

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

ANDREW GORDON WAKELING

APPELLANT (Appellant)

and

**ATTORNEY GENERAL OF CANADA ON BEHALF OF THE UNITED STATES OF
AMERICA and ATTORNEY GENERAL OF BRITISH COLUMBIA**

RESPONDENTS (Respondents)

AND BETWEEN:

ANDREW WAKELING

APPELLANT (Applicant)

and

ATTORNEY GENERAL OF CANADA ON BEHALF OF THE MINISTER OF JUSTICE

RESPONDENTS (Respondents)

and

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TABLE OF CONTENTS

PART I – OVERVIEW 1

PART II – POSITION ON APPELLANT’S QUESTIONS 2

PART III – STATEMENT OF ARGUMENT 2

 A. Section 193(2)(e) permits near-limitless disclosure. 2

 B. The scope of permitted disclosure is relevant under *Charter s. 8*. 5

 I. The permitted disclosure of information gathered in a search informs the
 reasonableness of the law that authorizes the search. 5

 II. The disclosure of information is not a fresh s. 8 search. 7

 C. Section 193(2)(e)’s inclusion in the *Criminal Code*’s wiretap scheme infringes
 Charter s. 8. 7

 D. Section 193(2)(e) should be struck down absent s. 1 justification. 9

PART IV – ORDER REQUESTED..... 10

PART V – TABLE OF AUTHORITIES 11

PART VI – PROVISIONS DIRECTLY AT ISSUE..... 13

PART I – OVERVIEW

1. Section 193(2)(e) of the *Criminal Code* permits near-limitless disclosure of private communications intercepted by wiretap. Accordingly, s. 193(2)(e) infringes s. 8 of the *Charter* and should be held to be of no force or effect unless the infringement is justified under s. 1.
2. Under s. 193(2)(e), private communications may be disclosed to an investigator or prosecutor either within Canada or in a foreign state. The disclosure need only be *intended* to be in the interests of the administration of justice. The interests can be those of Canada *or of the foreign state*. And there is no requirement even to attempt to constrain the foreign state's use and dissemination of the communications, nor to keep any record of the disclosure.
3. Section 193(2)(e) is an integral part of the *Criminal Code*'s wiretap scheme. That scheme, like any law authorizing a search, must be reasonable to comply with *Charter* s. 8. Put differently, provisions restricting or permitting disclosure of the fruits of a search form part of the context in which courts must assess the reasonableness of the law authorizing the search. By permitting near-limitless disclosure of private communications intercepted by wiretap, s. 193(2)(e) makes the *Criminal Code*'s wiretap scheme unreasonable, and thus violates *Charter* s. 8.
4. Correspondingly, disclosure to a foreign official under s. 193(2)(e) is not a fresh search under s. 8. The plain meaning of "search" does not encompass such a disclosure. Pursuant to s. 32 of the *Charter*, s. 8 protects individuals' privacy interests from unreasonable intrusion by "government". A s. 8 search therefore must involve an acquisition of private information by the Canadian state, not a foreign one.
5. Contrary to the Court of Appeal's view, an authorizing judge cannot meaningfully contemplate, much less countenance, disclosure under s. 193(2)(e) when initially authorizing a wiretap interception: police are ordinarily incapable of providing any evidence to the judge concerning a future disclosure of private communications that they have not yet even intercepted.
6. The protection against unreasonable search and seizure in *Charter* s. 8, with its associated objective of preserving individual privacy rights, is central to the interest of the British Columbia Civil Liberties Association ("BCCLA") in defending civil liberties in Canada, and the public interest in holding government actors accountable.

PART II – POSITION ON APPELLANT’S QUESTIONS

7. These submissions concern the eleventh question posed by the appellant and stated by McLachlin C.J. as a constitutional question:

Does s. 193(2)(e) of the *Criminal Code*, R.S.C. 1985, c. C-46 infringe s. 8 of the *Canadian Charter of Rights and Freedoms*?

8. The answer to that question is “yes”.

PART III – STATEMENT OF ARGUMENT

A. Section 193(2)(e) permits near-limitless disclosure.

9. The scope of the disclosure permitted by s. 193(2)(e)¹ is breathtaking. An intercepted private communication may be disclosed to any investigator or prosecutor, anywhere, without any record of the disclosure being made, and without any attempt to impose conditions on the communication’s subsequent use and dissemination. The disclosure need only be *intended* to be in the interests of the administration of justice—either in Canada or elsewhere. Moreover, it is unclear whose intention matters.

10. Thus, on its face, s. 193(2)(e) permits disclosure even to support torture, or to prosecute an offence in a foreign state that violates Canadian constitutional norms or international law, provided only that *someone* intends that disclosure to be in the interests of the administration of justice *somewhere*. Even where disclosure is intended to be in the interests of justice in Canada, there is no need to seek assurances that the recipient will honour that intent.

11. In defending s. 193(2)(e), the respondents rely heavily on several laudable examples of multi-jurisdictional cooperation in the investigation of multi-jurisdictional crime drawn from the affidavit of RCMP Deputy Commissioner Gary Bass.² This sort of cooperation is unquestionably permitted by s. 193(2)(e), and for good reason: it is indisputable that an ability to share information, including

¹ Because Part VI of the *Criminal Code*, R.S.C. 1985, c. C-46 is a comprehensive code for wiretap interceptions (see, e.g., *R. v. TELUS Communications Co.*, 2013 SCC 16 at para. 23 [*TELUS*] [Appellant’s Book of Authorities (ABA) Tab 16]), the *Privacy Act*, R.S.C. 1985, c. P-21, has no application here. In any event, *Privacy Act* s.8(2)(f) is substantially duplicative of *Criminal Code* s. 193(2)(e) and the same arguments generally apply to both.

² Factum of the Attorney General of Canada at paras. 13-14 and Factum of the Attorney General of British Columbia at paras. 38- 42.

private communications intercepted by wiretap, is sometimes necessary for the effective investigation of multi-jurisdictional crime.

12. But s. 193(2)(e) goes beyond the situations described by Deputy Commissioner Bass. Indeed, it goes beyond the investigation of multi-jurisdictional crime, to the investigation of purely extra-jurisdictional crime. The respondents do not explain, and Deputy Commissioner Bass's evidence does not show,

(a) why Canadian officials need the ability to disclose intercepted communications when to do so is in the interests of the administration of justice *not* in Canada, but only in the foreign state;

(b) why Canadian officials should not be obliged to impose limits on the use and dissemination of the intercepted communications that they disclose—*e.g.*, by requiring that they not be disseminated to *other* foreign states nor used to facilitate the investigation or prosecution of offences for which they have not been sought; or

(c) why Canadian officials' disclosures should not be subject to some form of oversight, such as inclusion in the annual report to Parliament of wiretap activities required by s. 195 of the *Criminal Code*.

13. Section 193(2)(e)'s explicit negation of any requirement that disclosure be in the interests of justice in Canada is especially problematic. It opens the door to disclosures to foreign states that are motivated by Canadian authorities' political, financial, personal, or other interests, as long as the *foreign state's* intention relates to the interests of *its* administration of justice. While it is unlikely that any Canadian official would disclose intercepted private communications for such a motive, it is nonetheless within the scope of s. 193(2)(e), and the general integrity of our officials does not narrow the provision's language. "[T]he constitutionality of a statutory provision cannot rest on an expectation that the Crown will refrain from doing what it is permitted to do".³

14. Equally problematic is the possibility of no-strings-attached disclosure. It is this type of disclosure that resulted in the mistreatment of Maher Arar, and that Commissioner of Inquiry Dennis O'Connor subsequently condemned:

³ *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, 2002 SCC 61 at para. 45, *per* Arbour J. [Tab 2].

It is also important that the RCMP control, to the extent it is able, the use to which information provided to other agencies may be put. Written caveats are used by the RCMP and other agencies that share information to try to prevent recipient agencies from further disseminating information or using it for purposes of which they do not approve. While such caveats do not guarantee protection against unacceptable use, common sense tells us that they should significantly reduce the risk.

The fact that Project A-O Canada did not attach written caveats to the information about Mr. Arar provided to American agencies increased the risk that those agencies would use the information for purposes unacceptable to the RCMP, such as removing him to Syria.⁴

15. As the Arar incident reflects, there is no room for error when disclosing to a foreign state: once information is disclosed, it is beyond Canada's control. This is why it is crucial that Canadian officials attempt to limit the foreign state's use and dissemination through caveats, undertakings, or agreements before any disclosure is made. When an intercepted communication is disclosed within Canada, *Criminal Code* s. 193(1) applies to the recipient and limits subsequent dissemination and use. But a foreign state is not subject to s. 193(1). Absent some other constraint, a foreign state will disseminate and use the intercepted communication as it sees fit.

16. For example, according to Deputy Commissioner Bass, the RCMP cooperates with law enforcement agencies in China.⁵ Concurrently, however, China maintains political allegiances that do not align with Canada's. The flow of intercepted communications from Canadian hands to China, and onward to North Korea, is entirely conceivable in the absence of any attempt to prevent that flow. Canadians' private communications could end up anywhere in the world, used for any purpose, and no one in Canada would be the wiser.

