

**SUPREME COURT OF CANADA**

(ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA)

BETWEEN:

**HER MAJESTY THE QUEEN**

**APPELLANT**

- and -

**YAT FUNG ALBERT TSE, NHAN TRONG LY, HUONG DAC DOAN,  
VIET BACK NGUYEN, DANIEL LUIS SOUX and  
MYLES ALEXANDER VANDRICK**

**RESPONDENTS**

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**FACTUM OF THE INTERVENER,  
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## **PART I – STATEMENT OF FACTS**

### **A. OVERVIEW**

1. Section 184.4 of the *Criminal Code* allows peace officers to intercept communications quickly and without prior judicial authorization necessary to prevent serious harm in such situations as hostage takings, bomb threats and armed stand-offs. It embodies an appropriate balance between the interests of an individual in being left alone and the interests of society, including the actual or potential victim, in preventing serious harm.
2. The trial judge should have assessed the context in which interceptions occur under s.184.4 and then adapted the relevant principles to that context. Instead, he used the various requirements pertaining to interceptions under s.186 as they were set out by this Court in *R. v. Duarte*<sup>1</sup> as a constitutional template. This approach was incorrect because s.186 applies in a very different context: third party interceptions for the purpose of criminal investigations. As a result, the trial judge erroneously concluded that s.184.4 is deficient in the absence of requirements that: (a) the police “immediately and without delay” seek judicial authorization once s.184.4 is utilized and (b) interceptions under s.184.4 be included in the report to Parliament required by s.195 of the *Criminal Code*. The Attorney General of Canada will focus his submissions on these two errors. He adopts the submissions of the Attorney General of British Columbia that s.184.4 is constitutional pursuant to s.7, 8 and 11(d) of the *Charter* given its safeguards and the context in which it applies.
3. Requiring that the police seek judicial authorization while the interceptions are already taking place does not minimize the intrusion into the privacy of an individual before the search is conducted consistent with the purpose of s.8 of the *Charter*. It also demands that officers familiar with the case attend to such applications while trying to prevent imminent harm. The interpretation of this provision by the Attorney General of British Columbia provides the proper balance of ensuring that interceptions without judicial authorization do not continue indefinitely while allowing officers to prevent serious harm.

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<sup>1</sup> *R v. Duarte*, [1990] 1 S.C.R. 30, Appellant's Book of Authorities, Vol. I, Tab 21

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4. Similarly, a report to Parliament has no real impact or bearing on the rights protected by s.8 of the *Charter*. It is not intended to, nor can it, prevent a breach or provide specific remedies *post facto*. It does not provide Parliament with actual oversight over the actions of individual peace officers. It may provide Parliament with a general sense of how a particular provision is being used and inform future policy development, but it does not provide any specific evidence of consistency between the legislation in question and the *Charter*.

## **B SUMMARY OF THE FACTS**

5. The Attorney General of Canada relies on facts as stated by the parties to this appeal and the facts set out below. He takes no position as to any factual disputes between the parties.

## **C. LEGISLATIVE HISTORY**

6. On June 30, 1974, Canada's first comprehensive wiretap legislation, *The Protection of Privacy Act*, came into force. The legislation criminalized the interception of private communications, with certain exceptions. It permitted police to intercept communications between third parties with prior judicial authorization (s.178.13, now s.186 of the *Criminal Code*). It did not include an emergency wiretap provision such as s.184.4.<sup>2</sup> However, interceptions could be made without judicial authorization where one of the parties consented pursuant to s.178.11(2)(a), which was constitutionally challenged in *Duarte*.
7. To ensure political accountability, the legislation required an annual report to Parliament setting out statistical data concerning the use of s.186 authorizations and resulting criminal prosecutions.<sup>3</sup> The reporting provision (now s.195 of the *Criminal Code*) provided some opportunity for Parliament to be apprised of the extent to which this authority has been used in the preceding year.<sup>4</sup> The then Minister of Justice, Otto Lang, noted that the requirement to report "in what is

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<sup>2</sup> *Protection of Privacy Act*, R.S.C. 1974, c. C-34, ss. 178.11-178.15, Attorney General of Canada's [AGC] Book of Authorities, Tab 20

<sup>3</sup> *Ibid*, s. 178.22

<sup>4</sup> Minister of Justice Otto Lang, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, respecting Bill C-176*, 29<sup>th</sup> Leg., No. 13 June 5, 1973 at 13-6 to 13-10, AGC Book of Authorities, Tab 30; Minister of Justice Otto Lang, *House of Commons Debates*, 28<sup>th</sup> Parl, 4<sup>th</sup> Sess, Vol 2 (2 May 1972) at 1819- 1822, AGC Book of Authorities, Tab 27

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essentially a political way" was essential as Parliament has the obligation to make laws which protect its citizens.<sup>5</sup>

8. There have been minor amendments to the reporting requirement since 1974.<sup>6</sup> In 1977 a provision (now s.196) was added requiring notice to the person intercepted pursuant to s.186 authorizations in certain circumstances.<sup>7</sup> The amendment required that the number of notifications made each year be included in the report to Parliament.<sup>8</sup>
9. In 1993, in response to various decisions of this Court,<sup>9</sup> Parliament introduced significant amendments to the wiretap legislation. These included provisions to authorize interceptions in various specific situations: s.184.4, s.184.1 (interception of a person with his/her consent to prevent bodily harm to him/her), s.184.2 (interception with consent); and s.492.2 (information re number recorder), none of which need to be included in the s.195 report to Parliament.
10. The Minister of Justice at the time, Pierre Blais, summarized the purpose of s.184.4 when he spoke to the Senate as follows:

In cases where, because of the urgency of the situation, policemen must intervene to prevent serious injury to a person or the destruction of property (and they have an opportunity to do so), this provision enables them to try to intercept communications in order to find out what is going on if this can help save lives until they are able to obtain authorizations.

Think about the case of a hijacker who holds up an airplane on an airport runway, or a disturbed person who holds his wife and children hostage and threatens to kill them; is it reasonable in these cases, to refuse policemen the right to try and find out what is going on until they can find a judge and meet the strict requirements of the procedure that involves collecting elements of proof? No not when every minute counts. I feel that this provision is necessary to ensure public safety. Moreover, I do not think the Charter

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<sup>5</sup> Minister of Justice, Otto Lang, *House of Commons Debates*, VIII (November 1973) at 8199, AGC Book of Authorities, Tab 28

<sup>6</sup> See for example *Criminal Code*, 1985, c. C-46, s. 195(1)

<sup>7</sup> *Criminal Law Amendment Act*, 1977, c. C-53, s. 12

<sup>8</sup> *Criminal Law Amendment Act*, 1977, c. C-53, s. 11.1

<sup>9</sup> *Duarte, supra*; *R v. Wong*, [1990] 3 S.C.R. 36 [video surveillance], Appellant's Book of Authorities Vol. III, Tab 60; *R v. Wiggins*, [1990] 1 S.C.R. 62 [informer body pack], Appellant's Book of Authorities Vol. III, Tab 58; *R v. Wise*, [1992] 1 S.C.R. 527 [tracking device], AGC Book of Authorities, Tab 10

should be an obstacle to those who wish to save lives or prevent serious damage to property.<sup>10</sup>

