SCC File No.: 37118

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

NOUR MARAKAH

Appellant

- AND -

HER MAJESTY THE QUEEN

Respondents

- AND -

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FACTUM OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

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TABLE OF CONTENTS

PART I: STATEMENT OF FACTS

1. The British Columbia Civil Liberties Association (the "BCCLA") accepts the facts as set out in the parties' facta and takes no position on disputed facts.

PART II: THE BCCLA'S POSITION ON THE QUESTION IN ISSUE

2. Today, many Canadians communicate primarily through text messaging. The same thoughts and emotions that we once expressed over voice communications are now captured word-for-word in a written record stored in our phones. At virtually all times, Canadians carry a device containing transcripts of years of private conversations with their closest family members and friends in the form of their text messaging history. This appeal raises the question of whether the State can access our private conversations without meeting the usual requirements of s. 8 of the *Charter,* simply because the State finds them in someone else's device. The BCCLA respectfully submits that the answer should be "no". Whether we have a reasonable expectation of privacy should depend on the nature of our communications, and not on the physical place from which they are accessed.

3. The issue in this appeal is critical not just for privacy, but also for expressive freedom. The values underlying s. 2(b) of the *Charter* — the pursuit of truth, participation in the community and individual self-fulfillment — are all promoted when we can explore our emotions and ideas, however intimate or outlandish, in private conversations with our closest confidantes, secure in the knowledge that they will be protected by the Constitution. To be sure, the Constitution does not give our communications absolute protection from the State. It does, however, demand that the State meet some basic thresholds before invading our privacy. We should be able to hold the State accountable to these thresholds whenever our private communications have been searched or seized. It should not matter what device the State used.

PART III: STATEMENT OF ARGUMENT

I. TEXT MESSAGES ARE ANALOGOUS TO PHONE CALLS

4. Before the advent of cell phones and text messaging, Canadians communicated predominantly through voice communications. They caught up on each other's lives by picking up the phone and calling one another. They debated politics over coffee or lunch. They flirted

and told tawdry jokes in the privacy of their own homes. Unless someone recorded these conversations in real-time, they disappeared into the ether. The only record that remained resided in the imperfect repositories of our minds.

5. In the modern age, Canadians are increasingly communicating over text messaging. Among young people, text messaging has already eclipsed phone calls as the predominant mode of communication with cell phones. A recent Canadian study of university and college students found that 86% of students use their mobile phones to exchange text messages, while only 48% use their mobile phones to have voice conversations.[1] Similarly, a 2014 Gallup poll in the United States found that 68% of Americans between the ages of 18 and 29 said that they send or read text messages "a lot", while only 50% of the same age group said the same thing about making or receiving a phone call using a cell phone.[2]

6. This reality has prompted a number of Canadian judges to recognize the functional similarity between phone calls and text messaging. In *R. v. Giles,* MacKenzie J. observed that "the explosion of e-mail and other text-based modes of instantaneous communication has meant that much of our communication that was once exclusively verbal is now by electronic text."[3] In *R v. S.M.,* Nordheimer J. wrote:

> Text messages are a relatively recent phenomenon but their increasing use as a method of communication between individuals cannot be denied. Text messages are instantaneously transmitted and it is generally expected that text messages will receive an equally timely response… Text messages occur very much more in "real time". Indeed, text messages are often a substitute for an actual conversation and thus are much more akin to a traditional telephone conversation than they are to other modes of communication.[4]

7. Most recently, the B.C. Court of Appeal wrote the following in *R. v. Pelucco*:

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[1] "Survey about Canadian students' consumer habits: Addicted to texting and online streaming", *Newad,* accessed online January 19, 2017.

[2] "The New Era of Communication Among Americans", *Gallup,* accessed online January 19, 2017. Indeed, there have been studies showing that Americans text more than they talk going as far back as 2008: see "Americans Text More Than They Talk", CNET (Sept. 2008).

[3] *R. v. Giles,* [2007] B.C.J. No. 2918 at para. 43 (S.C.). See also *R. v. Belcourt,* [2012] B.C.J. No. 2636 at para. 9 (S.C.).