⁴ Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar : Analysis and Recommendations* (Ottawa, Public Works and Government Services, 2006) at 5.1.5.1 [Tab 12].

⁵ Affidavit of Commissioner Gary Bass at paras. 13-14 (Record of the Attorney General of Canada at 5).

B. The scope of permitted disclosure is relevant under *Charter* s. 8.

I. The permitted disclosure of information gathered in a search informs the reasonableness of the law that authorizes the search.

17. To comply with *Charter* s. 8, a law that authorizes a search must be reasonable.⁶ The reasonableness analysis asks whether the law sufficiently protects an individual's privacy in the face of the state's interest in intruding on that privacy.⁷ This Court has long acknowledged that this analysis is context-specific:

It appears to me from the jurisprudence that the "context" in which these matters must be judged involves a number of factors: the nature and the purpose of the legislative scheme whose administration or enforcement is in question; the mechanism for discovery or mandatory production employed and the degree of its potential intrusiveness; and the availability of judicial supervision. One must consider all of these factors in determining whether a seizure, real or potential, would be unreasonable within the meaning of section 8.⁸

18. The scope of the subsequent disclosure invited by the legislative scheme must form part of the context in which the scheme's reasonableness is analyzed. If the scheme permits the fruits of a search to be disclosed widely, its intrusion on privacy will be much greater than if disclosure is constrained. This amplified interference with privacy interests should not escape all *Charter* scrutiny simply because the permitted disclosure follows the initial search.

19. Parliament's recognition of the importance of disclosure restrictions is evidenced by their inclusion in the *Criminal Code*'s wiretap scheme. For instance, s. 193(1) makes it an offence to disclose an intercepted private communication, absent certain exceptions. If not for s. 193(1), intercepted private communications could be disclosed to anyone, anywhere, at the whim of law enforcement. There is little chance that such a wiretap scheme would be *Charter*-compliant:

[T]he regulation of electronic surveillance protects us from a risk of a different order, i.e., not the risk that someone will repeat our words but the much more insidious danger inherent in allowing the state, in its unfettered discretion, to

⁶ *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145 [*Hunter*] [ABA Tab 2]; *R. v. Collins*, [1987] 1 S.C.R. 265 at para. 23 [Tab 4].

⁷ *Hunter*, *supra* note 6 at 157, 159-60 [ABA Tab 2].

⁸ *Del Zotto v. Canada*, [1997] 3 F.C. 40, 147 D.L.R. (4th) 457 (F.C.A.) at para. 13, *per* Strayer J.A., dissenting [Tab 1]. His dissenting reasons were adopted unanimously by this Court on appeal: [1999] 1 S.C.R. 3. See also *Hunter*, *supra* note 6 at 159-60 [ABA Tab 2]; *R. v. Plant*, [1993] 3 S.C.R. 281 at para. 19 [Tab 9]; *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757 at paras. 69-71 [Tab 8]; *R. v. Gomboc*, 2010 SCC 55, [2010] 3 S.C.R. 211 at para. 23 [Tab 7].

record *and transmit* our words... Surreptitious electronic recording annihilates the very important right to determine to whom we speak, i.e., *the right to choose the range of our auditors*.⁹

20. This Court acknowledged the relevance of restrictions on subsequent use when evaluating the constitutionality of the *Criminal Code*'s emergency wiretap provisions. In *obiter*, the Court noted that oversight of the s. 184.1 emergency wiretap power is provided, in part, by strict restrictions on the subsequent use of the intercepted communications.¹⁰

21. Disclosure and use restrictions are not unique to wiretap. For instance, *Criminal Code* s. 462.48 allows the Attorney General to obtain disclosure of income tax information in connection with the investigation of certain drug-related offences. The person to whom the information is delivered may not disseminate it except for the purposes of that investigation.

22. Although the Court has not often had occasion to consider disclosure and use restrictions in its *Charter* s. 8 analyses, the impetus to do so will likely grow as technology evolves. Computers have vastly simplified not only the process of gathering information, but also the process of storing, analyzing, and sharing that information:

Computers... are remarkably efficient tools for distributing and preserving data. They can store everything, distribute data anywhere in an instant, and configure data in a way that can be broadly subjected to many different types of analysis for many reasons.

The shift to computerization presents an easy case for the expanded role of use restrictions in privacy law. ... In the past, the law focused on evidence collection: The frailty and imperfection of the human mind made use restrictions generally unnecessary. But computers have brought the cost of total memory to zero, and that shift means that the law must now play the role that the practicalities of human observation once played.¹¹

⁹ *R. v. Duarte*, [1990] 1 S.C.R. 30 at para. 37 (emphasis added), *per* La Forest J. [*Duarte*] [Tab 5].

¹⁰ *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531 at para. 82, n. 7 [*Tse*] [ABA Tab 17]. Although s. 184.1 was not directly in issue, the Court observed that because no prior judicial authorization is required under s. 184.1, accountability and oversight are provided by other means, including restrictions on subsequent use. Note also that, despite the use restrictions in s. 184.1 (namely, destruction of the intercepted communications "as soon as practicable") the intercepted communications could nevertheless first be disclosed to a foreign state under s. 193(2)(e).

¹¹ Orin S. Kerr, "The National Surveillance State: A Response to Balkin" (2008-2009) 93 *Minn. L. Rev.* 2179 at 2182-83 [Tab 14]. This Court has also acknowledged the need to interpret s. 8 in light of technological advances: see *R. v. Wong*, [1990] 3 S.C.R. 36 at para. 9 [Tab 11] and *TELUS*, *supra* note 1 [ABA Tab 16].

23. The increasing ease with which information can be used, copied, and disseminated brings new significance to disclosure and use restrictions and their role in ensuring the reasonableness of a search.

II. The disclosure of information is not a fresh s. 8 search.

24. While the s. 8 analysis must consider the extent to which the fruits of a search can be disclosed, the disclosure of information is not itself a fresh search under *Charter* s. 8. To hold otherwise would stretch the plain meaning of “search” too far:

“Search” is a common English word. We speak of a search for a person as in a search for a child who is lost. We speak of a search for a culprit seen running from the scene of a crime and lost sight of. But in this section of the *Charter*, I think the word is about looking for “things” (and in this context I use the word “things” to include words spoken) to be used as evidence of a crime.¹²

25. Furthermore, under s. 32 of the *Charter*, s. 8 only applies to searches by “government”, meaning Canadian state actors. Thus, a search under s. 8 must involve the acquisition of private information by the Canadian government. In a s. 193(2)(e) disclosure to a foreign state, the Canadian state is not itself acquiring private information; rather, it is facilitating such an acquisition by the foreign state.

C. Section 193(2)(e)’s inclusion in the *Criminal Code*’s wiretap scheme infringes *Charter* s. 8.

26. The inclusion of s. 193(2)(e) in the *Criminal Code*’s wiretap scheme results in an infringement of *Charter* s. 8: the astonishing breadth of the disclosure it invites has the effect of making the *Criminal Code*’s wiretap scheme unreasonable. *Charter* s. 8’s guarantee of reasonable freedom from surveillance does not permit intercepted communications to be disclosed abroad, without restriction, for the sole benefit of foreign states.

27. Since the advent of *Charter* s. 8, this Court has approached electronic surveillance of private communications with great caution on account of the significant privacy interests at stake:

¹² *R. v. Evans* (1994), 93 C.C.C. (3d) 130 (B.C.C.A.), at para. 86, per Rowles J.A., quoting *R. v. Sandhu* (1993), 82 C.C.C. (3d) 236 (B.C.C.A.) at 247, per Southin J.A. [Tab 6].

[O]ne can scarcely imagine a state activity more dangerous to individual privacy than electronic surveillance and to which, in consequence, the protection accorded by s. 8 should be more directly aimed.¹³

28. As this Court observed in *R. v. Tse*, wiretaps have a severe impact on those privacy interests due to their clandestine nature. Wiretaps raise the spectre of an unreviewable police power as, by definition, the subject of a wiretap will be unaware of the intrusion.¹⁴ Furthermore, a wiretap intrudes on the privacy interests of at least *two* people: the target of the investigation, and the person with whom the target communicates.¹⁵

29. Given the significant privacy interests with which a wiretap severely interferes, a wiretap crosses the line into an unreasonable search where it includes the potential for subsequent, near-limitless disclosure. The unconstrained power to disclose an intercepted privacy communication is fundamentally inconsistent with the “importance of the societal values involved in wiretapping and the risks to essential privacy interests”.¹⁶ The disclosure contemplated by s. 193(2)(e) shows a reckless disregard for privacy that creates a chilling effect on free speech:

Few of us would ever speak freely if we knew that all our words were being captured by machines for later release before an unknown and potentially hostile audience.¹⁷

There are few audiences more unknown and potentially hostile than the authorities of a foreign state.

30. The respondents, like the Court of Appeal, contend that a judge contemplates, and countenances, disclosure under s. 193(2)(e) when considering whether to issue the authorization for a wiretap interception. They suggest this helps to make s. 193(2)(e) compliant with the *Charter*.¹⁸

31. First, while judges may be taken to know and apply the law, it is fanciful to think that all authorizing judges necessarily have the full breadth of the disclosure permitted by s. 193(2)(e) in

¹³ *Duarte*, *supra* note 9 at para. 19, *per* La Forest J. [Tab 5].

