Test

Check your progress. How much do you recall?

1. Section \_\_\_\_\_ of the *Canadian Charter of Rights and Freedoms* refers to being detained or imprisoned.
  
2. Section 494 states you may arrest an individual who commits an indictable offence.
  - a. True
  - b. False
  
3. When you arrest an individual, you have the option to tell the person to call \_\_\_\_\_.
  
4. Assault is an example of a (n) \_\_\_\_\_ offence.
  
5. Picking the lock on a secured office and removing items without permission is an example of what type of crime \_\_\_\_\_.
  
6. When determining citizen's powers of arrest, the term "founds committing" means that the citizen can deduce that the suspect committed the crime.
  - a. True
  - b. False
  
7. For the crime of Break and Enter, a person is deemed to have "broken" into a place if they have walked through an open doorway leading to the interior of the premise.
  - a. True
  - b. False

## ADDENDUM: FURTHER INFORMATION ON CRIMINAL CODE

### Introduction

It is important to know the value in understanding the basic *Criminal Code* Sections and how they are examined by the Crown and the Courts. An online version is available and is valuable but does not provide case law, which does help to understand the court's positions on different sections and the contents of sections. Two links are listed below which are helpful: the first is an online version of the *Criminal Code of Canada* and the second is the foremost link for case law.

- *Criminal Code of Canada* online: <http://laws-lois.justice.gc.ca/eng/acts/C-46/>
- Case Law Site: <http://www.canlii.org/>

### Definitions within the *Criminal Code of Canada*

In working with sections in the *Criminal Code* it is important to understand the definition of a term within the section. Many terms are defined in the *Code*. The trick is to know where to look for them.

There are four general rules for finding the definition of key terms.

First, many terms are defined in section 2 of the statute.

Second, look at the beginning of the Part in which the offence is found. For example the offence of theft is found in Part 9, Offences Against Rights of Property, and the definition for 'break' is found here.

Third, look in the sections before or after the section where the term is found. Here you are most likely to find information related to the offence.

Last, if the term does not have a definition you can find, it is likely you will find a definition in case law. A good *Criminal Code* will include case law related to the sections which provide additional information relating to what the courts have set as expectations.

Parties to offence

21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

R.S., c. C-34, s. 21.

### Personating a Peace Officer

130. (1) Everyone commits an offence who

- (a) falsely represents himself to be a peace officer or a public officer; or
- (b) not being a peace officer or public officer, uses a badge or article of uniform or equipment in a manner that is likely to cause persons to believe that he is a peace officer or a public officer, as the case may be.

(2) Everyone who commits an offence under subsection (1)

- (a) is guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 130; 2009, c. 28, s. 2.

### Perjury

131. (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or

solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

132. Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 132; R.S., 1985, c. 27 (1st Supp.), s. 17; 1998, c. 35, s. 119.

### **Witness giving contradictory evidence**

136. (1) Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years, whether or not the prior or later evidence or either is true, but no person shall be convicted under this section unless the court, judge or provincial court judge, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

### **Fabricating evidence**

137. Everyone who, with intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

### **Offences relating to affidavits**

138. Everyone who

(a) signs a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,

(b) uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or declared, as the case may be, by the affiant or declarant or before a person authorized in that behalf, or

(c) signs as affiant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by him, as the case may be, when the writing was not so sworn or declared,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

R.S., c. C-34, s. 126.

## **Obstructing Justice**

139. (2) Everyone who willfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years. (3) Without restricting the generality of subsection (2), every one shall be deemed willfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;

(b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or

(c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

R.S., c. C-34, s. 127; R.S., c. 2(2nd Supp.), s. 3; 1972, c.13, s. 8.

## **Interception**

184. (1) Everyone who, by means of any electro-magnetic, acoustic, mechanical or other device, willfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) Subsection (1) does not apply to (a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it.

## **Possession**

191. (1) Every one who possesses, sells or purchases any electro-magnetic, acoustic, mechanical or other device or any component thereof knowing that the design thereof renders it primarily useful for surreptitious interception of private communications is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

## **Disclosure of information received from interception of radio-based telephone communications**

193.1 (1) Every person who wilfully uses or discloses a radio-based telephone communication or who wilfully discloses the existence of such a communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years, if

(a) the originator of the communication or the person intended by the originator of the communication to receive it was in Canada when the communication was made;

(b) the communication was intercepted by means of an electromagnetic, acoustic, mechanical or other device without the consent, express or implied, of the originator of the communication or of the person intended by the originator to receive the communication; and

(c) the person does not have the express or implied consent of the originator of the communication or of the person intended by the originator to receive the communication.

## **Assault**

265. (1) A person commits an assault when

a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- a) the application of force to the complainant or to a person other than the complainant;
- b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- c) fraud; or
- d) the exercise of authority.

## **Intimidation**

423. (1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

- (a) uses violence or threats of violence to that person or his or her spouse or common law partner or children, or injures his or her property;
- (b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;
- (c) persistently follows that person;
- (d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
- (e) with one or more other persons, follows that person, in a disorderly manner, on a highway;
- (f) besets or watches the place where that person resides, works, carries on business or happens to be; or
- (g) blocks or obstructs a highway.

## **Unauthorized use of computer**

342.1 (1) Every one who, fraudulently and without colour of right,

- (a) obtains, directly or indirectly, any computer service,
- (b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system,
- (c) uses or causes to be used, directly or indirectly, a computer system with intent to commit an offence under paragraph (a) or (b) or an offence under section 430 in relation to data or a computer system, or
- (d) uses, possesses, traffics in or permits another person to have access to a computer password that would enable a person to commit an offence under paragraph (a), (b) or (c) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or is guilty of an offence punishable on summary conviction.

(2) In this section,

“computer password” means any data by which a computer service or computer system is capable of being obtained or used;

“computer program” means data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function;

“computer service” includes data processing and the storage or retrieval of data;

“computer system” means a device that, or a group of interconnected or related devices one or more of which,

- (a) contains computer programs or other data, and
- (b) pursuant to computer programs,
  - (i) performs logic and control, and
  - (ii) may perform any other function;

“data” means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer system;

## Theft

322. (1) Everyone commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
- (b) to pledge it or deposit it as security;
- (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or
- (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.

(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.

(4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.

## Robbery

343. Every one commits robbery who

- (a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to the stealing, uses violence or threats of violence to a person or property;
- (b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person; (c) assaults any person with intent to steal from him; or
- (d) steals from any person while armed with an offensive weapon or imitation thereof.

R.S., c. C-34, s. 302.

## Break and Enter

348. (1) Every one who

- (a) breaks and enters a place with intent to commit an indictable offence therein,
- (b) breaks and enters a place and commits an indictable offence therein, or
- (c) breaks out of a place after
  - (i) committing an indictable offence therein, or
  - (ii) entering the place with intent to commit an indictable offence therein, is guilty
- (d) if the offence is committed in relation to a dwelling-house, of an indictable offence *and liable to imprisonment for life, and*
- (e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

### Place is defined in section 348 (3):

- a) A dwelling house
- b) A building or structure or any part thereof, other than a dwelling house;
- c) A railway vehicle, a vessel, an aircraft, or a trailer; or
- d) A pen or an enclosure in which fur-bearing animals are kept in captivity for breeding or commercial purposes.

## Possession of property obtained by crime

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

## False pretence

361. (1) A false pretence is a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.

362. (1) Every one commits an offence who

(a) by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person;

(b) obtains credit by a false pretence or by fraud;

(c) knowingly makes or causes to be made, directly or indirectly, a false statement in writing with intent that it should be relied on, with respect to the financial condition or means or ability to pay of himself or herself or any person or organization that he or she is interested in or that he or she acts for, for the purpose of procuring, in any form whatever, whether for his or her benefit or the benefit of that person or organization,

(i) the delivery of personal property,

(ii) the payment of money,

(iii) the making of a loan,

(iv) the grant or extension of credit,

(v) the discount of an account receivable, or

(vi) the making, accepting, discounting or endorsing of a bill of exchange, cheque, draft or promissory note; or

(d) knowing that a false statement in writing has been made with respect to the financial condition or means or ability to pay of himself or herself or another person or organization that he or she is interested in or that he or she acts for, procures on the faith of that statement, whether for his or her benefit or for the benefit of that person or organization, anything mentioned in subparagraphs (c) (i) to (vi).

## Forgery

366. (1) Every one commits forgery who makes a false document, knowing it to be false, with intent
- (a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or
  - (b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.
- (2) Making a false document includes
- (a) altering a genuine document in any material part;
  - (b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or
  - (c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.
- (3) Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.
- (4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.
- (5) No person commits forgery by reason only that the person, in good faith, makes a false document at the request of a police force, the Canadian Forces or a department or agency of the federal government or of a provincial government.

R.S., 1985, c. C-46, s. 366; 2009, c. 28, s. 7.

## Fraud

380. (1) Everyone who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,
- (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
  - (b) is guilty
    - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
    - (ii) of an offence punishable on summary conviction, where the value of the subject-matter of the offence does not exceed five thousand dollars, where the value of the subject-matter of the offence does not exceed five thousand dollars.

## Mischief

430. (1) Every one commits mischief who wilfully
- (a) destroys or damages property;
  - (b) renders property dangerous, useless, inoperative or ineffective;
  - (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
  - (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.
- (1.1) Every one commits mischief who wilfully
- (a) destroys or alters data;
  - (b) renders data meaningless, useless or ineffective;
  - (c) obstructs, interrupts or interferes with the lawful use of data; or
  - (d) obstructs, interrupts or interferes with any person in the lawful use of data or denies access to data to any person who is entitled to access thereto.

- (2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.



- (4) Every one who commits mischief in relation to property, other than property described in subsection (3),
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
  - (b) is guilty of an offence punishable on summary conviction

## ADDENDUM: GUIDANCE ON COVERT VIDEO SURVEILLANCE IN THE PRIVATE SECTOR

### Introduction and scope<sup>16</sup>

The Office of the Privacy Commissioner considers covert video surveillance to be an extremely privacy-invasive form of technology. The very nature of the medium entails the collection of a great deal of personal information that may be extraneous, or may lead to judgments about the subject that have nothing to do with the purpose for collecting the information in the first place. In the Office's view, covert video surveillance must be considered only in the most limited cases.

This guidance is based on the federal private sector privacy law *The Personal Information Protection and Electronic Documents Act (PIPEDA)*, and is intended to outline the privacy obligations and responsibilities of private sector organizations contemplating and engaging in covert video surveillance. We consider video surveillance to be covert when the individual is not made aware of being watched.

This document serves as a companion piece to the following guidelines for video surveillance issued by this office: [Guidelines for Overt Video Surveillance in the Private Sector](#) (prepared in collaboration with Alberta and British Columbia) and [Guidelines for surveillance of public places by police and law enforcement authorities](#).

Please note that the following is guidance only. We consider each complaint brought before us on a case-by-case basis.

### *PIPEDA* requirements governing covert video surveillance

*PIPEDA* governs the collection, use and disclosure of personal information in the course of a commercial activity and in the employment context of federally regulated employers<sup>1</sup>. The capturing of images of identifiable individuals through covert video surveillance is considered to be a collection of personal information. Organizations that are contemplating the use of covert video surveillance should be aware of the criteria they must satisfy in order to collect, use and disclose video surveillance images in compliance with *PIPEDA*. These criteria are outlined below and address the purpose of the covert video surveillance, consent issues, and the limits placed on collecting personal information through covert video surveillance.

A common misconception is that organizations are released from their privacy obligations if covert video surveillance is conducted in a public place. In fact, under *PIPEDA*, any collection of personal information taking place in the course of a commercial activity or by an employer subject to *PIPEDA*, regardless of the location, must conform to the requirements described below.

#### **A. Purpose**

The starting point for an organization that is contemplating putting an individual under surveillance without their knowledge is to establish what purpose it aims to achieve. What is the reason for collecting

---

<sup>16</sup> Office of the Privacy Commissioner of Canada (2009). Retrieved from [http://www.priv.gc.ca/information/pub/gd\\_cvs\\_20090527\\_e.asp](http://www.priv.gc.ca/information/pub/gd_cvs_20090527_e.asp)

the individual's personal information through covert video surveillance? Under *PIPEDA*, an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances (subsection 5(3)).

In deciding whether to use covert video surveillance as a means of collecting personal information, an organization should closely examine the particular circumstances of why, when and where it would collect personal information and what personal information would be collected. There are a number of considerations that factor into determining whether an organization is justified in undertaking covert video surveillance. Given the different contexts in which covert video surveillance may be used, the ways in which the factors apply and are analyzed vary depending on the circumstances.

### **Demonstrable, evidentiary need**

In order for the organization's purpose to be considered appropriate under *PIPEDA*, there must be a demonstrable, evidentiary need for the collection. In other words, it would not be enough for the organization to be acting on a mere suspicion. The organization must have a strong basis to support the use of covert video surveillance as a means of collecting personal information.

### **Information collected by surveillance achieves the purpose**

The personal information being collected by the organization must be clearly related to a legitimate business purpose and objective. There should also be a strong likelihood that collecting the personal information will help the organization achieve its stated objective. The organization should evaluate the degree to which the personal information being collected through covert video surveillance will be effective in achieving the stated purpose.

### **Loss of privacy proportional to benefit gained**

Another factor to be considered is the balance between the individual's right to privacy and the organization's need to collect, use and disclose personal information. An organization should ask itself if the loss of privacy is proportional to the benefit gained. It may decide that covert video surveillance is the most appropriate method of collecting personal information because it offers the most benefits to the organization. However, these advantages must be weighed against any resulting encroachment on an individual's right to privacy in order for a reasonable person to consider the use of covert surveillance to be appropriate in the circumstances.

### **Less privacy-invasive measures taken first**

Finally, any organization contemplating the use of covert video surveillance should consider other means of collecting the personal information given the inherent intrusiveness of covert video surveillance. The organization needs to examine whether a reasonable person would consider covert video surveillance to be the most appropriate method of collecting personal information under the circumstances, when compared to less privacy-invasive methods.

## ***B. Consent***

As a general rule, *PIPEDA* requires the individual's consent to the collection, use and disclosure of personal information (Principle 4.3). It is possible for covert video surveillance to take place with consent. For example, an individual can be considered to have implicitly consented to the collection of their

personal information through video surveillance if that individual has initiated formal legal action against the organization and the organization is collecting the information for the purpose of defending itself against the legal action. It is important to note that implied consent does not authorize unlimited collection of an individual's personal information but limits collection to what is relevant to the merits of the case and the conduct of the defence.

In most cases, however, covert video surveillance takes place without consent. *PIPEDA* recognizes that there are limited and specific situations where consent is not required (paragraph 7(1) (b)). In order to collect information through video surveillance without the consent of the individual, organizations must be reasonably satisfied that:

- collection with the knowledge and consent of the individual would compromise the availability or accuracy of the information; and
- the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province.

The exception to the requirement for knowledge and consent could, in certain circumstances, provide for the collection of a third party's personal information.

In the employment context, an organization should have evidence that the relationship of trust has been broken before conducting covert video surveillance. Organizations cannot simply rely on mere suspicion but must in fact have evidentiary justification.

Regardless of whether or not consent is obtained, organizations must have a reasonable purpose for collecting the information.

### ***C. Limiting collection***

When collecting personal information, organizations must take care to limit both the type and amount of information to that which is necessary to fulfill the identified purposes (Principle 4.4). Organizations should be very specific about what kind of personal information they are looking to collect and they should limit the duration and scope of the surveillance to what would be reasonable to meet their purpose. Moreover, the collection must be conducted in a fair and lawful manner.

As well, organizations must limit the collection of images of parties who are not the subject of an investigation. There may be situations in which the collection of personal information of a third party<sup>2</sup> via covert video surveillance could be considered acceptable provided the organization has reason to believe that the collection of information about the third party is relevant to the purpose for the collection of information about the subject. However, in determining what is reasonable, the organization must distinguish between persons who it believes are relevant to the purposes of the surveillance of the subject and persons who are merely found in the company of the subject. In our view, *PIPEDA* does not allow for the collection of the personal information of the latter group without their knowledge or consent.

Organizations can avoid capturing individuals who are not linked to the purpose of the investigation by being more selective during video surveillance. If such personal information is captured, it should be deleted or depersonalized as soon as is practicable. This refers not only to images of the individuals themselves, but also to any information that could serve to identify them, such as street numbers and licence plates. We advocate the use of blurring technology when required. Though we acknowledge its cost to organizations, we view the expenditure as necessary given that, pursuant to *PIPEDA*, the

personal information of any individual can only be collected, used and disclosed without consent in very limited and specific situations.

## **The need to document**

Proper documentation by organizations is essential to ensuring that privacy obligations are respected and to protect the organization in the event of a privacy complaint. Organizations should have in place a general policy that guides them in the decision-making process and in carrying out covert video surveillance in the most privacy-sensitive way possible. There should also be a documented record of every decision to undertake video surveillance as well as a record of its progress and outcome.

### **1. Policy on covert video surveillance**

Organizations using covert video surveillance should implement a policy that:

- sets out privacy-specific criteria that must be met before covert video surveillance is undertaken;
- requires that the decision be documented, including rationale and purpose;
- requires that authorization for undertaking video surveillance be given at an appropriate level of the organization;
- limits the collection of personal information to that which is necessary to achieve the stated purpose;
- limits the use of the surveillance to its stated purpose;
- requires that the surveillance be stored in a secure manner;
- designates the persons in the organization authorized to view the surveillance;
- sets out procedures for dealing with third party information;
- sets out a retention period for the surveillance; and
- sets out procedures for the secure disposal of images.

### **2. Documenting specific instances of video surveillance**

There should be a detailed account of how the requirements of the organization's policy on video surveillance have been satisfied, including:

- a description of alternative measures undertaken and their result;
- a description of the kind of information collected through the surveillance;
- the duration of surveillance;
- names of individuals who viewed the surveillance;
- what the surveillance was used for;
- when and how images were disposed of; and
- a service agreement with any third party hired to conduct the surveillance, if applicable.

## **Best practices for using private investigation firms**

Many organizations hire private investigation firms to conduct covert video surveillance on their behalf. It is the responsibility of both the hiring organization and the private investigation firm to ensure that all collection, use and disclosure of personal information is done in accordance with privacy legislation. We strongly encourage the parties to enter into a service agreement that incorporates the following:

- confirmation that the private investigation firm constitutes an “investigative body” as described in *PIPEDA* “Regulations Specifying Investigative Bodies”;
- an acknowledgement by the hiring organization that it has authority under *PIPEDA* to collect from and disclose to the private investigation firm the personal information of the individual under investigation;
- a clear description of the purpose of the surveillance and the type of personal information the hiring organization is requesting;
- the requirement that the collection of personal information be limited to the purpose of the surveillance;
- the requirement that the collection of third party information be avoided unless the collection of information about the third party is relevant to the purpose for collecting information about the subject;
- a statement that any unnecessary personal information of third parties collected during the surveillance should not be used or disclosed and that it should be deleted or depersonalized as soon as is practicable;
- confirmation by the private investigation firm that it will collect personal information in a manner consistent with all applicable legislation, including *PIPEDA*;
- confirmation that the private investigation firm provides adequate training to its investigators on the obligation to protect individuals’ privacy rights and the appropriate use of the technical equipment used in surveillance;
- the requirement that the personal information collected through surveillance is appropriately safeguarded by both the hiring organization and the private investigation firm;
- the requirement that all instructions from the hiring company be documented;
- a provision prohibiting the use of a subcontractor unless previously agreed to in writing, and unless the subcontractor agrees to all service agreement requirements;
- a designated retention period and secure destruction instructions for the personal information;
- a provision allowing the hiring company to conduct an audit.

<sup>1</sup> For information on whether your organization is subject to *PIPEDA*, please see “A Guide for Business and Organizations” online at [http://www.priv.gc.ca/information/guide\\_e.cfm](http://www.priv.gc.ca/information/guide_e.cfm)

<sup>2</sup> By “third party”, we mean the person who is not the subject of surveillance.



## REFERENCES AND ADDITIONAL RESOURCES

- Black's Law Dictionary online. Retrieved from <http://thelawdictionary.org/>
- Canadian Legal Information Institute. Retrieved from <http://www.canlii.org/>
- Government of Canada (1982). *Canadian Charter of Rights and Freedoms*. Retrieved from <http://laws-lois.justice.gc.ca/eng/charter/>
- Government of Canada (1985). *Canada Evidence Act* (R.S.C. 1985, c. C-5). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-5/>
- Government of Canada (1985). *Criminal Code of Canada*, R.S.C., 1985, c. C-46. Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/>
- Government of Canada (1996). *Controlled Drugs and Substances Act* (S.C. 1996, c. 19). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-38.8/>
- Government of Canada (2000). *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5. Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/P-8.6/>
- Jurist Canada (2002). *Canadian legal dictionaries*. Retrieved from <http://jurist.law.utoronto.ca/dictionary.htm>
- Menary, C. (2011). *The Canadian private investigator's professional guidebook*. Toronto: Carswells.
- Office of the Privacy Commissioner of Canada (2009). *Guidance on covert video surveillance in the private sector*. Retrieved from [http://www.priv.gc.ca/information/pub/gd\\_cvs\\_20090527\\_e.cfm](http://www.priv.gc.ca/information/pub/gd_cvs_20090527_e.cfm)
- Province of Alberta (2010). *Alberta Evidence Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/A18.pdf>
- Province of Alberta (2010). *Alberta Human Rights Act*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg\\_type=Acts&isbncln=9780779744060](http://www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg_type=Acts&isbncln=9780779744060)
- Province of Alberta (2012). *Personal Information Protection Act*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=P06P5.cfm&leg\\_type=Acts&isbncln=9780779762507](http://www.qp.alberta.ca/574.cfm?page=P06P5.cfm&leg_type=Acts&isbncln=9780779762507)
- Province of Alberta (2008). *Security Services and Investigators Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/SO47.pdf>
- Province of Alberta (2012). *Security Services and Investigators Act Policy Manual*. Retrieved from <http://www.solgps.alberta.ca/>
- Province of Alberta (2010). *Security Services and Investigators Regulation*. Retrieved from [http://www.qp.alberta.ca/documents/Regs/2010\\_052.pdf](http://www.qp.alberta.ca/documents/Regs/2010_052.pdf)

# MODULE FIVE: USE OF FORCE

## INTRODUCTION

The most important rule about the use of force as a professional investigator is to avoid it as much as possible. This module reviews relevant sections in the *SSIA Policy Manual* and *Criminal Code of Canada* related to the use of force, including excessive force, prevention of a crime and prevention of unprovoked assault. It also provides an overview of the Use of Force Continuum Model, a model that stresses the use of communication to de-escalate threatening situations

## LEARNING OUTCOMES

At the conclusion of this chapter, participants will be able to:

1. Articulate legal and practical considerations in the use of force
2. Explain the Use of Force Continuum Model and how it applies to professional investigators
3. List tactical and situational considerations in the decision to use force.

## TOPICS

Introduction to Use of Force .....	155
Section 25, <i>Criminal Code of Canada</i> —Use of Force .....	157
Section 26, <i>Criminal Code of Canada</i> —Excessive Force .....	159
Section 27, <i>Criminal Code of Canada</i> —Prevention of a Crime .....	159
Section 34, <i>Criminal Code of Canada</i> — Prevention of An Unprovoked Assault .....	160
Overview of the Use of Force Continuum MODEL.....	161
Conclusion .....	166
REFERENCES AND ADDITIONAL RESOURCES.....	167



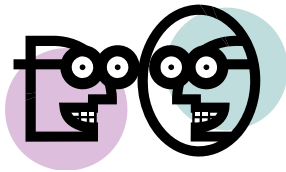


## Check Your Knowledge

Test your knowledge of the topic before starting this chapter.

1. As a professional investigator, I have a few special powers as outlined in the *Criminal Code of Canada*.
  - a. True
  - b. False
  
2. In any hostile, threatening or risk event, my primary function as a professional investigator is to protect myself.
  - a. True
  - b. False
  
3. As a professional investigator, I am no longer a 'Private Person' as outlined in Sec. 25 of the *Criminal Code of Canada*.
  - a. True
  - b. False
  
4. As a professional investigator, my best option is always to withdraw from any threatening encounter.
  - a. True
  - b. False
  
5. Any time any person uses physical force against another person, they are legally responsible for their actions and may be liable to criminal and/or civil action.
  - a. True
  - b. False

## INTRODUCTION TO USE OF FORCE



### Take a Moment to Reflect

- Have you ever arrested anyone?
- Have you been involved in an altercation (in your adult life) that became physical or looked like it might become physical? What were your feelings at the time?
- As you look at media images of police in confrontations with citizens, what thoughts occur to you about what it looks like, how the incident began?
- Be prepared to share your thoughts with the class

The most important rule about the use of force in your role as a professional investigator is to avoid it as much as possible. It cannot be stated often enough: as a professional investigator you have no more and no fewer rights than any other citizen

Professional investigators often have their success measured by the amount of individuals who have never heard of them. Most investigators do not spend time interacting with the public in an overt manner. Anonymity is often the key.