[4] *R. v. S.M.,* [2012] O.J. No. 2833 at para. 18 (S.C.J.).

> [T]ext messaging has much in common with telephone conversations. It is typically carried out between two individuals. While a written record of the text conversation is produced, it is not usual for the conversation to be printed, archived, or forwarded to others. In ordinary circumstances, the sender and recipient expect the record to be transitory, and not to be shared.[5]

8. These observations echo the rationale for Abella J.'s plurality opinion in *R. v. TELUS Communications Co.* In *TELUS*, this Court considered the application of Part VI of the *Criminal Code* (dealing with the interception of private communications) to the prospective seizure of text messages from a telecommunications company. On behalf of three justices, Abella J. wrote that "text messaging bears several hallmarks of traditional voice communication: it is intended to be conversational, transmission is generally instantaneous, and there is an expectation of privacy in the communication."[6] Thus, she held that a Part VI authorization is required for the interception of text messages just as it would be required for the interception of phone calls. To hold otherwise would be to allow technological form to distract from the legislative (and constitutional) purpose of protecting privacy.[7]

9. For these reasons, it is inappropriate to analogize text messages to letters as the Respondent does in its factum. First, letters are not transmitted instantanenously and cannot therefore be used in the same conversational manner as text messages. One can meaningfully characterize a letter as having been "sent" once it is placed in the mail; but it makes considerably less sense to describe a text message as having been "sent". Text messages are never simply "sent"; instead, they are part of an ongoing, dynamic dialogue that may continue indefinitely. Second, letters reside in one place; and so the place at which they are accessed matters. Text messages, however, reside in multiple places. They reside in the phones of all parties to the conversation, and can also reside in the servers of the telecommunications service provider. Thus, the privacy analysis for text messages should be driven by the nature of text messaging as a communications medium, and not the physical place from which they are accessed.

10. If the Court accepts that text messages are more analogous to phone calls than they are to letters, as we urge, then it follows that individuals should have a reasonable expectation of

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[5] *R. v. Pelucco*, [2015] B.C.J. No. 1794 at paras. 64-65 (C.A.).

[6] *R. v. TELUS Communications Co.*, [2013] 2 S.C.R. 3 at para. 1 per Abella J. ["*TELUS*"].

[7] As Abella J. put it in *TELUS*, *supra* at para. 5, "[t]echnical differences inherent in new technology should not determine the scope of protection afforded to private communications."

privacy in the contents of text messages regardless of whose device the police use to access those messages. This is the way that the courts determine standing under s. 8 of the *Charter* for phone calls. If the phone calls of an accused have been intercepted because of a wiretap authorization that targets a third party, the accused nevertheless has a reasonable expectation of privacy in the contents of those calls — and therefore has standing to challenge the constutitonality of the interception.[8] The same should be true of text messages.

11. One may reasonably ask how far this analysis goes. Would other text-based communications (*e.g.,* iMessage, Blackberry messenger) demand a similar analysis? That will depend on whether these other forms of communication can be said to be the functional equivalent of phone calls in the same way that text messages are. Technology is constantly changing and new text-based modes of communication will likely appear even before this Court renders its decision. It is not for this Court to address all current and future technological innovations,[9] but to do as it always does: articulate the general principles and the framework in which those principles operate, and then allow the lower courts to apply the framework on a case-by-case basis. The test can be stated as follows: where text-based communications are (i) transmitted instantaneously, (ii) used for realtime conversations, and (iii) exchanged with the expectation that they will not be shared with others, then all parties to the communication will have an objective reasonable expectation of privacy so as to give them standing under s. 8 of the *Charter*.

12. Despite the Court of Appeal's suggestion to the contrary,[10] there is nothing inconsistent between this approach and the "totality of the circumstances" test articulated in *R. v. Edwards.*[11] The *Edwards* factors were never intended to preclude a categorical approach to determining when there is a reasonable expectation of privacy. Rather, the *Edwards* factors inform the creation of the categories. Homes attract the protection of s. 8 of the *Charter*. So do computers,[12] cell phones,[13] and police requests for the subscriber information attached to a

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[8] *R. v. Shayesteh* (1996), 111 C.C.C. (3d) 225 at para. 40 (Ont. C.A.) (see Appellant's Authorities); *R. v. S.M., supra* at para. 26 (Ont. S.C.J.).