¹⁴ *Tse*, *supra* note 10 at paras. 17, 82-86 [ABA Tab 17]; see also *Duarte*, *supra* note 9 [Tab 5].

¹⁵ *R. v. Thompson*, [1990] 2 S.C.R. 1111 at paras. 107, 112 [Tab 10]. See also Nathan Forester, “Electronic Surveillance, Criminal Investigations, and the Erosion of Constitutional Rights in Canada: Regressive U-Turn or a Mere Bump in the Road Towards *Charter* Justice?” (2010) 73 Sask. L. Rev. 23 [Tab 13].

¹⁶ *R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992 at para. 21, *per* LeBel J. [Tab 3].

¹⁷ *Duarte*, *supra* note 9 at para. 35, *per* La Forest J., quoting *Holmes v. Burr*, 486 F.2d 55 (1973), *per* Hufstedler J., dissenting, cited with approval in *State v. Glass*, 583 P.2d 872 (1978) [Tab 5].

¹⁸ Factum of the Attorney General of Canada at para. 58 and Factum of the Attorney General of British Columbia at para. 115. This implicitly supports the position that the prospect of subsequent disclosure informs the reasonableness of the initial search.

mind. Under s. 186, an authorizing judge is required to determine whether the requested interception would be “in the best interests of the administration of justice”. It would be nonsensical for the authorizing judge at the same time to consider the propriety of subsequent disclosure that is *not* in the interests—let alone the *best* interests—of the Canadian administration of justice.

32. Furthermore, even if an authorizing judge were to turn his or her mind to the possibility of disclosure under s. 193(2)(e), it would be impossible for him or her to provide any meaningful oversight of its broad disclosure power in most cases. The authorizing judge operates in a vacuum: pre-interception, evidence cannot usually be adduced as to the foreign disclosure that might eventually take place.

33. Finally, s. 193(2)(e) in its current form could not be rendered *Charter*-compliant even by prior judicial authorization, the gold standard of search and seizure law: it is never reasonable to disclose an intercepted private communication to a foreign state when to do so is only in the foreign state’s interests and not Canada’s.

D. Section 193(2)(e) should be struck down absent s. 1 justification.

34. It can safely be assumed that Parliament would prefer to enact a wiretap scheme that does not include s. 193(2)(e) than to have no wiretap scheme at all. Accordingly, the least intrusive remedy for the s. 8 infringement identified above is to strike down s. 193(2)(e), which is the source of the infringement, unless the infringement can be justified under *Charter* s. 1. Parliament can choose whether and how to replace s. 193(2)(e).

35. There are many imaginable ways for Parliament to permit disclosure of intercepted communications that strike a more reasonable balance with individuals’ privacy interests. That said, it will invariably be unreasonable to permit Canadian officials to disclose intercepted communications to foreign officials when to do so is only in the interests of justice in the foreign jurisdiction. A *Charter*-compliant law would also require Canadian officials to obtain proper assurances limiting dissemination and use by the foreign state.

36. A requirement to obtain assurances would not be difficult to meet. According to the respondents, police are already obtaining them voluntarily.¹⁹ A *Charter*-compliant legislative solution will therefore not impede the multi-jurisdictional investigation of crime, but instead codify much of what is said to be its standard practice.

PART IV – ORDER REQUESTED

37. The BCCLA asks that it be granted permission to make 10 minutes of oral submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 28th day of March, 2014.



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¹⁹ Factum of the Attorney General of Canada at paras. 13-14 and Factum of the Attorney General of British Columbia at para. 40.

PART V – TABLE OF AUTHORITIES

<u>Case law</u>	<u>Paragraph(s)</u>
<i>Del Zotto v. Canada</i> , [1997] 3 F.C. 40, 147 D.L.R. (4th) 457 (F.C.A.), aff'd [1999] 1 S.C.R. 3	17
<i>Hunter et al. v. Southam Inc.</i> , [1984] 2 S.C.R. 145	17
<i>Lavallee, Rackel & Heintz v. Canada (Attorney General)</i> ; <i>White, Ottenheimer & Baker v. Canada (Attorney General)</i> ; <i>R. v. Fink</i> , 2002 SCC 61, [2002] 3 S.C.R. 209	13
<i>R. v. Araujo</i> , 2000 SCC 65, [2000] 2 S.C.R. 992	29
<i>R. v. Collins</i> , [1987] 1 S.C.R. 265	17
<i>R. v. Duarte</i> , [1990] 1 S.C.R. 30	19, 27, 28, 29
<i>R. v. Evans</i> (1994), 93 C.C.C. (3d) 130 (B.C.C.A.)	24
<i>R. v. Gomboc</i> , 2010 SCC 55, [2010] 3 S.C.R. 211	17
<i>R. v. Jarvis</i> , 2002 SCC 73, [2002] 3 S.C.R. 757	17
<i>R. v. Plant</i> , [1993] 3 S.C.R. 281	17
<i>R. v. TELUS Communications Co.</i> , 2013 SCC 16, [2013] 2 S.C.R. 3	9, 22
<i>R. v. Thompson</i> , [1990] 2 S.C.R. 1111	28
<i>R. v. Tse</i> , 2012 SCC 16, [2012] 1 S.C.R. 531	20, 28
<i>R. v. Wong</i> , [1990] 3 S.C.R. 36	22

Secondary sources

- Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa, Public Works and Government Services, 2006) 14
- Nathan Forester, “Electronic Surveillance, Criminal Investigations, and the Erosion of Constitutional Rights in Canada: Regressive U-Turn or a Mere Bump in the Road Towards *Charter* Justice?” (2010) 73 Sask. L. Rev. 23. 28
- Orin S. Kerr, “The National Surveillance State: A Response to Balkin” (2008-2009) 93 Minn. L. Rev. 2179. 22

PART VI – PROVISIONS DIRECTLY AT ISSUE

CANADA

CONSOLIDATION

CODIFICATION

Criminal Code

Code criminel

R.S.C., 1985, c. C-46

L.R.C. (1985), ch. C-46

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Code criminel — 16 mars 2014

	(b) it is to be disclosed in circumstances referred to in subsection 193(2).	b) elle sera divulguée dans un cas visé au paragraphe 193(2).	
	R.S., 1985, c. C-46, s. 184; 1993, c. 40, s. 3; 2004, c. 12, s. 4.	L.R. (1985), ch. C-46, art. 184; 1993, ch. 40, art. 3; 2004, ch. 12, art. 4.	
Interception to prevent bodily harm	184.1 (1) An agent of the state may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication if	184.1 (1) L'agent de l'État peut, au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre, intercepter une communication privée si les conditions suivantes sont réunies :	Interception préventive
	(a) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception;	a) l'auteur de la communication ou la personne à laquelle celui-ci la destine a consenti à l'interception;	
	(b) the agent of the state believes on reasonable grounds that there is a risk of bodily harm to the person who consented to the interception; and	b) l'agent a des motifs raisonnables de croire qu'il existe un risque de lésions corporelles pour la personne qui a consenti à l'interception;	
	(c) the purpose of the interception is to prevent the bodily harm.	c) l'interception vise à empêcher les lésions corporelles.	
Admissibility of intercepted communication	(2) The contents of a private communication that is obtained from an interception pursuant to subsection (1) are inadmissible as evidence except for the purposes of proceedings in which actual, attempted or threatened bodily harm is alleged, including proceedings in respect of an application for an authorization under this Part or in respect of a search warrant or a warrant for the arrest of any person.	(2) Le contenu de la communication privée obtenue au moyen de l'interception est inadmissible en preuve, sauf dans les procédures relatives à l'infliction de lésions corporelles ou à la tentative ou menace d'une telle infliction, notamment celles qui se rapportent à une demande d'autorisation visée par la présente partie, un mandat de perquisition ou un mandat d'arrestation.	Admissibilité en preuve des communications interceptées
Destruction of recordings and transcripts	(3) The agent of the state who intercepts a private communication pursuant to subsection (1) shall, as soon as is practicable in the circumstances, destroy any recording of the private communication that is obtained from an interception pursuant to subsection (1), any full or partial transcript of the recording and any notes made by that agent of the private communication if nothing in the private communication suggests that bodily harm, attempted bodily harm or threatened bodily harm has occurred or is likely to occur.	(3) L'agent de l'État qui intercepte la communication privée doit, dans les plus brefs délais possible, détruire les enregistrements de cette communication et les transcriptions totales ou partielles de ces enregistrements de même que les notes relatives à la communication prises par lui, si celle-ci ne laisse pas présumer l'infliction — effective ou probable — de lésions corporelles ni la tentative ou menace d'une telle infliction.	Destruction de enregistrements et de transcriptions
Definition of "agent of the state"	(4) For the purposes of this section, "agent of the state" means	(4) Pour l'application du présent article, «agent de l'État» s'entend :	Définition de «agent de l'État»
	(a) a peace officer; and	a) soit d'un agent de la paix;	
	(b) a person acting under the authority of, or in cooperation with, a peace officer.	b) soit d'une personne qui collabore avec un agent de la paix ou agit sous son autorité.	
	1993, c. 40, s. 4.	1993, ch. 40, art. 4.	
Interception with consent	184.2 (1) A person may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where	184.2 (1) Toute personne peut, au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre, intercepter une communi-	Interception avec consentement

