BD&P LAW FIRM

What If the Evidence Disappears Too? Anton Piller Orders

By Craig Alcock

In the first two articles in this series, I discussed tools that can help you find missing money and prevent it from disappearing again. In other cases, the risk isn't to the money disappearing, but to the evidence being altered, deleted, or destroyed.

Consider a departing employee suspected of taking confidential information with them on their way out the door, or a competitor may have obtained proprietary data, or records of a fraudulent transaction may exist on computers, phones or other devices controlled by the people you intend to sue.

If they are bad actors and they learn that litigation is coming, what happens to that evidence? Do you have reason to believe that incriminating evidence in is at imminent risk of being deleted or destroyed before it can be produced in litigation?

That is where an **Anton Piller order** can become important.

An Anton Piller order is an extraordinary court order designed to preserve evidence at real risk of being destroyed or concealed. Think of it like a civil search warrant. The application is made without notice to the Respondent and the resulting order can permit an "Independent Supervising Solicitor" appointed by the Court to enter premises and preserve specified documents, electronic records or other evidence before the other side has an opportunity to destroy it.

The obvious comparison is a search warrant, but there is an important difference. An Anton Piller order is a civil remedy, not a criminal search warrant. The Supreme Court of Canada has described it as an extraordinary remedy that effectively operates as a private search mechanism and has imposed significant safeguards on both obtaining and executing one.

Courts do not grant these orders simply because relevant evidence exists or because a plaintiff fears the defendant *might* delete something. The applicant needs compelling evidence supporting the claim, serious potential harm and a real possibility that important evidence will be destroyed before the ordinary litigation process can preserve it. That is a high bar, and it should be.

The defendant normally does not know about the application until the order is being executed. There is no opportunity to tell its side of the story in advance. The Supreme Court of Canada has therefore stressed the need for safeguards governing these orders and the protection of privileged information.

For a business that discovers suspected fraud, theft of confidential information or other serious misconduct, the practical question is simple: If we give them notice of the lawsuit today, will the evidence still exist tomorrow? If there is a real reason to think the answer is no, preserving the evidence may be more urgent than starting the lawsuit.

Sometimes you need to preserve the case before you can prove it.

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