11. In considering the introduction of these new provisions, the House of Commons and Senate committees heard from police agencies, law associations and lawyers within the Department of Justice. The Canadian Bar Association was concerned about the lack of "accountability" in s.184.4,<sup>11</sup> whereas the various police associations and lawyers from the Department of Justice took the position that the section had ample internal safeguards, judicial oversight if the evidence was sought to be introduced at a trial and internal police oversight.<sup>12</sup> Parliament considered all of these issues and adopted a measured response in the form of s.184.4.
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<sup>10</sup> Minister of Justice Blais, *Senate of Canada, Legal and Constitutional Affairs*, June 15, 1993, p. 48:15-16, Appellant's Record, Vol. V at pp. 72-73

<sup>11</sup> A. Borovoy, *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, Issue no. 46, p. 46:14, Appellant's Record, Vol. V, p. 43 [**absence of notice to intercepted parties**]; M. Fuerst, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue no. 4, p. 4:10, Appellant's Record, Vol. V, p. 14; A. Bryant, *Senate of Canada, Legal and Constitutional Affairs*, Issue 47, pp. 47:19-21, Appellant's Record, Vol. V, pp. 60-62 [**absence of records about use of s. 184.4**]; Sen. Neiman, *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, Issue no. 46, p. 46:11, Appellant's Record, Vol. V, p. 40; A. Bryant, *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, June 9, 1993, p. 47:19, Appellant's Record, Vol. V, p. 60; M. Fuerst, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue no. 4, p. 4:10, Appellant's Record, Vol. V, p. 14 [**concerns about the use of the term "peace officer"**]

<sup>12</sup> Sgt. Logar, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue No. 4, p. 4:20 (Sgt. Logar), Appellant's Record, Vol. V, p. 18; *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue No. 46, p. 46:38, Appellant's Record, Vol. V, pp. 46-53 [**internal restrictions in s. 184.4 and existence of police records**]; Sgt. Logar, *Proceedings of the Standing Senate Committee of Legal and Constitutional Affairs*, Issue no. 46, pp. 46:46-47, Appellant's Record, Vol. V, pp. 55-56 [**time needed to complete s. 188 application**]; S. Newark, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue no. 4, p. 4:29, Appellant's Record, Vol. V, p. 23; F. Bobiasz, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue no. 5, p. 5:28-29, Appellant's Record, Vol. V, pp. 27-28; *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, Issue no. 44, p. 44:16, Appellant's Record, Vol. V, p. 33; Sgt. M. Logar, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-109*, Issue no. 4, p. 4:21, Appellant's Record, Vol. V, p. 19; *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, Issue no. 46, p. 46:38, Appellant's Record, Vol. V, p. 49 [**the criminal trial as providing s. 184.4 accountability**]; Sgt. M. Logar, *Minutes of Proceedings and Evidence of the Legislation Committee on Bill C-109*, Issue 4, p. 4:21, Appellant's Record, Vol. V, p. 19; *Proceedings of the Standing Senate Committee of Legal Constitutional Affairs*, Issue no. 46, p. 46:42, Appellant's Record, Vol. V, p. 53 [**other methods of accountability, internal discipline, public complaint mechanisms and civil lawsuits**]

**PART II – QUESTIONS IN ISSUE**

12. On March 25, 2011, the Chief Justice stated the following constitutional questions:
1. Does s.184.4 of the *Criminal Code*, R.S.C. 1985, c. C-46, infringe s.7 of the *Canadian Charter of Rights and Freedoms*?
  2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?
  3. Does s.184.4 of the *Criminal Code*, R.S.C. 1985, c. C-46, infringe s.8 of the *Canadian Charter of Rights and Freedoms*?
  4. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?
  5. Does s.184.4 of the *Criminal Code*, R.S.C. 1985, c. C-46, infringe s.11(d) of the *Canadian Charter of Rights and Freedoms*?
  6. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?
  7. If s.184.4 of the *Criminal Code*, R.S.C. 1985, c. C-46, infringes the *Canadian Charter of Rights and Freedoms*, is it necessary to declare it of no force and effect under s. 52(1) of the *Constitution Act*, 1982, or is a lesser remedy available?
13. Section 184.4 of the *Criminal Code* does not violate s.7, 8 or 11(d) of the *Charter*. If this Court finds there is any infringement, it is justified pursuant to s.1 of the *Charter*. Finally, if s.184.4 infringes the *Charter* and it cannot be justified pursuant to s.1 of the *Charter*, the appropriate remedy is to suspend the declaration of invalidity for twelve months to allow Parliament the opportunity to pass new legislation to address the constitutional deficiencies without putting persons at risk of serious harm.

**PART III – STATEMENT OF ARGUMENT**

**A. S.184.4 IS REASONABLE IN THE CONTEXT IN WHICH IT APPLIES**

**1. Context determines the point at which an individual's rights to privacy must give way to society's objectives**

14. Context is crucial in determining the reasonableness of a search.<sup>13</sup> What is reasonable in one situation may not be reasonable in another. From the earliest days of the *Charter* this Court has held the reasonableness of a search is determined by assessing “whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals”.<sup>14</sup> This requires evaluating the nature of the privacy interest at stake, the nature of the situation, including the seriousness of the offence as well as the information known to the police about the suspect and the crime at that time and whether the search is responsive or tailored to the purpose of the search.<sup>15</sup> It is also essential to consider the conditions under which interceptions are permitted.<sup>16</sup>

**2. The trial judge used the wrong context to consider the reasonableness of s.184.4**

15. The trial judge failed to give proper consideration to the context of an interception under s.184.4. Instead, he treated the particular legislative requirements designed for a very different context as the touchstone for evaluating s.184.4. As noted by the Attorney General of British Columbia,<sup>17</sup> the trial judge used the requirements for third party interceptions under s.186, referred to in *Duarte*, as a constitutional template. The point at which the individual's privacy interest must give way to the state's interest in preventing serious harm in urgent circumstances is different

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<sup>13</sup> *R v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at p. 645, AGC Book of Authorities, Tab 8; *R v. Kang-Brown*, [2008] 1 S.C.R. 456 at para. 59, AGC Book of Authorities, Tab 7

<sup>14</sup> *Hunter v. Southam*, [1984] 2 S.C.R. 145 at p. 159, Appellant's Book of Authorities, Vol. I, Tab 6; *R v. Tessling*, [2004] 3 S.C.R. 432, Appellant's Book of Authorities, Vol. III, Tab 53

<sup>15</sup> *R v. Clayton*, [2007] 2 S.C.R. 725, Appellant's Book of Authorities, Vol. I, Tab 17; *R v. Plant*, [1993] 3 S.C.R. 281 at p. 293, AGC Book of Authorities, Tab 9

<sup>16</sup> *W. (K.L.) v. Winnipeg Child and Family Services*, [2002] 2 S.C.R. 519 at paras. 84 and 133, Appellant's Book of Authorities, Vol. II, Tab 61

<sup>17</sup> Appellant's Factum, para. 29

than it is where the state's interest is to investigate crimes. The trial judge therefore erroneously applied prerequisites to s.184.4 that were inappropriate and unnecessary to make the provision reasonable.