Code criminel — 16 mars 2014

	subsection (1) as the Minister of Public Safety and Emergency Preparedness may prescribe. R.S., 1985, c. C-46, s. 191; R.S., 1985, c. 27 (1st Supp.), s. 26; 2005, c. 10, s. 34; 2013, c. 8, s. 4.	publique et de la Protection civile peut prescrire. L.R. (1985), ch. C-46, art. 191; L.R. (1985), ch. 27 (1 ^{re} suppl.), art. 26; 2005, ch. 10, art. 34; 2013, ch. 8, art. 4.	
Forfeiture	192. (1) Where a person is convicted of an offence under section 184 or 191, any electromagnetic, acoustic, mechanical or other device by means of which the offence was committed or the possession of which constituted the offence, on the conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty whereupon it may be disposed of as the Attorney General directs.	192. (1) Lorsqu'une personne est déclarée coupable d'une infraction prévue à l'article 184 ou 191, tout dispositif électromagnétique, acoustique, mécanique ou autre au moyen duquel l'infraction a été commise ou dont la possession a constitué l'infraction peut, après cette déclaration de culpabilité et en plus de toute peine qui est imposée, être par ordonnance confisqué au profit de Sa Majesté, après quoi il peut en être disposé conformément aux instructions du procureur général.	Confiscation
Limitation	(2) No order for forfeiture shall be made under subsection (1) in respect of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of that person by means of which an offence under section 184 has been committed if that person was not a party to the offence. 1973-74, c. 50, s. 2.	(2) Aucune ordonnance de confiscation ne peut être rendue en vertu du paragraphe (1) relativement à des installations ou du matériel de communications téléphoniques, télégraphiques ou autres qui sont la propriété d'une personne fournissant au public un service de communications téléphoniques, télégraphiques ou autres ou qui font partie du service ou réseau de communications téléphoniques, télégraphiques ou autres d'une telle personne et au moyen desquels une infraction prévue à l'article 184 a été commise, si cette personne n'a pas participé à l'infraction. 1973-74, ch. 50, art. 2.	Restriction
Disclosure of information	193. (1) Where a private communication has been intercepted by means of an electromagnetic, acoustic, mechanical or other device without the consent, express or implied, of the originator thereof or of the person intended by the originator thereof to receive it, every one who, without the express consent of the originator thereof or of the person intended by the originator thereof to receive it, wilfully (a) uses or discloses the private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof, or (b) discloses the existence thereof, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.	193. (1) Lorsqu'une communication privée a été interceptée au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre sans le consentement, exprès ou tacite, de son auteur ou de la personne à laquelle son auteur la destinait, quiconque, selon le cas : a) utilise ou divulgue volontairement tout ou partie de cette communication privée, ou la substance, le sens ou l'objet de tout ou partie de celle-ci; b) en divulgue volontairement l'existence, sans le consentement exprès de son auteur ou de la personne à laquelle son auteur la destinait, est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans.	Divulguation de renseignements
Exemption	(2) Subsection (1) does not apply to a person who discloses a private communication or any part thereof or the substance, meaning or pur-	(2) Le paragraphe (1) ne s'applique pas à une personne qui divulgue soit tout ou partie d'une communication privée, ou la substance,	Exemption

Criminal Code — March 16, 2014

port thereof or of any part thereof or who discloses the existence of a private communication

(a) in the course of or for the purpose of giving evidence in any civil or criminal proceedings or in any other proceedings in which the person may be required to give evidence on oath;

(b) in the course of or for the purpose of any criminal investigation if the private communication was lawfully intercepted;

(c) in giving notice under section 189 or furnishing further particulars pursuant to an order under section 190;

(d) in the course of the operation of

(i) a telephone, telegraph or other communication service to the public,

(ii) a department or an agency of the Government of Canada, or

(iii) services relating to the management or protection of a computer system, as defined in subsection 342.1(2),

if the disclosure is necessarily incidental to an interception described in paragraph 184(2)(c), (d) or (e);

(e) where disclosure is made to a peace officer or prosecutor in Canada or to a person or authority with responsibility in a foreign state for the investigation or prosecution of offences and is intended to be in the interests of the administration of justice in Canada or elsewhere; or

(f) where the disclosure is made to the Director of the Canadian Security Intelligence Service or to an employee of the Service for the purpose of enabling the Service to perform its duties and functions under section 12 of the *Canadian Security Intelligence Service Act*.

(3) Subsection (1) does not apply to a person who discloses a private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof or who discloses the existence of a private communication where that which is disclosed by him was, prior to the disclosure, lawfully disclosed in the

Publishing of
prior lawful
disclosure

le sens ou l'objet de tout ou partie de celle-ci, soit l'existence d'une communication privée :

a) au cours ou aux fins d'une déposition lors de poursuites civiles ou pénales ou de toutes autres procédures dans lesquelles elle peut être requise de déposer sous serment;

b) au cours ou aux fins d'une enquête en matière pénale, si la communication privée a été interceptée légalement;

c) en donnant le préavis visé à l'article 189 ou en fournissant des détails complémentaires en application d'une ordonnance rendue en vertu de l'article 190;

d) au cours de l'exploitation :

(i) soit d'un service de communications téléphoniques, télégraphiques ou autres à l'usage du public,

(ii) soit d'un ministère ou organisme du gouvernement du Canada,

(iii) soit d'un service de gestion ou de protection d'un ordinateur - au sens du paragraphe 342.1(2) —,

si la divulgation est nécessairement accessoire à une interception visée aux alinéas 184(2) c), d) ou e);

e) lorsque la divulgation est faite à un agent de la paix ou à un poursuivant au Canada ou à une personne ou un organisme étranger chargé de la recherche ou de la poursuite des infractions et vise à servir l'administration de la justice au Canada ou ailleurs;

f) lorsque la divulgation est faite au directeur du Service canadien du renseignement de sécurité ou à un employé du Service et vise à permettre au Service d'exercer les fonctions qui lui sont conférées en vertu de l'article 12 de la *Loi sur le Service canadien du renseignement de sécurité*.

(3) Le paragraphe (1) ne s'applique pas aux personnes qui rapportent une communication privée, en tout ou en partie, ou qui en divulguent la substance, le sens ou l'objet, ou encore, qui en révèlent l'existence lorsque ce qu'elles révèlent avait déjà été légalement divulgué auparavant au cours d'un témoignage

Publication
d'une
divulgaration
légitime antérieure

Code criminel — 16 mars 2014

	<p>course of or for the purpose of giving evidence in proceedings referred to in paragraph (2)(a).</p> <p>R.S., 1985, c. C-46, s. 193; R.S., 1985, c. 30 (4th Supp.), s. 45; 1993, c. 40, s. 11; 2004, c. 12, s. 5.</p>	<p>ou dans le but de témoigner dans les procédures visées à l'alinéa (2)a).</p> <p>L.R. (1985), ch. C-46, art. 193; L.R. (1985), ch. 30 (4^e suppl.), art. 45; 1993, ch. 40, art. 11; 2004, ch. 12, art. 5.</p>	
Disclosure of information received from interception of radio-based telephone communications	<p>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</p> <p>(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;</p> <p>(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</p> <p>(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.</p>	<p>193.1 (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque utilise ou divulgue volontairement une communication radiotéléphonique, ou en divulgue volontairement l'existence, si :</p> <p>a) l'auteur de la communication ou la personne à laquelle celui-ci la destinait se trouvait au Canada lorsqu'elle a été faite;</p> <p>b) la communication a été interceptée au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre, sans le consentement, exprès ou tacite, de son auteur ou de la personne à laquelle celui-ci la destinait;</p> <p>c) le consentement, exprès ou tacite, de l'auteur de la communication ou de la personne à laquelle celui-ci la destinait n'a pas été obtenu.</p>	Divulgence de renseignements obtenus par suite de l'interception d'une communication radiotéléphonique
Other provisions to apply	<p>(2) Subsections 193(2) and (3) apply, with such modifications as the circumstances require, to disclosures of radio-based telephone communications.</p> <p>1993, c. 40, s. 12.</p>	<p>(2) Les paragraphes 193(2) et (3) s'appliquent, avec les adaptations nécessaires, à la divulgation de la communication radiotéléphonique.</p> <p>1993, ch. 40, art. 12.</p>	Autres dispositions applicables
Damages	<p>194. (1) Subject to subsection (2), a court that convicts an accused of an offence under section 184, 184.5, 193 or 193.1 may, on the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount not exceeding five thousand dollars as punitive damages.</p>	<p>194. (1) Sous réserve du paragraphe (2), un tribunal qui déclare un accusé coupable d'une infraction prévue aux articles 184, 184.5, 193 ou 193.1 peut, sur demande d'une personne lésée, ordonner à l'accusé, lors du prononcé de la sentence, de payer à cette personne des dommages-intérêts punitifs n'excédant pas cinq mille dollars.</p>	Dommages
No damages where civil proceedings commenced	<p>(2) No amount shall be ordered to be paid under subsection (1) to a person who has commenced an action under Part II of the <i>Crown Liability Act</i>.</p>	<p>(2) Nul ne peut être condamné, en vertu du paragraphe (1), à payer une somme quelconque à une personne qui a intenté une action en vertu de la partie II de la <i>Loi sur la responsabilité de l'État</i>.</p>	Pas de dommages-intérêts lorsque des poursuites civiles sont engagées
Judgment may be registered	<p>(3) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable</p>	<p>(3) Lorsqu'une somme dont le paiement est ordonné en vertu du paragraphe (1) n'est pas versée immédiatement, le requérant peut faire enregistrer l'ordonnance à la cour supérieure de la province où le procès a eu lieu comme s'il s'agissait d'un jugement ordonnant le paiement</p>	Le jugement peut être enregistré

Criminal Code — March 16, 2014

against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

de la somme y indiquée, et ce jugement est exécutoire contre l'accusé comme s'il s'agissait d'un jugement rendu contre lui par ce tribunal dans des poursuites civiles.