[9] See *e.g.,* Binnie J.'s comments on behalf of the Court in *R. v. Tessling,* [2004] 3 S.C.R. 432 at para. 55.

[10] *R. v. Marakah,* 2016 ONCA 542 at paras. 41-42.

[11] *R. v. Edwards,* [1996] 1 S.C.R. 128 at para. 45.

[12] *R. v. Morelli,* [2010] 1 S.C.R. 253; *R. v. Vu,* [2013] 3 S.C.R. 657.

[13] *R. v. Fearon,* [2014] 3 S.C.R. 621.

particular I.P. address.[14] So too, in our submission, should searches and seizures of text messages regardless of whose phone the police use to access the messages. Predictability is a virtue not only for civil liberties, but also for law enforcement. The police need to know when they have conducted a "search" so as to require them to meet the standards in s. 8 of the *Charter*.

13. The approach that we advocate is important not just for privacy (under s. 8 of the *Charter*), but also for expressive freedom (under s. 2(b)). We express our innermost thoughts and ideas in the context of private communications. As Kennedy J. (of the Supreme Court of the United States) put it, "[c]ell phone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification."[15] If we have to worry about the State having groundless access to our conversations — whether through a wiretap of our phone calls or a search of our text messages on our friends' cell phones — we will inevitably engage in self-censorship. The effect would be to "smother that spontaneity — reflected in frivolous, impetuous, sacrilegious, and defiant discourse — that liberates daily life".[16]

14. As the Respondent points out in its factum, some (though not all) of the U.S. courts have taken a different approach and found no reasonable expectation of privacy where the police search a third party's cell phone for text messages.[17] This Court should exercise caution, however, before following these U.S. cases. Many of these cases rely on the inapt analogy between text messages and letters,[18] which has been criticized in the U.S. academic literature[19] (in addition to being inconsistent with the view that Canadian courts have taken of text messaging). The U.S. cases also rely on the principle that once an individual has disclosed information to third parties (*e.g.,* banks), he or she no longer has any reasonable exepectation of

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[14] *R. v. Spencer,* [2014] 2 S.C.R. 212.

[15] *Ontario v. Quon,* 560 U.S. 746 (2010) at p. 11.

[16] *United States v. White*, 401 U.S. 745 (1971) per Harlan J. in dissent, quoted in *R v Duarte,* [1990] 1 S.C.R. 30.

[17] For an example of a U.S. case adopting the approach that we advocate in this case, see *State of Washington v. Hinton,* 319 P.3d 9 (2014), BCCLA Authorities, Tab 1.

[18] See *e.g., United States v. Jones,* 149 Fed. Appx. 954 (2005), BCCLA Authorities, Tab 2; *State of Oregon v. Carle,* 337 P.3d 904 (2014), BCCLA Authorities, Tab 3; *State of Wisconsin v. Tentoni,* 871 N.W.2d 285 (2015), BCCLA Authorities, Tab 4.

[19] See *e.g,* Katharine M. O'Connor, ":o OMG They Searched My Txts: Unraveling the Search and Seizure of Text Messages", 2010 U. Ill. L. Rev. 685 (2010) at 707-709, BCCLA Authorities, Tab 8; Joseph C. Vitale, "Text Me, Maybe?: *State v. Hinton* and the Possibility of Fourth Amendment Protections Over Sent Text Messages Stored in Another's Cell Phone", 58 St. Louis U. L.J. 1109 (2013-2014) at 1137-1141, BCCLA Authorities, Tab 9.

privacy in the information stored with the third party.[20] This is plainly not the law in Canada.[21] The seminal U.S. case in this regard, *United States v. Miller,* rested its reasoning on the assumption of risk doctrine.[22] This Court has repeatedly rejected the risk analysis in giving effect to the rights guaranteed by s. 8 of the *Charter.*[23]