16. In *Duarte* this Court held that s.178.11(2)(a) of the *Criminal Code* infringed s.8 of the *Charter* because it permitted police officers to intercept communications without prior judicial authorization or any other restrictions, where a person such as an informer was a party to the communication and had given his or her consent.<sup>18</sup> It allowed police officers to intercept calls "in their absolute discretion, against whom they wish and for whatever reasons they wish, without any limit as to place or duration".<sup>19</sup>
17. In contrast, this Court held that legislative scheme in Part IV.I of the *Criminal Code* (now Part VI), which created s.186 authorizations, struck the right balance between individuals' privacy interests and those of law enforcement investigating crimes because there was "external restraint" on the power of the state to record private communications and interception had to be "justified by application of an objective criterion".<sup>20</sup> The provisions were designed to prevent "the possibility that the police view recourse to electronic surveillance as a humdrum and routine administrative matter" and prevented intercepting private communications on the basis of mere suspicion.<sup>21</sup>
18. This Court did not, however, say that all of the legislative requirements for interceptions authorized by s.186 were necessary or that these were the only requirements that make s.186 interceptions reasonable.<sup>22</sup>
19. The context in which s.186 interceptions are permitted is fundamentally different than the context in which s.184.4 applies:

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<sup>18</sup> *Duarte, supra* at para 47

<sup>19</sup> *Duarte, supra* at para 27

<sup>20</sup> *Duarte, supra* at para. 25

<sup>21</sup> *Duarte, supra* at paras. 31 and 47; *R. Finlay and Grellette* (1985) 52 O.R. (2d) 632 (C.A.), AGC Book of Authorities, Tab 5

<sup>22</sup> *R. v. Riley*, (2008), 174 C.R.R. (2d) 250 (Sup Ct.) at paras. 37- 38, Appellant's Book of Authorities, Vol. II, Tab 47

| <b>s.186 interceptions</b>                                                                                      | <b>s.184.4 interceptions</b>                                                                                 |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Purpose of the interception is to investigate crime that has been or is being committed                         | Purpose of interception is to prevent imminent serious harm to persons or property                           |
| Limited to serious offences                                                                                     | Limited to unlawful acts that may result in serious harm                                                     |
| No requirement of urgency                                                                                       | The situation is urgent and there is no time to obtain s.188 or s.186 authorizations                         |
| Interception permitted for all persons who may assist the investigation, including persons who are not suspects | Interceptions are limited to the person who would perform the serious harm and the victim or intended victim |
| Requirement of investigative necessity                                                                          | Interception must be immediately necessary to prevent unlawful act                                           |
| Interception valid for up to 60 days                                                                            | Interception is permitted until an authorization could be obtained with reasonable diligence                 |

20. *Duarte* found that third party interceptions require an external and objective criterion. However, it did not address the circumstances of s.184.4 interceptions. In the present case, what is important is that there are both an objective standard to establish the necessity for the interception and restrictions on the degree of intrusion to what is necessary to prevent serious harm. Section 184.4 is carefully tailored to do just that and, as such, is reasonable. First, the intrusion is only permissible for this purpose; this is a significant legal restriction that is fundamental to the reasonableness of s.184.4.<sup>23</sup> Second, s.184.4 is only a stop gap measure. The legislative scheme provides for interceptions pursuant to s.186 when there are no significant time constraints and, where the urgency of the situation is such that an authorization under s.186 could not be obtained in time, authorization to intercept is available under s.188 for up to 36 hours. When neither of those avenues would permit interceptions in time to prevent serious harm, s.184.4 provides for unauthorized interceptions. Third, s.184.4 requires that the high standard of reasonable grounds be satisfied, although this Court has held that a lower standard of reasonable suspicion may justify a search to prevent serious harm.<sup>24</sup> Finally, s.184.4 limits the degree of intrusion by only

<sup>23</sup> *R v. Godoy*, [1999] 1 S.C.R. 311 at para. 22, Appellant's Book of Authorities, Vol. II, Tab 26

<sup>24</sup> *Clayton*, *supra* at paras. 32-37; see also *R v. Golub*, [1997] O.J. No. 3097 (C.A.) at paras. 9-10, AGC Book of Authorities, Tab 6; See also *Hunter*, *supra* at p. 168

permitting interceptions to and from the person who would likely cause the serious harm and to and from the intended victims of the harm, unlike other interceptions permitted under the *Criminal Code*.<sup>25</sup>

21. Notwithstanding the fundamentally different context in which s.184.4 applies, the trial judge used the provisions for s.186 interceptions as a constitutional template in determining whether s.184.4 contravenes s.8 of the *Charter*. While the trial judge stated that not all requirements that are mandatory for s.186 interceptions need always be present, he held that the “absent such safeguards the constitutionality of legislation allowing the interception of private communications will be compromised”.<sup>26</sup> The trial judge mechanically examined each requirement of s.186 interceptions, as highlighted, and evaluated whether these requirements were sufficiently mirrored in s.184.4 as summarized below:

**Last resort requirement for the most serious offences:** The risk of serious harm ameliorates the requirement that this be a tool of last resort. The term “unlawful conduct” in s.184.4(c) did not sufficiently limit the seriousness of the offence and therefore should be read as an offence enumerated in s.183 of the *Criminal Code*.<sup>27</sup>

**Time Limitation:** This requirement is satisfied by interpreting the provision in accordance with the “constitutional compliant implementation” process that requires peace officers to immediately take steps to obtain judicial authorization under Part VI.<sup>28</sup>

**Judicially imposed conditions and restrictions:** The existence of exigent circumstances that gives rise to a reasonable apprehension of serious harm justifies the interception for a short period of time without the need for judicially imposed conditions and restrictions.<sup>29</sup>

**Mandates renewal on a showing of cause:** There is no renewal provision, but this requirement is sufficiently satisfied as officers must immediately seek to obtain a s.188 and/or s.186 authorization.<sup>30</sup>

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<sup>25</sup> Appellant's factum at paras. 45-46

<sup>26</sup> Reasons for judgment, Appellant's Record, Vol. I, pp. 83 and 98 at paras. 201 and 239

<sup>27</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 84 at paras. 203-205

<sup>28</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 85 at paras. 206-209

<sup>29</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 86 at para. 210

<sup>30</sup> Reasons for judgment, Appellant's Record, Vol. I, pp. 86-87 at paras. 211-313

**Notification to the person intercepted:** Failure to notify the person intercepted is a constitutionally deficiency.<sup>31</sup>

**Report to Parliament:** The purpose of the report is to provide oversight over the police intercepting communications. The failure to require a report is a constitutional failing in the legislation.<sup>32</sup>

**Engages the Attorney General of the province in which the application for an authorization is brought.** The lack of this requirement undermines police accountability.<sup>33</sup>

**Prior judicial authorization:** While this is not required, without any of the other requirements that are necessary for a s.186 interception, s.184.4 is not reasonable.<sup>34</sup>