Moneys in possession of accused may be taken

(4) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute respecting ownership of or right of possession to those moneys by claimants other than the accused.

R.S., 1985, c. C-46, s. 194; 1993, c. 40, s. 13.

(4) Tout ou partie d'une somme dont le paiement est ordonné en vertu du paragraphe (1) peut être prélevé sur les fonds trouvés en la possession de l'accusé au moment de son arrestation, sauf en cas de contestation de la propriété ou du droit de possession de ces fonds de la part de réclamants autres que l'accusé.

L.R. (1985), ch. C-46, art. 194; 1993, ch. 40, art. 13.

Les fonds se trouvant en la possession de l'accusé peuvent être pris

Annual report

195. (1) The Minister of Public Safety and Emergency Preparedness shall, as soon as possible after the end of each year, prepare a report relating to

(a) authorizations for which that Minister and agents to be named in the report who were specially designated in writing by that Minister for the purposes of section 185 applied and to the interceptions made under those authorizations in the immediately preceding year;

(b) authorizations given under section 188 for which peace officers to be named in the report who were specially designated by that Minister for the purposes of that section applied and to the interceptions made under those authorizations in the immediately preceding year; and

(c) interceptions made under section 184.4 in the immediately preceding year if the interceptions relate to an offence for which proceedings may be commenced by the Attorney General of Canada.

Information respecting authorizations — sections 185 and 188

(2) The report shall, in relation to the authorizations and interceptions referred to in paragraphs (1)(a) and (b), set out

(a) the number of applications made for authorizations;

(b) the number of applications made for renewal of authorizations;

(c) the number of applications referred to in paragraphs (a) and (b) that were granted, the number of those applications that were refused and the number of applications referred to in paragraph (a) that were granted subject to terms and conditions;

Rapport annuel

195. (1) Le ministre de la Sécurité publique et de la Protection civile établit, après la fin de chaque année, aussitôt que possible, un rapport comportant l'information relative :

a) aux autorisations demandées par lui-même et les mandataires, nommés dans le rapport, qu'il a spécialement désignés par écrit pour l'application de l'article 185 et aux interceptions faites en vertu de ces autorisations au cours de l'année précédente;

b) aux autorisations données en vertu de l'article 188 et demandées par les agents de la paix nommés dans le rapport, qu'il a spécialement désignés pour l'application de cet article et aux interceptions faites en vertu de ces autorisations au cours de l'année précédente;

c) aux interceptions faites en vertu de l'article 184.4 au cours de l'année précédente, si elles ont trait à une infraction pour laquelle des poursuites peuvent être intentées par le procureur général du Canada.

(2) Le rapport indique, en ce qui concerne les autorisations et les interceptions visées aux alinéas (1)a) et b) :

a) le nombre de demandes d'autorisation qui ont été présentées;

b) le nombre de demandes de renouvellement des autorisations qui ont été présentées;

c) le nombre de demandes visées aux alinéas a) et b) qui ont été acceptées, le nombre de ces demandes qui ont été refusées et le nombre de demandes visées à l'alinéa a) qui ont été acceptées sous certaines conditions;

Renseignements concernant les autorisations — articles 185 et 188

Code criminel — 16 mars 2014

(d) the number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

- (i) an offence specified in the authorization,
- (ii) an offence other than an offence specified in the authorization but in respect of which an authorization may be given, and
- (iii) an offence in respect of which an authorization may not be given;

(e) the number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

- (i) an offence specified in such an authorization,
- (ii) an offence other than an offence specified in such an authorization but in respect of which an authorization may be given, and
- (iii) an offence other than an offence specified in such an authorization and for which no such authorization may be given.

and whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an authorization;

(f) the average period for which authorizations were given and for which renewals thereof were granted;

(g) the number of authorizations that, by virtue of one or more renewals thereof, were valid for more than sixty days, for more than one hundred and twenty days, for more than one hundred and eighty days and for more than two hundred and forty days;

(h) the number of notifications given pursuant to section 196;

(i) the offences in respect of which authorizations were given, specifying the number of authorizations given in respect of each of those offences;

(j) a description of all classes of places specified in authorizations and the number of authorizations in which each of those classes of places was specified;

d) le nombre de personnes dont l'identité est indiquée dans une autorisation et contre lesquelles des poursuites ont été intentées sur l'instance du procureur général du Canada relativement :

- (i) à une infraction spécifiée dans l'autorisation,
- (ii) à une infraction autre qu'une infraction spécifiée dans l'autorisation mais pour laquelle une autorisation peut être donnée,
- (iii) à une infraction pour laquelle une autorisation ne peut être donnée;

e) le nombre de personnes dont l'identité n'est pas indiquée dans une autorisation et contre lesquelles des poursuites ont été intentées sur l'instance du procureur général du Canada relativement :

- (i) à une infraction spécifiée dans une telle autorisation,
- (ii) à une infraction autre qu'une infraction spécifiée dans une telle autorisation mais pour laquelle une autorisation peut être donnée,
- (iii) à une infraction autre qu'une infraction spécifiée dans une telle autorisation et pour laquelle aucune autorisation de ce genre ne peut être donnée,

lorsque la perpétration ou prétendue perpétration de l'infraction par cette personne est arrivée à la connaissance d'un agent de la paix par suite de l'interception d'une communication privée en vertu d'une autorisation;

f) la durée moyenne de validité des autorisations et des renouvellements de ces autorisations;

g) le nombre d'autorisations qui, en raison d'un ou de plusieurs renouvellements, ont été valides pendant plus de soixante jours, plus de cent vingt jours, plus de cent quatre-vingts jours et plus de deux cent quarante jours;

h) le nombre d'avis donnés conformément à l'article 196;

i) les infractions relativement auxquelles des autorisations ont été données, en spécifiant le

Criminal Code — March 16, 2014

(k) a general description of the methods of interception involved in each interception under an authorization;

(l) the number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization;

(m) the number of criminal proceedings commenced at the instance of the Attorney General of Canada in which private communications obtained by interception under an authorization were adduced in evidence and the number of those proceedings that resulted in a conviction; and

(n) the number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Canada as a result of the investigations.

nombre d'autorisations données pour chacune de ces infractions;

f) une description de tous les genres de lieux spécifiés dans les autorisations et le nombre d'autorisations dans lesquelles chacun d'eux a été spécifié;

g) une description sommaire des méthodes d'interception utilisées pour chaque interception faite en vertu d'une autorisation;

h) le nombre de personnes arrêtées, dont l'identité est arrivée à la connaissance d'un agent de la paix par suite d'une interception faite en vertu d'une autorisation;

i) le nombre de poursuites pénales engagées sur l'instance du procureur général du Canada, dans lesquelles des communications privées révélées par une interception faite en vertu d'une autorisation ont été produites en preuve et le nombre de ces poursuites qui ont entraîné une condamnation;

j) le nombre d'enquêtes en matière pénale au cours desquelles des renseignements obtenus par suite de l'interception d'une communication privée faite en vertu d'une autorisation ont été utilisés, bien que la communication privée n'ait pas été produite en preuve dans des poursuites pénales intentées sur l'instance du procureur général du Canada par suite des enquêtes.

Information
respecting
interceptions —
section 184.4

(2.1) The report shall, in relation to the interceptions referred to in paragraph (1)(c), set out

(a) the number of interceptions made;

(b) the number of parties to each intercepted private communication against whom proceedings were commenced in respect of the offence that the police officer sought to prevent in intercepting the private communication or in respect of any other offence that was detected as a result of the interception;

(c) the number of persons who were not parties to an intercepted private communication but whose commission or alleged commission of an offence became known to a police officer as a result of the interception of a private communication, and against whom proceedings were commenced in respect of the offence that the police officer sought to prevent in intercepting the private communica-

(2.1) Le rapport indique aussi, en ce qui concerne les interceptions qui sont visées à l'alinéa (1)c) :

a) le nombre d'interceptions qui ont été effectuées;

b) le nombre de personnes qui sont parties à chaque communication privée interceptée et contre lesquelles des poursuites ont été intentées relativement à l'infraction que le policier a tenté de prévenir par l'interception de la communication privée ou à toute autre infraction découverte à cette occasion;

c) le nombre de personnes qui ne sont parties à aucune communication privée interceptée — lorsque la perpétration ou prétendue perpétration de l'infraction a été découverte par un policier par suite de l'interception d'une communication privée — et contre lesquelles des poursuites ont été intentées relativement à l'infraction que le policier a tenté

Renseignements
concernant les
interceptions —
article 184.4

Code criminel — 16 mars 2014

tion or in respect of any other offence that was detected as a result of the interception;

(d) the number of notifications given under section 196.1;

(e) the offences in respect of which interceptions were made and any other offences for which proceedings were commenced as a result of an interception, as well as the number of interceptions made with respect to each offence;

(f) a general description of the methods of interception used for each interception;

(g) the number of persons arrested whose identity became known to a police officer as a result of an interception;

(h) the number of criminal proceedings commenced in which private communications obtained by interception were adduced in evidence and the number of those proceedings that resulted in a conviction;

(i) the number of criminal investigations in which information obtained as a result of the interception of a private communication was used even though the private communication was not adduced in evidence in criminal proceedings commenced as a result of the investigations; and

(j) the duration of each interception and the aggregate duration of all the interceptions related to the investigation of the offence that the police officer sought to prevent in intercepting the private communication.