15. The Respondent also makes a variation of the assumption of risk argument in its factum. The Respondent submits that it is relevant to consider the educational initiatives taken across Canada aimed at teaching young people the dangers of online messaging given that the recipient of the message can share it with others.[24] This, however, is precisely the type of argument that this Court rejected in *R. v. Duarte*. The *Charter* is "not meant to protect us against a poor choice of friends".[25] But it is meant to protect us from unreasonable searches and seizures by the State. The fact that we run the risk of confiding in the wrong person through text messaging does not mean that we never had a reasonable expectation of privacy in the communication to begin with — especially when the question is whether we have a reasonable expectation of privacy ***vis-à-vis the State***.

16. The Respondent seeks to distinguish *Duarte* on the basis that, in this case, the Appellant made a conscious choice to communicate using a medium that necessarily creates a permanent record over which he has no control.[26] This submission overlooks the fact that in *TELUS,* all seven justices who sat on the case held that text messages are private communications even though a permanent record is necessarily created. We discuss *TELUS* in more detail below.

II. *TELUS* PROVIDES COMPELLING SUPPORT FOR OUR POSITION

17. As mentioned above, this Court's decision in *TELUS* considered the application of Part VI of the *Criminal Code* to prospective police seizures of text messages from a telecommunications company. While three sets of justices issued three separate opinions, all

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[20] *United States v. Jones, supra*, BCCLA Authorities, Tab 2.

[21] *R. v. Spencer, supra* at paras. 66-67 (S.C.C.).

[22] *United States v. Miller,* 425 U.S. 435 (1976), BCCLA Authorities, Tab 5.

[23] *R. v. Cole,* [2012] 3 S.C.R. 34 at paras. 75-79; *R. v. Duarte, supra* (S.C.C.); *R. v. Wong*, [1990] 3 S.C.R. 36.

[24] Respondent's factum, para. 36.

[25] *R. v. Duarte, supra* (S.C.C.).

[26] Respondent's factum, para. 42.

seven justices agreed that text messages are "private communications" as defined in Part VI.[27] (The three opinions differed only with respect to the type of court order required to seize text messages on a prospective basis.) In other words, the Court unanimously held that text messages are communications that are "made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it".[28] As Abella J. observed in her plurality opinion, this statutory definition of "private communications" is one that "focuses on the individual's reasonable expectation of privacy in the communication."[29] That, of course, is the same concept as that which governs standing under s. 8 of the *Charter.*

18. The Respondent seeks to distinguish *TELUS* on the basis that it is not a standing case, which is technically correct. But this misses the broader implications of this Court's judgment. If the Respondent is correct that an individual has no standing to challenge the seizure of his text messages from another's cell phone, then an individual would equally have no standing to challenge the seizure of his text messages from a telecommunications company's servers. Thus, if the police were to ignore the Court's judgment in *TELUS* and demand that a telecommunications company provide it with text messages absent a court order — and if the telecommunications company were to comply — then the accused would have no standing to challenge this search as being unconstitutional under s. 8 of the *Charter*. That cannot be correct.

19. The Respondent attempts to draw a distinction between the expectation that a message will not be intercepted from the telecommunication company's servers during the communications process (which it concedes is reasonable) and the expectation that a historical record of the message stored on the recipient's phone will not be seized (which it says is not reasonable). This distinction is difficult to understand.

20. The distinction between the seizure of *historical* text messages and the seizure of text messages stored during the communications process is one that, at most, affects the type of judicial authorization required but not standing.[30] In the case of the latter, *TELUS* settled that a

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[27] *TELUS, supra* at para. 12 per Abella J., para. 67 per Moldaver J. and para. 135 per Cromwell J. (S.C.C.).

[28] *Criminal Code,* R.S.C., 1985, c. C-46, s. 183.

[29] *TELUS, supra* at para. 26 per Abella J. (S.C.C.).