This module is meant to introduce a professional investigator to the topic of use of force and its considerations while being a 'private person' and acting as a professional investigator. Investigators working in areas where the risk of hostile physical encounters is high are encouraged to seek additional training that addresses physical self-defence skills.

During one's daily conduct as an investigator, typical duties are far from the responsibilities of a security guard or law enforcement professional. The role of the investigator is most times desk-bound, covert or innocuous. These characteristics in themselves will remove most use of force considerations. In most instances where an investigator may face a challenging situation or a hostile or anxious individual, skilled communication will mitigate any potential threat. However, there are rare circumstances where investigators may find themselves in hostile or threatening situations. In those exceptional cases where communication skills do not work, a swift tactical withdrawal is the most appropriate choice. Any use of force –whether in a defensive or restraining manner – is always considered an absolute last resort.

Escalating an incident/encounter to one requiring the application of any level of force is risky to the investigator's well-being and professional reputation as well as the wellbeing and reputation of the other party(ies). There can be serious consequences – physically and legally.

Section 6.3.4 of the *Security Services and Investigators Policy Manual* requires that all licensed businesses must submit (where required by the *Act* and *Regulations*) and maintain reports of incidents where an individual licensee employed or engaged by a business uses any type of force against another person. Incidents of death, serious injury or use of a baton are especially to be reported.

Every individual licensee must submit use-of-force reports to the Registrar detailing incidents for:

1. Any incident in which the licensee uses a baton or other weapon,
2. Any incident in which the individual licensee or another is seriously injured or where the incident results in the death of an individual licensee or another, and
3. Any incident where a patrol dog used by a licensee for security work attacked or bit a person, including the handler.

Section 6.3.4, *Security Services and Investigators Policy Manual*

©Alberta Queen's Printer, 2008

These rules are consistent with s. 4 of the *Regulation*. To comply, an SSIA Incident Report Form is to be completed with copies going to the Province within 48 hours of the incident, the employer and the internal file. As a general rule, licensed businesses and individuals involved in an incident where they believe a public complaint may be filed are encouraged to document and report the event.



© Microsoft

## SECTION 25, CRIMINAL CODE OF CANADA—USE OF FORCE

Section 25 of the *Criminal Code* sets out who is permitted to lawfully use force in Canada, and under what circumstances they are permitted to do so. The rules here are the same for everyone – public law enforcement, private citizen or licensed investigator.

### Sec. 25 C.C.C. Protection of persons acting under authority

25. (1) Every one who is required to do anything in the administration or enforcement of the law

- a) as a private person,
- b) as a peace officer or public officer,
- c) in aid of a peace officer or public officer, or
- d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

#### When not protected

(3) Subject to subsection (4) and (5), a person is not justified for the purpose of subsection (1) in using force that is intended to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for self-preservation of the person or the preservation of any one under the person's protection from death or grievous bodily harm.

#### When protected

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- b) the offence for which the person is to be arrested is one for which that person to be arrested without warrant;
- c) the person to be arrested takes flight to avoid the arrest;
- d) the peace officer or the other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm

© Government of Canada (1985). *Criminal Code of Canada*. Reproduced with permission by Federal Reproduction Law Order.

In simpler terms, a professional investigator may use reasonable force when:

- aiding a police or peace officer to stop the flight of a suspected criminal, to settle a disturbance, or at the officer's request
- protecting oneself or others from harm or injury (self-defence)
- stopping an individual from committing a criminal act (e.g. one sees an individual attempting to crawl into a home through a broken window and pulls the individual back)

Section 26 of the Criminal Code is especially important: *you can be charged with a criminal act* if you use force in an inappropriate way. Even if you are not criminally charged, you may be subject to discipline or dismissal by your employer and you may be charged in a civil case.

The key components under Section 25 are the following:

- Reasonable grounds to act are required
- Any use of force must be legally justified
- Only as much force as is immediately and absolutely necessary can be used.

“Reasonable grounds” is defined as “what a cautious and prudent person would believe, and which goes beyond mere suspicion.”

“Reasonable force” is determined by the situation in which it is to be applied, and in Canada is generally accepted as being the minimum level of force required to defend oneself and get away safely. The amount of force used must be consistent with the physical and mental characteristics of the subject, and must be appropriate to the situation at hand. If retreat is an option, it must be used rather than resorting to any use of force.

“Justified” is defined as “being exempt from criminal and/or civil liability, and as much force as is necessary would be considered as “the least amount of force to effect its purpose.”



© Microsoft

## SECTION 26, *CRIMINAL CODE OF CANADA*—EXCESSIVE FORCE

Sec. 26 C.C.C.

26. Everyone who is authorized to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

©Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order.

In accordance with Section 25, which states that a person is authorized to use force, Section 26 holds the person accountable for the amount of excessive force used. “Excessive” is best described as ‘extra’; the amount of ‘extra’ force you used to control an individual or to protect yourself.

## SECTION 27, *CRIMINAL CODE OF CANADA*—PREVENTION OF A CRIME

Use of force to prevent commission of offence

27. Every one is justified in using as much force as is reasonably necessary

- (a) to prevent the commission of an offence
  - (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
  - (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or
- (b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).

© Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order.

Section 27 of the *Criminal Code* defines how force may be used in the prevention of a criminal act. Again, the force must be reasonable and appropriate to the circumstances.

The clause in section 27(a) (i) is important because it states, “for which, if it were committed, the person who committed it might be arrested without warrant.” Legally, this means that unless the offence (that is about to be committed) is one where the suspect could be arrested without warrant, then the use of force to prevent the offence from occurring could be considered excessive.

The implication is that individuals contemplating intervening may not be aware of whether any particular offence, and the circumstances in which it is occurring, is an offence where the suspect can be arrested without warrant.

## SECTION 34, *CRIMINAL CODE OF CANADA* — PREVENTION OF AN UNPROVOKED ASSAULT

Sec. 34. Self-defense against an unprovoked assault

34. (1) Every one who is unlawfully assaulted without having provoked the assault is justified in repelling force with force if the force he uses is not intended to cause death or grievous bodily harm and is no more than necessary to enable him to defend himself.

© Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order.

Section 34 describes protecting yourself against an unprovoked attack. However, consistent with previous statements, the safest and most prudent course of action is to withdraw from the encounter.

Any time any person uses physical force against another person, they are legally responsible for their actions and may be liable to criminal and/or civil action.

According to Section 32(c) of the *Security Services and Investigators Act*, a business licensee must keep complete records in accordance with the regulations, of any incident where an individual licensee employed or engaged for services by the business licensee used force, and must produce those records for inspection at any time on the request of the Registrar. In practice, the business licensee is encouraged to self-report to the Province (form PS3750).

For the purposes of section 32(c) of the Act, use of force includes material use of force.

“Material” is defined as force that goes beyond normal restraint such as escorting a person from or to a location.

Physical altercations in which a person had to be forcefully restrained or arrested or in which handcuffs are applied are considered material in nature and a record must be kept. However, unless the thresholds detailed in section 19 of the Act are met, licensees are not required to submit a report to the Registrar. For example, if handcuffs are used without incident, the licensee must keep a record but is not required to submit a report to the Registrar.

## OVERVIEW OF THE USE OF FORCE CONTINUUM MODEL

Originating within law enforcement, the Use of Force Continuum Model is a cognitive model used to represent how an individual enters into or is confronted with a situation, and how they assess, plan and respond to incidents that threaten their safety or the safety of others around them. The model serves as a reference tool for decision-making and post-event articulation of choices made and actions taken.

The model itself is based on individual perception and immediate event considerations. The perception of escalation or intervention by a person is based on communication. This model is a continuum which can continuously change and/or be affected by the situation. The model also implicitly acknowledges that individuals using lawful force do not apply force options in consecutive steps or stages from the lowest force option to the highest, but rather they must select the most appropriate force option or combination of options available in the circumstances based upon their objectively-held (reasonable) perception in the immediate circumstances.

The model is graphically represented in Figure 5.1. It consists of concentric rings representing, from the inside out:

1. the situation, which requires an ongoing process of assessment, planning and action (grey area)
2. the subject's behaviour (shades of white and grey depicting level of aggression)
3. perception of the situation and tactical considerations (dark blue)
4. communications strategies for de-escalating the situation (light blue)
5. force response options (outer multi-coloured area )

As the investigator integrates all of these factors into the totality of circumstances presented, they are enabled to undertake a reasonable use of force response based on their own perception and tactical options available, including their individual capacity/skills, and then be able to articulate to others how the situation was perceived, assessed and responded to.





© Alberta Ministry of Justice and Solicitor General

**Figure 5.1 The Use of Force Continuum Model**

Response options include:

- presence
- dialogue/communications
- tactical repositioning
- physical control
- intermediate weapons
- lethal force

The model, used by the Alberta Government, stresses the use of communications to de-escalate the situation and provide an opportunity for the individuals involved to back off. It further stresses the continual situational assessment and use of perception (threats, options) while simultaneously assessing tactical considerations. Within all this is the continual loop of assess – plan – act. Each investigator, when involved with a situation that may involve a consideration of force, must first be able to assess the situation, decide on the most appropriate response option that involves the minimum amount of force, and then act accordingly.

While the Use of Force Continuum Model was developed originally for law enforcement, it applies to professional investigators, especially in its emphasis on tactical withdrawal for any threatening situation.

Ideally, investigators will be able to use prior planning and situational awareness to prevent any encounter that could pose a threat to personal safety. The best understanding of force is that it

should not be used. Furthermore if force must be used, the investigator should have made every attempt to de-escalate or remove themselves from that situation.

*It cannot be stressed enough that every attempt must be made to remove oneself from any situation by communicating with the individual who could pose a threat.*

Investigators who may work in environments where there is a higher than normal level of threat of physical violence are highly encouraged to seek out and receive more in-depth training in personal safety and use of defensive force.



© Microsoft





## CONCLUSION

This module has introduced participants to major legal and practical considerations in the use of force, especially as outlined in the *SSIA Policy Manual*, the *Criminal Code of Canada* and the Use of Force Continuum. It has explained how the Use of Force Continuum Model applies to professional investigators and has outlined tactical and situational considerations in the decision to use force.



### Post-Test

1. What is the most important rule about the use of force by a professional investigator?
2. According to the *SSIA Policy Manual*, what must be submitted to the Alberta Government by all licensed businesses where an employee has used force against another person?
3. What is “reasonable force” and when may it be used, according to the *Criminal Code of Canada*?
4. Under what conditions is use of force justified, according to the *Criminal Code of Canada*?
5. Define the Use of Force Continuum Model and describe its major components.



## REFERENCES AND ADDITIONAL RESOURCES

Alberta Ministry of Justice and Solicitor General (2011). The Canadian legal system and security professionals. *Alberta basic security training*, Module 2.

Government of Canada (1985). *Criminal Code* (R.S.C., 1985, C. C-46). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/>

Province of Alberta (2008) *Security Services and Investigators Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/SO47.pdf>

# Module Six: Investigations

## INTRODUCTION

The acquisition of investigative knowledge and skills cannot be limited to a single training module. As a result, this module provides participants with a framework for their future learning. While each case differs in investigative outcomes, the techniques for achieving investigative success rests with some core investigative principles that will be discussed in this module. This module also builds on key lessons found in the modules on law (Module 4), Effective Communication (Module 7) and Ethics (Module 2).

This module:

- introduces investigators to the fundamentals of investigation: the gathering of information that could later become evidence.
- looks at who employs investigator services and why they do so, and
- looks at how investigators approach an investigation in a professional, impartial, logical and effective manner
- emphasizes a need for investigators to understand who the potential clients are and clarify their needs
- emphasizes the need to identify clients' objectives in order to devise an investigative goal and plan investigative steps

This module is an introduction to the many diverse issues, aspects and tasks found within professional investigations. It is not meant as an in-depth study of each area.

## LEARNING OUTCOMES

Upon completion of this module, participants should be able to:

1. describe how to access open source information
2. determine whether a potential file falls within an organization's investigative mandate (occupational jurisdiction)
3. be able to describe the scope of an investigation
4. demonstrate how to use publicly accessible open sources of information as part of an investigation
5. explain the fundamental concepts of investigation file management
6. demonstrate how to correctly identify file objectives and goals
7. demonstrate how to develop an operational plan for an investigation
8. determine potential sources of information
9. describe how policies and legislation impact investigative scope
10. interpret and apply legislation, policies and procedures as they apply to case studies
11. describe the proper strategies for locating persons or assets
12. using a case study, determine relevant and irrelevant facts pertaining to an investigation
13. describe the proper strategies for conducting background information checks on premises and people
14. demonstrate appropriate techniques for case management
15. explain appropriate technical and legal techniques for using video and audio recording devices
16. describe how to manage confidential sources
17. using a case study, identify appropriate documentary evidence using administrative/regulatory and criminal standards
18. interpret specialized analytical reports (e.g. financial, medical) relevant to an investigator's industry
19. explain the importance of maintaining evidence continuity
20. describe how to seize and store relevant types of evidence
21. describe the key elements of a cognitive interview
22. demonstrate how to plan for interviews
23. demonstrate how to conduct a non-suggestive, non-leading interview with a suspect or respondent to an investigation
24. describe the proper technique for taking a formal statement
25. describe the appropriate techniques for using recording equipment while conducting interviews
26. identify uses and components of technology for lawful covert surveillance purposes in a private investigation, and what laws apply and the limitations of such activities
27. describe the appropriate strategies for conducting in-person surveillance of premises, vehicles and people
28. identify client/agency rules for surveillance that may direct how surveillance is conducted
29. demonstrate how to conduct covert, moving surveillance of people



## TOPICS:

Purposes of an Investigation .....	172
Planning an Investigation and Managing Risk .....	173
Cognitive Failures in Investigations .....	175
Managing Investigative Risk .....	179
Investigative Techniques: An Introduction.....	185
Interviewing.....	186
Surveillance .....	197
Collection of Physical Evidence.....	207
Collection of Information from Open and Closed Sources .....	214
Undercover Work.....	214
Confidential Sources.....	215
Investigation File Management and Preservation .....	217
Conclusion .....	218
REFERENCES AND ADDITIONAL RESOURCES .....	221



## Check Your Knowledge

Test your knowledge of the topic before starting this module.

1. Investigators may be contracted for which of the following clients?
  - a. Private individuals
  - b. Lawyers and law firms
  - c. Insurance companies
  - d. Corporations
  - e. Government
  - f. All of the above
  
2. Investigators do not get involved in investigating criminal acts since these are the responsibility of the police.
  - a. True
  - b. False
  
3. Our eyes often see only what they look for and look for what is already in our minds. Is this statement true or false?
  - a. True
  - b. False
  
4. Having too much information will always reduce investigative errors.
  - a. True
  - b. False
  
5. Interviews and interrogations are the same thing. Is this statement true or false?
  - a. True
  - b. False
  
6. During interviews of employees it is permissible to prevent union representatives from sitting in on the interview.
  - a. True
  - b. False

## PURPOSES OF AN INVESTIGATION

The purpose of an investigation is to:

- gather information impartially, systematically and professionally
- document all findings in a way that best meets the unique objectives of the investigation
- engage in a process of formal inquiry to uncover the truth
- potentially generate factual reports, analyses and interpretation of data, or recommendations for remedial action

## Types of Investigations

According to section 2.1 of the Alberta *Security Services and Investigators Act*, an investigator is:

any person or organization that undertakes to investigate, perform surveillance, or seek or obtain information about crimes, offences, contradictions of enactments or misconduct or allegations of same about:

---

---

---

---

---

---

---

---

---

---

In practice, professional investigators are engaged in wide range of inquiries. They may act on behalf of:

- Private individuals
- Lawyers and law firms
- Insurance companies
- Corporations
- Government
- Professional associations and regulatory bodies
- Out-of-province and out-of-country investigators

## PLANNING AN INVESTIGATION AND MANAGING RISK

While some investigations can become large and complex, they all usually follow the same pattern. Challenges can, and frequently do, arise.

An investigation most often starts one of two ways:

1. the investigator initiates an inquiry based on observation or report of an event, or
2. the investigator is tasked with an inquiry from a third party (internal or external).

### First Steps in an Investigation

Upon receiving the assignment, an investigator will typically try to identify the following:

1. The purpose or goal of the investigation
  - a. Collect evidence that will support a charge or law suit
  - b. Simple collection of data or evidence
  - c. Investigate to help with compliance or an informal resolution of a matter
  - d. Help make the problem go away
  - e. Mitigate future risk
  - f. Other
2. The scope of the investigation
3. The intended timeline for deliverables/action
4. Potential challenges and how they will be overcome
5. Required resources
  - a. What data sources will need to be accessed
  - b. Special equipment required
  - c. Special investigative strategies and techniques required
6. Budget
7. Timeline for reporting

In practical terms, an initial file intake will include documenting the following information:

- Client contact details
- Summary of what is to be investigated
- Details of target individuals or location
- Budget
- Timeline
- Reporting timetable and preferred methodology



## ACTIVITY

1. List purposes of an investigation
2. List common types of investigations
3. List challenges that could be found in an investigation

**The purpose of an investigation is to:**

- 
- 
- 
- 
- 
- 
- 
- 

**Common types of investigations:**

- 
- 
- 
- 
- 
- 
- 
- 

**Common challenges in an investigation:**

- 
- 
- 
- 
- 
- 
- 
-

## COGNITIVE FAILURES IN INVESTIGATIONS

A special mindset is required to be a good professional investigator. This includes knowledge of:

- how cognitive mistakes can hinder the success of an investigation
- how personal emotions, bias or past experience of the investigator can consciously or unconsciously affect an investigation
- how client pressure or other external influences may also affect how an investigation is perceived or conducted

A good investigator identifies, collects and records evidence that may point to both the guilt and innocence of a person. According to Osterburg and Ward (1997), investigative mindset provides foresight and possibly insight to the resourceful investigator. It is important to believe nothing and to guard against everything, since doubt is crucial to knowledge.<sup>17</sup> According to another expert,

[O]ur eyes often see only what they look for and look for what is already in our minds. It is possible to train our powers of observation by making a concerted effort to see and recall more of what we look at. Thus, the average person may look at something but does not really see it and cannot describe in any detail what he or she has just looked at. On the other hand, a trained observer will make an effort not to miss anything, especially if it is the least bit suspicious, unusual, or out of place.<sup>18</sup>

When conducting an investigation, including minor and serious cases, investigators must be aware of various mindsets, cognitive or external problems that can lead to the failure of an investigation. These include:

- Perception and memory problems
  - We are not always objective in how we view the world.
  - Sometimes we perceive what we expect to perceive leading to an unintentional bias
  - Our memories are not always accurate. Memory is limited, and information is lost or unintentionally altered. Recall is fallible and not always accurate. A mistake in memory of key facts becomes a firm belief as something we “know”, even though it is based on a mistake in memory. Intuitively, we place greater weight on evidence that supports our beliefs than evidence that contradicts it.
- **Tunnel vision**
  - Occurs when there is a narrow focus on a limited range of alternatives, to the exclusion of the larger set of circumstances surrounding the event. Failure to hold an open mind, free of preconceived notions, can lead to focusing on one point, piece of information, or potential suspect, without seeing or being aware of the greater circumstances.

---

<sup>17</sup>J. Osterburg and R. Ward (1997). *Criminal investigation: A method for reconstructing the past*. 2<sup>nd</sup> ed. Cincinnati: Anderson, p. 361.

<sup>18</sup>M.S. Peña (1993). *Practical criminal investigation*. 3<sup>rd</sup> ed. Placerville, CA: Copperhouse

- **Assumptions – jumping to conclusions**
  - An excellent example of this the abduction or disappearance of child. Statistically, it is highly likely that one or both parents or the non-custodial parent is the perpetrator. But, this is not always true. Investigators who assume this is the case may miss evidence that points to somebody else entirely.
- **Failure to keep an open mind**
  - We make judgments based only on what we remember, not on the totality of our experiences.<sup>19</sup>
- **Intuition**
  - Typically, people use two kinds of decision-making processes: rational and intuitive. In the rational approach, conscious thought takes place, evidence is considered and a reasoned, deliberate decision is arrived at. Intuition is different. Intuition suggests an unconscious, automatic process where decisions are reached based on prior experience and mental shortcuts. Intuition can be influenced by emotion and bias, and is prone to error. In an investigation, intuition should be acted upon with caution. When it is used, rational analysis should be used to examine it prior to action.
- **Failure to recognize key evidence**
  - We are influenced more by vivid information than abstract data. More attention is given to witness statements than forensic evidence. The weight attached to witness statements is not always warranted. International research has repeatedly shown the high rate of inaccuracy in witness statements, including the identification of suspects. It is not unusual for the vividness of eyewitness evidence to overshadow the importance of other, more reliable evidence.
- **Ego**
  - Ego of the primary investigator prevents the acknowledgement of a mistake and over-rides inputs from junior investigators.
- **Fatigue**
  - The more tired and overworked that investigators are, the more prone they are to mistakes.

---

<sup>19</sup> D.K. Rossmo (2006). Criminal investigative failures: Avoiding the pitfalls. *FBI Law Enforcement Bulletin* 75 (9), pp. 1-8.

- **Too much or too little information**

- Too much information or evidence can lead to investigators becoming overwhelmed in details, fatigued and possibly losing sight of the larger picture.
- In the case of too little information or evidence, investigators may resort to drawing inferences from the evidence and make quick conclusions at the expense of a thorough, unbiased and professional investigation.

- **Groupthink**

- Decisions are made by the group, sometimes based on false assumptions, incorrect or incomplete information. In these decisions, individuals are often afraid, reluctant or hesitant to challenge or question a decision made by the larger group. It occurs in highly cohesive groups under pressure to make important decisions. Common wisdom goes unquestioned, sometimes with disastrous results. In instances of groupthink, there is often a reluctance to think critically and challenge the dominant theory. In any investigation, it is wise to question assumptions, evidence, and procedures. To prevent cognitive mistakes and ensure full understanding of facts, a question worth asking is, “How do we know what we think we know?”<sup>20</sup> In this way, validity of evidence is tested and ensured.

To help categorize information, some investigations have catalogued case information using the following outline:

1. What we know (facts)
2. What we think we know (theories or conjectures)
3. What we would like to know (key issues requiring additional data).

Categorizing and documenting the investigation’s knowledgebase in this manner facilitates effective information sharing, allowing everyone (both present and future) to work from the same foundation.

Strategies to help avoid investigative failures include:

- Ensuring managerial awareness of these problems through case study-based training
- Encouraging an atmosphere of open inquiry, ensuring investigative managers remain impartial and neutral
- If possible, deferring reaching conclusions until sufficient data has been collected
- Considering different perspectives and encourage cross-fertilization of ideas, thereby avoiding tunnel vision
- Organizing brainstorming sessions and seeking creativity rather than consensus
- Ensuring that investigative managers willingly accept objections, doubts, and criticisms from team members
- Encouraging investigators to express alternative, even unpopular, points of view and assign the role of devil’s advocate to a strong team member
- Considering using subgroups for different tasks and facilitating parallel but independent decision-making
- Recognizing and delineating assumptions, inference chains, and points of uncertainty; always ask, “How do we know what we think we know?”

---

<sup>20</sup> *Ibid*



- Obtaining expert opinions and external reviews at appropriate points in the investigation
- Conducting routine systematic debriefings after major investigations and organize a full-scale “autopsy” after an investigative failure
- Encouraging and facilitating research into criminal investigative failures and how they might be prevented<sup>21</sup>

In an investigation, there can be serious ramifications if those involved fail to pay attention to possible cognitive failures.

- Information may be overlooked,
- Avenues of inquiry may not be identified,
- Evidence may be lost, or
- The wrong party may be accused.