22. The trial judge failed to recognize that many of the s.186 interception requirements have no relevance to the context in which s.184.4 applies. One such provision is the requirement to seek an authorization immediately upon commencing interceptions pursuant to s.184.4. Another is the report to Parliament.

i. **Taking steps to obtain a future authorization does not affect the reasonableness of s.184.4 interceptions**

23. Although he acknowledged that prior judicial authorization was not necessary, in attempting to mimic the s.186 requirements, the trial judge insisted that there be judicial authorization of some type. He concluded that once they began to intercept, the police should "immediately and without delay" begin to take steps to obtain either or both a s.188 or s.186 authorization for further interceptions.<sup>35</sup> However, this conclusion was erroneous for two reasons.
24. First, the situation may resolve itself almost immediately, rendering preparation of an authorization pointless.<sup>36</sup> Further, s.184.4(a) permits officers to intercept communications if they

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<sup>31</sup> Reasons for judgment, Appellant's Record, Vol. I, pp. 87-88 at paras. 214-219

<sup>32</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 89 at paras. 220-222

<sup>33</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 90 at para. 223

<sup>34</sup> Reasons for judgment, Appellant's Record, Vol. I, pp. 90-94 at paras. 224-228

<sup>35</sup> Reasons for judgment, Appellant's Record, Vol. I, pp. 69-70 at paras. 166 and 169

<sup>36</sup> *Riley*, *supra* at para. 117; Exhibit M, affidavits from various police forces re utilization of s.184.4, Appellant's Record, Vol. II, p. 153 to Vol. III, p. 53

could not obtain an authorization with “reasonable diligence”. This includes a degree of flexibility to allow officers to best ensure that the objective of preventing serious harm is not sacrificed.<sup>37</sup> The Attorney General of Canada adopts the Attorney General of British Columbia’s interpretation of “reasonable diligence” in s.184(1)(a). It provides peace officers with the necessary flexibility to balance the competing demands of preventing serious harm and judicial oversight which is consistent with the s.8 jurisprudence that recognizes there must be a degree of flexibility in determining what is reasonable.<sup>38</sup>

25. Second, this Court has ruled that no judicial authorization is required where the purpose of the search is to prevent imminent serious harm. For example, in *R v. Godoy*,<sup>39</sup> this Court held that a search of a home after a disconnected 911 call was reasonable even though the person who answered the door stated that everything was fine. The police acted reasonably by forcibly entering the apartment, without a warrant, as they were acting in the course of their duty to protect life and the intrusion was limited to this purpose. Prior judicial authorization was not required because “a threat to life and limb more directly engages the values of dignity, integrity and autonomy underlying the right to privacy than does the interest in being free from the minimal state intrusion of police entering an apartment to investigate a potential emergency”.<sup>40</sup>
26. In *Winnipeg Child and Family Services v. K.L.W.*,<sup>41</sup> a majority of this Court also upheld legislation permitting the apprehension of a child without prior judicial authorization in situations of serious harm or risk of serious harm even where there was no emergency.
27. The same analysis that made the searches reasonable in *Godoy* and *Winnipeg Child and Family Services v. K.L.W.* is applicable to s.184.4.

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<sup>37</sup> *W. (K.L.)*, *supra* at para. 114

<sup>38</sup> *Kang*, *supra* at para. 59

<sup>39</sup> *R. v. Godoy*, *supra* at para. 23; see also *W. (K.L.)*, *supra* at para. 114

<sup>40</sup> *Godoy*, *supra* at para. 19; see also *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 88, Appellant’s Book of Authorities, Volume II, Tab 41 and *Hunter*, *supra* at pp. 160-61

<sup>41</sup> *W. (K.L.)*, *supra* at paras. 104-109

ii. A report to Parliament does not affect the reasonableness of s.184.4 interceptions

28. While the trial judge recognized that not all wiretap provisions require a s.195 report to Parliament,<sup>42</sup> he continued to adhere to the requirements in *Duarte* and held that s.184.4 was constitutionally deficient because no such report is required.<sup>43</sup> He erred in this conclusion because such a report has nothing to do with ensuring that the intrusion on privacy is minimized while accomplishing the objective of preventing serious harm to person or property. Accordingly, it is irrelevant to the reasonableness of the search. Once again, the trial judge's error results from his mirror image approach. First, he applied this, among all the other elements referred to in *Duarte*, rather than analyzing what the relevant context requires. Second, as set out in paragraph 18 above, *Duarte* does not actually stand for the proposition that such a report is constitutionally required.
29. While a report is a useful tool that Parliament may use to assist in making legislative decisions, there is no connection between a report to Parliament and s.8 of the *Charter*. As discussed in the context of a remedy pursuant to s.24(1) of the *Charter* an appropriate and just remedy is "one that meaningfully vindicates the rights and freedoms of the claimants".<sup>44</sup> The purpose of s.8 of the *Charter* is to,
- protect individuals from unjustified state intrusions upon their privacy. That purpose requires a mean of preventing unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place.<sup>45</sup>
30. A report to Parliament does not contain any information about particular interceptions that could prevent a breach, nor does it provide sufficient information to demonstrate that a breach in a particular case has occurred to enable the individual to obtain a remedy.

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<sup>42</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 89 at para. 220

<sup>43</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 89 at paras. 221-222

<sup>44</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3 at para. 55, AGC Book of Authorities, Tab 2

<sup>45</sup> *Hunter, supra* at p. 160

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31. Moreover, contrary to the trial judge's view, a report to Parliament is not intended to, nor can it, provide Parliament with oversight of the day to day actions of peace officers such that it could minimize the degree of intrusion on privacy interests. Section 195 does not require that Parliament do anything with the report nor can Parliament be compelled to take a particular response to the information contained in the report.<sup>46</sup>
  32. Further, s.195 does not provide Parliament with any oversight function over day to day police actions within the reporting requirements. In any event, providing Parliament with this type of oversight would be "counter to our traditional view of the independence of the police constable subject to supervision through the chain of command of the police force, and the insulation of the police functioning from political interference".<sup>47</sup> Oversight of this nature is the responsibility of the organizations that monitor peace officers. As the Appellant's Record demonstrates there are internal policies, manuals and procedures in place to oversee police officers' use of s.184.4.<sup>48</sup> *The Royal Canadian Mounted Police Act*,<sup>49</sup> *Police Services Act*,<sup>50</sup> and other police services Acts also provide oversight of police actions through internal discipline procedures and boards of review.<sup>51</sup>
  33. Section 184.4 provides judicial oversight appropriate to the context in which it applies. First, it requires that officers must obtain judicial authorization with "reasonable diligence". If an authorization is sought to continue to intercept calls and is refused then interceptions pursuant to s.184.4 must cease.<sup>52</sup> Second, evidence of interceptions tendered in support of criminal charges is

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<sup>46</sup> House of Commons, Standing Order 32, AGC Book of Authorities, Tab 29; *Doucet-Boudreau*, *supra*  
<sup>47</sup> *Riley*, *supra* at para. 111