Other
information

(3) The report shall, in addition to the information referred to in subsections (2) and (2.1), set out

(a) the number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 184 or 193; and

(b) a general assessment of the importance of interception of private communications for the investigation, detection, prevention and prosecution of offences in Canada.

Report to be laid
before
Parliament

(4) The Minister of Public Safety and Emergency Preparedness shall cause a copy of each report prepared by him under subsection (1) to

de prévenir en interceptant la communication privée et à toute autre infraction découverte à cette occasion;

d) le nombre d'avis donnés conformément à l'article 196.1;

e) les infractions visées par des interceptions, celles qui ont donné lieu à des poursuites par suite d'une interception, ainsi que le nombre d'interceptions effectuées pour chacune des infractions;

f) une description sommaire des méthodes d'interception utilisées pour chaque interception;

g) le nombre de personnes arrêtées dont l'identité a été découverte par un policier par suite d'une interception;

h) le nombre de poursuites pénales intentées dans lesquelles des communications privées interceptées ont été produites en preuve et le nombre de ces poursuites qui ont donné lieu à une condamnation;

i) le nombre d'enquêtes en matière pénale au cours desquelles des renseignements obtenus par suite de l'interception d'une communication privée ont été utilisés, même si la communication n'a pas été produite en preuve dans des poursuites pénales intentées par suite des enquêtes;

j) la durée de chaque interception et la durée totale des interceptions liées à l'enquête relative à l'infraction que le policier a tenté de prévenir en interceptant la communication privée.

Autres
renseignements

(3) Le rapport contient, outre les renseignements visés aux paragraphes (2) et (2.1) :

a) le nombre de poursuites intentées contre des fonctionnaires ou préposés de Sa Majesté du chef du Canada ou des membres des Forces canadiennes pour des infractions prévues aux articles 184 ou 193;

b) une évaluation d'ensemble de l'importance de l'interception des communications privées pour le dé pistage, la prévention et la poursuite des infractions au Canada, et les enquêtes y relatives.

Le rapport est
déposé devant le
Parlement

(4) Le ministre de la Sécurité publique et de la Protection civile fait déposer devant le Parlement une copie de chaque rapport qu'il a établi

Criminal Code — March 16, 2014

be laid before Parliament forthwith on completion thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Rapport by
Attorney's
General

(5) The Attorney General of each province shall, as soon as possible after the end of each year, prepare and publish or otherwise make available to the public a report relating to

(a) authorizations for which the Attorney General and agents specially designated in writing by the Attorney General for the purposes of section 185 applied and to the interceptions made under those authorizations in the immediately preceding year;

(b) authorizations given under section 188 for which peace officers specially designated by the Attorney General for the purposes of that section applied and to the interceptions made under those authorizations in the immediately preceding year; and

(c) interceptions made under section 184.4 in the immediately preceding year, if the interceptions relate to an offence not referred to in paragraph (1)(c).

The report must set out, with any modifications that the circumstances require, the information described in subsections (2) to (3).

R.S., 1985, c. C-46, s. 195; R.S., 1985, c. 27 (1st Supp.), s. 27; 2005, c. 10, s. 34; 2013, c. 8, s. 5.

Written
modification to be
given

196. (1) The Attorney General of the province in which an application under subsection 185(1) was made or the Minister of Public Safety and Emergency Preparedness if the application was made by or on behalf of that Minister shall, within 90 days after the period for which the authorization was given or renewed or within such other period as is fixed pursuant to subsection 185(3) or subsection (3) of this section, notify in writing the person who was the object of the interception pursuant to the authorization and shall, in a manner prescribed by regulations made by the Governor in Council, certify to the court that gave the authorization that the person has been so notified.

Extension of
period for
notification

(2) The running of the 90 days referred to in subsection (1), or of any other period fixed pursuant to subsection 185(3) or subsection (3) of this section, is suspended until any application made by the Attorney General or the Minister

en vertu du paragraphe (1) dès qu'il est terminé ou, si le Parlement ne siège pas à ce moment-là, dans les quinze premiers jours de séance ultérieurs.

(5) Aussitôt que possible après la fin de chaque année, le procureur général de chaque province établit et publie — ou met à la disposition du public de toute autre façon — un rapport comportant l'information relative :

a) aux autorisations demandées par lui-même et les mandataires qu'il a spécialement désignés par écrit pour l'application de l'article 185 et aux interceptions faites en vertu de ces autorisations au cours de l'année précédente;

b) aux autorisations données en vertu de l'article 188 et demandées par les agents de la paix qu'il a spécialement désignés pour l'application de cet article et aux interceptions faites en vertu de ces autorisations au cours de l'année précédente;

c) aux interceptions faites en vertu de l'article 184.4 au cours de l'année précédente, dans les cas non visés à l'alinéa (1)c).

Le rapport contient les renseignements visés aux paragraphes (2) à (3), compte tenu des adaptations nécessaires.

L.R. (1985), ch. C-46, art. 195; L.R. (1985), ch. 27 (1^{re} suppl.), art. 27; 2005, ch. 10, art. 34; 2013, ch. 8, art. 5.

Rapport par les
procureurs
général

Avais à donner
par écrit

196. (1) Le procureur général de la province où une demande a été présentée conformément au paragraphe 185(1) ou le ministre de la Sécurité publique et de la Protection civile, dans le cas où la demande a été présentée par lui ou en son nom, avise par écrit, dans les quatre-vingt-dix jours qui suivent la période pour laquelle l'autorisation a été donnée ou renouvelée ou au cours de toute autre période fixée en vertu du paragraphe 185(3) ou du paragraphe (3) du présent article, la personne qui a fait l'objet de l'interception en vertu de cette autorisation et, de la façon prescrite par règlement pris par le gouverneur en conseil, certifie au tribunal qui a accordé l'autorisation que cette personne a été ainsi avisée.

Prolongation du
délai

(2) Il y a interruption du délai mentionné au paragraphe (1) jusqu'à ce qu'il soit décidé de toute demande présentée, par le procureur général ou le ministre à un juge d'une cour supérieure de juridiction criminelle ou à un juge au

Criminal Code — March 16, 2014

has committed or is about to commit a designated offence.

R.S., 1985, c. 42 (4th Supp.), s. 2; 1996, c. 19, s. 70; 2001, c. 32, ss. 25, 82; 2002, c. 13, s. 16(F); 2004, c. 12, s. 8(F).

Definition of
"designated
substance
offence"

462.48 (1) In this section, "designated substance offence" means

- (a) an offence under Part I of the *Controlled Drugs and Substances Act*, except subsection 4(1) of that Act; or
- (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

Disclosure of
income tax
information

(1.1) The Attorney General may make an application in accordance with subsection (2) for an order for disclosure of information under subsection (3), for the purposes of an investigation in relation to

- (a) a designated substance offence;
- (b) an offence against section 354, 355.2, 355.4 or 462.31 if the offence is alleged to have been committed in relation to any property, thing or proceeds obtained or derived directly or indirectly as a result of
 - (i) the commission in Canada of a designated substance offence, or
 - (ii) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated substance offence;
- (c) an offence against section 467.11, 467.12 or 467.13 or a conspiracy or an attempt to commit, or being an accessory after the fact in relation to, such an offence; or
- (d) a terrorism offence.

Application

(2) An application under subsection (1.1) shall be made *ex parte* in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or a person specially designated by the Attorney General for that purpose deposing to the following matters, namely,

- (a) the offence or matter under investigation;

motifs raisonnables de soupçonner que des biens sont des produits de la criminalité ou qu'une autre personne a commis une infraction désignée ou s'apprête à le faire.

L.R. (1985), ch. 42 (4^e suppl.), art. 2; 1996, ch. 19, art. 70; 2001, ch. 32, art. 25 et 82; 2002, ch. 13, art. 16(F); 2004, ch. 12, art. 8(F).

462.48 (1) Au présent article, on entend par «infraction désignée (drogues et autres substances)» :

- a) soit une infraction prévue à la partie I de la *Loi réglementant certaines drogues et autres substances*, sauf le paragraphe 4(1) de cette loi;
- b) soit le complot ou la tentative en vue de commettre une telle infraction ou le fait d'en être complice après le fait ou d'en conseiller la perpétration.