---

<sup>21</sup> *Ibid*

## MANAGING INVESTIGATIVE RISK

Investigators need to be mindful of not incurring needless risk to themselves, their employers or their clients. Perhaps the easiest way of mitigating risk is to constantly ask the following questions and consider the potential implications of each step in the investigative process.

1. **Specifically, what is the goal of this investigation?**

---

---

---

---

2. **Are the needs of the client lawful and reasonable within the mandate/authority and license of the investigator?**

---

---

---

---

3. **Are the needs and expectations of the client realistic to the resources and budget they wish to spend?**

---

---

---

---

4. **What is the client timeline for this investigation and can it be met?**

---

---

---

---

5. **What do we know so far?**

---

---

---

---

6. **How do we know these “facts” to be true?**

---

---

---

---

7. **What information needs to be found, and how will this be accomplished?**

---

---

---

---

8. **What resources will be needed to conduct this investigation? (personnel, equipment, sources of information)**

---

---

---

---

9. **What challenges might we encounter in this investigation, and what is the plan to address them?**

---

---

---

---

10. **What risks might be logically foreseen in this investigation, and what is the plan to address each? Risks may be physical, legal, financial, or operational.**

---

---

---

---



## Group Discussion Activity

- What makes an effective investigation?
- What are the qualities of a professional investigator?

An effective investigation is one which:

- 
- 
- 
- 
- 
- 
- 

A good investigator will:

- 
- 
- 
- 
- 
- 
-



## Class Discussion Activity: Quiz

Use the following quiz to test your knowledge as you progress through this module.

1. Elizabeth is an experienced insurance investigator who is contacted by a leading insurance firm to conduct an investigation into a suspected personal injury fraud. She needs to obtain details of the injuries reported by the victim at the time. The client insists that she use whatever methods necessary to obtain the information. Elizabeth has organized surveillance on the subject. Which of the following statements would be correct, regarding obtaining medical information on the subject?
  - a. Elizabeth may use any medical information that is lawfully provided by the client.
  - b. Elizabeth may obtain details of the subject's injuries direct from the doctor who gave initial treatment as it is the subject of a possibly criminal investigation.
  - c. Elizabeth may request a copy of the doctor's report from the subject, their lawyer or the client, and she may lawfully refer to it during the investigation.
  - d. Elizabeth may trick the subject into signing a medical release authorization. The fact it has been signed by the subject will suffice and provide the evidence she needs as to the real extent of the injury.
    - i. a & b
    - ii. a & c
    - iii. b & d
    - iv. a only
  
2. Which of the following statements is/are correct regarding what makes an effective investigation?
  - a. The investigator was diligent in the collection of evidence and statements.
  - b. The investigator took steps to address the safety needs of all involved.
  - c. The investigator treated all parties involved with respect and dignity.
  - d. If there was an offence, the investigator identified the person(s) responsible and collected sufficient evidence to prove the case in court.
  - e. all of the above

3. List 6 ways we may find or verify information to fill in knowledge gaps during an investigation.
  - i.
  - ii.
  - iii.
  - iv.
  - v.
  - vi.
  
4. Ahmed is conducting an in-house theft investigation for a large oil company. He has already completed three witness interviews and still needs to speak with the suspect. He knows that the original budget he was given will not be enough to complete the investigation. Which of the following courses of action, if any, are correct?
  - a. Ahmed should continue with the investigation and inform the client in due course that he requires more money.
  - b. Ahmed should stop the investigation until a further budget is agreed with the client.
  - c. Ahmed should update the case file and inform his manager.
  - d. Ahmed should continue investigating since his client is a large oil firm and budget is not an issue.
    - i. a & c
    - ii. b & c
    - iii. c & d
    - iv. a & d
  
5. Maria is assigned to obtain a statement from a witness to an assault. As she begins to take details it becomes apparent that the “witness” did not see much of what actually happened because she was talking on her cell phone at the time. Her friend, whom she was with, had seen the assault occur and described it to her immediately afterwards. Which, if any, of the following statements is correct?
  - a. Maria should continue taking the statement, including in it everything the witness tells her. Hearsay evidence can be admissible in some cases.
  - b. Maria should end the interview immediately and stop taking the statement. It is hearsay evidence and not admissible.
  - c. Maria should complete the interview of the witness and determine the identity of the witness’s friend and interview that person as well.
  - d. Maria should continue with the interview but not the statement.

## **INVESTIGATIVE TECHNIQUES: AN INTRODUCTION**

There are many techniques and tools available to investigators in their work. As the profession continues to grow and as technology evolves, these techniques and tools become more sophisticated and change over time.

### **Common investigative techniques include:**

#### **Interviews**

- Interviews may be brief, or take hours. Some may be simple while others involve sophisticated techniques and advanced specialist training.

#### **Taking of formal statements**

- Sometimes these are recorded electronically with the consent of the individual and sometimes written.
- Main method of locating potential witnesses or persons of interest and asking specific questions. These will usually require patience, a plan, and the ability to engage strangers in conversation without them shutting down or withdrawing.

#### **Surveillance of places and individuals.**

- Surveillance can be done on foot, from a static post such as a parked car, or be mobile. At times, operatives may follow targets into public places or onto transit.

#### **Collection of physical evidence**

- This may include contaminated soil or water, counterfeit goods, or faulty mechanical devices.
- Investigators may take measurements, photographs or make detailed scale diagrams. In some instances, they may collect physical evidence at the scene. Examples include crash investigations, engineering failures, environmental incidents and the sale of counterfeit goods at a local flea market.

#### **Collection of information from “open” and “closed” sources**

- These are publicly available sources such as news media archives, court records, online sources or information found within corporate records or libraries. While the information is there to be found, the skill is in knowing what to look for and where. Often, specialist training is required for this kind of research.
- Investigators collecting evidence from “closed” sources must ensure the information is lawfully collected, can be lawfully used within the investigation, and can be lawfully shared with the client. Provincial or federal privacy of information laws may apply to some of this information. It is the responsibility of the investigator to know the relevant laws and follow them. For example, a



former colleague of the investigator may now work for a mobile phone company, and have access to the phone records of a target. This information cannot be lawfully collected or shared without a court order or the consent of the target.

### **Undercover work**

- Can include playing a role to gain public information.

### **Confidential sources**

- Confidential sources can be defined as sources of information that provide information related to a case the investigator is working on. This source usually wants two things: anonymity and compensation.

## **INTERVIEWING**

An interview is a planned, cooperative and voluntary two-way conversation, usually with a victim or witness.

Interviews can be informal and unplanned, such as those conducted on a street, and designed to seek general or specific information. They may be done in person or by telephone. Depending on the context and purpose, they may be highly structured or unstructured.

An interrogation is a planned, confrontational and accusatory conversation with a suspect.

Interrogations are designed to fairly and impartially collect truthful information on what the suspect did, through direct questioning of the suspect under conditions controlled by the investigator. The goal of an interrogation is to have the suspect provide an admission of facts and a confession of guilt or provide a story the investigator can prove as false. This is an area where additional training will prove beneficial to professional investigators.

Problems with memory include:

- memory is sometimes faulty
- witnesses sometimes recall events imperfectly, out of sequence, or with information added that they may not in fact have firsthand knowledge of

Problems with “leading” or “suggesting” during interviews:

Improperly conducted interviews may “lead” or subtly “suggest” answers, without any dishonest intent of the interviewer. At the same time, the interview may not yield all the information available.

Investigations can fail because of improperly conducted interviews. Innocent people may be accused of something they did not do. Ideally, an investigator will carefully plan an interview in advance (who, where, when, progression of questions, intended outcome), rehearse the process and questions, conduct the interview, then reflect afterwards on their success and how they might do things differently next time.

One strategic approach to interviewing uses the acronym of **PEACE**:

1. **P**lanning and preparation
2. **E**ngage and explain
3. **A**ccount, **C**larify, **C**hallenge
4. **C**losure
5. **E**valuation

**Cognitive interviews** work best for witnesses who are having difficulty recalling events. Typically, a cognitive interview follows a number of specifically designed, progressive steps:<sup>22</sup>

1. Pre-interview planning by operative.
2. Introduction. Build rapport between interviewer and subject.
3. Introduce the topic of the discussion.
4. Establish ground rules (tell the truth; it's OK to say "I don't know" or "I don't remember;"subject can ask for a break or a question to be repeated.)
5. Free narrative. The subject tells all they know, in their own words and uninterrupted. The interviewer will demonstrably pay close attention and subtly encourage the individual to keep talking. The investigator should be taking notes during this period of the interview and should already be familiar with the evidence. S/he is therefore able to use good listening skills to detect discrepancies in the story.
6. (Optional step) Re-telling the story using differing memory retrieval techniques. For example, the subject is asked to tell the story in reverse order. In this way, the brain uses different pathways to retrieve memory, and new information may be collected. The premise is that events that are actually witnessed can easily be told in reverse order whereas recounting a

---

<sup>22</sup>R.P. Fisher and R.E. Geiselman (1992). *Memory enhancing techniques for investigative interviewing: The cognitive interview*. Springfield: Charles C. Thomas.

fictionalized event is very difficult and therefore deception is more easily detected. People who are telling a fictitious story often memorize the created events from beginning to end and are easily confused when having to tell the fictitious story in reverse order.

Another strategy that is sometimes used is to try and get the witness to imagine what they would have seen if they were standing where someone else was. We often can imagine ourselves standing somewhere else. Sometimes asking a witness to do this may allow the person to unlock a memory of something they actually saw but the simple act of projecting themselves somewhere else in the scenario allows for the memory to be more easily retrieved.

It is recommended that Step 6 only be used by very skilled interviewers.

7. Questioning. Using a combination of open and closed questions, the interviewer asks specific questions to clarify information from the narrative or inquire into new information.
8. Conclusion. Before thanking the subject for their time and cooperation, or asking if they have any questions, the interviewer asks if the subject can remember anything else of value that the interviewer did not ask about. In some instances, the subject will recall something of value that is new.

**Caution:**

There are many interview techniques available and some have been subject to heavy criticism because of the manipulative nature of their processes. Investigators need to be diligent about what techniques they are using. In some cases, confessions are being dismissed in court because of psychological and emotional manipulations by interviewers.



### **Group Discussion Activity: Whiz Bang Computers and Electronics**

You will soon have an opportunity to conduct a cognitive interview with the Vice President, Operations, of Whiz Bang Computers and Electronics, Mr. Joe Whistleblower. List key questions you would like to ask the VP.

---

---

---

---

---

---

---

---

---

---



### **Group Discussion Activity: Whiz Bang Computers and Electronics**

**In your investigative groups, review the information you have up to this point.**

**Draft the key points that need to be investigated.**

**Draft a statement (using complete sentences) about what you are planning on investigating. This is your Terms of Reference statement. Be as precise and concise as possible.**

**Review others' Terms of Reference and decide on one that everyone can use. That statement will now be utilized for the duration of the investigation. In the next exercise, you will use it to complete the "Summary of Request" portion of the Client Form.**



### **Writing Activity on Whiz Bang Computers and Electronics**

Using the points drafted in the previous exercise, complete the Client Form on the next page.

## Client Form

**Name:** Whiz Bang Computers and Electronics  
**Address:** 109 1 Ave E  
**City:** Anytown AB, T00 0A0  
**Phone:** 403 111 2222  
**Contact:** Joe Whistleblower [joe.whistleblower@whizbangcomputers.com](mailto:joe.whistleblower@whizbangcomputers.com)  
Position: Vice President of Ops  
**HR contact:** Emma Ployer [emma.ployer@whizbangcomputers.com](mailto:emma.ployer@whizbangcomputers.com)

**Counsel:** \_\_\_\_\_

**Client requested means of communications:**

\_\_\_\_\_

**Date Received:** \_\_\_\_\_ **By (name):** \_\_\_\_\_

**Client File #:** \_\_\_\_\_ **Date(s) of Occurrence:** \_\_\_\_\_

**Summary of Request:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Budget: \$** \_\_\_\_\_ **Retainer:** \_\_\_\_\_

**Timeline/diary date:** \_\_\_\_\_

**Witnesses and Suspects**

**Name** \_\_\_\_\_ **Age** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_ **Positio**

**n** \_\_\_\_\_

**Phone numbers: (h)** \_\_\_\_\_ **(c)** \_\_\_\_\_ **(o)** \_\_\_\_\_

**Vehicles:** \_\_\_\_\_

## **Taking Statements**

Some interviews will be used as information within the investigation, with the intent of providing data or leads to another avenue of investigation. Some will be used to elicit a formal statement from an individual.

The purpose of taking a statement is to get an accurate account of an event from a witness. It is their statement, no-one else's, and should be given freely and in their own words.

A witness may write out their own statement. However the best practice, and the best way to ensure obtaining the fullest account, is for an investigator to obtain the account by interviewing the witness and then writing the statement themselves. This can be done by taking detailed notes during the interview and then writing the statement based on the notes. An alternative is to have the audio recording transcribed in written form, and then present this to the witness at a later date for signature. Either way, the witness needs to read the statement, agree that those are their words and that they accurately reflect their statement. The witness then signs and dates the statement.

Some tips for taking a witness statement include:

### **Equipment**

Make sure you have more than one pen and plenty of statement paper. If using audio recording equipment, test it in advance and ensure that there are fresh and spare batteries. In cases where an interview is recorded, the investigator should start the recording by stating the date, time, location and who is present. Any prolonged periods of silence in the recording will need to be explained in the accompanying report. At the conclusion of the interview, the investigator should again note the date and time. If anyone enters or leaves the room during the recorded interview, this too should be audibly noted.

### **Setting**

Arrange to take the statement somewhere private, where there are no distractions and the witness is comfortable and free to talk.

### **Plan**

Read the file before meeting the witness. Decide what information you need to obtain; draft an interview plan. This will prevent you forgetting to ask a question during the interview. The witness will notice and appreciate that you are professional and prepared.

### **Rapport**

The witness may be nervous. Put them at their ease by introducing yourself and explaining the process. Answer any questions they have. Break the ice with some light conversation before the interview. You will have a better witness (more detail) if they are comfortable and relaxed talking to you

### **The first question**

The beginning of the interview should be very open and should invite the witness to tell you their account. For example, "I am going to take a statement about the accident you witnessed last January 17. Please tell me in as much detail as possible about what happened." Tell them you will be taking notes as they talk.

**Let them talk**

Don't interrupt! Let the witness give you their account, in their own words. You can nod your head and smile etc. (non-verbal communication) and make note of any extra questions you may have. You can ask these questions when the witness has finished.

**Your questions**

When you planned your interview you will have had a list of topics you needed answers for. Check your list. If the witness has not answered or given enough detail, now you can ask. For example, "Thank you for telling me what happened. I just need a little more detail in some areas. Please tell me where you were standing when you witnessed the accident, and how clear or obstructed your view was at the time."

**Recap**

Now that you have a full picture, go over the whole account again. Ask if there is anything else that might have been missed.

**Write the statement**

You are writing the statement for the witness. Write it as they have told it to you. Use the language and terminology they have used. It does not need to be fancy; it needs to be factual. The statement needs to be legible. Do not use 'text speak.' (c u l8r – should be 'see you later').

**Witness to read the statement**

Ask the witness to read through the statement. Any mistakes should have a line drawn through and then be initialled by both of you. Ask the witness if they wish to add or change anything in the statement. When they are satisfied with the statement add the closing paragraph.

**Closing paragraph**

This ends the statement and is a confirmation from the witness that this is their version of events. For example, "The above five-page statement is given freely and is a true and accurate account of the events regarding the accident I observed. I have read the statement fully prior to signing it."

**Signatures**

Ensure the witness signs at the bottom of each page of the statement. Make sure they have initialled any changes. They should also sign after their last word on the statement (after their closing paragraph). The investigator will now also sign the statement. Statement forms vary from company to company but on the bottom of each page is usually a line for the person taking the statement to sign.

In a professional interview, common sense and law dictate that a number of approaches are not used, including:

- Torture
- Deprivation of food or water in a prolonged interview
- Inhumane, abusive or degrading treatment or language
- Use of threats of violence
- Shouting
- Use of obscene language
- Continually interrupting

The same holds true for the use of any of the following when questioning a person who is a suspect or target of the investigation:

- Offering deals as an inducement to confess
- Misleading the suspect as to the evidence against them
- Misrepresenting the strength of the evidence
- Failing to provide an appropriate adult, lawyer or interpreter
- Failing to provide medical treatment

With consent, the investigator can audio/video record an interview. Consent means that at least one party must give consent to the recording. Prior to starting the recording, the investigator could say:

*I am investigating \_\_\_\_\_. I am here for one reason only and that is to get to the truth. I need to hear your side of the story to make sure I get the facts correct. I would like to record it because I don't want to miss anything and I want to make sure that I hear correctly what you are saying. Do you mind if I record our session?*

It is not necessary for both parties to consent. However, it is best for the investigator to have the consent of the party being interviewed because the absence of consent may pose a challenge for future use of the recording and any evidence obtained through it in later proceedings. Investigators are advised to consult legal counsel and client guidelines in such cases.



## Dealing with Legal or Union Representation during Interviews

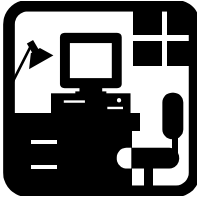
Occasionally, people being interviewed, especially respondents in civil or labour relations cases may want their lawyer or union representative present during the interview. An investigator cannot prevent the representative (union or lawyer) from being present. There are however, some rules that can be enforced.

The role of the lawyer or representative is to provide advice to his or her client. It is the client that answers the questions, not the representative or lawyer. The interviewee is voluntarily present to answer questions posed by the investigator.

The following tips may assist investigators in dealing with lawyers and representatives during interviews with their clients:

- To minimize the possibility of the interviewee being distracted by their representative, get the representative to sit on one side of their client (for example, their left) and have the interviewing investigator sit on a 45 degree angle to the client's right. In this way, the interviewee is mostly looking at the investigator.
- Begin the interview by stating that the investigator recognizes that the role of the representative or lawyer is to advise the client but not to answer questions for the client
- If the lawyer or representative is constantly obstructing the interview process, advise them that this is actually impeding the investigative process and ask the interviewee whether they want to continue
- In situations where the investigator is having to interview several people who may be represented by a union official, try to arrange ahead of time to have the same union representative present for all interviews. Generally, union officials will comply with this because they recognize the value of continuity during the interviews. People who belong to a union have a right to be represented by the union, not by anyone they choose in the union. Arranging ahead of time with union officials will often avoid any disagreements later and save the investigator having to explain the interview rules to each union representative that each interviewee brings with them
- In some cases, lawyers or union representatives may want transcripts of the interview. Be prepared to offer them a written transcript later, not the audio or video tape. This adds to the transparency of the interview process and the overall integrity of the investigation. The only caution is that there may be things said during the interview that, if released by the client, could violate another person's privacy. There is not much the investigator can do to control this other than to tell the interviewee and representatives not to share the information.

As in all other aspects of investigation, seek advice from veteran investigators and corporate legal staff.



## Self-Study: Interviewing

1. You are interviewing a woman on suspicion of theft from the workplace. As you begin to disclose your evidence to her the woman complains she is feeling dizzy and ill. You notice she is pale and sweating. What should your next course of action be?
  - a. Carry on with the interview since it is almost finished but keep observations on the woman.
  - b. Do nothing; this is a tactic used by a guilty person to stall for time
  - c. Stop the interview immediately and call a paramedic.
  - d. Offer to stop the interview immediately and obtain medical help if the woman needs it.
  
2. Fill in the blanks as appropriate;  
  
P \_\_\_\_\_  
E \_\_\_\_\_  
A \_\_\_\_\_  
C \_\_\_\_\_  
E \_\_\_\_\_
  
3. You are interviewing a suspect accused of committing an assault on a work colleague. He is represented by legal counsel. During the interview the lawyer keeps answering questions on behalf of his client and interrupting you. Which, if any, of the statements below are correct?
  - a. You should carry on with the interview as lawyers are entitled to represent their clients and advise them during interviews.
  - b. You should stop the interview immediately and tell the lawyer the reason why.
  - c. You should carry on with the interview after reminding the lawyer that she is not entitled to answer questions on behalf of her client during interview.
  - d. You should carry on with the interview and explain that continuing to do so will unnecessarily impede the investigation.
  - i. a & d
  - ii. c & d
  - iii. b only
  - iv. a & c

4. Tom is about to interview a witness to an assault. The witness works as night staff at the local convenience store and saw a man attacked outside of the store by three others. List five things the interviewer should take into account when planning the interview.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

5. You are conducting a taped interview of a woman accused of stealing office equipment. During the interview she becomes upset and bangs hard on the table two or three times. Which if any, of the following actions are correct?

- a. You should warn her to stop and stop the interview if the conduct persists
- b. You should carry on the interview and describe what happened for the benefit of the tape.
- c. You should describe what happened for the tape and stop the interview immediately.
- d. You should carry on the interview as you won't be intimidated.

6. List the sequence of steps in a cognitive interview and explain each one.

---

---

---

---

---

---

---

---

---

---



## Group Discussion Activity: Whiz Bang Computers and Electronics

In groups, conduct interviews of Makingit, Family and Knowles. Information on these interviewees will be provided in class.

### **SURVEILLANCE**

Surveillance is an important part of evidence gathering for some types of investigation files. It may also be used to gain information about individuals or premises.

Surveillance is typically conducted in one of the following manners:

- On foot
- Mobile while driving a vehicle
- In a static vehicle
- At a static observation point or premises
- Using impersonations to call and check on an individual
- Using of closed circuit TV (CCTV)

Surveillance does not follow and record people entering private places or where the subject has a reasonable expectation of privacy. In some contexts, operational guidelines may differ from this approach. Because investigations are conducted by so many different bodies, some with unique mandates, it is the responsibility of the investigator to be intimately familiar with and follow the guidelines they operate within.

Although overt surveillance is sometimes used when monitoring strikes or protests, surveillance, by its very nature, is mostly a covert activity.

- Investigators observe and follow targets, sometimes switching simple disguises if they come close to the target or are operating on foot.
- Investigators should follow professional standards and operational guidelines
- Investigators should be respectful of the general public's safety and security which includes not taking any safety and security risks and following traffic laws at all times.

- Information collected during a surveillance operation—including video recording—is to be objective in nature. Selective recording of observations is not only unprofessional but also could jeopardize the entire investigation.
- Depending on the type of investigation and context, surveillance may be recorded continuously, for a few minutes each hour, or when something noteworthy occurs.
- As with any investigative technique, information collected during surveillance, including video recordings, is the property of the client.

There are privacy laws in Alberta that must be strictly adhered to. Any evidence or information that is obtained from outside these parameters may be ruled inadmissible in court and could even result in some form of legal penalty, including a lawsuit.

In most situations, privacy legislation prohibits the use of surreptitious audio recording during surveillance. Legislation, and some client policies, also direct that video surveillance may only be done from public places, and only record what is in plain sight. Examples of what cannot be lawfully recorded include:

- Standing on a ladder on a public street to look down into a private yard
- Using special night vision equipment from a parked car to film inside the living room of a private residence
- Inside a fitness club locker room

Generally, wherever there is a reasonable expectation of privacy, surveillance recording is prohibited.

Client guidelines may prohibit recording surveillance of:

- Children in a public playground
- Inside a place of worship

Clients may also prohibit video recording while the investigator is driving, unless it is a hands-free set up.

Surveillance is often used for the following purposes:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Typical equipment used during surveillance includes:

- digital cameras with telephoto lenses for use in public places
- radios and cell phones to coordinate operations with colleagues
- paper and pens for recording notes and observations
- some surveillance vehicles are fitted with small portable toilets and battery-operated air conditioners

### **Interception or recording of private conversations:**

Surveillance that includes the interception or recording of private conversations is not legally permissible in Canada without a court order. Investigators who engage in such activities can face severe legal consequences. Typically, such court orders are available only to law enforcement.

### **Practical restrictions:**

Investigation firms and their clients will place practical restrictions on how surveillance is done—including what can and cannot be done. Some of these guidelines will be quite comprehensive such as forbidding the use of GPS tracking systems. As well, professional investigation associations may have a professional code of practice that addresses the conduct of surveillance operations. It is the duty of the investigator to be familiar with and follow all such guidelines and restrictions.

### **GPS tracking:**

In some jurisdictions, investigators are permitted to place GPS tracking devices on target vehicles and thus monitor their movements remotely. Use of such devices for tracking purposes is something of a grey area in Canada. There is no stated case law in Alberta regarding covert planting of a GPS system to track a vehicle. It should be noted that while the court deemed that installing a covert GPS was not unlawful in certain circumstances, the evidence it gained was still ruled inadmissible by the judge because the actions of the investigator installing the device were deemed to be breaches of privacy legislation.