<sup>48</sup> Exhibit A, RCMP Policies and Manuals, Appellant's Record, Vol. II, pp. 43-97; Exhibit M, Appellant's Record, Vol. II, pp. 153, Vol. III, p. 57

<sup>49</sup> *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, ss. 24.1, 25, 29 and 45, AGC Book of Authorities, Tab 22

<sup>50</sup> *Riley*, *supra* at para. 112; See also *Police Services Act*, R.S.O. 1990 c P. 15

<sup>51</sup> *Riley*, *supra* at para. 112; *Police Act*, S.N.B. 2005, c. P-9.2 ss. 18 and 25, AGC Book of Authorities, Tab 18; *Police Act*, R.S.Q. 2000 c. P-13.1, ss. 64, 143, AGC Book of Authorities, Tab 17; *Royal Newfoundland Constabulary Act*, R.S.N. 1992, c. R-17 ss. 22, 25, AGC Book of Authorities, Tab 23; *Police Act*, S.N.B. 2005, c. 31, ss. 10, 13, 20, AGC Book of Authorities, Tab 14; *The Police Act*, S.S. 1990-91, c. P-15-01. ss. 45, 54, AGC Book of Authorities, Tab 24; *Provincial Police Act*, R.S.M. 1987, c. P150 s. 10, AGC Book of Authorities, Tab 21; *Police Act*, R.S.A. 2000 C. P-17 ss. 17, 18 and 28, AGC Book of Authorities, Tab 15; *Police Act*, R.S.B.C. 1996 C. 367, s. 50, AGC Book of Authorities, Tab 16

<sup>52</sup> Reasons for judgment, Appellant's Record, Vol I, p. 132 at paras. 347-348

subject to judicial scrutiny pursuant to the *Charter*. A report is not a substitute for this judicial oversight.

34. A report pursuant to s.195 of the *Criminal Code* is a tool used by Parliament to legislate. It provides a limited retrospective view of the use of wiretap authorizations. The report contains statistical information about the number of authorizations sought, obtained and refused, the number of renewals, the number of persons identified and not identified in the authorization who were prosecuted, the duration of the authorizations, the number of people notified pursuant to s.196 of the *Criminal Code*, types of places intercepted, types of offences involved, general description of methods of interceptions, number of prosecutions that used and did not use the interceptions and other such statistical information.<sup>53</sup>
35. From time to time, Parliament has required that reports be provided to it when new legislation has been introduced, often requiring a review of the legislation to assist in carrying out Parliament's function. For example, reports are required pursuant to:
- s.25.3 of the *Criminal Code* (report regarding when police commit offences in furtherance of criminal investigations);
  - s.83.31 of the *Criminal Code* (report regarding use of provision in terrorist investigations);
  - s.696.5 of the *Criminal Code* (report regarding applications for Ministerial Review);
  - s.13.1 of the *DNA Identification Act*; and
  - s. 38 of the *Privacy Act*.<sup>54</sup>
36. Parliament first introduced the use of a report in the wiretap context in 1974 when this investigative technique was new and Parliament was concerned about its use. As noted in *Riley*, "Parliament presumably hoped that the report would assist it in determining what revisions would

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<sup>53</sup> *Criminal Code*, 1985, c. C-46, s. 195(1)

<sup>54</sup> *Privacy Act*, R.S.C. 1985, c. P-21, AGC Book of Authorities, Tab 19; ss. 25.3, 83.81, 696.5 of the *Criminal Code*, R.S.C. 1985, Chap C-46, AGC Book of Authorities, Tab 12; s. 13.1 *DNA Identification Act*, R.S.C. 2000, c. 10 s. 12 amended 2005, c. 10. s. 26, AGC Book of Authorities, Tab 13

be necessary to fine tune the balance between privacy and law enforcement".<sup>55</sup> When amendments were made to the wiretap legislation in 1993, Parliament did not require reports to be provided for any of the new wiretap interception provisions.<sup>56</sup>

37. The fact that a report to Parliament is not a constitutionally required "safeguard" that impacts on the degree of intrusion on an individual as contemplated by s.8 of the *Charter* is supported by a review of the limited cases that have considered the constitutionality of legislation that requires such reporting. While reporting to Parliament is sometimes referred in the case law in general terms as a "safeguard", and it is not disputed that there may be in many cases good policy reasons for requesting a report, the requirement has not been used as a basis to find that a law is reasonable or otherwise constitutional.<sup>57</sup>

## B. SECTION 1

38. If this Court finds that s.184.4 violates s.7, 8 or 11(d) of the *Charter*, it is submitted that the legislation is justified pursuant to s.1 of the *Charter*. While it is accepted that legislation violating s.7 or s.8 will not easily be saved by s.1, this task is not impossible "particularly in the extraordinary circumstances where concerns are grave and the challenges complex".<sup>58</sup>
39. The purpose of s.184.4 is pressing and substantial. Many other jurisdictions have a provision to address this same concern.<sup>59</sup> The terms of s.184.4 are rationally connected to this objective.<sup>60</sup>

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<sup>55</sup> *Riley, supra* at para. 117

<sup>56</sup> These provisions include s. 184.1, 184.2, 184.3 and 184.4 of the *Criminal Code*

<sup>57</sup> *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248, Appellant's Book of Authorities, Vol. I, Tab 1; See also *U.S.A. v. Nadarajah*, 2010 ONCA 859, AGC Book of Authorities, Tab 11; *Application under s. 83.28 of the Criminal Code (Re)*, *supra*; *R v. Finlay and Grellette, supra*; *R v. Rodgers*, [2006] 1 S.C.R. 554 at paras. 40 and 51, Appellant's Book of Authorities, Volume II, Tab 50

<sup>58</sup> *Charkaoui v. Canada*, [2007] 1 S.C.R. 350 at para. 66, AGC Book of Authorities, Tab 1

<sup>59</sup> 18 U.S.C.A. § 2518(7), AGC Book of Authorities, Tab 25; *Police Act 1997, Regulation of Investigatory Powers Act 2000* s. 7 (note that it not limited to serious harm but to national security, serious crime), AGC Book of Authorities, Tab 31; *Telecommunications (Interception) Act 1979* ss. 7(4)-7(8), 30, 93 102, AGC Book of Authorities, Tab 32; *Crimes Act 1961* (N.Z.) 1961/43 at 312(g), AGC Book of Authorities, Tab 26

<sup>60</sup> *R v. Brais*, [2009] R.J.Q. 1092 at para. 248, Appellant's Book of Authorities, Vol. I, Tab 14

be necessary to fine tune the balance between privacy and law enforcement".<sup>55</sup> When amendments were made to the wiretap legislation in 1993, Parliament did not require reports to be provided for any of the new wiretap interception provisions.<sup>56</sup>

37. The fact that a report to Parliament is not a constitutionally required "safeguard" that impacts on the degree of intrusion on an individual as contemplated by s.8 of the *Charter* is supported by a review of the limited cases that have considered the constitutionality of legislation that requires such reporting. While reporting to Parliament is sometimes referred in the case law in general terms as a "safeguard", and it is not disputed that there may be in many cases good policy reasons for requesting a report, the requirement has not been used as a basis to find that a law is reasonable or otherwise constitutional.<sup>57</sup>