(1.1) Le procureur général peut, en conformité avec le paragraphe (2), demander une ordonnance en vertu du paragraphe (3) aux fins d'une enquête sur :

- a) soit une infraction désignée (drogues et autres substances);
- b) soit une infraction prévue aux articles 354, 355.2, 355.4 ou 462.31 qui aurait été commise à l'égard de biens, objets ou produits qui ont été obtenus ou proviennent directement ou indirectement de la perpétration au Canada d'une infraction désignée (drogues et autres substances) ou d'un acte ou d'une omission survenu à l'extérieur du Canada et qui, au Canada, aurait constitué une infraction désignée (drogues et autres substances);
- c) soit un acte criminel prévu aux articles 467.11, 467.12 ou 467.13 ou le complot ou la tentative de commettre un tel acte ou la complicité après le fait à tel égard;
- d) soit une infraction de terrorisme.

(2) La demande d'ordonnance est à présenter à un juge par écrit et doit être faite *ex parte*; elle est accompagnée de l'affidavit du procureur général — ou d'une personne qu'il désigne expressément à cette fin — comportant les éléments suivants :

- a) désignation de l'infraction visée par l'enquête ou de l'objet de celle-ci;

Definition de
«infraction
désignée
(drogues et
autres
substances)»

Communication
de renseignements
fiscaux

Demande
d'ordonnance

Code criminel — 16 mars 2014

(b) the person in relation to whom the information or documents referred to in paragraph (c) are required;

(c) the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of the *Income Tax Act* to which access is sought or that is proposed to be examined or communicated; and

(d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of any of the offences referred to in subsection (1.1) and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purposes of which the application is made.

Order for disclosure of information

(3) Where the judge to whom an application under subsection (1.1) is made is satisfied

(a) of the matters referred to in paragraph (2)(d), and

(b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the judge may, subject to any conditions that the judge considers advisable in the public interest, order the Commissioner of Revenue or any person specially designated in writing by the Commissioner for the purposes of this section

(c) to allow a police officer named in the order access to all such information and documents and to examine them, or

(d) where the judge considers it necessary in the circumstances, to produce all such information and documents to the police officer and allow the police officer to remove the information and documents,

within such period after the expiration of seven clear days following the service of the order pursuant to subsection (4) as the judge may specify.

b) désignation de la personne visée par les renseignements ou les documents demandés;

c) désignation du genre de renseignements ou de documents — livre, dossier, texte, rapport ou autre document — qu'a obtenus le ministre du Revenu national — ou qui ont été obtenus en son nom — dans le cadre de l'application de la *Loi de l'impôt sur le revenu* et dont la communication ou l'examen est demandé;

d) les faits à l'origine des motifs raisonnables de croire que la personne mentionnée à l'alinéa b) a commis une infraction visée au paragraphe (1.1) — ou en a bénéficié — et que les renseignements ou documents demandés ont vraisemblablement une valeur importante, en soi ou avec d'autres éléments, pour l'enquête mentionnée dans la demande.

Ordonnance de communication

(3) Sous réserve des conditions qu'il estime indiquées dans l'intérêt public, le juge saisi de la demande peut ordonner au commissaire du revenu — ou à la personne que celui-ci a désignée expressément par écrit pour l'application du présent article — de permettre à un policier nommé dans l'ordonnance d'avoir accès aux renseignements ou documents demandés et de les examiner ou, si le juge l'estime nécessaire dans les circonstances, de les remettre au policier, s'il est convaincu à la fois de l'existence :

a) des faits mentionnés à l'alinéa (2)d);

b) de motifs raisonnables de croire qu'il est dans l'intérêt public d'en permettre l'accès, compte tenu des avantages pouvant vraisemblablement en résulter pour l'enquête en question.

L'ordonnance est valide pour la période que précise le juge; elle ne peut toutefois entrer en vigueur avant l'expiration d'un délai de sept jours francs suivant celui où elle est signifiée en conformité avec le paragraphe (4).

Criminal Code — March 16, 2014

Service of order	(4) A copy of an order made by a judge under subsection (3) shall be served on the person to whom the order is addressed in such manner as the judge directs or as may be prescribed by rules of court.	(4) Une copie de l'ordonnance est signifiée à la personne qu'elle vise; la signification se fait selon les règles du tribunal ou de la façon que le juge ordonne.	Signification
Extension of period for compliance with order	(5) A judge who makes an order under subsection (3) may, on application of the Minister of National Revenue, extend the period within which the order is to be complied with.	(5) Le juge qui rend une ordonnance en vertu du paragraphe (3) peut, à la demande du ministre du Revenu national, prolonger la période durant laquelle le destinataire de celle-ci est tenu de s'y conformer.	Prolongation
Objection to disclosure of information	(6) The Minister of National Revenue or any person specially designated in writing by that Minister for the purposes of this section may object to the disclosure of any information or document in respect of which an order under subsection (3) has been made by certifying orally or in writing that the information or document should not be disclosed on the ground that (a) the Minister of National Revenue is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which the Government of Canada is a signatory; (b) a privilege is attached by law to the information or document; (c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction; or (d) disclosure of the information or document would not, for any other reason, be in the public interest.	(6) Le ministre du Revenu national — ou la personne qu'il a désignée expressément par écrit pour l'application du présent article — peut s'opposer à la communication des renseignements ou documents visés par une ordonnance rendue sous le régime du paragraphe (3) en attestant, oralement ou par écrit : a) soit qu'une entente, une convention ou un autre traité, bilatéraux ou internationaux, en matière d'impôt que le gouvernement du Canada a signés interdisent au ministre du Revenu national de les communiquer; b) soit que les renseignements ou documents font l'objet d'un privilège reconnu par la loi; c) soit que ces renseignements ou documents ont été placés dans un contenant scellé en conformité avec la loi ou en vertu d'une ordonnance d'un tribunal compétent; d) soit que la communication des renseignements ou documents serait, pour toute autre raison, contraire à l'intérêt public.	Opposition à la communication
Determination of objection	(7) Where an objection to the disclosure of information or a document is made under subsection (6), the objection may be determined, on application, in accordance with subsection (8), by the Chief Justice of the Federal Court, or by such other judge of that Court as the Chief Justice may designate to hear such applications.	(7) La validité d'une opposition fondée sur le paragraphe (6) est décidée, sur demande, conformément au paragraphe (8) par le juge en chef de la Cour fédérale ou tout autre juge de cette cour qu'il charge de l'audition de ce genre de demande.	Juge en chef de la Cour fédérale
Judge may examine information	(8) A judge who is to determine an objection pursuant to subsection (7) may, if the judge considers it necessary to determine the objection, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused	(8) Le juge saisi d'une opposition peut examiner les documents ou renseignements dont la communication est demandée, s'il l'estime nécessaire pour rendre sa décision, et doit déclarer l'opposition fondée et interdire la communication s'il constate l'existence d'une des circonstances prévues au paragraphe (6).	Décision

Code criminel — 16 mars 2014

	where the judge is satisfied of any of the grounds mentioned in subsection (6).	
Limitation period	(9) An application under subsection (7) shall be made within ten days after the objection is made or within such greater or lesser period as the Chief Justice of the Federal Court, or such other judge of that Court as the Chief Justice may designate to hear such applications, considers appropriate.	(9) Le délai à l'intérieur duquel la demande visée au paragraphe (7) peut être présentée est de dix jours suivant l'opposition, mais le juge en chef de la Cour fédérale ou le juge de cette cour qu'il charge de l'audition de ce genre de demande peut modifier ce délai s'il l'estime indiqué.
Appeal to Federal Court of Appeal	(10) An appeal lies from a determination under subsection (7) to the Federal Court of Appeal.	(10) Il y a appel de la décision visée au paragraphe (7) devant la Cour d'appel fédérale.
Limitation period for appeal	(11) An appeal under subsection (10) shall be brought within ten days from the date of the determination appealed from or within such further time as the Federal Court of Appeal considers appropriate in the circumstances.	(11) Le délai à l'intérieur duquel l'appel prévu au paragraphe (10) peut être interjeté est de dix jours suivant la date de la décision frappée d'appel, mais la Cour d'appel fédérale peut le proroger si elle l'estime indiqué dans les circonstances.
Special rules for hearings	(12) An application under subsection (7) or an appeal brought in respect of that application shall (a) be heard <i>in camera</i> ; and (b) on the request of the person objecting to the disclosure of information, be heard and determined in the National Capital Region described in the schedule to the <i>National Capital Act</i> .	(12) Les demandes visées au paragraphe (7) font, en premier ressort ou en appel, l'objet d'une audition à huis clos; celle-ci a lieu dans la région de la capitale nationale définie à l'annexe de la <i>Loi sur la capitale nationale</i> si la personne qui s'oppose à la communication le demande.
Ex parte representations	(13) During the hearing of an application under subsection (7) or an appeal brought in respect of that application, the person who made the objection in respect of which the application was made or the appeal was brought shall, on the request of that person, be given the opportunity to make representations <i>ex parte</i> .	(13) La personne qui a formulé une opposition qui fait l'objet d'une demande ou d'un appel a, au cours des auditions, en première instance ou en appel et sur demande, le droit de présenter des arguments <i>ex parte</i> .
Copies	(14) When any information or document is examined or provided under subsection (3), the person by whom it is examined or to whom it is provided or any officer of the Canada Revenue Agency may make, or cause to be made, one or more copies of it, and any copy purporting to be certified by the Minister of National Revenue or an authorized person to be a copy made under this subsection is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.	(14) Lorsque des renseignements ou documents sont remis à une personne en application du paragraphe (3) ou lorsqu'elle est autorisée à les examiner, celle-ci ou un fonctionnaire de l'Agence du revenu du Canada peut en faire une copie; toute copie faite en vertu du présent paragraphe fait preuve de la nature et du contenu de l'original et a la même valeur probante que celui-ci aurait eue s'il avait été déposé en preuve de la façon normale.
Further disclosure	(15) No person to whom information or documents have been disclosed or provided pur-	(15) Il est interdit aux personnes à qui des renseignements ou documents ont été commu-