See the Office of the Privacy Commissioner of Canada for updated discussions. The following is an excerpt from their website.

Privacy concerns can also arise as a result of GPS tracking - GPS devices should only be placed on a vehicle to track its location with the permission of the owner of the vehicle. For example, if an employee is driving a company vehicle and the client is the owner of that company, the client may give written permission to the investigator to place a GPS device on the vehicle.

In the case investigated by the OPC, several workers complained that their employer, a telecommunications company, is using GPS to improperly collect their personal information – specifically their daily movements while on the job.

The company is using GPS in its installation and repair, and construction vehicles to locate, dispatch and route employees to job sites. Some workers worried, however, that GPS is also being used to monitor work performance and that information gleaned from this technology will be used to justify disciplinary action.

The OPC investigation accepted most of the company's arguments for using GPS. It agreed, for

example, that using GPS to dispatch vehicles is likely to lead to better service for the company's customers and also could help locate missing vehicles.

However, the OPC expressed concern about using GPS as an employee surveillance tool. While using GPS to track a vehicle is not overly privacy invasive, routinely evaluating worker performance based on assumptions drawn from GPS information impinges on individual privacy.

The use of GPS as an employee surveillance tool may be acceptable in certain situations, which are defined and communicated to employees beforehand, according to the OPC findings. However, a company should not routinely use GPS to monitor its workforce.

In this case, the OPC asked the company to clearly explain to its employees how GPS would be used to check up on them, and also to develop a policy outlining an appropriate process of warnings and progressive monitoring. The policy subsequently prepared by the company spelled out situations in which the company will use GPS data to monitor employees. These include an investigation into a complaint – about speeding, for example – from a member of the public; an investigation into concerns raised within the company; or to address productivity problems. The company also made a commitment to train its managers about the appropriate use of the technology.

“Systematically using GPS to check up on workers and try to determine how well they are doing their jobs would be going too far,” said Ms. Stoddart. “Employers do not have carte blanche to use GPS to constantly monitor their workforce.”

The OPC finding also cautions employers about “function creep” – collecting information for one purpose, and then using it for some other unrelated purpose in violation of basic fair information practices.

“Managing workplace privacy is a balancing act. On the one hand, employers have the right to know what workers are up to on company time. On the other, employees have a right to privacy,” the Commissioner said.

“Workers do not check their privacy rights at the factory or office door. Workplace privacy is an important part of the basic autonomy rights of individuals in our society,” she said. “Employers must find ways to weed out the bad employees without shattering the dignity and privacy rights of the good employees – who make up the vast majority of the workforce.”

The OPC is mandated by Parliament to act as an ombudsman, advocate and guardian of privacy rights in Canada.

© Office of the Privacy Commissioner of Canada, *PIPEDA Case summary #351: Use of personal information collected by Global Positioning System considered*. Reproduced by Federal Reproduction Law Order

In an Alberta case, it was decided that an investigator may lawfully place a covert GPS tracking system to the outside of a vehicle, without a court order and commit no offence under the *Criminal Code*, providing that:

- The vehicle is not on private property but is in a public place
- The vehicle is not damaged by installing the device

- The device does not use power from the vehicle
- The investigator does not trespass on private land to install the device.
- The vehicle is not entered

Having said that, investigation firm and client guidelines may prohibit the use of GPS tracking devices and legislation may change, as might policy from the provincial regulator of professional investigators.

### **Closed Circuit Television:**

Covert surveillance can include using a CCTV system concealed in a ceiling to identify internal thieves or other misconduct. While installed in a private place, these systems are installed at the behest of the company and are therefore lawful, as long as they record in normal work areas and not locker rooms or washrooms.

CCTV is subject to provincial privacy legislation and the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), which guides the collection, use and disclosure of information collected in a commercial activity, such as surveillance.

Federally, in Canada, The Office of the Privacy Commissioner considers covert video surveillance to be an extremely privacy-invasive form of technology. As such, under *The Personal Information Protection and Electronic Documents Act* (PIPEDA), the Privacy Commissioner has published a report titled *Guidance on Covert Video Surveillance in the Private Sector*, which is available online for free and included in this manual (Module 4).

In brief, the report states that covert video surveillance is permitted only when:

- there is demonstrable evidentiary need for the surveillance
- evidence that would be collected by the surveillance achieves specifically the intended purpose
- any loss of privacy in the conduct of the surveillance is proportional to the benefit to be gained
- less privacy-invasive measures have already been attempted or considered

While these points address federally regulated workplaces, the policy has generally been adopted by provincial privacy bodies.

The report *Guidance on Covert Video Surveillance in the Private Sector* is a companion to another report from the same office, *Guidelines for Overt Video Surveillance in the Private Sector*, which was created in part with the support of the Government of Alberta. Investigators are well advised to read both reports, and look to the Office of the Information and Privacy Commissioner of Alberta for further guidance.

It is important to note that legislation and policy regarding the use of covert CCTV for surveillance purposes may change and that it is the responsibility of the investigator to keep current with laws and regulations.

Practically, investigators conducting surveillance are advised to:

- Use Google Earth (map and street view) in advance to familiarize themselves with the area, including routes in and out.
- Bring a map book along.
- Choose a vehicle that blends into the local surroundings.



- Choose a static foot post where the investigator fits in, has a good view of the target and is able to move quickly to follow the target should they become mobile.
- Have a plausible and innocuous answer ready should somebody challenge them about why they're there.
- Be ready to fully cooperate with local authorities should somebody report them as a "suspicious person". This includes immediately providing their license to authorities, or anyone else who demands it.
- If the surveillance may go mobile, have a few simple disguises in a bag (hat, glasses, wig, change of jacket and other clothes) ready in case the target spots them.
- Ensure all surveillance equipment is fully operational.
- Use the date and time stamp on still and video camera systems.
- Use the camera to document the immediate area, such as nearby buildings and vehicles, to give context to the subsequent images collected.
- Have food and water handy, including a disposal mechanism, if the surveillance is take place over a protracted period of time.
- Get specialized training in static and mobile surveillance.
- Be conscious of surroundings and any personal safety hazards that might present themselves.

Surveillance is a skill that cannot be learned simply from a book. It needs to be practiced, coached and practiced again over time.

## Surveillance Considerations

There are 3 phases to surveillance:

1. Preparation,
2. Execution and
3. Delivery of information to the client.

### 1. Preparation

Operator

- 
- 
- 
- 
- 

Equipment

- 
- 
- 
- 
- 

Location

- 
- 
- 
- 
-

## 2. Execution

Operator

- 
- 
- 
- 

Equipment

- 
- 
- 
- 
- 

Location

- 
- 
- 
- 
- 

## 3. Delivery

The first two areas are only steps in the process of getting the information in a format that meets the client's needs and possible court action. Questions that need to be asked are:

- Do you have the expertise or team to do the needed work such as video and photo evidence analysis and storage?
- Do you have the ability to take your surveillance evidence and deliver it in a way that the client can understand and that you can present in court?
- Do you have a recorded Chain of Custody on evidence?
- Is your report an accurate reflection of the investigation and observations?



## Group Activity: Surveillance

Instructor will explain activity.



## Class Discussion Activity on Whiz Bang Computers and Electronics

Identify static surveillance locations based on the photos and map.



© A.Vonkemann 2012. Reproduced with permission

**Figure 6.1: View from the South**  
(Store located half way down block on right side of photo)



© A.Vonkemann 2012. Reproduced with permission

**Figure 6.2: View from West**  
(Looking directly at store)



© A.Vonkemann 2012. Reproduced with permission

**Figure 6.3: Close-up View of Store**



© A.Vonkemann 2012. Reproduced with permission

**Figure 6.4: View looking West from Store**  
(across to an empty parking lot)



**Figure 6:5: Map View of Si-Bin Fruit and Electronics (Whiz Bang’s Competitor) Location**

## **COLLECTION OF PHYSICAL EVIDENCE**

As part of an investigative strategy, the investigator typically seeks to collect one of two forms of evidence: direct and circumstantial. They might, for example, locate this evidence through interviews, surveillance or physical collection of items.

### **1. Direct evidence**

Direct evidence supports the truth of an assertion without relying on additional evidence to show an action or inaction occurred. Examples would be an eye witness that observed an industrial accident that injured or killed an individual. Surveillance video that entirely captured a bar fight where a patron was seriously injured would also be direct evidence.

### **2. Circumstantial evidence is the most frequent evidence available.**

Circumstantial evidence is evidence that supports a premise or assertion. Testimony from a witness who saw a suspect (a new employee) run away from the scene of a warehouse theft is circumstantial, as they did not witness the actual theft of property. When put together with additional pieces of circumstantial evidence it paints a picture of what happened, but pieces may still be missing. Additional pieces might include that the suspect who was seen to run away was carrying a box, and had been seen moments earlier by another witness close to where the theft took place in the warehouse. None of this evidence directly shows that the suspect committed the theft but implies the suspect had the opportunity and was most likely the one to have committed the act.



## **Class Discussion Activity on Whiz Bang Computers and Electronics**

Identify and classify the type of evidence you currently have in the Whiz Bang Computers and Electronics case:

- Direct evidence
- Indirect evidence

During an investigation, investigators must:

- Be aware that anything might be evidence relating to their investigation
- Seek and find the material which constitutes evidence
- Identify any evidence that might have a shelf life, for example videotaped evidence captured by local cameras that may only have a few days before being recorded over
- Recognize the potential of the evidence found
- Document the condition of physical evidence, where it was found, when and by whom
- Ensure continuity of possession of physical evidence
- Provide the care and attention needed to protect and preserve physical evidence against loss, interference (accidental and intentional) destruction, or deterioration
- Analyze the significance, meaning, and relevance of evidence
- Document thoroughly all of the above

### **3. Continuity of evidence**

A critical component of the collection of evidence is for the investigator to be able to honestly and accurately testify in court that the physical evidence being presented is in fact the same item as originally found, and is still in the same condition as when first found. The investigator must be able to testify as to who had handled the evidence or had access to it and how it was securely stored in the time since it was first found.

To prove continuity of physical evidence, an investigator must make thorough and complete notes of the item when found. This includes a description of the item, what condition it is in, where found, by whom and when, where the item was stored and how it was secured, to show that it was not tampered with between that time and when it was presented in court.

### **4. Handling and storage of evidence:**

The handling and storing of evidence varies depending on the context of the agency and the type of investigation.

Collecting evidence can require considerable preparation. The following are some brief guidelines for collecting various types of evidence.

**Liquids:**

- need to be placed in a sealable container that will not chemically react or impact the liquid. Container should be sealed with tape and the investigator should put time, date and initials on the seal

**Medium-sized objects (paper, physical items):**

- usually placed in an envelope or plastic bag
- investigator should also identify the object he or she seized by placing their initials in a discreet place on the object so if later asked how they know the item presented in court or at an administrative hearing is the one they seized, they can point to their initials
- container should be sealed with tape and the investigator should time, date and initial the seal

**Large objects:**

- investigator should also identify the object seized by placing their initials in a discreet place on the object so if later asked how they know the item presented in court or at an administrative hearing is the one they seized, they can point to their initials placed in a location that cannot destroy the appearance of the item.

**Be careful of objects that:**

- leak or are corrosive
- may be soluble
- contain dangerous chemicals
- are needles or sharps
- require forensic testing

**What to Record:**

- where, when and who found evidence
- description and condition of evidence
- who collected evidence
- how the evidence was marked by the “finder”
- how disposed (who received it)



## 5. Describing an Evidence Field

It is important to describe scenes as accurately as possible. Historically, three methods have been used:

- sketches
- scale drawings
- photographs or video

**Sketches** consist of rough drawings that include cardinal orientation (NSEW)

Advantage: can be quickly done before evidence is moved or destroyed

Disadvantage: difficult to see what the scene looks like to scale

**Scale drawings** usually consist of formal measurements with NSEW orientation.

Advantage: scale can be determined and the physical representation of one object to another is easier to visualize

Disadvantage: requires considerable expertise; requires individual to cross the evidence field, leading to possible contamination

**Photographs and video**

Advantage: often more easily understood by viewers; can be in colour

Disadvantage: use of telephoto or wide angle lenses can minimize or exaggerate the impact of what is visually represented; requires some planning to determine the orientation of shots; will require an explanation of NSEW orientation

### Tips for Photographing an Evidence Scene:

- Investigators who are planning on using cameras and video equipment should be trained in their proper usage.
- Photograph or videotape the scene as soon as possible before items can be moved or lost.
- Try to photograph from each direction (NSEW) so viewer can better visualize the scene.
- Try to have points of reference in shots that allow viewer to better orient themselves and to establish some sense of scale.
- Number evidence items (place cards) after taking an initial photograph and then photograph them again.
- Take notes of all shots explaining what the shot is and why it was taken.
- Remember: photographs are treated like evidence. The rules regarding continuity apply.

**Types of shots when using the camera:**

**Long shot:** Basically a wide angle shot that establishes location and context and this shot orients the viewer to the scene

**Medium shot:** Closes in on specific elements of the scene without getting into close-up shots of individual (small) pieces of evidence

**Close-up shot:** Focuses on important objects or evidence

**Re-establishing shot:** Often another long shot that gives the viewer another overall look, perhaps from a different perspective

Figures 6.6 to 6.9 constitute a sequence of shots for a (fictitious) insurance claim where an individual is suing the municipality for an injury she incurred coming from her residence.



© Darrell W. Kean and Associates Consulting Ltd. 2012.  
Reproduced with Permission

**Figure 6.6: Long Shot from the South East**



© Darrell W. Kean and Associates Consulting Ltd. 2012.  
Reproduced with Permission

**Figure 6.7: Medium Shot from the South**



© Darrell W. Kean and Associates Consulting Ltd. 2012.  
Reproduced with Permission

**Figure 6.8: Close-up Shot from the South**



© Darrell W. Kean and Associates Consulting Ltd. 2012.  
Reproduced with Permission

**Figure 6.9: Re-Establishing Shot from the South West**

## 6. Continuity of Evidence

Continuity of evidence refers to the ability of the investigator to honestly and accurately testify in court that the physical evidence being presented is in fact the same item as originally found, and is still in the same condition as when first found. The investigator must be able to testify as to who handled the evidence or had access to it and how it was securely stored in the time since it was first found.

To prove continuity of physical evidence, an investigator must make thorough and complete notes of the item when found. This includes a description of the item, what condition it is in, where found, by whom and when, where the item was stored and how it was secured, to show that it was not tampered with between that time and when it was presented in court.

## 7. Forensics:

A “forensic examination” of, or for, evidence means that scientific processes have been used to examine something for a legal purpose. Thus, “forensic evidence” is usually understood as some form of physical evidence that will undergo a scientific examination. Forensic science applies scientific knowledge to legal proceedings or arguments.

Forensic experts who examine evidence usually have some form of advanced specialty education or certifications. They usually partake in continuous professional development and are members of professional associations such as the Academy of Forensic Sciences.

Depending on the type of inquiry, investigators may call upon forensic specialists to examine evidence. Frequently, this now includes examination of digital devices to locate evidence. The evidence may be files, user logs or other data.

Digital forensics involves the identification, collection, preservation, examination, and analysis of digital evidence. It is a technical, computer-related field involved in the collection and examination of evidence from computers, including audio, video, and graphical images.

Digital devices such as computers, cell phones and personal digital assistants (PDA's) can contain files that contain:

- Address books/lists of contacts
- Audio and/or video files
- Image files
- Calendars of appointments
- Database files
- Documents or text files
- Graphic editing and viewing software for images
- E-mail files/records
- Graphics files
- Internet bookmarks, favourites, use history
- Online chat logs
- User-created directory and file names that classify images
- Spreadsheet files

## COLLECTION OF INFORMATION FROM OPEN AND CLOSED SOURCES

A fundamental role of any investigator is basic research. This can include looking for information on:

- Persons
- Locations
- Property/assets
- Investments
- Events

While some investigators immediately turn to the internet as a first place to look, few realize that the usual search engines only access a small fraction of data available. Meta and mega search tools offer far more results, providing the investigator takes the time to do a thorough search and also understands the use of words and phrases to refine online searches. For example, searching for John Doe online will yield results for John and Doe. This could be hundreds of thousands of online hits. But if you place quotation marks around the name and add the geographic area the investigator thinks John Doe is in, the search would look like this: "John Doe"+Calgary. The use of the + sign denotes that all sites that list the words John Doe and Calgary are to be prioritized.

Most people have used the computer to search for information. The more abstract the information, the more difficult it is to narrow the search. For example, using the words "military tattoo" will not likely result in finding the origins of the phrase "death before dishonor." Similarly, searching for "death before dishonor" will not easily yield the desired results either. Instead what is yielded is a list of internet "hits" linked to music. Tying the two terms together with a conjunction such as "and", "or", or "not" can greatly narrow the search. This is a Boolean search. For example: typing "military tattoo AND death before dishonor" will yield an interesting "hit" on the fourth item (if using Google). Just finding a "hit" does not mean that it is accurate but at least it is a starting point.

There are multiple free online sites where investigators can learn more about how best to use Boolean searches. There are also free online sites the list search tools of interest to investigators. Canadian sites include:

- <http://www.toddington.com/resources/>
- <http://www.webinvestigator.ca/Resources/Resources.html>

Getting out of the office, investigators often use the following resources for research:

- Public libraries. They offer company reports, business indexes, telephone directories, maps, newspaper archives, trade magazines and other historical databases such as criss-cross directories that show phone numbers in sequence and by address. Librarians are often excellent sources of assistance to investigators.
- Court and land registries. Land title records, divorce records, bankruptcy proceedings and civil suits are all often publicly searchable, as are liens on personal property.
- Regulatory bodies that hold public records on the entities and individuals they cover

Corporate records and filings may be available through the securities regulator or other government offices, or on a company web site.

The simplest research tools are a telephone and a sense of informed curiosity.

## UNDERCOVER WORK

Undercover work can be more complex than regular investigative work, for instance where an operative is placed inside a workplace by the owner of the company who wants to find out who is stealing inside the warehouse. In such cases, a great deal of prior planning often takes place, including

- operational and safety guidelines for the investigator, with specific direction on the target(s) of the investigation
- a briefing on each of the behaviour(s)/infractions/activities to look for and how to document each
- lines of reporting
- locales outside the workplace that the target(s) may frequent, and
- what the role and duties of the undercover “employee” will be.

Pretext calling is another form of undercover work. Pretext calling may also be used to gain an incriminating statement from a target. In some instances, clients will prohibit investigators from making pretext calls.

## **CONFIDENTIAL SOURCES**

With confidential sources the challenge to the investigator is the legality of the information provided, and if it is legal, it still may violate ethical guidelines set by the investigative industry or the client. For example, a source within a phone company that provides non-public information on somebody may be breaking the law. Use and disclosure of the information by the investigator could also be illegal. A housecleaner in a hotel that is shown a picture of a recent guest and confirms that, yes, they did stay in room 417 last night might not be breaking the law, but almost certainly would be in trouble with the hotel management if they knew the conversation took place.

Consider the following examples of confidential sources:

1. In wanting to be anonymous the source usually does not want to be named, go to court or be a formal witness. This causes a problem because in order to be of evidentiary use they have to be able to provide enough other forms of evidence to be of value to the case. This means the source must provide other witnesses or ways to find real evidence to be of value. This must happen in a legal manner. A person providing information from hospital records about a victim’s real condition is performing an illegal act and could end up with both the investigator and source charged.
2. The source maybe a former friend, co-worker or associate who just wants to see a wrong righted but doesn’t want to be linked to the potential fallout. They may be motivated by money, thinking they have some information of value and think they should be paid for it.
3. The source may fear for their safety and think if it is revealed that they provided information, they could be hurt or killed.

In the above examples, the first is the best for an investigator because motivation is not a problem and payment for the information is not expected. The second creates more issues and in professional investigations is rarely embraced due to limited budgets and possible problems. The third example is one the investigator should stay away from. This person’s safety is at risk and there are no provisions

within the investigation industry to deal with this. If this relates to a criminal case it is best to refer this person to the police, who do have a mechanism to facilitate both the information and the person's long term safety. If the investigator were to take this person's information and something happened to the person, the liability of the investigator and the agency could be huge.

If a confidential source is to be used, there are several things to be aware of:

- First, consult with a manager within your organization so they are aware and can authorize this strategy within the guidelines of the organization.
- Ascertain if working with the source is in the best interest of the investigation and the agency, or if it could cause issues if exposed.
- Consider the investigator's safety in meeting with the source.
- Manage the source's expectations. Most sources come with issues and believe they are entitled to know what is happening. Confidentiality with the agency/client still takes precedence.
- Know the motivation of the source.
- Keep a detailed record of the interactions and payments made and keep this record securely stored.

For some investigators, the source may be a friend or former professional colleague who has access to confidential information, such as phone or utility records, or even police records. Accessing such information could be a crime and may cost everyone their jobs.

## INVESTIGATION FILE MANAGEMENT AND PRESERVATION

Case management, also referred to as file management, is the process followed to manage an investigation, including staff/resource/budget management, evidence collection and documentation, asset recovery, witness interviews, and perpetrator identification and location. Different segments of the professional investigation industry will each have unique issues to manage within their respective inquiries.

In major cases investigators face a number of challenges, including:

- Time management
- Timelines
- Investigator fatigue
- Coping with massive amounts of complex data and evidence
- Identifying linkages between evidence and individuals
- Managing competing demands for services and resources
- Directing and managing multiple investigators
- Budget implications
- Sorting through and analyzing the meaning and value of large amounts of information
- Following up on leads, evidence, and victim/witness statements
- Identifying and interviewing all relevant witnesses and persons of interest
- Filing reports and keeping managers and clients apprised of issues, budgets and case progression

The scale and complexity of major investigations(e.g. multi-country counterfeiting of a client product, or a fraud that involves multiple victims) can place extraordinary managerial and logistical demands on those charged with their investigation and management. The day-to-day experiences of most frontline investigators do not equip them to meet these challenges. The recent history of major case investigations attests to the inadequacy of relying on experience alone to provide the requisite skills.

Case management is as much about managing people and resources as it is about data management. It focuses on identification and assignment of investigative tasks/functions, accountability, development of systems, and a systematized approach to data management. The overall goal is the appropriate resolution of cases and the prevention of continued or future harm to individuals and client agencies involved.

Case file management includes but is not limited to:

- Secure storage of paper and digital files, and related evidence in a manner that restricts unauthorized access
- Backing up digital files off-site via a secure server
- Formalizing client access to files
- Policy on archiving records, where and for how long, taking into account privacy considerations
- Noting all those who acted on the file and what they did
- Noting actions to be taken, when, by whom and how
- Noting how evidence has been collected, stored, reported and disseminated

Investigators encountering a major case that is beyond their resource capacity are encouraged to seek guidance from managers and more experienced investigators.



Some typical sub-headings for files might include:

- Witnesses
- Victims
- Locations and their link to people associated with the file
- Relevant legislation
- Statements
- Evidence (physical, documentary)
- Policies and procedures
- Human Resources information (background info)
- Financial status reports

Investigators need a systematic way of compiling this information especially when there may be information that needs to be in separate sections such as witness information and statements. There is some specialized training available in this area, including training in the use of computer programs to log, track and chart evidence and make linkages between persons and evidence.

## **CONCLUSION**

This module has introduced participants to the fundamentals of investigation, including its types and purposes, its clients, and a variety of investigative approaches. It has explained how to plan and manage an investigation, including risk awareness, interviewing techniques, research, surveillance, physical evidence, legislation and policies affecting investigations, dealing with confidential sources and managing case files.



## Post-Test

**1. What are the purposes of a professional investigation?**

---

---

---

---

---

**2. Name and describe four common types of investigation.**

---

---

---

---

---

**3. List the major considerations an investigator will typically make in planning an investigation.**

---

---

---

---

---

**4. Describe four common cognitive failures in investigations and the strategies to help avoid them.**

---

---

---

---

**5. Describe the progressive steps of a cognitive interview.**

---

---

---

---

---

**6. What are the most important considerations to keep in mind when gathering and handling evidence?**

---

---

---

---

**7. Describe three types of confidential sources and the major points to be aware of when using them.**

---

---

---

---

---



## REFERENCES AND ADDITIONAL RESOURCES

Fisher, R. P., & Geiselman, R. E. (1992) *Memory enhancing techniques for investigative interviewing: The cognitive interview* Springfield, IL: Charles C. Thomas

Internet for Investigations (2011). Resources for investigators. Retrieved from <http://www.webinvestigator.ca/Resources/Resources.html>

Osterburg, J. W. and R. H. Ward (1997) *Criminal investigation: A method for reconstructing the past* (2<sup>nd</sup> ed) Cincinnati, OH: Anderson Publishing Co.