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<sup>57</sup> *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248, Appellant's Book of Authorities, Vol. I, Tab 1; See also *U.S.A. v. Nadarajah*, 2010 ONCA 859, AGC Book of Authorities, Tab 11; *Application under s. 83.28 of the Criminal Code (Re)*, *supra*; *R v. Finlay and Grellette, supra*; *R v. Rodgers*, [2006] 1 S.C.R. 554 at paras. 40 and 51, Appellant's Book of Authorities, Volume II, Tab 50

<sup>58</sup> *Charkaoui v. Canada*, [2007] 1 S.C.R. 350 at para. 66, AGC Book of Authorities, Tab 1

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40. As explained in paragraph 20 above, the legislation is also carefully tailored to ensure that the rights of an individual are impaired no more than necessary.
41. Finally, the beneficial effect of s.184.4 significantly outweighs the limitation of the rights affected. The benefit to potential and actual victims, as shown in the evidence that demonstrates the utilization of this provision,<sup>61</sup> significantly outweighs the limited invasion into an individual's privacy.

### C. ALTERNATIVE CONSTITUTIONAL REMEDIES

42. If this Court finds that s.184.4 is not saved by s.1 of the *Charter*, the Attorney General of Canada submits that the appropriate remedy is to suspend the declaration of constitutional invalidity for a period of twelve months.
43. The Attorney General of British Columbia suggests that s.184.4 may be saved by reading in s.195 of the *Criminal Code* (notice to the person intercepted).<sup>62</sup> However, such a remedy would not be appropriate. There are a range of measures that Parliament could adopt that address the reasonableness of a search in the context in which s.184.4 applies. Further, as this Court noted in *Hunter*:

It is the legislature's responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution's requirements. It should not fall to the courts to fill in the details that will render legislative lacunae constitutional.<sup>63</sup>

44. Similarly, the issue as to whether "peace officer" should be read down should not be decided in this case as it does not arise on the facts. Moreover, reading down the term "peace officer" would be too great an intrusion into Parliament's legislative domain. As noted, the purpose of s.184.4 is to prevent harm that may arise in armed standoffs, kidnappings and bomb threats. One can

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<sup>61</sup> Exhibit M, *supra*

<sup>62</sup> Appellant's factum at paras. 83-84

<sup>63</sup> *Hunter*, *supra* at p. 169; See also *Schachter v. Canada*, [1992] 2 S.C.R. 679, Appellant's Book of Authorities, Vol. III, Tab 62; *R v. Demers*, [2004] 2 S.C.R. 489 at paras. 57-59, AGC Book of Authorities, Tab 4; *M v. H.*, [1999] 2 S.C.R. 3 at paras 138-147, AGC Book of Authorities, Tab 3

envision scenarios where other types of peace officers including a pilot of an aircraft, a captain of a vessel or an officer of the Canadian Forces may find themselves in urgent situations where the use of s.184.4 would be necessary.

45. A suspension of the declaration of invalidity is an appropriate remedy if s.184.4 is found to be unconstitutional and not justified pursuant to s.1 of the *Charter*. A suspension will avoid creating danger to public safety that would occur should s.184.4 be struck without a suspension<sup>64</sup> and provides Parliament with the opportunity to amend s.184.4.<sup>65</sup> The Government previously indicated its intention to amend this legislation requiring that s.195 and s.196 apply to s.184.4 in former Bills C-31 and C-50. Bill C-31 was introduced on May 15, 2009 and died on the Order Paper due to the prorogation of Parliament on December 31, 2009. This bill was reintroduced, as Bill C-50, on October 29, 2010 but died on the order paper in March 2011.

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#### **PART IV – ORDER SOUGHT CONCERNING COSTS**

46. The Attorney General of Canada does not seek costs in this appeal and submits that no costs should be awarded.

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<sup>64</sup> Reasons for judgment, Appellant's Record, Vol. I, p. 111 at paras. 271-272; See also Exhibit M, *supra*  
<sup>65</sup> *Schachter, supra* at para. 79; *R v. Demers, supra* at paras. 57-59

**PART V – STATEMENT OF THE ORDER SOUGHT**

47. The Attorney General of Canada respectfully submits that the constitutional questions be answered as follows:
- (a) Questions 1, 3 and 5 be answered in the negative, in which case there is no need to answer the remaining questions;
  - (b) If this Court decides to answer any of questions 1, 3 and 5 in the positive, questions 2, 4 and 6, as the case may be, also be answered in the positive - that any infringement is justified;
  - (c) If this Court finds an infringement is not justified, s.184.4 be declared of no force and effect under s.52(1) of the *Constitution Act, 1982* and the declaration of constitutional invalidity be suspended for 12 months.
48. The Attorney General of Canada also requests that the stay of the declaration of constitutional invalidity made by Justice Davies on June 16, 2011 be extended by this Court until the release of this Court's decision.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Toronto this 29<sup>th</sup> day of September, 2011.

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**Cheryl J. Tobias, Q.C.**  
**Of Counsel for the Intervener**

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**Nancy Dennison**  
**Of Counsel for the Intervener**

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**ALPHABETICAL TABLE OF AUTHORITIES**