Criminal Code — March 16, 2014

	<p>suant to this subsection or pursuant to an order made under subsection (3) shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made.</p>	<p>niqués ou remis en vertu du présent paragraphe ou d'une ordonnance rendue sous le régime du paragraphe (3) de les communiquer par la suite à d'autres personnes, sauf dans le cadre de l'enquête qui a donné lieu à l'ordonnance.</p>	
Form	(16) An order made under subsection (3) may be in Form 47.	(16) L'ordonnance peut être rendue au moyen de la formule 47.	Formule
Definition of "police officer"	(17) In this section, "police officer" means any officer, constable or other person employed for the preservation and maintenance of the public peace. R.S., 1985, c. 42 (4th Supp.), s. 2; 1984, c. 13, s. 7; 1996, c. 19, s. 70; 1997, c. 23, s. 10; 1999, c. 17, s. 120; 2001, c. 32, s. 26, c. 41, ss. 15, 133; 2005, c. 38, ss. 138, 140; 2010, c. 14, s. 9; 2013, c. 9, s. 15.	(17) Au présent article, « policier » s'entend d'un officier ou d'un agent de police ou de toute autre personne chargée du maintien de la paix publique. L.R. (1985), ch. 42 (4 ^e suppl.), art. 2; 1994, ch. 13, art. 7; 1996, ch. 19, art. 70; 1997, ch. 23, art. 10; 1999, ch. 17, art. 120; 2001, ch. 32, art. 26, ch. 41, art. 15 et 133; 2005, ch. 38, art. 138 et 140; 2010, ch. 14, art. 9; 2013, ch. 9, art. 15.	Définition de « policier »
	SPECIFIC RULES OF FORFEITURE	AUTRES DISPOSITIONS EN MATIÈRE DE CONFISCATION	
Specific forfeiture provisions unaffected by this Part	462.49 (1) This Part does not affect the operation of any other provision of this or any other Act of Parliament respecting the forfeiture of property.	462.49 (1) La présente partie ne porte pas atteinte aux autres dispositions de la présente loi ou de toute autre loi fédérale qui visent la confiscation de biens.	Maintien des dispositions spécifiques
Priority for restitution to victims of crime	(2) The property of an offender may be used to satisfy the operation of a provision of this or any other Act of Parliament respecting the forfeiture of property only to the extent that it is not required to satisfy the operation of any other provision of this or any other Act of Parliament respecting restitution to or compensation of persons affected by the commission of offences. R.S., 1985, c. 42 (4th Supp.), s. 2.	(2) Les biens d'un contrevenant ne peuvent être affectés à l'exécution d'une disposition de la présente loi ou d'une autre loi fédérale en matière de confiscation que dans la mesure où ils ne sont pas requis dans le cadre d'une autre disposition de la présente loi ou d'une autre loi fédérale en matière de restitution aux victimes d'infractions criminelles ou de leur dédommagement. L.R. (1985), ch. 42 (4 ^e suppl.), art. 2.	Priorité aux victimes
	REGULATIONS	RÈGLEMENTS	
Regulations	462.5 The Attorney General may make regulations governing the manner of disposing of or otherwise dealing with, in accordance with the law, property forfeited under this Part. R.S., 1985, c. 42 (4th Supp.), s. 2.	462.5 Le procureur général peut prendre des règlements sur la façon dont il peut être disposé des biens confisqués sous le régime de la présente partie. L.R. (1985), ch. 42 (4 ^e suppl.), art. 2.	Règlement
	PART XIII ATTEMPTS — CONSPIRACIES — ACCESSORIES	PARTIE XIII TENTATIVES — COMLOTS — COMPLICES	
Attempts, accessories	463. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences: (a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on con-	463. Sauf disposition expressément contraire de la loi, les dispositions suivantes s'appliquent à l'égard des personnes qui tentent de commettre des infractions ou sont complices, après le fait, de la perpétration d'infractions : a) quiconque tente de commettre un acte criminel pour lequel, sur déclaration de culpabi-	Punition de la tentative et de la complicité



CANADA

CONSOLIDATION

CODIFICATION

Privacy Act

Loi sur la protection des
renseignements
personnels

R.S.C., 1985, c. P-21

L.R.C. (1985), ch. P-21

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Privacy — March 16, 2014

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the institution under subsection 3(2).

1980-81-82-83, c. 111, Sch. II "7".

Disclosure of
personal
information

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal
information may
be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

(f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation — as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act* —, the government of a foreign state, an international organization of states or an international organization

a) qu'aux fins auxquelles ils ont été recueillis ou préparés par l'institution de même que pour les usages qui sont compatibles avec ces fins;

b) qu'aux fins auxquelles ils peuvent lui être communiqués en vertu du paragraphe 3(2).

1980-81-82-83, ch. 111, ann. II « 7 ».

8. (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

a) communication aux fins auxquelles ils ont été recueillis ou préparés par l'institution ou pour les usages qui sont compatibles avec ces fins;

b) communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;

c) communication exigée par *subpoena*, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de renseignements;

d) communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le gouvernement fédéral;

e) communication à un organisme d'enquête déterminé par règlement et qui en fait la demande par écrit, en vue de faire respecter des lois fédérales ou provinciales ou pour la tenue d'enquêtes licites, pourvu que la demande précise les fins auxquelles les renseignements sont destinés et la nature des renseignements demandés;

f) communication aux termes d'accords ou d'ententes conclus d'une part entre le gouvernement du Canada ou l'un de ses organismes et, d'autre part, le gouvernement d'une province ou d'un État étranger, une or-

Communication
des renseignements
personnels

Cas d'autorisation

Protection des renseignements personnels — 16 mars 2014

established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

(i) to the Library and Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

ganisation internationale d'États ou de gouvernements, le conseil de la première nation de Westbank, le conseil de la première nation participante — au sens du paragraphe 2(1) de la *Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique* — ou l'un de leurs organismes, en vue de l'application des lois ou pour la tenue d'enquêtes licites;

g) communication à un parlementaire fédéral en vue d'aider l'individu concerné par les renseignements à résoudre un problème;

h) communication pour vérification interne au personnel de l'institution ou pour vérification comptable au bureau du contrôleur général ou à toute personne ou tout organisme déterminé par règlement;

i) communication à Bibliothèque et Archives du Canada pour dépôt;

j) communication à toute personne ou à tout organisme, pour des travaux de recherche ou de statistique, pourvu que soient réalisées les deux conditions suivantes :

(i) le responsable de l'institution est convaincu que les fins auxquelles les renseignements sont communiqués ne peuvent être normalement atteintes que si les renseignements sont donnés sous une forme qui permette d'identifier l'individu qu'ils concernent,

(ii) la personne ou l'organisme s'engage par écrit auprès du responsable de l'institution à s'abstenir de toute communication ultérieure des renseignements tant que leur forme risque vraisemblablement de permettre l'identification de l'individu qu'ils concernent;

k) communication à tout gouvernement autochtone, association d'autochtones, bande d'Indiens, institution fédérale ou subdivision de celle-ci, ou à leur représentant, en vue de l'établissement des droits des peuples autochtones ou du règlement de leurs griefs;

l) communication à toute institution fédérale en vue de joindre un débiteur ou un créancier de Sa Majesté du chef du Canada et de recouvrer ou d'acquitter la créance;



CANADA

A Consolidation of

**THE
CONSTITUTION
ACTS
1867 to 1982**

**DEPARTMENT OF JUSTICE
CANADA**

Consolidated as of January 1, 2013

CONSTITUTION ACT, 1982 ⁽⁸⁰⁾

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

FUNDAMENTAL FREEDOMS

Fundamental freedoms

2. Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

⁽⁸⁰⁾ Enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.), which came into force on April 17, 1982. The *Canada Act 1982*, other than Schedules A and B thereto, reads as follows:

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.
2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.
3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.
4. This Act may be cited as the *Canada Act 1982*.

Constitution Act, 1982

Limitation

- (3) The rights specified in subsection (2) are subject to
- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

LEGAL RIGHTS

Life, liberty and security of person

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.

Search or seizure

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

Detention or imprisonment

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

Arrest or detention

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.

Proceedings in criminal and penal matters

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;

Constitution Act, 1982

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

APPLICATION OF CHARTER

Application of Charter

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).