Peña, M. S. *Practical criminal investigation* (3<sup>rd</sup> ed.) (1993). Placerville, CA: Copperhouse Publishing Company

Province of Alberta (2008) *Security Services and Investigators Act* (Statutes of Alberta 2008 Chapter S-4.7)

Rossmo, D. K. (2006) Criminal investigative failures: Avoiding the pitfalls. *FBI Law Enforcement Bulletin*. 75(9)

Thomas, A., & Loftus, E. (2005) Eyewitness memory *RCMP Gazette*, 67(4)  
Retrieved from [http://www.gazette.rcmp.gc.ca/articleen.html?&lang\\_id=1&article\\_id=205](http://www.gazette.rcmp.gc.ca/articleen.html?&lang_id=1&article_id=205)

Toddington International Inc. (2012) Free internet research tools and search resources for online investigators. Retrieved from <http://www.toddington.com/resources/>

# MODULE SEVEN: COMMUNICATIONS AND REPORT WRITING

## INTRODUCTION

In this module participants will learn about verbal and non-verbal communication skills, including speaking, writing and formal testimony. They will learn strategies of verbal communication in various contexts and with various audiences, including threatening situations that require defusing skills. They will learn the significance of tone of voice, body language and other nonverbal messages in communicating with others. Participants will also learn, discuss and practice methods for taking field notes and writing reports, including organizational methods for each. Using the course's ongoing case study, they will critically analyse evidence and write a complete report on this evidence. Finally, they will be informed about the formalities of testifying in court proceedings and/or other hearings.

## LEARNING OUTCOMES

Upon completion of this module, participants should be able to:

1. Demonstrate the key components of effective verbal communication
2. Demonstrate how to apply tactical communication techniques in challenging, aggressive and/or threatening situations
3. Demonstrate effective communication skills
4. Demonstrate effective defusing skills
5. Describe the differences between types of reports such as administrative, client-directed, investigative and Crown Counsel
6. Demonstrate the ability to write a detailed investigative report
7. Demonstrate how to write accurate field notes
8. Describe the proper use of the International Phonetic Alphabet (e.g. Alpha, Bravo, Charlie etc.)
9. Demonstrate appropriate techniques for providing testimony at administrative, regulatory and/or criminal proceedings

## TOPICS

Verbal and Non-Verbal Communication .....	225
Challenges to Communication .....	230
Seven Steps for Effective Communication .....	232
Communicating with Uncooperative Persons .....	233
Field Notes .....	236
REPORT WRITING .....	243
Privacy Legislation and Reports .....	249
Common Errors in Writing Reports .....	250
Structure of Reports .....	253
Providing Testimony .....	254
CONCLUSION .....	256
REFERENCES AND additional RESOURCES .....	259



## Check Your Knowledge

Test your knowledge of the topic before starting this module.

1. Nonverbal communication can constitute over 90% of a message.
  - a. True
  - b. False
  
2. Active listening is an important method for gaining cooperation and compliance during communication.
  - a. True
  - b. False
  
3. To empathize with someone means to feel sorry for him or her.
  - a. True
  - b. False
  
4. Professional investigators know their own personal triggers and expect them to be set off during their career.
  - a. True
  - b. False
  
5. An individual with the smell of alcohol on his or her breath has been drinking.
  - a. True
  - b. False
  
6. Field notes can be referred to during testimony at courts, tribunals and administrative hearings.
  - a. True
  - b. False
  
7. The requirement for objectivity in reports means that they should not vary according to their audience.
  - a. True
  - b. False

## VERBAL AND NON-VERBAL COMMUNICATION

Professional communication occurs when:

- the message is heard and understood, which includes speaking at a rate that can be followed by the listener and enunciating words clearly
- the message and its delivery are courteous and respectful
- the message is free from slang, racial slurs and profanity
- the message does not contain complicated words, acronyms or obscure phrases<sup>23</sup>

An important element in communicating is your voice, including the tone and volume.  
The tone of your voice should be:

Confident Calm, assuring	vs.	Arrogant Trying to demonstrate you have power
Friendly Approachable, open	vs.	Dismissive Showing disinterest or leaving the other person feel that what they have to say is not important to you
Assertive Making requests in a straightforward manner	vs.	Aggressive Forcing your opinion or agenda on the other

The volume should be:

- normal volume, meaning that it is loud enough to hear relative to other noises that may be occurring

If the volume is:

- too soft, people will strain to hear you resulting in potentially lost or missed communication. At times, people may assume you are timid and lack confidence.
- too loud, people may feel threatened and may simply reject what you have to say, simply because of how you have said it.

We mostly communicate in two ways:

- Verbal (7%)
- Non Verbal (93%)

<sup>23</sup> Alberta Ministry of Justice and Solicitor General (2011). *Alberta basic security training*, Module 4, Communication for security professionals.



## Phonetic Alphabet

The phonetic alphabet is used by investigators when speaking to other professionals to clearly articulate alphabetic letters to reduce confusion. For example, letters like 'M' and 'N' can easily be misunderstood when describing licence plate numbers of cars, using a radio or telephone.

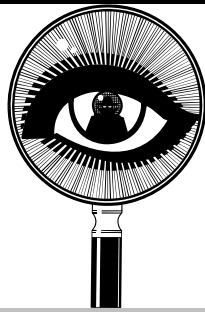
The following is the conventional phonetic alphabet used by Canadian investigators.

A -- Alpha	I -- India	Q -- Quebec
B -- Bravo	J -- Juliet	R -- Romeo
C -- Charlie	K -- Kilo	S -- Sierra
D -- Delta	L -- Lima	T -- Tango
E -- Echo	M -- Mike	U -- Uniform
F -- Foxtrot	N -- November	V -- Victor
G -- Gulf	O -- Oscar	W -- Whiskey
H -- Hotel	P -- Papa	X -- X-Ray
		Z -- Zulu

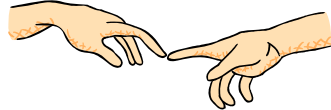


© Microsoft

Other elements in non-verbal communication include:



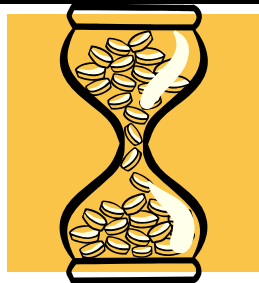
Visual



Tactile



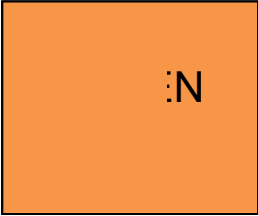
Vocal



Use of time, space and image

First impressions are quickly made before you even open your mouth.

Occasionally, people will challenge your authority or what it is you are trying to accomplish. One method that is helpful for gaining cooperation and compliance when facing this resistance is LEAPS (Listen, Empathize, Ask, Summarize, Paraphrase):<sup>24</sup>

	<p>This is about being an “active listener,” which includes hearing each spoken word and using non-verbal strategies to convey your understanding of what is being said as well as your respect for the speaker. Typically it includes:</p> <ul style="list-style-type: none"><li>• Making eye contact</li><li>• Nodding or acknowledging certain points, when appropriate</li><li>• Focusing on the speaker and not appearing distracted by other things or activities</li><li>• Listening and not interrupting while they are speaking</li></ul>
---	--



### **Class Activity: Sending and Receiving**

The following activity helps demonstrate the importance of two-way communication that includes non-verbal communication.

In this exercise, senders will attempt to describe to the receivers some geometric shapes the senders are looking at. The shapes should be kept hidden from the receivers. The goal is to have the receiver understand the message sent from the sender (without looking at the geometric shapes) and draw what the receiver thinks the sender is describing.

<sup>24</sup> G.J. Thompson (2004). *Verbal judo: The gentle art of persuasion*. NY: HarperCollins.

## EMPATHIZE

To empathize with other people is to try to understand the situation from their perspective. This is not the same as being persuaded to feel the same way they do. The act of empathizing with the speaker often reduces their level of anxiety and may increase the degree to which they will cooperate with you (complying with your directions, providing you with valuable information).

It stands to reason, however, that it may be difficult for you to empathize with the speaker. You may encounter an individual who has a particular agenda and may be trying to impede your investigation. Try not to focus on their motivation and instead, view the individual as a person who sees no other options and feels they are in a desperate position. You may find it easier to relate in that way.

Again, empathy is not the same as feeling sorry for someone; it is simply trying to figure out why the person is behaving in a certain way so that you can use that understanding to develop an effective communication plan.

## ASK

Make sure you understand what the other person is saying to you. There is nothing wrong with asking the individual to repeat something you could not hear or to clarify something you do not fully understand. Be polite; the person may already be aggravated by the circumstances and you do not want your questions to add to the individual's level of frustration. When asking for clarification:

- Do not try to make the person feel stupid or inferior. If you didn't understand something, simply ask them to repeat it or ask them to say it in a different way.
- Be clear about what you need clarification about. For example, if they were talking about a number of people and then start using words like "he" and "she" ask them to clarify who the "he" and "she" refer to. Ask them who said or did what.

It is important that you do not interrupt them during their portion of the conversation unless it is an emergency. Interruptions, even for the purpose of clarifying facts, can often distract them in their ability to formulate their thoughts or relate an event they have witnessed. Save the questions requiring clarification until after they have finished speaking.

<p style="text-align: center;"><b>RASE</b></p>	<p>When you paraphrase, you are taking what the speaker said and repeating it back using your own words. There are two advantages to doing so; it shows the speaker you were listening, and you are able to double check that you have understood correctly. Many times, misunderstandings which occur during communication can lead to greater conflict. Paraphrasing will help minimize this risk.</p>
<p style="text-align: center;"><b>RIZE</b></p>	<p>At the end of the conversation you should summarize what has been discussed, including repeating any action steps which you or the speaker will be taking. For example, if someone is telling you what they witnessed including the actions of several people who are involved in an employee theft you are investigating, you might try:</p> <p><i>Just to be clear, what you are saying is that last Friday you saw Manny and Stephen go into the Parts Department and remove several boxes marked 'Hard Drives'. You then are saying that Stephen placed these boxes into the trunk of Manny's car. Is that correct?</i></p>

There are many barriers to communication. By means of discussion and group exercises, participants can recognize some of the barriers and use the knowledge gained to effectively open lines of communication with witnesses.

## CHALLENGES TO COMMUNICATION



### **Class Discussion Activity: Challenges to Communication**

What are some barriers to effective communication?

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

You should be mindful of the challenges that you yourself may bring to communication. English is a tricky language and if it is not your (or the person you are interviewing's) first language it is likely some different vocabulary and accent will confuse the communication pattern. You should consider the following:

- Speaking slowly, because accents can make verbal communication difficult to understand when speaking at a quick pace.
- Pronouncing words carefully and deliberately.

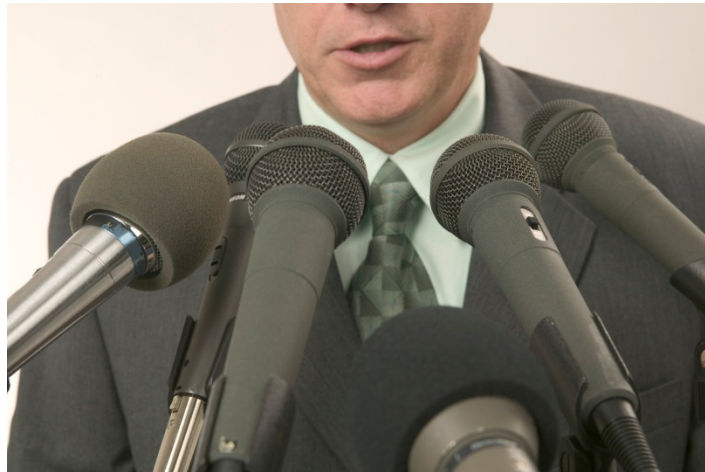
- Avoiding the use of non-Canadian slang/terms; for example, Canadians generally refer to their home as a house, a condo, or an apartment and not a “flat,” as would commonly be used in England.
- Checking that the listener has understood, particularly if you have given instructions or made a request concerning the listener’s behaviour.

The first rule in overcoming any of these challenges is avoiding communication which is biased, discriminating, or harassing. Your own attitudes and beliefs about the preferences and behaviours of others have no place in professional communication.

**Bias** – having a preference either for or against some characteristic, such as an individual’s gender, ethnicity, religion, or sexual orientation.

**Discrimination** – treating another individual differently because they belong to a class or group, for example their ethnicity or religion. It is also possible to show favouritism to someone for the same reasons. These behaviours are not acceptable in your role as a professional investigator.

**Harassment** – treating an individual or group of individuals in a negative manner due to circumstances which are not related to the situation at hand; this could also be termed “bullying.”



©Microsoft

## SEVEN STEPS FOR EFFECTIVE COMMUNICATION

You will encounter communication challenges throughout your career. It is not likely you will learn several foreign languages or have access to a translator when dealing with an individual who speaks a language different from your own. There are, however, some simple steps you can take regardless of what is causing the communication barrier.

1. Watch your non-verbal language. If barriers prevent you and another individual from communicating through words, body language will become very critical. You need to be mindful of your own non-verbal communication, as well as the messages being sent by the other individual. Here are some basic tips for doing so:
  - a. Maintain good posture; this shows respect for yourself and for the other individual.
  - b. Be attentive; ensure your facial gestures demonstrate you are paying attention.
  - c. Refrain from showing frustration, impatience, or anger; this will only cause the speaker to be flustered or upset, which will make effective communication even more difficult.
2. Use plain language; avoid using complicated words or slang.
3. Stay focused on the conversation.
4. Ask one question at a time; allow the person to answer and ensure you are both clear as to what was said before moving to your next question.
5. Use alternative means of communication, where possible.
  - a. In some cases, it may help to use written communication. For example, an individual with a hearing impairment may be able to communicate with you using written notes.
  - b. Use gestures to help explain; sometimes gestures may help you get your message across. Holding your palm outward toward the individual is generally accepted as a signal to not proceed further.
6. Check for understanding; it is okay to respectfully ask, "Do you understand?" at various points during your conversation.
7. Remain patient; this may be difficult if you begin to get frustrated. Try to empathize with the other individual, who is probably even more frustrated than you are. Allow the person time to think about what you have asked and formulate an answer.

## COMMUNICATING WITH UNCOOPERATIVE PERSONS

Despite your best attempts to utilize respectful, effective communication, it is inevitable you will encounter an individual who does not wish to comply with your direction. Dealing with uncooperative individuals is certainly not pleasant, and will challenge your ability to remain calm and professional. Before you ever encounter such a situation, it will be helpful for you to know your own personal “triggers.”

Some examples of personal triggers include the following:

- Disrespect
- Sarcasm
- Refusal to take responsibility for actions
- Bullying
- Profanity
- Getting in your “personal space”

Plan for someone, at some point, to “set off” one of your triggers. Individuals who are comfortable challenging authority have probably done so in the past and know how to manipulate people and circumstances in order to further their own agenda. Prepare, at some point, to be in a position where you need to control your response to a personal trigger.

Strategies for managing your trigger(s) may include:

- putting an end to conversations or situations which would typically trigger your frustration
- changing the subject/topic back to the matter at hand
- redirecting their speech by asking them questions which they should want to answer. You may ask them “Have you come here before?” and “What happened the last time you tried to enter without your ID?”

### Hostile or Violent Persons

Signs that a situation may be escalating include:

- increasing volume of conversation
- non-verbal body language suggesting the individual is becoming agitated or angry
- making threats
- inappropriate behaviour, such as pounding on a door or trying to remove a barrier

You should monitor this type of behaviour, being mindful of other persons in the area. Do not take your attention away from an individual demonstrating hostile behaviour. Look for ways to remove yourself to a place of safety.



## Boiling Kettle Analogy

An analogy for dealing with hostile or violent persons is the boiling kettle analogy. Try the following strategies:

- **Venting steam:** Allow the person to vent their feelings while at the same time giving them adequate space (angry people tend to feel even more threatened if someone encroaches on their personal space). This would be similar to allowing more steam to escape the kettle.
- **Removing heat:** Remove the source of the other person's frustration (if possible). This would be similar to removing the kettle from heat source.
- **Don't increase heat:** Remain calm; do not raise your voice. Maintaining your composure may have a calming effect on the upset individual. This would be similar to reducing the overall "heat" or pressure on the kettle. The individual would not see you as greatly increasing their level of frustration.

### You may also try:

- asking the individual to come with you to an area where they are less likely to make a spectacle of themselves (perhaps an office, or moving outdoors). Be cautious, however, about moving to a secluded area with an individual who is behaving violently, as you need to remain mindful of your own safety.
- offering the individual choices; people often get angry when they feel they have been stripped of their power.
- offering explanations but not getting into arguments about issues
- acknowledging that you can see they are upset but moving the discussion into solutions

## Intoxicated Persons

The first step in being able to deal effectively with an intoxicated person is to be able to recognize the signs of alcohol or drug intoxication. Individuals under the influence of a substance may:

- appear clumsy, or uncoordinated; may have difficulty maintaining balance
- mumble, slur their words, or be otherwise difficult to understand when speaking
- have bloodshot or watery eyes
- speak louder than appropriate, given the situation
- appear disheveled or unkempt
- be unable to understand or follow direction
- be in possession of materials suggesting substance use (e.g., empty bottle, drug paraphernalia)
- have the smell of alcohol on the breath (do not assume intoxication based on this alone – individuals having a diabetic emergency may have breath which smells of alcohol)

Once you have observed and assessed you are dealing with an individual you believe to be intoxicated, proceed keeping the following in mind:

- Intoxicated persons are unpredictable; continue monitoring to ensure safety for the individual, the public, and yourself.
- When possible, call for assistance if an intoxicated individual behaves in an unruly manner.
- Do not antagonize, ridicule, or otherwise harass the individual; speak to them calmly, and without bias, providing clear instructions.
- Give short, clear directions; give the individual time to respond to your requests.
- Do not try to reason with the individual; if necessary, call for assistance or police intervention to aid in resolving the situation.

### **Persons Intending to Deceive**

Determining whether someone is trying to deceive you is not an exact science. In fact, generally impressions about whether someone is lying or intentionally deceiving you are fairly unreliable.

- **Eye contact**

Some believe that persons not willing to look you in the eye are hiding something. Unfortunately, there are many valid reasons why someone would not want to look you in the eye, including cultural practices, respect for perceived power imbalances (age, gender, and authority), shyness, and fear.

- **Body postures**

Some believe that how a person stands, sits or moves their arms and legs are indicators of deception, but again there are far too many alternate explanations for their unique behaviours to allow an investigator to conclude that the person is attempting deception.

- **How they verbally respond**

Some believe that intonation, delayed responses or not responding directly to questions are indicators of deception, but the reality is that people cognitively process information in different ways and unless you have a base-line knowledge of how the person normally communicates, the chances of you misinterpreting their verbal responses is high.

There are advanced interviewing courses available that more completely examine these areas. Participants are encouraged to explore these courses.

## FIELD NOTES

Field notes are quick notes made, usually in a small notebook, while working a case. Field notes are useful as:

- notes that will assist in the drafting of a more comprehensive report
- notes that improve an investigators' abilities to recall information correctly
- notes that can be referred to during testimony at courts, tribunals, administrative hearings (with the permission of the court, tribunal etc.)
- a method to describe events as soon as practicable after an event's occurrence
- a method to ensure accountability

The criminal court standard for writing field notes is very high. Essentially, the courts want to see notes that are taken as soon as practicable to the event, written in a style that demonstrates investigative integrity and are not subject to misunderstanding.

Some common rules for writing field notes include:

- use black ink (it photocopies better)
- include date, location and file reference
- use only one notebook at a time (absolutely no "rough" notes notebook)
- write notes in chronological order based on how you came by the information
- use the 24-hour clock
- spell names legibly using block capitals
- complete each line in the notebook
- note errors with a single line drawn through the error and the line initialed by the author. What follows the error is the correct version.
- nothing erased or blackened out
- no additional notes written above or below lines. If explanatory or additional information is needed, write it on a separate line and indicate what it refers to.
- no personal notes such as personal shopping lists
- no notations that may have an impact on the integrity of the investigation should the notes be accessed through privacy legislation (personal opinions of witnesses, targets)
- pages should be numbered
- pages should be in a bound book where the removal of pages could be noticed. Investigative companies often do not have a specific style of notebook. Some use ordinary note pads.

The standard discussed here is the standard a court might expect. Deviations from this standard may cause some difficulties in court.

Who can refer to your notes?

- A co-investigator
- Person who has given a verbatim statement
- Judges and lawyers
- You



## Group Discussion Activity: Whiz Bang Computers

Get into your investigative groups for the following activity. Review the evidence you have acquired so far in this case and identify other information you would like to obtain. Why do you want this information?

On the following pages you will find more materials on this case:

- spreadsheet from Petty Cash account
- statement from Donald Baker, husband of Mary Baker (now deceased)
- statement from Bin Moola by Investigator Tomkins along with Tomkins' investigative notes. Tomkins retired from the investigative company a few months ago, is living in some exotic locale and is unavailable. Tomkins was asked by the President of your company to quickly look into this file as a result of an incidental conversation between him and Mr. Joe Whistleblower approximately 3 months ago. You are just finding out about this now.

Take approximately 20 minutes to read and discuss the implications of the information.

[Whiz Bang Computers] Petty Cash Log

For 01/01/2012 through 05/02/2012	Balance	\$1430.59	Actual amount remaining \$842.41
--------------------------------------	---------	-----------	-------------------------------------

Date	Description	Amount Deposited	Amount Withdrawn	Charged To	Approved By
1/1/2012	Deposit to petty cash	\$50.00		petty cash	Mary Baker
1/3/2012	Pizza for overtime workers		\$18.53	morale account	Mary Baker
1/6/2012	Deposit to petty cash	\$100.00		petty cash	Mary Baker
1/8/2012	Deposit to petty cash	\$123.00		petty cash	Mary Baker
1/10/2012	Deposit to petty cash	\$150.00		petty cash	Mary Baker
1/15/2012	Wine		\$37.43	social expense	Whistleblower
1/20/2012	Dinner		\$127.00	social expense	Snickery
1/27/2012	office expense		\$117.00	office	Knowles
2/5/2012	Deposit to petty cash	\$150.00		petty cash	Mary Baker
2/12/2012	Deposit to petty cash	\$200.00		petty cash	Whistleblower
2/18/2012	doughnuts		\$15.75	social expense	Snickery
2/21/2012	take-out		\$47.56	social expense	Moola
2/22/2012	Deposit to petty cash	\$500.00		petty cash	Whistleblower
3/5/2012	Deposit to petty cash	\$600.00		petty cash	Whistleblower
3/8/2012	Supplies		\$20.00	supplies	Family
3/12/2012	Scotch		\$85.00	social expense	Moola
3/17/2012	Paper		\$117.00	supplies	Makingit
3/23/2012	Cleaning		\$45.00	supplies	Knowles
4/12/2012	Lunch		\$27.32	social expense	Whistleblower
4/16/2012	Deposit to petty cash	\$400.00		petty cash	Whistleblower
4/18/2012	Misc		\$473.00	petty cash	
5/2/2012	Client entertainment		\$300.00	petty cash	
	<b>Totals</b>	<b>\$2,273.00</b>	<b>\$1,430.59</b>		

**Statements from Moola and Donald Baker (widower of Mary Baker):**

**Statement of Bin Moola taken by Investigator Tomkins**

Details:

- 23 years old
- Resides at 3029 Morley Drive, Calgary Alberta, where he lives with his girlfriend of 4 years who works in a nightclub
- Work number is (403)111-2222
- Cell number (403) 999-6661

The following statement was taken by Investigator Tomkins who started to interview Moola when Moola immediately stated, "I'll tell you whatever you want to know." Tomkins asked Moola for a written statement and the following is what Tomkins received:

"I have worked for Whiz Bang Computers for about a year and a half. I was hired there by Sid. I have been an outstanding salesman for Whiz Bang. I have absolutely no knowledge of the missing money but if I was to point fingers, I would start with Baker since she controlled the petty cash fund.

