



Electricity Use Not Protected Information

By Breena Murray

In today's world there is a lot of talk about invasions of privacy. Certain information about an individual is protected by section 8 of the *Charter of Rights and Freedoms*. But where does the line get drawn as to what information is actually protected?

In a recent decision, the Supreme Court of Canada decided in a seven to two split that the use of a digital recording ammeter, a device that can be used to record electricity use and patterns, is not an invasion of privacy if used by the police without a search warrant.

This decision stems from an investigation done by the Calgary Police on a home which they thought housed a marijuana grow operation. In the course of their investigation, the Police asked the power company to install the ammeter on the transformer for the home so that they could obtain readings of the electricity use for the home. Because the transformer was not located on the property of the suspected

home, the Police did not obtain a search warrant prior to the ammeter's installation.

The Police use these ammeter's when they suspect a grow operation is present at the house because grow operations have a distinctive pattern of electricity use that can be seen through the ammeters. If these patterns exist, the Police will then obtain a warrant to search the premises. The use of ammeters is just part of the Police investigation and are only used after they have already formed the belief a grow operation is present as a result of information they have obtained elsewhere.

The accused in this case appealed his initial conviction because he said that the ammeter was an invasion of his privacy. The Alberta Court of Appeal overturned his conviction because they found the accused's expectation of privacy was objectively reasonable. They said the ammeter could disclose information such as the number of occupants of the home, when

they are present and when they are sleeping.

However, the majority of the Supreme Court of Canada found that the Court of Appeal's assertions about what the ammeter could reveal were not supported by the evidence given at trial. The detective who testified at trial was asked if the ammeter could produce information to answer the following questions, to all of which he answered no:

- how many occupants live in the residence
- whether any occupants are home at a particular time
- whether anyone is watching television
- whether anyone is using a computer
- whether anyone is listening to a stereo
- whether anyone is taking a bath, sitting in a hot tub, or showering

- whether anyone is cooking or washing dishes
- the gender of the occupants
- the political affiliation of the occupants
- the sexual orientation of the occupants
- where electricity is being used in the house
- whether any electrical devices are on a timer

The Supreme Court of Canada concluded that the only information these ammeters reveal is the consumption of electricity of the home. They went on to state that the relationship between consumers and utility companies does not have expectation of confidentiality attached to it as we see with other relationships (for example between solicitors and their clients).

Thus, the Police's use of a property's electricity use in its investigation of a marijuana grow operation will not be seen by the Courts to be an invasion of privacy as there is no reasonable expectation of such.