[30] Although it's important to note that the question of whether a different judicial authorization is justifiable when dealing with historical text messages is precisely the issue that this Court will consider in *R. v. Jones,* SCC File No.

Part VI authorization is required. In the case of the former, even the Crown has conceded (in the past) that a production order is required.[31]

21. If instead the Respondent's distinction is based on the target of the seizure — the telecommunciations company vs. the cell phone belonging to the recipient of the text message — then the Respondent has overlooked the clear language of Part VI of the *Criminal Code* on which *TELUS* was based. Section 183 defines "private communications" to mean communications "made under circumstances in which it is reasonable for the originator to expect that ***it will not be intercepted by any person other than the person intended by the originator to receive it***".[32] Thus, when all seven justices in *TELUS* held that text messages are "private communications", they held that it is reasonable for the sender of a text message to expect that no one will intercept the message other than its intended recipient. In this context, "no one" includes the police — whether they are going through the telecommunications company or the recipient's cell phone.

22. When individuals exchange text messages, they are consenting to those messages being read by their intended recipient. But consent for one is not consent for all. It is certainly not consent for the police.

III. CONSENT SEARCHES SHOULD BE THE EXCEPTION

23. The Respondent expresses concern over the inability of the police to search the text messages on a cell phone based solely on the consent of the cell phone owner if this Court recognizes that both parties to a text message conversation have a reasonable expectation of privacy. This concern is misplaced.

24. Consent searches are based on a waiver of the constitutional right to be secure against unreasonable search and seizure.[33] The police must therefore meet a high threshold before searching on this basis.[34] Consent searches are meant to be the exception and not the rule.[35]

37194. The BCCLA will argue that the same type of judicial authorization should be required in both instances: a Part VI authorization.

[31] *TELUS*, *supra* at para. 11 (S.C.C.).

[32] *Criminal Code,* R.S.C., 1985, c. C-46, s. 183 [emphasis added].

[33] *R. v. Wills*, [1992] O.J. No. 294 (C.A.); *R. v. Borden*, [1994] S.C.J. No. 82.

[34] *R. v. Wills*, *supra* at paras. 49-50 (Ont. C.A.).

25. It is not unreasonable to insist, as this Court did in *R. v. Cole,*[36] that the police obtain the consent of all parties before conducting a search based on a waiver of the Constitution — nor is it anomalous. In *R. v. Mercer*, the Ontario Court of Appeal held that the police could not search the accused's hotel room based solely on the consent of the hotel manager.[37] In *R. v. Brilhante*, the court held that the police could not search the matrimonial home based solely on the consent of the accused's wife.[38] And similarly, in *R. v James,* the court held that the police could not search the accused's desktop computer in the living room of his home based solely on the consent of his spouse.[39]

26. In the cell phone context, the police have a variety of ways of searching the contents of the phone — including the text messages stored on the phone — without needing to rely on the consent of the parties. Instead of insisting on a waiver of constitutional rights, the police can respect those rights. They can do so in any of the following ways while still achieving their investigative objectives.

27. First, if the cell phone is discovered incident to a lawful arrest, the police can search through recent text messages pursuant to the parameters set out in *R. v. Fearon.*[40] Second, the police can apply for a search warrant under s. 487 of the *Criminal Code.* If the police believe that it would be impracticable to appear personally before a justice to make the warrant application, they can seek a telewarrant over the telephone under s. 487.1(1).

28. Third, in cases of true urgency — where even a telewarrant would take too long — the police can search the phone without a warrant pursuant to the common law doctrine of exigent circumstances (*i.e.,* when the safety of the officer or the public is at stake, or when a search is necessary to prevent the destruction of evidence). This doctrine is codified in s. 487.11 of the *Criminal Code.*

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[35] Warrantless searches are presumptively unreasonable: *Hunter v. Southam Inc.,* [1984] 2 S.C.R. 145; *R. v. Nolet,* [2010] 1 S.C.R. 851 at para. 21; *R. v. Cole, supra* at para. 37 (S.C.C.).

[36] *R. v. Cole, supra* at para. 78 (S.C.C.).