I know about Sid and Candy and as far as I am concerned what they do is their business. Candy's a dooper and I would not trust her either.

You wanted to know something about CROC. I never met the guy in person but his name is Frank Decepre."

Moola refused to write any more.

**Statement of Donald Baker, widow of Mary Baker. Statement taken by Investigator Tomkins**

Details:

- 72 years old
- Resides at 7815 Piccadilly Square, Calgary Alberta
- Home number is (403)777-2222

The following statement was taken by Investigator Tomkins:

“My dear wife Mary has worked as a part-time accountant for several companies including Whiz Bang. She said that Whiz Bang was the strangest company she ever worked for. Late night shenanigans between staff, strange petty cash purchases and a boss, Joe Whistleblower who seemed absolutely clueless about what was going on. Mary said that one day Whistleblower mentioned to her that he thinks that someone is ‘ripping him off’ since the petty cash fund always needed to be topped-up. Mary started looking into it and she realized that somehow approximately \$1200.00 was missing over a few months. She wasn’t sure who was doing it since everyone had access to the petty cash fund. Security there was terrible. She began to wonder about Jess and then shifted her attention to Candy since she was really “flaky” according to Mary. Then one day she found Sid in her office for no reason. I don’t think Mary really had much luck in figuring all this out. Unfortunately, she had early stage dementia and it was difficult for her to track a lot of things other than numbers. I miss her terribly. She had a heart attack 2 weeks ago.”

Donald Baker broke down and could not write any more.

Investigator Tomkins has retired and has left the country. He left the following notes appended to the interview file for Bin Moola. The source of this information is unclear and unfortunately, Tomkins is unavailable.

### **Investigative File Notes for Investigator Tomkins:**

Bin has worked with the company for about a year and a half. He started working at another location as a sales person. He was hired there by the manager, Sid Slickery. Sid worked with HR to hiring Bin, stating he liked him. Sid stated that he would like to do the background and reference check on Bin, which he stated he completed and gave to HR. Bin was hired. Bin seemed to be motivated and had great sales numbers. Since he worked on a base plus commission this was great for him and the organization. A short time after Bin arrived there was a report of cash going missing from the store. The manager, Sid, did an investigation and terminated a junior store employee whom he told HR had been working every time the money went missing. This employee was still in the probation period and had no legal recourse against the company but was adamant that she didn't steal any money. Shortly afterwards, Sid moved to the current store and requested Bin as his new assistant manager.

#### **History**

Bin worked at a retail warehouse about a year before joining this company. The warehouse had damaged goods on a regular basis that were to be thrown out. Bin found that many of these items had some value and approached his manager to sell these items to his friends. The manager agreed to this if Bin would give him a 30% cut of the sales. They did this and the demand was so great that they started "damaging" more goods to sell them. The shrinkage was increasing and the company involved decided to clean house and let go all the employees from the manager down, including Bin. The manager of the warehouse that was let go was Sid Slickery.

Bin was also going to College to get his business degree. In his 4<sup>th</sup> year he was expelled from the college for selling assignment papers to other students.

#### **Involvement**

Bin is an entrepreneur who has the ability to see an opportunity to make money in any situation. Unfortunately he has no lawful limits. Bin started the new store down the block and obtained product through the store. He has a new client, unknown at this time.

He created an incorporated company, Si-Bin Fruit and Electronics, and put his name on it as President. He listed Sid as one of the directors.

#### **Association with other players:**

As seen Bin and Sid have worked together in the last two organizations. In both cases Sid was the manager but Bin created an outside revenue stream that lined both their pockets. Sid hired Bin at the first store knowing he would bring in good sales and maybe additional money. He did not do any background on Bin but just filled in the paperwork and gave it back to HR.

#### **Canadian Retail Oil Company (CROC)**

Followed up with the name Frank Decepre given by Moola.

Called him and he said that he is too busy to meet, being on the road for the next couple of weeks but he would gladly answer any questions on the phone. He talked in glowing terms about Bin and his relationship with the company. He stated that CROC is a new company doing a lot of business in northern Alberta. They are competing with the big companies and



use the product from the client as incentives to get and keep personnel in northern Canada. Many of the items are signing bonuses and other are placed into their camps for the use of the workforce. Frank talks a lot but doesn't give a lot of usable information.

Frank states that he has been working with Bin for a couple of years. Bin has been great at getting him the product in a very timely manner and even getting him stuff on rush orders. When asked for couple of orders he states that they are in his office and he would try and get them to the investigator in a couple of weeks when he is back. He is equally vague when asked about the name of the courier and where the items are delivered to. When asked about the CROC's website site to get additional information, he states that they are in the process of getting a new site as they were just bought. Any question that is asked about specifics gets vague answers about new employees and changing phone systems that do not allow him to provide a phone number.

Frank does provide a company address which is a suite number and street address. An online check does not find any listing for CROC. A Corporate Check on The Canadian Retail Oil Company also comes back with no hits. The same results occur for the name of Frank Decepre. Investigations into the company address reveal a Mailbox by Deception location. A check on the phone number associated with Frank indicates the number is associated with Whiz Bang Computers and Electronics.

## REPORT WRITING

Professional investigators are often required to describe, in writing, the findings of their investigations. The purpose of this section is to provide an overview of some of the key elements in successful report writing. Many post-secondary institutions offer more comprehensive report writing courses and participants are encouraged to enroll in these courses.

In some cases, report writing may simply be filling in the blanks of a generic form but most of the time it will require complete sentences and paragraphs divided into different sections.

Report writing is something that many take for granted but to do it well, requires a:

- lot of practice,
- critical eye,
- willingness to look at the report from the perspective of your reader, who is relying on you to relate to them all that you have done on a specific investigative file.

A report can be defined as “an orderly account, in writing, of an incident that has been observed, heard or investigated.”<sup>25</sup>



**Activity: What types of reports have you written in your careers?**

**Examples include:**

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

---

<sup>25</sup> T.A. Rosazza (1987). *Report writing correspondence course*. Laurel, MD. American Correctional Association

## **Types of Reports**

Reports come in a variety of styles, including:

### **Administrative**

These reports are often short, sometimes do not require complete sentences or paragraphs and may even be simply fill-in-the-blanks. They are often characterized with having to do with the day-to-day functioning of the organization. Examples of these might include requests for equipment, reporting the damage or loss of equipment, explaining expense claims, requests for vacation time or permission to enroll in work-related advanced training.

### **Operational**

These reports are often characterized by the need for complete sentences and paragraphs, but may also require the ability to write in point form. For example, an investigator may report an interview with a person in the following two ways:

Point Form Example:

- 1030 hours 2012-05-29 spoke with A. Pascuzzo regarding theft of boxes from his manufacturing plant
- 3 guys moved boxes into vehicle at 2000 hours 2012-05-28

Complete Sentences Example:

At approximately 1030 hours on Tuesday, May 29<sup>th</sup>, 2012 I spoke with Mr. Albert Pascuzzo about allegations of employee thefts from his manufacturing plant. Mr. Pascuzzo stated he saw three men moving boxes from the storage room into one of the men's cars around 2000 hours Monday, May 28<sup>th</sup>, 2012.

### **Formal Report**

These reports are more complex. They are almost always characterized by complete sentences and paragraphs. Often they are very detailed and contain multiple sections, some of which do not directly lead to another. For example, one section may discuss legal issues. Another section might describe witness statements. Another section might detail forensic or scientific analysis. Another section might conduct an analysis of what all the evidence or findings actually mean. As a result, headings are often used to assist the reader through the report. Crown Counsel reports are good examples of this type of report.



## Class Discussion Activity: Report Analysis

Following is a fictitious report based on an investigation that required surveillance of a subject's residence.

Take a few minutes to read the report and identify areas that you may find confusing.

Sample Occurrence or Incident Report:

Time	Occurrence Report
2300	Arrived on scene. 2176 2 <sup>nd</sup> St NE Calgary. Parked north side of 2 <sup>nd</sup> St NE approx. 25 meters south of junction with 2 <sup>nd</sup> Ave. Clear view of subject's residence with no obstruction. Lights observed on subject's front right window. Curtains closed.
2320	Light goes on in upper floor window.
2338	Light goes out in upper floor window. Banging is heard. Subject must have stumbled over something.
2345	Front door opens and unknown male leaves. Plate # AOL 1-- Blue Ford. Vehicle sped off at high rate of speed. Male is approx. 6 foot 40 years carrying a backpack. No sighting of subject. Video taken.
2346	Front lower window light goes out.
2350	Upper windows light turned on and subject can be seen moving around bedroom.
0000	Light turned off.
0100	Nothing to report. All quiet.
0200	Relieved by M. Sparks

Possible areas of confusion in the report include:

---

---

---

---

---

---

---



**Activity: Who are the audiences of your reports?**

**Some audiences include:**


Some of the things that might differ between these audiences:

- level of technical expertise
- knowledge of how investigative work is conducted
- terminology
- educational level
- reason for needing the information
- what they plan on doing with the information

## Hearsay Evidence and its Role in Reports

Hearsay evidence is third party evidence and is not considered by Canadian courts to be as admissible as direct evidence. An example of hearsay evidence follows:

Investigator Jake is taking a statement from Alice regarding a number of office thefts from petty cash box. Alice believes the culprit to be an office junior, Patrick. Alice never actually saw Patrick remove any money but he has access to the petty cash box. Alice overheard a co-worker Jaskaran tell Rebecca that she saw Patrick take some money off the desk where the petty cash box is located. She believes Patrick drinks and socializes more than he can afford and is using drugs so must be stealing. (She had a friend with an addiction problem and feels she can recognize the same symptoms.) She wishes to include this in her statement.



### Class Discussion Activity: Hearsay Evidence

What might be admissible evidence in the above paragraph and what would not? Why?

Admissible evidence includes:

---

---

---

---

---

---

Inadmissible evidence would include:

---

---

---

---

---

---

There are exceptions to the hearsay rule in criminal law but they are too complex to be considered in this module. The basic rules are:

- Reports need to include verifiable evidence. Opinions, conjecture, and assumptions should not be included in reports or if included, the reader should be made aware that the comments are simply opinions, conjecture, and assumptions and should not be considered facts.
- If a witness, who is not deemed by a Court to be an expert, offers an opinion, then it should not be considered a fact (even if the opinion is correct).
- If a witness reports something that someone else has told them about something that person witnessed, then it cannot be considered fact (even if what the person reports is true).
- Only include things that witnesses have actually witnessed with their senses (sight, sound, smell touch etc.)
- The rules around hearsay evidence arise mostly from the criminal courts. There are fewer restrictions concerning hearsay evidence in civil and administrative hearings; however, the general trend is to only use evidence from witnesses who have actually “witnessed” something directly.

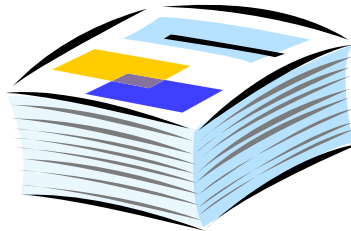


©Microsoft

## PRIVACY LEGISLATION AND REPORTS

Module 2 on Professionalism and Ethics discusses the impact of federal and provincial privacy legislation. These pieces of legislation can relate directly to all reports including, in some cases, the investigator's field notes. As a result, investigators need to be aware that:

- all reports may be subject to review through privacy legislation. The credibility of the investigator and the investigator's company will be judged by the quality of the reports. Use professional language and avoid offering unqualified opinions.
- conclusions in reports must be supported by facts and those facts should be corroborated.
- in reports, it is sometimes better to refer to people by their positions or titles since a report that has been accessed through privacy legislation may require the names of people to be blacked out. Recipients of this blacked-out report may believe that something is being hidden.
- care must be used in detailing information from confidential informants in case their identity can be determined through what evidence they provided.
- caution should be used when reporting a person's medical or psychological history.



©Microsoft



## COMMON ERRORS IN WRITING REPORTS

Issue	Fix
Spelling errors	Spelling matters. People will determine the credibility of your investigation based, in part, on your spelling. If you know you have troubles spelling, ask someone to proofread the report or use a dictionary. Spell-check programs are sometimes useful but they are also often incorrect.
Use of jargon or acronyms	Jargon and acronyms are often very distracting and confusing. If using an acronym, spell the words out the first time and then use the acronym afterwards. For example: Self-Contained Underwater Breathing Apparatus (SCUBA)
Abbreviations	Abbreviations can also be distracting, especially if the reader is unfamiliar with what the abbreviation means. For example, Smith, Singh and Sutter LLC. The “LLC” refers to a Limited Liability Company.
Grammar problems	<p>Poor grammar leads to major confusion among readers of reports. A simple example would be: “Tom and Jim went to the store. He bought gum.”</p> <p>The question for the reader is, “Who purchased the gum?” The writer may have intended the reader to conclude Tom purchased the gum but it is not clear. This confusion can be avoided by using pronouns with clear antecedents.</p> <p>Be careful using the following pronouns: <i>this, that, they, he and she</i>. Make sure that your readers know who or what these pronouns refer to.</p>
Gender-neutral language	Use <i>he/she</i> or <i>s/he</i> or <i>he or she</i> . Be careful to avoid confusion when using <i>they</i> to refer to one individual.

Superfluous language	This can be flowery language, obscure vocabulary or additional words that do not add additional information. For example: "Investigator Smith attended the complainant's residence. It was like a cute house situated on the sunny side of the street that managed to catch the softness of the early morning light."
Structure	<p>Examples include:</p> <ul style="list-style-type: none"> <li>• Bias and unsupported statements,</li> <li>• Inclusion of irrelevant information,</li> <li>• Omission of relevant information</li> <li>• Factual errors</li> <li>• Poor organization</li> <li>• Illegibility (if hand-written)</li> </ul> <p>Having a colleague read your reports can be very helpful because a fresh perspective may allow them to identify grammar or structural errors that you missed.</p>

Reports should include answers to the following questions:

**"Who"** describes people involved such as:

- Victim
- Suspect
- Witnesses
- Investigators
- Specialists (police, fire investigators, insurance experts)
- Property owners
- Client

**"What"** refers to what happened:

- What activities occurred
- What evidence was located, by whom and where it was stored
- What was damaged, removed, lost
- What witnesses will state (see earlier comments about hearsay evidence)
- What are the next steps

**“Where”** describes the location:

- Where activities took place
- Where damage or injuries occurred
- Where witnesses, victims, targets are located

**“When”** refers to the sequence of events:

- When an activity occurred
- When damage, theft occurred
- When your investigation began

**“Why”** refers to the reasons activities occurred:

- Why the activity was committed

**“How”** refers to:

- How the event happened
- Sometimes includes an analysis along with conclusions

## STRUCTURE OF REPORTS

The structure of a report will depend on its purpose. Administrative reports and Incident or Occurrence reports often already have headings where investigators simply insert information. Operational reports may be much more complicated. The following points outline how to construct an operational report.

Group information into meaningful parts such as:

- witness statements
- physical evidence
- actions of investigators
- legal or civil issues

The part names will vary depending on the complexity of the case.

Determine a logical sequence for presenting the information. Reports generally have a beginning (introduction), middle (the facts of the case) and end (summary that may include conclusions and recommendations). A common structural formula is:

- Tell 'em what you're going to tell 'em.
- Tell 'em what you want to tell 'em, and
- Tell 'em what you told 'em.

A logical sequence (with headings) could be the following:

1. Initial complaint
2. Mandate and scope of investigative inquiry
3. Relevant law or contractual agreements relevant to case
4. Investigative plan
5. Description of injuries, loss or damage being alleged
6. Witness statements
7. Physical evidence obtained (such as photos, videos, description of documents), who obtained the evidence, its condition and where the evidence is currently located
8. Background of key personnel
9. Analysis of findings and recommendations (if required)

Some cautions about outlines:

- If a section has too much information, consider dividing into smaller sections
- If a section has too little information, consider folding the information from the small section into a related section but find a method for the added information to stand out.
- Use the same grammatical and formatting style for all sections

## Three Types of Organizational Structure:

### 1. Chronological

Chronological reporting can work well for short reports or when all of the events that need to be recorded occurred one after another. The challenge occurs in complex reports when there are activities occurring at the same time or, in order to understand what transpired, the reader must be taken forward and backward in time.

### 2. Thesis and support

Thesis reporting is best used when the author has a single large thesis or statement that he or she wishes to prove. Most of the time this type of report sees each paragraph logically leading from the preceding and tying into the next paragraph. Generally, this style would not be used in investigations but rather in position papers written for senior managers.

### 3. Comparison and Contrast

Comparison and contrast report structures usually focus on making two opposing arguments with an analysis of commonalities and differences. This style might be useful within a broad investigative report for analyzing witness statements but would probably not be used as an overall structure for a report.

## PROVIDING TESTIMONY

Occasionally investigators are called to testify before a criminal or civil court, a tribunal, an administrative hearing or some other adjudicating body. In this forum the integrity of the investigation and its investigators will be tested. Courts are solemn places and the rules governing what can be said in court, especially criminal court, are complex. Following are some general guidelines:

- Come to court prepared for the case by bringing all relevant documentation and evidence. Have this material well organized and secure. If it appears that you are disorganized, inferences will be made about the quality of your investigation.
- Recall that there may be others who have a right to review your notes. (See section on note-taking above.)
- Dress appropriately. For men, this typically means a suit, shirt and tie or uniform. For women, it generally means business attire or uniform.
- Be on time.
- Be respectful of the person in charge (for example the judge). It is customary to slightly bow towards the judge upon entering a courtroom.

- You may be asked to swear an oath on a Bible. If you do not want to swear an oath on the Bible, then it is permissible to “affirm” that you will tell the truth. If you wish to affirm, tell the prosecutor or your lawyer ahead of time.
- You generally can stand or sit while testifying. Don’t fidget or wave your arms around. It is important that you keep non-verbal expressions to a minimum.
- Speak clearly and with sufficient volume that all can hear.
- Do not use jargon, acronyms or abbreviations.
- Make sure you understand all questions asked of you before answering them. If you don’t understand the question, politely ask for it to be re-phrased.
- Answer the question that is asked and do not go off on a tangent about other things.
- If you do not know the answer to questions, say so. Do not guess or speculate unless specifically asked to.
- If you make an error in testimony and realize it, ensure that you acknowledge the error and clarify the answer.
- Do not play word games with the lawyers. Do not try to outwit them. Chances are if you think they are trying to be tricky, the person hearing the case will have noticed it as well.
- Do not get into arguments with lawyers.
- Do not attempt to use humour.
- Your job is to report what you witnessed and did. Do so objectively and fairly. If there is evidence that exonerates the defendant or respondent, then acknowledge that evidence. It’s not your job to find fault or ensure a conviction but to be professional and objective. This includes being professional outside the courtroom as well. Be careful about what you say to others outside the court.
- You are excused only when the judge or person in charge of the hearing says you are. When in doubt, ask.
- Do not discuss your testimony with anyone else. Others may have to testify and discussing what you said may compromise what the other person might say.



### **Group Discussion Activity: Whiz Bang Computers**

In your investigative groups, review all the evidence you currently have. Identify what you know are facts and the evidence to support those facts. Identify what you know as circumstantial evidence and any of its supporting evidence.



### **Class Activity: Whiz Bang Computers**

The purpose of this activity is to get everyone in the class to now work independently to draft their own version of the final report. For many participants, this will take quite a while to complete. Your instructor may have you do this exercise in-class or for homework.

Write a detailed investigative report to your boss, your instructor, outlining the results of your investigation. Hand in your report to your instructor.

## **CONCLUSION**

This module has introduced participants to several strategies of effective verbal and nonverbal communication, including techniques for coping with communicative challenges. It has demonstrated methods for writing field notes and reports, discussed the impact of privacy legislation on report-writing and offered appropriate techniques for providing testimony at administrative, regulatory and criminal proceedings.



## Post-Test

1. Non-verbal communication accounts for approximately what percentage of the total message sent by someone speaking?
  - a. 20%
  - b. 30%
  - c. 90%
  - d. 50%
  - e. None of the above since words are all that matter

1. Write the phonetic alphabet words that spell "Alberta".

---

2. The acronym LEAPS stands for what?

- L \_\_\_\_\_
- E \_\_\_\_\_
- A \_\_\_\_\_
- P \_\_\_\_\_
- S \_\_\_\_\_

3. Write 5 of the 7 steps for effective communication.

---

---

---

---

---

4. What are some tips for dealing with verbally hostile and aggressive people?

---

---

---

---

---



5. Who can refer to your field notes in court?

---

---

---

---

---



## REFERENCES AND ADDITIONAL RESOURCES

Alberta Ministry of Justice and Solicitor General (2011). *Alberta basic security training*.  
Module 4, Communication for security professionals.

Guth, H. P. (1972). *Concise English handbook*. Belmont, CA: Wadsworth.

Rosazza, T. A., (1987) *Report writing correspondence course*. Laurel, MD:  
American Correctional Association.

Thompson, G.J. *Verbal judo: The gentle art of persuasion*. NY: HarperCollins.

# Module Eight: Specialized Investigations

## INTRODUCTION

This module is an introduction to various fields of professional investigation. It is an overview of broad areas and will not explore all aspects of the profession. The module will only discuss general areas, keeping in mind the broad range of specializations in investigations. It will also discuss some of the expectations and risks associated with each area and help participants understand the basic knowledge and expertise required to be effective in each arena.

This course provides a foundation on which an investigator will build his or her trade. A professional investigator will spend a career or even a lifetime enhancing skills and abilities. Participants are encouraged to pursue their own learning and professional development needs as they pursue their specialties.

## LEARNING OUTCOMES

At the conclusion of this chapter, participants will be able to:

1. List and describe the various types of specialty investigations
2. Explain the focus and purposes of each specialty investigation

## TOPICS

Introduction to Specialized Investigations .....	262
In-House Investigations .....	263
Regulatory Investigations .....	263
Barrister and Solicitor Investigations .....	264
Location of Persons Investigations.....	265
Corporate and Due Diligence Investigations .....	266
Insurance Investigations.....	267
Occupational Health and Safety Investigations.....	267
Private Client Investigations .....	268
Retail Sector Investigations .....	269
The Use of Experts.....	269
Specialized Professional Development.....	270
Conclusion .....	271
References and Additional Resources .....	273



## Check Your Knowledge

Test your knowledge of the topic before starting this chapter.

1. As a licensed investigator you have the expertise needed to do any investigation.
  - a. True
  - b. False
  
2. One of the important aspects of working for a lawyer in an investigation is the client-lawyer privilege that protects the lawyer's client's information.
  - a. True
  - b. False
  
3. As an investigator hired by the client to find a private individual, you can release any information you find to your client.
  - a. True
  - b. False
  
4. In locating an individual for a person who then assaults the individual, you could be charged as party to the offence.
  - a. True
  - b. False
  
5. As an occupational health and safety investigator it is important to understand all safety regulations and rules that apply to the investigation site.
  - a. True
  - b. False

## INTRODUCTION TO SPECIALIZED INVESTIGATIONS

Professional investigators work within various business environments. Some investigators work for entities that specialize in doing investigations for a variety of clients and will become generalists. Others will work for organizations where investigations are a specific area of business within the organization. In such cases they will likely focus solely on a very specialized area of investigation such as loss prevention, securities, workers' compensation or regulatory enforcement. Others will work for a company that will specialize in providing specialized investigation for one industry, insurance claims as an example. With such diversity of practice, this course can provide only a synopsis of the areas and their associated challenges.

As in all professional workplaces, the investigator as an employee will be subject to the professional standards of practice and expectations of employers. Those that specialize will need to understand the rules and regulations within their investigative scope. What is required by all investigators is the ability to listen, ask questions, think on their feet, make wise decisions and effectively communicate their findings. It is these skills in conjunction with the investigator's inquisitive nature and tenacity that will set them apart in their chosen path.

Investigators who enter the field from public investigations will have the advantage of prior experience. However these same investigators will find challenges in the business side of investigations. The professional investigator has to live within budgets, timelines, deliverables and expectations of clients. The professional investigator does not have the advantages of additional powers or government databases to provide the information. An investigator is required to make decisions related to cases, conflicts and budgeting that are not normally considerations for the public investigator. The professional investigator has to deliver a high quality product at a reasonable cost that provides the client, the organization or the lawyer a good return on investment (ROI). The investigator needs to manage the file within the resources that are available.