| <b><u>Cases</u></b>                                                               | <b><u>Paragraph(s)</u></b>     |
|-----------------------------------------------------------------------------------|--------------------------------|
| <i>Application under s. 83.28 of the Criminal Code (Re)</i> , [2004] 2 S.C.R. 248 | .....37                        |
| <i>Charkaoui v. Canada</i> , [2007] 1 S.C.R. 350                                  | .....38                        |
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| <p><b>184.1</b> (1) An agent of the state may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication if</p> <p>(a) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception;</p> <p>(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</p> <p>(c) the purpose of the interception is to prevent the bodily harm.</p> <p>Admissibility of intercepted communication</p> <p>(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.</p> <p>Destruction of recordings and transcripts</p> <p>(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.</p> <p>Definition of “agent of the state”</p> | <p><b>184.1</b> (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 :</p> <p>a) l’auteur de la communication ou la personne à laquelle celui-ci la destine a consenti à l’interception;</p> <p>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;</p> <p>c) l’interception vise à empêcher les lésions corporelles.</p> <p>Admissibilité en preuve des communications interceptées</p> <p>(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.</p> <p>Destruction des enregistrements et des transcriptions</p> <p>(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.</p> <p>Définition de « agent de l’État »</p> <p>(4) Pour l’application du présent article, « agent de l’État » s’entend :</p> <p>a) soit d’un agent de la paix;</p> |
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| <p>(4) For the purposes of this section, “agent of the state” means</p> <p>(a) a peace officer; and</p> <p>(b) a person acting under the authority of, or in cooperation with, a peace officer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>b) soit d’une personne qui collabore avec un agent de la paix ou agit sous son autorité.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>184.2</b> (1) A person may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where either the originator of the private communication or the person intended by the originator to receive it has consented to the interception and an authorization has been obtained pursuant to subsection (3).</p> <p>Application for authorization</p> <p>(2) An application for an authorization under this section shall be made by 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, <i>ex parte</i> and in writing to a provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, and shall be accompanied by an affidavit, which may be sworn on the information and belief of that peace officer or public officer or of any other peace officer or public officer, deposing to the following matters:</p> <p>(a) that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed;</p> <p>(b) the particulars of the offence;</p> <p>(c) the name of the person who has consented to the interception;</p> <p>(d) the period for which the authorization is requested; and</p> <p>(e) in the case of an application for an authorization where an authorization has previously been granted under this section or section 186, the particulars of the authorization.</p> <p>Judge to be satisfied</p> <p>(3) An authorization may be given under this</p> | <p><b>184.2</b> (1) Toute personne peut, au moyen d’un dispositif électromagnétique, acoustique, mécanique ou autre, intercepter une communication privée si l’auteur de la communication ou la personne à laquelle il la destine a consenti à l’interception et si une autorisation a été obtenue conformément au paragraphe (3).</p> <p>Demande d’autorisation</p> <p>(2) La demande d’autorisation est présentée, <i>ex parte</i> et par écrit, à un juge de la cour provinciale, à un juge de la cour supérieure de juridiction criminelle ou à un juge au sens de l’article 552 soit par l’agent de la paix, soit par 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; il doit y être joint un affidavit de cet agent ou de ce fonctionnaire, ou de tout autre agent de la paix ou fonctionnaire public, pouvant être fait sur la foi de renseignements tenus pour véridiques et indiquant ce qui suit :</p> <p>a) le fait qu’il existe des motifs raisonnables de croire qu’une infraction à la présente loi ou à toute autre loi fédérale a été ou sera commise;</p> <p>b) les détails relatifs à l’infraction;</p> <p>c) le nom de la personne qui a consenti à l’interception;</p> <p>d) la période pour laquelle l’autorisation est demandée;</p> <p>e) dans le cas où une autorisation a déjà été accordée conformément au présent article ou à l’article 186, les modalités de cette autorisation.</p> <p>Opinion du juge</p> <p>(3) L’autorisation peut être donnée si le juge</p> |

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| <p>section if the judge to whom the application is made is satisfied that</p> <p>(a) there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed;</p> <p>(b) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception; and</p> <p>(c) there are reasonable grounds to believe that information concerning the offence referred to in paragraph (a) will be obtained through the interception sought.</p> <p>Content and limitation of authorization</p> <p>(4) An authorization given under this section shall</p> <p>(a) state the offence in respect of which private communications may be intercepted;</p> <p>(b) state the type of private communication that may be intercepted;</p> <p>(c) state the identity of the persons, if known, whose private communications are to be intercepted, generally describe the place at which private communications may be intercepted, if a general description of that place can be given, and generally describe the manner of interception that may be used;</p> <p>(d) contain the terms and conditions that the judge considers advisable in the public interest; and</p> <p>(e) be valid for the period, not exceeding sixty days, set out therein.</p> | <p>est convaincu :</p> <p>a) qu'il existe des motifs raisonnables de croire qu'une infraction à la présente loi ou à toute autre loi fédérale a été ou sera commise;</p> <p>b) que l'auteur de la communication privée ou la personne à laquelle il la destine a consenti à l'interception;</p> <p>c) qu'il existe des motifs raisonnables de croire que des renseignements relatifs à l'infraction seront obtenus grâce à l'interception.</p> <p>Contenu et limite de l'autorisation</p> <p>(4) L'autorisation doit :</p> <p>a) mentionner l'infraction relativement à laquelle des communications privées peuvent être interceptées;</p> <p>b) mentionner le genre de communication privée qui peut être interceptée;</p> <p>c) mentionner, si elle est connue, l'identité des personnes dont les communications privées peuvent être interceptées et donner une description générale du lieu où les communications peuvent être interceptées, s'il est possible de donner une telle description, et une description générale de la façon dont elles peuvent l'être;</p> <p>d) énoncer les modalités que le juge estime opportunes dans l'intérêt public;</p> <p>e) être valide pour la période, d'au plus soixante jours, qui y est indiquée.</p> |
| <p>184.4 A peace officer may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where</p> <p>(a) the peace officer believes on reasonable grounds that the urgency of the situation is such that an authorization could not, with reasonable diligence, be obtained under any other provision of this Part;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>184.4 L'agent de la paix peut intercepter, au moyen d'un dispositif électromagnétique, acoustique, mécanique ou autre, une communication privée si les conditions suivantes sont réunies :</p> <p>a) il a des motifs raisonnables de croire que l'urgence de la situation est telle qu'une autorisation ne peut, avec toute la diligence raisonnable, être obtenue sous le régime de la</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <p>(b) the peace officer believes on reasonable grounds that such an interception is immediately necessary to prevent an unlawful act that would cause serious harm to any person or to property; and</p> <p>(c) either the originator of the private communication or the person intended by the originator to receive it is the person who would perform the act that is likely to cause the harm or is the victim, or intended victim, of the harm.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>présente partie;</p> <p>b) il a des motifs raisonnables de croire qu'une interception immédiate est nécessaire pour empêcher un acte illicite qui causerait des dommages sérieux à une personne ou un bien;</p> <p>c) l'auteur de la communication ou la personne à laquelle celui-ci la destine est soit la victime ou la personne visée, soit la personne dont les actes sont susceptibles de causer les dommages.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>185. (1)</b> An application for an authorization to be given under section 186 shall be made <i>ex parte</i> and in writing to a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 and shall be signed by the Attorney General of the province in which the application is made or the Minister of Public Safety and Emergency Preparedness or an agent specially designated in writing for the purposes of this section by</p> <p>(a) the Minister personally or the Deputy Minister of Public Safety and Emergency Preparedness personally, if the offence under investigation is one in respect of which proceedings, if any, may be instituted at the instance of the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or</p> <p>(b) the Attorney General of a province personally or the Deputy Attorney General of a province personally, in any other case,</p> <p>and shall be accompanied by an affidavit, which may be sworn on the information and belief of a peace officer or public officer deposing to the following matters:</p> <p>(c) the facts relied on to justify the belief that an authorization should be given together with particulars of the offence,</p> <p>(d) the type of private communication proposed to be intercepted,</p> <p>(e) the names, addresses and occupations, if known, of all persons, the interception of whose private communications there are reasonable grounds to believe may assist the</p> | <p><b>185. (1)</b> Pour l'obtention d'une autorisation visée à l'article 186, une demande est présentée <i>ex parte</i> et par écrit à un juge d'une cour supérieure de juridiction criminelle, ou à un juge au sens de l'article 552, et est signée par le procureur général de la province ou par le ministre de la Sécurité publique et de la Protection civile ou par un mandataire spécialement désigné par écrit pour l'application du présent article par :</p> <p>a) le ministre lui-même ou le sous-ministre de la Sécurité publique et de la Protection civile lui-même, si l'infraction faisant l'objet de l'enquête est une infraction pour laquelle des poursuites peuvent, le cas échéant, être engagées sur l'instance du gouvernement du Canada et conduites par le procureur général du Canada ou en son nom;</p> <p>b) le procureur général d'une province lui-même ou le sous-procureur général d'une province lui-même, dans les autres cas;</p> <p>il doit y être joint un affidavit d'un agent de la paix ou d'un fonctionnaire public pouvant être fait sur la foi de renseignements tenus pour véridiques et indiquant ce qui suit :</p> <p>c) les faits sur lesquels le déclarant se fonde pour justifier qu'à son avis il y a lieu d'accorder une autorisation, ainsi que les détails relatifs à l'infraction;</p> <p>d) le genre de communication privée que l'on se propose d'intercepter;</p> <p>e) les noms, adresses et professions, s'ils sont connus, de toutes les personnes dont les communications privées devraient être interceptées du fait qu'on a des motifs</p> |