[37] *R. v. Mercer,* [1992] O.J. No. 137 (C.A.).

[38] *R. v. Brilhante,* [2001] O.J. No. 1987 at paras. 27-29 (S.C.J.).

[39] *R. v James,* [2005] O.J. No. 4126 at para. 65 (S.C.J.). See also *R. v. Barrett,* [1995] O.J. No. 920 at para. 13 (Ont. C.J.), BCCLA Authorities, Tab 6; and *R. v. Field,* [1996] N.W.T.J. No. 20 at para. 27 (S.C.), BCCLA Authorities, Tab 7.

[40] *R. v. Fearon, supra* at para. 83 (S.C.C.).

29. Given this menu of options, it is difficult to understand the Respondent's myopic focus on consent searches and the limited circumstances in which the police can base their searches on a constitutional waiver. The law gives the police plenty of other search powers.

30. More importantly, there is nothing unduly onerous about requiring the police to obtain a warrant where they cannot fit themselves within an exception to the warrant requirement. This is particularly so in the hypotheticals posited by the Respondent, where the text message is clear evidence of an offence and where the recipient of the text message wishes to provide the text message to the police. In these circumstances, it is easy enough for the police to talk to the recipient about the contents of the text message and prepare their warrant application accordingly. The Information to Obtain would consist of a few pages at most — or a few minutes on the phone in the case of a telewarrant — and the warrant would almost certainly be issued. The privacy rights of all parties to the text message conversation would be respected and the police would suffer no more than a minor inconvenience in conducting their investigation. This is a small price to pay for the privacy and expressive freedom that all Canadians should be able to enjoy when exchanging text messages.

PART IV: SUBMISSIONS ON COSTS

31. The BCCLA does not seek costs and asks that none be awarded against it.

PART V: NATURE OF THE ORDER REQUESTED

32. The BCCLA requests leave to present oral argument at the hearing of this appeal.

All of which is respectfully submitted this 27th day of February, 2017.

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PART VI: TABLE OF AUTHORITIES

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R. v. Tessling, [2004] 3 S.C.R. 432	11
R. v. Marakah, 2016 ONCA 542	12
R. v. Edwards, [1996] 1 S.C.R. 128	12
R. v. Morelli, [2010] 1 S.C.R. 253	12
R. v. Vu, [2013] 3 S.C.R. 657	12
R. v. Fearon, [2014] 3 S.C.R. 621	12, 27
R. v. Spencer, [2014] 2 S.C.R. 212	12, 14
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Authority Cited	**Paragraph(s)**
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PART VII: LEGISLATION CITED

A. Canadian Legislation

***Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11**

Fundamental freedoms	Libertés fondamentales
2. Everyone has the following fundamental freedoms:	2. Chacun a les libertés fondamentales suivantes :
…	…
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	*b*) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
…	…
Search or seizure	Fouilles, perquisitions ou saisies
8. Everyone has the right to be secure against unreasonable search or seizure.	8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

***Criminal Code*, R.S.C. 1985, c. C-46**

PART VI Invasion of Privacy Definitions Definitions 183 In this Part, … *private communication* means any oral communication, or any telecommunication, that is made by an originator who is in Canada or is intended by the originator to be received by a person who is in Canada and that is made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it, and includes any radio-based telephone communication that is treated electronically or otherwise for the purpose of preventing intelligible reception by any person other than the person intended by the originator to receive it; (*communication privée*)	PARTIE VI Atteintes à la vie privée Définitions Définitions … 183 Les définitions qui suivent s'appliquent à la présente partie. … *communication privée* Communication orale ou télécommunication dont l'auteur se trouve au Canada, ou destinée par celui-ci à une personne qui s'y trouve, et qui est faite dans des circonstances telles que son auteur peut raisonnablement s'attendre à ce qu'elle ne soit pas interceptée par un tiers. La présente définition vise également la communication radiotéléphonique traitée électroniquement ou autrement en vue d'empêcher sa réception en clair par une personne autre que celle à laquelle son auteur la destine. (*private communication*)
Information for search warrant 487 (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place (a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed, (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,	Dénonciation pour mandat de perquisition 487 (1) Un juge de paix qui est convaincu, à la suite d'une dénonciation faite sous serment selon la formule 1, qu'il existe des motifs raisonnables de croire que, dans un bâtiment, contenant ou lieu, se trouve, selon le cas : a) une chose à l'égard de laquelle une infraction à la présente loi, ou à toute autre loi fédérale, a été commise ou est présumée avoir été commise; b) une chose dont on a des motifs raisonnables de croire qu'elle fournira une preuve touchant la commission d'une infraction ou révélera l'endroit où se trouve la personne qui est présumée avoir commis une infraction à la présente loi, ou à toute autre loi