In public investigations, the terms *suspect* and *victim* are often used; however in professional investigations these terms are often replaced with *target* and *client*. Other terms often associated more with professional investigations are *customer service* and *return on investment*.

Unlike most movies and TV shows, professional investigations are rarely glamorous, exciting or dangerous. In fact, most work consists of routine inquiries, observations, research, report-writing and conversations with individuals. Much of the work is done at a desk and by telephone or computer. It is people (customer service), communication (report writing), business (ROI & budget management), and observation skills (understanding the human psyche) that make a successful professional investigator.

Investigations firms starting out, even sole-proprietors, require a business plan, operating capital, initial clients, licences and equipment. It is not enough to be a good investigator. Sound business knowledge and experience are also required in addition to excellent communications skills, especially in relation to clients and personnel.

## IN-HOUSE INVESTIGATIONS

In-house/internal investigations typically focus on issues of compliance with standards, policies, codes of behaviour or regulations. They may focus on internal theft and inventory loss or theft (sometimes referred to as shrinkage), reports made to an internal whistleblower line alleging inappropriate, unethical or illegal behaviour, or allegations of internal fraud.

Some examples of corporate or internal investigators include:

- Inventory tracking/loss prevention,
- Internal complaints
- Health industry investigators
- Airline fraud investigators
- Utility company investigators (utility boards, phone, and electricity)
- Logistics and courier companies
- Municipalities

In-house investigators, in most situations, are required to be licensed in Alberta.

## REGULATORY INVESTIGATIONS

For an investigator who might want to work in a regulatory environment, there are many options. As an example most professions have their own regulatory body which sets standards and expectations for the profession. These organizations frequently do their own internal investigations. In these areas, generally the investigator has some experience in the profession of the association. Some examples of these regulatory associations or agencies are:

- Health and Wellness
  - Dentists
  - Nurses
  - Licensed Nurse Practitioners
  - Paramedics
  - Doctors
  - Physiotherapists
- Professions
  - Engineers
  - Geologists
  - Teachers
  - Accountants
  - Planners
  - Lawyers
  - Financial services (e.g. securities)

In these examples, investigators are often tasked with inquiring into public complaints alleging breaches of the professional code of ethics, internal complaints of harassment or discrimination, or breaches of professional practice such as fraud.

In doing work for regulatory agencies it is important to remember that the investigator represents the association or agency. The investigator needs to understand both the regulations and the process for investigations that the organization has in place. Frequently there are timelines and expectations to abide by. A good working relationship with the organization's contact person and even with the legal counsel of the organization is important.

In most cases work done by an investigator is not allowed to make recommendations or express opinion. In these cases the investigator is strictly there to determine and present the facts.

## **BARRISTER AND SOLICITOR INVESTIGATIONS**

Barrister and solicitor investigative work is a broad field. Just as investigators have their areas of specialization, so do lawyers and law firms. Within the investigations profession the value of working with a lawyer, especially on a civil case, is well-understood. The reasons for this value are twofold:

1. The first is the ability to protect the information that is gathered by the investigator. In an investigation done under the direction of a lawyer, the communications and the report provided to the lawyer fall under privilege. This can be very beneficial for organizations doing investigations because under privacy rules, it protects the evidence from being disclosed.
2. The second reason is that the person who is putting forward the court case knows what is needed to prove the case. The lawyer running the case is the same person providing direction and input to the investigator and is in a position to provide that expertise to the investigator.

Some of the areas of law practice that a lawyer might represent and for which he or she might require investigative assistance are:

- Employment and labour
- Corporate litigation
- Injury
- Family
- Wills and estates
- Human rights
- Privacy
- Intellectual property
- Real estate

In areas such as these, the lawyer represents the clients and is directing the case towards court. The lawyer will bring in contract investigators to provide specific elements of the case.

In barrister and solicitor investigations it is very important to understand exactly what the lawyer is requesting the investigator to do. As an investigation moves forward and other opportunities present themselves it is important to go back to the lawyer to get approval or additional direction. The lawyer and the investigator form a team that works for the best interests of the client. It is important here to understand that all an investigator's findings, whether beneficial or not to the case, must be provided to the lawyer. Facts that you believe may harm the case are important for the lawyer to know. It is better to find out the weaknesses of the case in advance than to have them come out in the court case. The investigator's job is to provide the information, not to provide judgments on whether or not to provide the information to the lawyer.

## LOCATION OF PERSONS INVESTIGATIONS

Investigations by their nature present the need to locate people, which could include anyone related to any investigation. Examples include a lawyer wanting to find a person named in a will, an adopted child trying to locate birth parents, an insurance adjuster wanting to find a witness to an event, or someone wanting to locate a person in order to serve them documents.

Finding people, sometimes simply referred to as 'locates,' means that the investigator is often looking for personal information versus business information, bringing privacy legislation into play. A solid understanding of privacy law and regulations is required to be successful in these cases. Many databases that were available to an investigator in the past are no longer available because of privacy legislation. Here, knowledge of consent and how to submit an official privacy request will help even the most seasoned investigator. An investigator may have a friend working in an organization that holds information which would be beneficial to the investigation. Requesting the friend to provide such information could put the friend and the investigator at risk of criminal charges, including unauthorized use of a computer, under section 342.1 of the *Criminal Code of Canada*.

Besides access to information, this area comes with other pitfalls. The investigator needs to understand the reason the client wants to find a subject and be able to explain the limitations of the information. The investigator has a responsibility to make sure the information being sought for the client is for a legal purpose. Does the person want to harm or harass the located subject? If the investigator is satisfied why the client wants to locate the individual, the question becomes whether, if that individual is found, there is a limitation on what information can be released. An example of this principle is outlined in the following case study:

### Case Study – Finding Birth Parents

A possible client phones an investigator with a request to find her birth mother. The client is over 30 years old and has never had any contact with her mother. After hearing the client's story and receiving an outline of the information which would help track down the mother, the investigator believes that the mother can be found. The possible client requests that the investigator provide her with contact information for the mother when she is found.

**Question:** How would you explain to this client what she could expect as a result of the investigation? What would be the concerns for the investigator? Be prepared to present and discuss your answers in class.

---

---

---

---

---

---



## CORPORATE AND DUE DILIGENCE INVESTIGATIONS

Corporate and due diligence investigations are an increasing area of business. In the corporate sector the need to understand who you are doing business with, or understanding a business you want to acquire, requires in-depth due diligence. There may be corporate risks to accepting investment funds from an offshore entity with a shady past, signing an agreement with an overseas vendor who has a reputation for not meeting contractual obligations, or risks associated with merging with a firm currently under investigation for bribing foreign officials.

This is not an area for a novice investigator unless that investigator is being trained or mentored by an experienced professional. The ability to access and search many databases is key to success in this field. Most often these investigations are requested through a law office on behalf of client. Frequently if there is a business transaction being contemplated, the client may be anonymous to the investigator.

This module does not have the depth of scope to provide a background for these investigations. However if this is an area the investigator would like to pursue, additional training into internet investigations as well as a thorough understanding of corporate directories and civil court searches would provide a solid starting point.

## INSURANCE INVESTIGATIONS

Insurance investigations are a staple for many investigation organizations. They are usually civil investigations and can be either defence or plaintiff-focused. Frequently insurance companies will investigate files that are focused on exposing individuals who take advantage of the coverage, faking injury or blatantly defrauding the provider. Insurance investigators usually break down into three areas: the in-house investigator, the background and statement-taking investigator, and the surveillance professional.

In doing insurance investigations as an outside contractor one of the biggest concerns is to avoid conflicts of interest. If there is a civil suit it is not uncommon for both sides to retain investigators. A due diligence process is required in advance of accepting a contract. This process usually will require checking the names of the lawyers representing the case, the plaintiffs and defendants, and any other parties that may have been involved in the incident.

As with most investigation work there is usually a requirement to be discreet when engaging in your investigations.

## OCCUPATIONAL HEALTH AND SAFETY INVESTIGATIONS

Investigations into occupational health, safety and, increasingly, environmental issues require knowledge of applicable federal and provincial legislation as well as organizations' policies. Some areas of investigation may require knowledge of additional regulations that would cover the organization or the industry. An example would be the aviation industry or trucking industry where there are federal regulations in addition to provincial standards.

In sectors like occupational health and safety and environmental investigations, there is a requirement for high levels of knowledge in the field. This knowledge relates to the subject matter to be investigated; however it also is a major factor in site and personal security management. As an example an investigator may be called in to look at a reported hazardous spill from a train derailment. The substance spilled may be known or unknown. The first step is the safety of all involved including that of the investigator. Understanding the personal safety issues and protection requirements is first and foremost. This applies not only to a major spill, but also to a workplace incident. Putting oneself in danger is not beneficial to anyone involved.

The second safety concern is to understand the substance one is dealing with. Here the investigations are not so much to find out what happened but to quickly understand the risks and be able to communicate those findings into actions. In the previous example the chemical spill might be an inert chemical until exposed to water, when it becomes a highly toxic gas. It is forecast to rain in the next twelve hours. The accident site is two kilometers from a populated area. The investigator needs to act quickly with others to protect the citizens, contain the impact and communicate the risks.

In this field of specialization, preparing background assessments for potential risk areas, substances and specific client hazards is a must. You need to be prepared and have the needed equipment for any situation that will present itself. The investigator needs to know how and what to report, who to call, what specialties are required and where to acquire the needed resources. Frequently these investigations will involve a team of qualified specialists to respond quickly and effectively to any accident or disaster.

An environmental investigator may be required to collect and label samples from various sources to provide to a lab for examination. The expectation to gather, label and record exhibits occurs in all fields of investigations, but the level of detail, the specifics of handling and the expectation of data recorded may be at their highest levels for this investigator. Being able to assess and identify the impacts of an incident is a key element of this work. Often investigators involved in such files will become witnesses in court or legal proceedings.

## PRIVATE CLIENT INVESTIGATIONS

While not all licensed investigators contract their services to clients, some do. For this group, it is important to understand what the client expects and if those expectations can be met within the legal scope of your abilities. Many times clients will be asking for information or actions they have seen provided in a TV show environment, which often has little or no basis in reality.

The greatest risk in this area is in understanding the motivation of the client. Frequent requests from private individuals will be to locate another person. Why are they looking? What information can the investigator provide? These are two questions the investigator needs to ask. For example is it a jealous ex-boyfriend looking for a former girlfriend? Is the real reason for 'the locate' to harass her or to harm her? Bear in mind the due diligence that the law would expect of a licensed professional. Will the information provided to the client then place someone else in jeopardy? Be aware that the investigator could be party to an offence as defined in the Criminal Code (below), and as such could be charged and lose his or her licence.

<p>Parties to offence</p> <p>21. (1) Every one is a party to an offence who</p> <ul style="list-style-type: none"><li>(a) actually commits it;</li><li>(b) does or omits to do anything for the purpose of aiding any person to commit it; or</li><li>(c) abets any person in committing it.</li></ul> <p>Common intention</p> <p>(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.</p>
---

© Government of Canada (1985). *Criminal Code*. Reproduced with permission by Federal Reproduction Law Order.

The domestic investigation is another area of practice with risk. One partner wants to know what the other is doing. Is the request to provide information for legal proceeds or is it a “fishing trip”? These investigations are legal within the scope of law explained in this course. However, the party hiring an investigator frequently wants more than the law allows. The client may be looking for recorded conversations or hacking into private emails and phone conversations, actions that are illegal. The investigator needs to be aware of the Criminal Code sections on harassment (s. 264.1), unauthorized use of a computer (s. 342.1), and interception of communications (s. 184). Is the client harassing the target? Is the investigator being used as a tool of that harassment? Is the investigator a pawn in a nasty game? Frequently these cases have low budgets and high expectations.

## RETAIL SECTOR INVESTIGATIONS

The retail sector employs a large number of investigators. Many of these are in loss prevention, and many others are in retail risk management. People employed in internal inventory, corporate risk management and internal controls may be exempt from licensing. (See section 10 of the *Security Services and Investigations Act* for more info). Here the focus will be on the loss prevention investigator.

Loss prevention investigators are unique in that they are most likely to be arresting individuals for crimes. Their ability to arrest is based on the citizen’s power of arrest under the *Criminal Code of Canada*. (See Module 3.) Although the *Criminal Code* defines their arrest powers, the situations in which they arrest are usually restricted by the organization’s policies and insurance coverage.

In addition to powers of observation, loss prevention investigators require strong conflict management and people skills. The act of taking away someone’s freedom is not without risk. The trained loss prevention investigator is keenly aware of their personal safety and the safety of those around them. Additional training in these areas is strongly recommended.

## THE USE OF EXPERTS

Within the profession of investigators is a sub-field of experts. These individuals could include handwriting experts, document examiners, computer forensic experts and arson investigators. These individuals may or may not require licensing. If the expert only sub-contracts to other investigators, investigation agencies or law firms, it is likely they can operate under that agency’s investigative authority and do not need a licence. However if they deal directly with the public it is likely they will need a licence. In either case it is best to contact the Government of Alberta, Ministry of Justice and Solicitor General, tel. 1-877-462-0791 or email [ssia.registrar@gov.ab.ca](mailto:ssia.registrar@gov.ab.ca) directly to find out.

This kind of investigator is an expert who has already been recognized in their field for a high level of knowledge. Frequently they have high levels of training and certification. Most often they are members of an association of professions within their field. What sets them apart is that most often they have been qualified by the courts as being an expert in their field.

## SPECIALIZED PROFESSIONAL DEVELOPMENT

As participants can see, the fields of service for the investigator are diverse and may require high levels of knowledge or expertise. This course provides only a foundational level of understanding for the investigator. It is expected that the additional expertise required in the investigator's field of choice would be provided by his/her organization, mentoring and formal courses which provide the needed knowledge required. In a changing world, it is the role of the investigator to be able to adapt and integrate this change.

One of the expectations of a professional is a commitment to learning and professional development. This commitment can take many forms: keeping abreast of industry and legal updates, reading industry trade magazines, taking courses and attending conferences providing specialized training. Professional associations, client networks, and participating in industry groups will add to the knowledge, skills and abilities of the professional investigator. It is the responsibility of each firm and each investigator to ensure their knowledge and skills are current with industry best practices.



### Group Discussion Activity

In groups, choose one of the specialized fields of investigation identified in this module. List below the following considerations for this specialized field:

1. Benefits of the field assigned
2. Risks and expectations of the assigned field
3. Professional bodies that might exist for investigator professional development
4. Expertise needed

---

---

---

---

---

---

---

---

---

---

## CONCLUSION

This module has introduced participants to the fundamentals of investigation, including its types and purposes, its clients, and a variety of investigative approaches. It has explained how to plan and manage an investigation, including risk awareness, interviewing techniques, research, surveillance, physical evidence, legislation and policies affecting investigations, dealing with confidential sources and managing case files.



## Post-Test

Test your knowledge of the topic at the conclusion of the module.

1. All investigators require the same skills and background knowledge.
  - a. True
  - b. False
  
2. An occupational health and safety investigator can face a number of risks and hazards which could include:
  - a. Chemicals
  - b. Gas and oil spills
  - c. Structural hazards
  - d. Electrical Hazards
  - e. All of the above
  
3. Once an investigator receives their licence they have all the skills needed to embark on any investigation.
  - a. True
  - b. False
  
4. Which field(s) of specialized investigation is most likely to include physically arresting people?
  - a. In-house
  - b. Occupational health and safety
  - c. Retail
  - d. Barristers and solicitors
  
5. In conducting a 'locate' or a private client inquiry, the investigator has to be aware of:
  - a. Motive of the client
  - b. Disclosure of personal information
  - c. Risk of being party to an offence
  - d. All of the above



## REFERENCES AND ADDITIONAL RESOURCES

Alberta Ministry of Justice and Solicitor General. (2012) Retrieved from <https://www.solgps.alberta.ca>

Alberta Association of Private Investigators. (2012). Retrieved from <http://www.aapionline.ca>

ASIS Calgary (2012). Retrieved from <http://www.asis162.org>

ASIS Edmonton (2012). Retrieved from <http://www.asisedmonton.com>

*Criminal Code of Canada* (R.S.C., 1985, c. C-46). Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/>

Menary, C. J. (2011). *The Canadian private investigator's professional guidebook*. Toronto: Carswells.

Office of the Information and Privacy Commissioner of Alberta. (2012.) Retrieved from <http://www.oipc.ab.ca>



# Module Nine: The Business of Investigations

## INTRODUCTION

This module is an introduction to business aspects of professional investigation firms and investigators. It is not meant as an in-depth study of each topic covered. Participants are encouraged to pursue their own learning and professional development needs as they relate to the focus of this particular module. Each topic within is complex, unique and directly applicable to operational aspects of a professional investigations firm.

## LEARNING OUTCOMES

At the conclusion of this chapter, participants will be able to:

1. Identify basic elements of planning and operating a professional investigation business
2. List professional responsibilities and obligations in operating a professional investigation business, especially as they relate to the mitigation of risk

## TOPICS

Overview of the Business Side of Investigations.....	276
The Investigations Business.....	277
Licensing: Individuals.....	277
Licensing: Companies.....	279
Contracts and Agreements.....	279
Personnel and Systems.....	279
Equipment and Data.....	281
Insurance.....	281
Databases and Anonymity.....	281
Clients.....	282
Compliance and Risk Mitigation Systems.....	282
Ongoing Professional Development.....	283
Conclusion.....	289
ADDENDUM: Sample Template for Client Services Agreement.....	290
References and Additional Resources.....	292



## Check Your Knowledge

Test your knowledge of the topic before starting this module.

1. Simply by obtaining a licence as a professional investigator, a new investigator can start business and take in clients.
  - a. True
  - b. False
  
2. The only insurance required for an investigations company is for workers' compensation.
  - a. True
  - b. False
  
3. All investigation companies offer the same services.
  - a. True
  - b. False
  
4. A services agreement or contract setting out fees and the work to be performed is one of the most important documents to agree on at the start of a new client assignment.
  - a. True
  - b. False
  
5. It is important to fully understand and abide by individual client guidelines on such things as surveillance procedures, format of reports and billing procedures.
  - a. True
  - b. False

## OVERVIEW OF THE BUSINESS SIDE OF INVESTIGATIONS

Professional investigations take place within a formal business environment. Some investigators work for entities such as regulatory bodies, for example:

- a law society
- a financial services professional body
- a teachers' college that regulates standards of practice and investigates allegations of member professional misconduct
- agencies that regulate and investigate workers' compensation or other forms of insurance claims
- agencies that conduct environmental investigations on behalf of professional bodies
- private investigation firms.

Like all professional workplaces, each has professional standards of practice and expectations of its investigators. Many work with end-users of investigation reports that may in turn have policies they impose on the investigator and the firm that employs them.

Some who enter the investigation field have prior related experience in some aspect of professional investigations, but not necessarily in the business side. This means they may be unprepared to manage or operate a successful business, comply with appropriate legislation and/or mitigate risks unique to their industry. This is especially true for those transitioning from the public to the private sector where they may be inexperienced with for-profit budgeting, resource and personnel management as well as taxes, infrastructure and cost management, insurance and licensing.

For those in the private investigation industry, it is sometimes not so much about being a successful investigator as it is about being a successful business leader and manager.

Unlike the investigative work shown in most movies and TV shows, professional investigations are rarely glamorous, exciting or dangerous. In fact, most work consists of routine inquiries, fact checking, research, report writing and talking with individuals. A lot of the work is done in the background from a desk and by telephone or computer.

Firms, even sole-proprietors just starting out, require a business plan, operating capital, initial clients, licences and equipment.

It is not enough to be a good investigator. Sound business knowledge and experience are also required in addition to excellent communications skills, especially in relation to clients and personnel.

## THE INVESTIGATIONS BUSINESS



### Group Discussion Activity: Resources for an Investigations Business

In groups of 4-5, identify some of the things you think are needed to establish yourself as an investigative firm. Record your answers and those of the class below.

---

---

---

---

---

---

---

---

## LICENSING: INDIVIDUALS

Under the *Alberta Security Services and Investigators Act*, individuals working in the investigation services industry must be licensed. Working without a licence is an offense under the Act and may result in fines or court appearances.

In Alberta, Section 2.1 of the Act defines an investigator as:

**Any person or organization that undertakes to investigate, perform surveillance, or seek or obtain information about crimes, offences, contradictions of enactments or misconduct or allegations of same about:**

- an accident, incident, personal injury or damage to property or premises
- the activities, conduct, character or repute of a person or organization
- the whereabouts of an individual
- the location, disposition or recovery of lost, stolen or missing property

©Alberta Queen's Printer, 2008

This licence class is exempt from wearing a uniform if desired. If a uniform is worn it must be compliant with legislation.

Applicants for individual investigator licences must meet basic licensing requirements and training qualifications before applying to receive a licence. Individual licences are issued for two year terms and are subject to the terms and conditions of the Act, Regulations and Policy. Applicants should familiarize themselves with these documents and their rights and responsibilities under the legislation, specifically including:

- *Security Services and Investigators Act*
- *Security Services and Investigators Regulation*
- *Security Services and Investigators (Ministerial) Regulation*
- *Security Services and Investigators Act Policy Manual*

Appendices B, C and D of this manual contain *The Act* and *Regulations*. In addition, each of the above-noted documents can be found online, in full for free, at the Ministry of Justice and Solicitor General website [www.securityprograms.alberta.ca](http://www.securityprograms.alberta.ca).

Individual investigator licences are portable, meaning the licence remains with the individual when he or she changes jobs and enables the individual licensee to work for more than one company if desired. Individual licensees, not their employers, are responsible for applying for, renewing and maintaining their licences.

Individuals applying for a licence under the *Security Services and Investigators Act* as investigators must meet the following requirements:

- At least 18 years of age
- A Canadian citizen or legally entitled to work in Canada
- Competent and of good character
- No serious criminal record for which a pardon has not been granted
- No outstanding criminal charges
- Not the subject of a criminal investigation
- Fluent in speaking English. The standard for fluency is the ability to communicate effectively with the public and members of the emergency response system during emergency situations.
- Successful completion of training requirements for the class(es)<sup>26</sup> of licence being sought

In addition to providing proof of qualifications, applicants will be required to swear an affidavit on the application form attesting to their qualifications. Swearing a false affidavit will result in suspension or cancellation of a licence.

It is the responsibility of individuals to ensure they are properly licensed to work as investigators in the Province of Alberta.

---

<sup>26</sup> Individuals may hold dual licences in some classes, i.e.: investigator and security services.

## LICENSING: COMPANIES

Under the Alberta *Security Services and Investigators Act*, contract businesses and the in-house departments of companies offering investigation services must be licensed, although some exceptions apply. Performing or offering licensed services without a licence is an offence under the Act and may result in fines or court appearances.

Businesses regulated under other federal and provincial legislation may be exempt from licensing under the Alberta *Security Services and Investigators Act*. Please refer to section 10 of the Act and Regulation for a complete list of exemptions, or call the Licensing Department at 1-877-462-0791.

While not required in all municipalities, companies also require municipal business licences to operate legally.

It is the responsibility of the company to ensure it is properly licensed to conduct investigations in the Province of Alberta. See Section 3.6.2 of the *SSIA Policy Manual* for requirements.

## CONTRACTS AND AGREEMENTS

There are a number of different forms of contracts and agreements found within the investigation field. For example:

- New personnel sign confidentiality agreements and employment contracts
- Clients and firms sign service agreements
- Firms sign agreements for office space, equipment and vehicles

In regard to clients, perhaps the most important initial step to formalize a services agreement is to get a signed agreement/contract with the client that specifies:

- Budget (hourly rate, total billable, allowable expenses, including per kilometer mileage, meals, other billable expenses)
- Expected outcome, scope of the project, tasks to be completed
- Approved mechanism for resolution of any disputes that may arise
- Ownership of any intellectual property (e.g.: reports, video) that may be created during the investigation
- How invoicing and payment will be processed

It is important to obtain the client's expectations and policies on how the investigation is to be conducted, including for example, limitations on how surveillance is to be conducted. For instance, some clients may not permit surveillance or video recording of subjects on school or play grounds or in places of worship.

For a sample template for a client service agreement, see the end of this module. This agreement sample deals with rates but does not cover the scope of the work to be done. Some investigative firms will describe the scope and limitations of the work in a separate document.

## PERSONNEL AND SYSTEMS

To operate, companies need personnel that typically fall into the categories of management, operations and administrative support. Hence companies require recruiting strategies, vetting and hiring procedures, orientation and training of new personnel, performance management systems, operational policies and procedures. Within any company, policies and procedures are typically focused within one of the following areas: operations, human resources and administration.

In the investigation industry, operational policies and procedures address such points as

- use of equipment
- safe driving practices
- guidelines on surveillance and filing of reports

Human resources policies and procedures address

- job descriptions
- payroll
- hours of work
- leave entitlement and other benefits
- termination

Administrative policies and procedures address such points as

- use of company e-mail and computers
- bonding of employees
- signing authority for contracts
- taxes
- conflict of interest and ethics policies
- workers' compensation claims and reporting
- purchasing of equipment

These and many more policies and procedures are required to successfully operate a business.

Policies and procedures will also address critical systems such as file confidentiality, data security and storage. These may include restricted access to levels of the computer network, physical offices or other data systems. Provincial and federal privacy legislation dictates how data is collected, what is permissible to collect, how such data may be shared and how it must be stored and protected, in addition to how data can be released, to whom, and in what circumstances. There can be legal penalties for failure to comply with such legislation.

Additional organizational systems will be used to monitor the pending expiry dates of individual and company licences, certifications and insurance policies.

In some instances, clients seeking to contract investigative services will demand proof that an investigation firm has specific policies, procedures, insurance, certifications and other details.

## EQUIPMENT AND DATA

At a minimum, most investigators and the firms they work for require:

- Vehicles (some may be specially designed for surveillance purposes)
- Computers (report writing, video editing, data searches, etc.)
- Surveillance equipment (still and video, low light and night capability)
- Secure storage space for written reports (locked and fire resistant)
- Secure office facilities
- Communications equipment (cell phone, landlines, e-mail).

There may be other equipment required for specialized investigations, such as audio recording equipment, or access to subscription-based databases for specialized research.

Related to the section above on Personnel and Systems, there may be regulatory, legal, insurance or client-driven requirements to enact special measures to properly secure hard copy and digital data used or developed during an investigation. This may include off-site nightly data back-up of all digital files, access control measures to restrict who can enter the file room, locked file cabinets with monitored access, and tiers of restricted access to computer networks and e-mail archives. For some government projects, some staff may have to undergo additional security clearance checks to perform investigative work and access the related data.

## INSURANCE

Insurance is critical to any enterprise. In addition to provincial workers' compensation insurance, a firm will typically have insurance policies for fire/disaster, vehicles, business continuity, errors and omissions, and general liability. Depending on the nature of the firm, additional insurance may be required.

Sole proprietor investigators working out of their home and without any employees may require additional home insurance to cover their work assets and business.

## DATABASES AND ANONYMITY

Depending on the nature of the investigations being conducted, individuals and firms may require access to databases for property searches, liens, mortgages, court records such as civil actions and criminal cases, insurance claims, or other specialized records. In all instances, it is the responsibility of the investigator to know what data can be legally accessed, and what restrictions may apply to the collection, storage and dissemination of such data.

At the same time, the success of an investigator may in part depend on the ability to remain anonymous. To this end, investigators are advised to consider what easily accessible information can be found about them or their employer, online and via social media. This includes considering how they show up on call display when using the office phone or their cellular phone.



## CLIENTS

While not all licensed investigators contract their services to clients, some do. For this group, their business depends on finding, signing and maintaining clients. This includes marketing and sales.

Marketing is whatever is done to reach and persuade prospects who may become clients. The sales process is everything that is done to close the sale and get a signed contract. Both are necessary for business success and both need to be conducted in a manner that is ethical and professional.

While it is outside the scope of this training course, investigators who work with clients are advised to research and plan for the following:

- How they will market their services, and to what specific audiences
- Strategies to sell their services
- Creation of client service agreements/contracts
- Systems for client relationship management over time
- Plans for building the business, including creation of specialized lines of service that will attract and keep clients

Ideally, clients form long-term, professional relationships based on mutual respect and quality of service delivery. Unethical business practices, sloppy service and breaches of client confidentiality are common reasons for losing clients and going out of business.

## COMPLIANCE AND RISK MITIGATION SYSTEMS

There are threats to any business. The level of risk that each threat poses is a combination of the vulnerability of a business to the threat, its likelihood of occurring and its potential impact. Threats may take the form of a natural disaster (fire, flood, earthquake, pandemic), or the consequence of a business practice (e.g. failure to follow the law, policy or client guideline, or failure of a client to pay an invoice). Business continuity plans can be created to address threats and the risks they may pose to any enterprise. Companies are well advised to invest time and energy in a risk management system that is unique to their context.

In the investigation field, common threats include in part:

- Failure to comply with regulatory mechanisms (e.g. licensing)
- Failure to comply with legislation (e.g. privacy and protection of information)
- Failure to comply with client guidelines (e.g. conducting unauthorized surveillance)

Corporate policy and procedures can help mitigate to some degree all such threats, especially if combined with orientation of newly-hired staff and regular internal training sessions. It is the responsibility of all investigations firms to develop their own internal register of the threats they may encounter, the risks each may pose, and appropriate systems to mitigate the occurrence and level of risk posed by each. This includes systems to ensure full compliance with all relevant codes of professional practice, provincial and federal legislation.

## ONGOING PROFESSIONAL DEVELOPMENT

One of the characteristics of a professional is a commitment to ongoing learning and professional development. This can take the form of regular reading of investigation industry trade magazines or those specializing in a topic area such as fraud or environmental events. Professional development further includes joining industry associations and client networks and participating in their informal and formal learning events. Many professional associations offer accredited training programs that result in formal designations.

It is the responsibility of each firm and each investigator to ensure that knowledge and skills are current with industry best practices.



©Microsoft



## Group Discussion Activity: Business Plan

Create a brief business plan for a fictional investigation firm. The plan should identify:

- Five areas of specialist investigation services that the firm will offer
- What their rates will be for each of the five services they will offer
- Who the client market(s) will be
- Three ways they will market their services to their client market(s)
- What their anticipated costs, including overhead, will be for operating their business

Areas of Specialist Investigation	Rates per Service
1.	
2.	
3.	
4.	
5.	

Marketing Strategy	Anticipated Costs, including Overhead
Marketing Strategy 1.	
Marketing Strategy 2	
Marketing Strategy 3.	



### Group Discussion Activity: Startup

Identify and list the steps required to set up and open a professional investigation firm, including systems and equipment.

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



### Group Discussion Activity: Risk Mitigation

Identify and list what threats your fictionalized professional investigation firm may be exposed to, what the impact of each could be, and a measure to mitigate the risk of each threat.

Potential Threat	Potential Impact	Risk Mitigation Measure



## Post-Test

Test your knowledge of the topic.

1. To operate as an investigator in Alberta, each individual investigator must be properly licensed with the Province.
  - a. True
  - b. False
  
2. Investigations can face a number of threats, including:
  - a. Unlicensed investigators
  - b. Staff breaching provincial or federal legislation
  - c. Clients not paying their invoice
  - d. Staff acting unethically
  - e. All of the above
  
3. Professional development as an investigator ends after the initial period of training and new-hire orientation.
  - a. True
  - b. False
  
4. A services agreement or contract setting out fees and the work to be performed is one of the most important documents to agree on at the start of a new client assignment.
  - a. True
  - b. False
  
5. It is important to fully understand and abide by individual client guidelines on such things as surveillance procedures, format of reports and billing procedures.
  - a. True
  - b. False

## CONCLUSION

This module has introduced participants to the basic elements of planning and operating a professional investigation business, including licensing, contracts and agreements, personnel, equipment, insurance, databases and anonymity. Client relations and professional responsibilities and obligations have been discussed, especially as they relate to risk mitigation, and sources of ongoing professional development have been identified.



## ADDENDUM: SAMPLE TEMPLATE FOR CLIENT SERVICES AGREEMENT

date

Personal or Corporate Address

**Attn:**

Subject:

File #:

**DOCUMENT SENT;**

B By  
Email:  
By Fax:  
By Mail:  
By  
Courier

---

The information contained herein is classified as **“PRIVILEGED and CONFIDENTIAL”** in anticipation of litigation and is expressly for the interest of our client and their legal representatives.

---

### **SERVICE AND RETAINER AGREEMENT**

Thank you for contacting us regarding the above noted matter. As discussed, the following is our fee schedule;

<b>Item</b>	<b>Rates</b>	
Investigations		Per hour
Travel		Per hour
Kilometer	\$.72	Per Kls
Cell Phone	\$.50	Per Min.
Copies	\$.30	Per page
Typing	\$9.50	Per page
Parking	At cost	
Meals	At cost	
Courier / Mail	At cost	

Our billable time to you may include; taking instructions, reviewing documents, organization of file materials, development of work plan, other preparation tasks, making telephone calls, conducting inquiries/research/interviews, preparing notes, attending meetings and preparing reports.

We ask that all investigation services be paid in advance. To initiate this investigation we require a retainer of \$\_\_\_\_\_ (CAD funds). Funds can be sent to us by one of the following. Please indicate which you will use;

- Credit Card Authorization Form (see attached)
- Personal or Corporate Cheque
- Bank Draft / Money Order
- Wired funds to *Your Company* Bank Account

We will confirm receipt of the retainer funds and will provide an invoice showing a credit for that amount.

As the investigation proceeds we will calculate our ongoing fees and expenses and apply them to your account. Once the account approaches a zero balance we will request additional funds before continuing with the investigation. An updated invoice will be sent you showing fees, expenses and the current balance. This process will continue until the investigation is complete. If you require clarification on invoicing please call anytime.

Either party has right to terminate our services upon written notice. If our services are terminated, you will be responsible for our fees and expenses to the time of termination.

Please acknowledge by signing below;

I, \_\_\_\_\_ agree to the terms and conditions set out in this letter.  
*(please print name)*

---

*Signature*

Please return a signed copy of this letter to our office by way of;

- Fax (1-604-517-4510)
- Email (*PDF attached*)
- Mail / Courier
- By Hand

We look forward to working with you.

Yours truly,

*Your Company Name*



## REFERENCES AND ADDITIONAL RESOURCES

Alberta Association of Private Investigators (2012). Retrieved from <http://www.aapionline.ca/>

ASIS Calgary (2012). Retrieved from <http://www.asis162.org/>

ASIS Edmonton (2012.) Retrieved from <http://www.asisedmonton.com/>

Canadian Association of Private Investigators (2012). Retrieved from <http://www.capicanada.ca/>

Province of Alberta (2008). *Alberta Security Services and Investigators Act.*

Local library for business planning, insurance and risk mitigation

Local business association and Chamber of Commerce

Local insurance broker

City Hall for local licensing and zoning

# **Alberta Professional Investigator Training**

## **Appendix A: References and Additional Resources**

## Appendix A: References and Additional Resources

### Books, Websites and Online Documents

- Alberta Association of Private Investigators. Retrieved from [www.aapionline.ca](http://www.aapionline.ca)
- Alberta Human Rights Commission (2012). <http://www.albertahumanrights.ab.ca/>
- Alberta Learning Information Service (2011). OCCinfo. Alberta Occupational Profiles. Private Investigator. Retrieved from [http://alis.alberta.ca/occinfo/Content/RequestAction.asp?Keyword=private+investigator&cmdGO=GO&aspAction=GetTitlesSearchKeyword&format=html&Page=TitleSearch&Results=TRUE&SNT\\_ID=55](http://alis.alberta.ca/occinfo/Content/RequestAction.asp?Keyword=private+investigator&cmdGO=GO&aspAction=GetTitlesSearchKeyword&format=html&Page=TitleSearch&Results=TRUE&SNT_ID=55)
- Alberta Ministry of Justice and Solicitor General (2012.) Retrieved from <http://justice.alberta.ca/Pages/home.aspx>
- Alberta Office of the Information and Privacy Commissioner (2012.) Retrieved from <http://www.oipc.ab.ca>
- ASIS Calgary (2012). Retrieved from [www.asis162.org](http://www.asis162.org)
- ASIS Edmonton (2012.) Retrieved from [www.asisedmonton.com](http://www.asisedmonton.com)
- ASIS International (2012). [www.asisonline.org](http://www.asisonline.org)
- Association of Certified Forensic Investigators of Canada. Retrieved from [www.acfi.ca](http://www.acfi.ca)
- Association of Certified Fraud Examiners (2012). Retrieved from [www.acfe.com](http://www.acfe.com)
- Canadian Association of Private Investigators (2011). Retrieved from [www.capicanada.ca](http://www.capicanada.ca)
- Canadian Centre for Occupational Health and Safety. (2012). *Accident investigation*. Retrieved from <http://www.ccohs.ca/oshanswers/hsprograms/investig.html>
- Canadian Centre for Occupational Health and Safety. (2012). *Hazard and risk*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/hazard\\_risk.html](http://www.ccohs.ca/oshanswers/hsprograms/hazard_risk.html)
- Canadian Centre for Occupational Health and Safety. (2012). *Hazard control*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/hazard\\_control.html](http://www.ccohs.ca/oshanswers/hsprograms/hazard_control.html)
- Canadian Centre for Occupational Health and Safety. (2012). *Risk assessment*. Retrieved from [http://www.ccohs.ca/oshanswers/hsprograms/risk\\_assessment.html](http://www.ccohs.ca/oshanswers/hsprograms/risk_assessment.html)
- Canadian Legal Information Institute. Retrieved from <http://www.canlii.org/>
- CIPS: Canada's Association of Information Technology Professionals (2012.) Retrieved from [www.cips.ca](http://www.cips.ca)
- Council of International Investigators (2011). Retrieved from [www.cii2.org](http://www.cii2.org)

Fleras, A. and J. L. Elliott (1999) *Unequal relations: An introduction to race, ethnic and Aboriginal dynamics in Canada* 3<sup>rd</sup> ed. Scarborough, Ont., Prentice-Hall.

Government of Canada (1982). *Canadian Charter of Rights and Freedoms*. Retrieved from <http://laws-lois.justice.gc.ca/eng/charter/>

GOVERNMENT OF CANADA (2012). *CRIMINAL CODE OF CANADA* (R.S.C., 1985, C. C-46).  
RETRIEVED FROM  
<HTTP://LAWS-LOIS.JUSTICE.GC.CA/ENG/ACTS/C-46/>

GOVERNMENT OF CANADA (2000). *PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT, SC*  
2000, C 5. RETRIEVED FROM <HTTP://WWW.CANLII.ORG/EN/CA/LAWS/STAT/SC-2000-C-5/LATEST/SC-2000-C-5.HTML>

Heuer, R. J. (1999). *Psychology of intelligence analysis*. Washington, DC, Center for the Study of Intelligence, CIA.

High Technology Crime Investigation Association (2010). Retrieved from [www.htcia.org](http://www.htcia.org)

Hutt v. The Queen, [1978] 2 S.C.R. 476

International Association of Arson Investigators (2012). Retrieved from <http://firearson.com>

International Association of Financial Crime Investigators (2012). Retrieved from [www.iafci.org](http://www.iafci.org)

Internet for Investigations: Specialized Internet Training for Investigators (2011).  
*Resources for investigators*. Retrieved from <http://www.webinvestigator.ca/Resources/Resources.html>

Jurist Canada Dictionary (2002). Retrieved from <http://jurist.law.utoronto.ca/dictionary.htm>

Menary, C. J. (2011). *The Canadian private investigator's professional guidebook*. Toronto: Carswells.

Metropolitan Police (n.d.) How to interview. Peel Centre Training Unit Student Notes. London: The Receiver, Metropolitan Police.

Office of the Privacy Commissioner of Canada (2006). *PIPEDA Case Summary # 2006-351: Use of personal information collected by Global Positioning System considered*. Retrieved from [http://www.priv.gc.ca/cf-dc/2006/351\\_20061109\\_e.asp](http://www.priv.gc.ca/cf-dc/2006/351_20061109_e.asp)

Office of the Privacy Commissioner of Canada (2008). *Findings under the Personal INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (PIPEDA). PIPEDA CASE SUMMARY #2008-392. INDIVIDUAL OBJECTS TO BEING PHOTOGRAPHED BY PRIVATE INVESTIGATION FIRM*. RETRIEVED FROM [HTTP://WWW.PRIV.GC.CA/CF-DC/2008/392\\_20080227\\_E.ASP](HTTP://WWW.PRIV.GC.CA/CF-DC/2008/392_20080227_E.ASP)

Office of the Privacy Commissioner of Canada (2009). *OPC guidance documents. Guidance on covert video surveillance in the private sector*. Retrieved from [http://www.priv.gc.ca/information/pub/gd\\_cvs\\_20090527\\_e.asp](http://www.priv.gc.ca/information/pub/gd_cvs_20090527_e.asp)

OFFICE OF THE PRIVACY COMMISSIONER OF CANADA (2011). *LEGAL INFORMATION RELATED TO*

*PIPEDA. PRIVACY PRINCIPLES*. RETRIEVED FROM [HTTP://WWW.PRIV.GC.CA/LEG\\_C/P\\_PRINCIPLE\\_E.ASP](HTTP://WWW.PRIV.GC.CA/LEG_C/P_PRINCIPLE_E.ASP)

Office of the Privacy Commissioner of Canada (2011). *Questions and answers regarding the application of PIPEDA, Alberta and British Columbia's Personal Information Protection Acts*. Retrieved from [http://www.priv.gc.ca/resource/fs-fi/02\\_05\\_d\\_26\\_e.asp](http://www.priv.gc.ca/resource/fs-fi/02_05_d_26_e.asp)

Osterburg, J. W. and R. H. Ward (1997). *Criminal investigation: A method for reconstructing the past* (2<sup>nd</sup> ed). Cincinnati, OH: Anderson Publishing Co.

Peña, M. S. (1993). *Practical criminal investigation* (3<sup>rd</sup> ed.). Placerville, CA: Copperhouse.

Pollock, J. M. (2012). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth

Province of Alberta (2010). *Alberta Evidence Act*. Retrieved from <http://www.qp.alberta.ca/documents/Acts/A18.pdf>

Province of Alberta (2010). *Alberta Human Rights Act*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg\\_type=Acts&isbncln=9780779744060](http://www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg_type=Acts&isbncln=9780779744060)

Province of Alberta (2010). *Alberta Occupational Health and Safety Act*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=O02.cfm&leg\\_type=Acts&isbncln=0779749200](http://www.qp.alberta.ca/574.cfm?page=O02.cfm&leg_type=Acts&isbncln=0779749200)

Province of Alberta (2009). *Alberta Occupational Health and Safety Code*. Retrieved from [http://employment.alberta.ca/documents/WHS/WHS-LEG\\_ohsc\\_2009.pdf](http://employment.alberta.ca/documents/WHS/WHS-LEG_ohsc_2009.pdf)

Province of Alberta (2012). *Alberta Occupational Health and Safety Regulation*. Retrieved from [http://www.qp.alberta.ca/574.cfm?page=2003\\_062.cfm&leg\\_type=Regs&isbncln=077971752X](http://www.qp.alberta.ca/574.cfm?page=2003_062.cfm&leg_type=Regs&isbncln=077971752X)

Province of Alberta (2012.) *Security Services and Investigators Act*. Retrieved from <http://www.securityprograms.alberta.ca>

Province of Alberta (2012.) *Security Services and Investigators Act Policy Manual*. Retrieved from <http://www.securityprograms.alberta.ca>

Province of Alberta (2012). *Security Services and Investigators Regulation*. Retrieved from <http://www.securityprograms.alberta.ca>

*R v Zienkiewicz* Vanc. Prov. Crt Info.# 71784K, April 6, 1994

*R v Thomas* North Vanc. Prov. Crt File #26520 April 19, 1995

R v Arango Provincial Division, Brampton, Ont Oct. 21, 1993

Rossmo, D. K. (2006). *Criminal investigative failures: Avoiding the pitfalls*. FBI Law Enforcement Bulletin 75(9).

Schulman, M. (1979). A survey of spousal violence against women in Kentucky. Washington DC: Department of Justice, Law Enforcement, as cited in Dutton, Donald G. (1995). *The domestic assault of women: Psychological and criminal justice perspectives* (Vancouver, BC: UBC Press)

Statistics Canada (2006). *Measuring violence against women—Statistical trends*. Retrieved from <http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf>

*The Law Dictionary*, Featuring *Black's Law Dictionary* Free Online 2<sup>nd</sup> ed. Retrieved from <http://thelawdictionary.org/>

Thomas, A., and Loftus, E. (2005). Eyewitness memory. *RCMP Gazette* 67(4). Retrieved from [http://www.gazette.rcmp.gc.ca/articleen.html?&lang\\_id=1&article\\_id=205](http://www.gazette.rcmp.gc.ca/articleen.html?&lang_id=1&article_id=205)

Thompson, G.J. (2004). *Verbal judo: The gentle art of persuasion*. NY: HarperCollins.

Toddington International Inc. (2012) *Free internet research tool and search resources for online investigators*. <http://www.toddington.com/resources/>

WorkSafe Alberta (2009). E-Learning programs. Retrieved from <http://www.employment.alberta.ca/SFW/268.html>

World Association of Detectives (2010). Retrieved from [www.wad.net](http://www.wad.net)



## Audiovisual Resources

Note: These titles are provided as starting points for instructor and student exploration of further learning related to the Alberta Professional Investigator Program. Their listing here does not constitute a recommendation. These and other relevant audiovisual materials may be available through local colleges and universities

In addition to the materials listed here, the Alberta Government Library has four extensive audiovisual collections: Occupational Health and Safety, Human Resource Management, Career Resources and Fire Protection. For listings and loan terms, see <http://www.employment.alberta.ca/1707.html>

ATS Productions. *As simple as respect: Diversity, respect and inclusion in the workplace*. (DVD and CD-ROM) ATS Media. Available from <http://www.rgtraining.ca/index.do>

Canada Law Book (1995). *How to be an effective trial witness*. (DVD and workbook). Available at <http://www.carswell.com/whatsnew/canadalawbook/>

Canadian Broadcasting Corporation (1994). *Cross culture* (VHS). Available from <http://www.cbclearning.ca/>

Crisis Prevention Institute, Inc. (2008). *Advancing your verbal intervention skills*. 3 vols. (DVD). Available at <http://www.crisisprevention.com/>

Crisis Prevention Institute. *Under the influence and out of control: How to verbally intervene with an impaired individual*. (DVD, Participant Workbooks and Leader's Guide). Available at <http://www.crisisprevention.com/>

Dale Trimble and Associates (2007). *Defusing hostility*. (DVD, workbook and discussion guide) <http://www.daletrimble.com/bc.htm>

Det Norske Veritas (USA) Inc. (1996). *Practical accident investigation*. (VHS) Available at <http://www.dnv.com/>

Films for the Humanities and Sciences (2010). *Communication essentials*. (Series on DVD) Available from <http://ffh.films.com/>

Films for the Humanities and Sciences (2008). *Confronting discrimination and prejudice*. (DVD) Available from <http://ffh.films.com/>

Films for the Humanities and Sciences (2000). *Investigative interviewing*. (DVD). Available from <http://ffh.films.com/>

Friday Street Productions (1990). *One hit leads to another*. (DVD and study guide). Victoria Women's Transition House Society. Available at <http://www.transitionhouse.net/>

Pulse Media (2004). *That's not what I meant!* (DVD and instructor's package booklet).

Into the Classroom Media. Available from <http://www.classroommedia.com/>

SafetyCare Inc.(2001). *Understanding hazards and risks*.(VHS) <http://www.safetycare.ca/>

Stage Fright Productions (2007). *The art of listening*. Learning Seed. Available at <http://www.learningseed.com/>

Stage Fright Productions (2008). *Body language: Beyond words*. (DVD)  
Learning Seed. Available from <http://www.learningseed.com/>

True Liars Productions Inc. (2009). *The truth about liars*. (DVD)  
Available from <http://www.cbclearning.ca/>

Visual Communications Group. (2003). *Surprising studies of visual awareness*. (DVD)  
Available from <http://www.vcgcorporate.com/>

Verbal Judo Institute, Inc. (2007). *Verbal judo: Dramatizations*. (DVD) Available at <http://www.verbaljudo.com/>

# **Alberta Professional Investigator Training**

## **Appendix B:**

### ***Security Services and Investigators Act***

# **Alberta Professional Investigator Training**

## **Appendix C:**

### ***Security Services and Investigators Regulation***

# **Alberta Professional Investigator Training**

## **Appendix D:**

### ***Security Services and Investigators (Ministerial) Regulation***