(c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or (c.1) any offence-related property, may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant (d) to search the building, receptacle or place for any such thing and to seize it, and (e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.	fédérale; c) une chose dont on a des motifs raisonnables de croire qu'elle est destinée à servir aux fins de la perpétration d'une infraction contre la personne, pour laquelle un individu peut être arrêté sans mandat; c.1) un bien infractionnel, peut à tout moment décerner un mandat autorisant un agent de la paix ou, dans le cas d'un fonctionnaire public nommé ou désigné pour l'application ou l'exécution d'une loi fédérale ou provinciale et chargé notamment de faire observer la présente loi ou toute autre loi fédérale, celui qui y est nommé : d) d'une part, à faire une perquisition dans ce bâtiment, contenant ou lieu, pour rechercher cette chose et la saisir; e) d'autre part, sous réserve de toute autre loi fédérale, dans les plus brefs délais possible, à transporter la chose devant le juge de paix ou un autre juge de paix de la même circonscription territoriale ou en faire rapport, en conformité avec l'article 489.1.
Telewarrants 487.1 (1) Where a peace officer believes that an indictable offence has been committed and that it would be impracticable to appear personally before a justice to make application for a warrant in accordance with section 256 or 487, the peace officer may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the chief judge of the provincial court having jurisdiction in the matter. Information submitted by telephone (2) An information submitted by telephone or	Télémandats 487.1 (1) L'agent de la paix qui croit qu'un acte criminel a été commis et considère qu'il serait peu commode de se présenter en personne devant un juge de paix pour y demander un mandat de perquisition en conformité avec l'article 256 ou 487 peut faire, à un juge de paix désigné par le juge en chef de la cour provinciale qui a compétence, une dénonciation sous serment par téléphone ou à l'aide d'un autre moyen de télécommunication. Dénonciation présentée par certains moyens (2) La dénonciation présentée par téléphone ou

other means of telecommunication, other than a means of telecommunication that produces a writing, shall be on oath and shall be recorded verbatim by the justice, who shall, as soon as practicable, cause to be filed, with the clerk of the court for the territorial division in which the warrant is intended for execution, the record or a transcription of it, certified by the justice as to time, date and contents.	à l'aide d'un autre moyen de communication qui ne peut rendre la communication sous forme écrite est faite sous serment et consignée mot à mot dans un procès-verbal ou enregistrée mécaniquement par le juge de paix qui, dans les plus brefs délais, fait déposer auprès du greffier du tribunal de la circonscription territoriale où le mandat doit être exécuté le procès-verbal ou une transcription de l'enregistrement de la dénonciation; le juge de paix en certifie le contenu, la date et l'heure.
Where warrant not necessary 487.11 A peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) or 492.1(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.	Cas où le mandat n'est pas nécessaire 487.11 L'agent de la paix ou le fonctionnaire public nommé ou désigné pour l'application ou l'exécution d'une loi fédérale ou provinciale et chargé notamment de faire observer la présente loi ou toute autre loi fédérale peut, pour l'accomplissement de ses fonctions, exercer, sans mandat, tous les pouvoirs prévus aux paragraphes 487(1) ou 492.1(1) lorsque l'urgence de la situation rend difficilement réalisable l'obtention du mandat, sous réserve que les conditions de délivrance de celui-ci soient réunies.