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| <p>investigation of the offence, a general description of the nature and location of the place, if known, at which private communications are proposed to be intercepted and a general description of the manner of interception proposed to be used,</p> <p>(f) the number of instances, if any, on which an application has been made under this section in relation to the offence and a person named in the affidavit pursuant to paragraph (e) and on which the application was withdrawn or no authorization was given, the date on which each application was made and the name of the judge to whom each application was made,</p> <p>(g) the period for which the authorization is requested, and</p> <p>(h) whether other investigative procedures have been tried and have failed or why it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.</p> | <p>raisonnables de croire que cette interception pourra être utile à l'enquête relative à l'infraction et une description générale de la nature et de la situation du lieu, s'il est connu, où l'on se propose d'intercepter des communications privées et une description générale de la façon dont on se propose de procéder à cette interception;</p> <p>f) le nombre de cas, s'il y a lieu, où une demande a été faite en vertu du présent article au sujet de l'infraction ou de la personne nommée dans l'affidavit conformément à l'alinéa e) et où la demande a été retirée ou aucune autorisation n'a été accordée, la date de chacune de ces demandes et le nom du juge auquel chacune a été présentée;</p> <p>g) la période pour laquelle l'autorisation est demandée;</p> <p>h) si d'autres méthodes d'enquête ont ou non été essayées, si elles ont ou non échoué, ou pourquoi elles paraissent avoir peu de chance de succès, ou si, étant donné l'urgence de l'affaire, il ne serait pas pratique de mener l'enquête relative à l'infraction en n'utilisant que les autres méthodes d'enquête.</p> |
| <p><b>186. (1)</b> An authorization under this section may be given if the judge to whom the application is made is satisfied</p> <p>(a) that it would be in the best interests of the administration of justice to do so; and</p> <p>(b) that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b>186. (1)</b> Une autorisation visée au présent article peut être donnée si le juge auquel la demande est présentée est convaincu que :</p> <p>a) d'une part, l'octroi de cette autorisation servirait au mieux l'administration de la justice;</p> <p>b) d'autre part, d'autres méthodes d'enquête ont été essayées et ont échoué, ou ont peu de chance de succès, ou que l'urgence de l'affaire est telle qu'il ne serait pas pratique de mener l'enquête relative à l'infraction en n'utilisant que les autres méthodes d'enquête.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>188. (1)</b> Notwithstanding section 185, an application made under that section for an authorization may be made <i>ex parte</i> to a judge of a superior court of criminal jurisdiction, or a judge as defined in section 552, designated from time to time by the Chief Justice, by a peace officer specially designated in writing, by name or otherwise, for the purposes of this section by</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p><b>188. (1)</b> Par dérogation à l'article 185, une demande d'autorisation visée au présent article peut être présentée <i>ex parte</i> à un juge d'une cour supérieure de juridiction criminelle ou à un juge au sens de l'article 552, désigné par le juge en chef, par un agent de la paix spécialement désigné par écrit, nommément ou autrement, pour l'application du présent article par :</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

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| <p>(a) the Minister of Public Safety and Emergency Preparedness, if the offence is one in respect of which proceedings, if any, may be instituted by the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or</p> <p>(b) the Attorney General of a province, in respect of any other offence in the province,</p> <p>if the urgency of the situation requires interception of private communications to commence before an authorization could, with reasonable diligence, be obtained under section 186.</p> <p>Authorizations in emergency</p> <p>(2) Where the judge to whom an application is made pursuant to subsection (1) is satisfied that the urgency of the situation requires that interception of private communications commence before an authorization could, with reasonable diligence, be obtained under section 186, he may, on such terms and conditions, if any, as he considers advisable, give an authorization in writing for a period of up to thirty-six hours.</p> <p>(3) [Repealed, 1993, c. 40, s. 8]</p> <p>Definition of "Chief Justice"</p> <p>(4) In this section, "Chief Justice" means</p> <p>(a) in the Province of Ontario, the Chief Justice of the Ontario Court;</p> <p>(b) in the Province of Quebec, the Chief Justice of the Superior Court;</p> <p>(c) in the Provinces of Nova Scotia and British Columbia, the Chief Justice of the Supreme Court;</p> <p>(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Chief Justice of the Court of Queen's Bench;</p> <p>(e) in the Provinces of Prince Edward Island and Newfoundland, the Chief Justice of the Supreme Court, Trial Division; and</p> <p>(f) in Yukon, the Northwest Territories and Nunavut, the senior judge within the meaning of subsection 22(3) of the <i>Judges Act</i>.</p> | <p>a) le ministre de la Sécurité publique et de la Protection civile, si l'infraction faisant l'objet de l'enquête est une infraction pour laquelle des poursuites peuvent, le cas échéant, être engagées sur l'instance du gouvernement du Canada et conduites par le procureur général du Canada ou en son nom;</p> <p>b) le procureur général d'une province, pour toute autre infraction se situant dans cette province,</p> <p>si l'urgence de la situation exige que l'interception de communications privées commence avant qu'il soit possible, avec toute la diligence raisonnable, d'obtenir une autorisation en vertu de l'article 186.</p> <p>Autorisations en cas d'urgence</p> <p>(2) Lorsque le juge auquel une demande est présentée en application du paragraphe (1) est convaincu que l'urgence de la situation exige que l'interception de communications privées commence avant qu'il soit possible, avec toute la diligence raisonnable, d'obtenir une autorisation en vertu de l'article 186, il peut, selon les modalités qu'il estime à propos le cas échéant, donner une autorisation écrite pour une période maximale de trente-six heures.</p> <p>(3) [Abrogé, 1993, ch. 40, art. 8]</p> <p>Définition de « juge en chef »</p> <p>(4) Au présent article, « juge en chef » désigne :</p> <p>a) dans la province d'Ontario, le juge en chef de la Cour de l'Ontario;</p> <p>b) dans la province de Québec, le juge en chef de la Cour supérieure;</p> <p>c) dans les provinces de la Nouvelle-Écosse et de la Colombie-Britannique, le juge en chef de la Cour suprême;</p> <p>d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, le juge en chef de la Cour du Banc de la Reine;</p> <p>e) dans les provinces de l'Île-du-Prince-Édouard et de Terre-Neuve, le juge en chef de la Cour suprême, Section de première instance;</p> |
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| <p>Inadmissibility of evidence</p> <p>(5) The trial judge may deem inadmissible the evidence obtained by means of an interception of a private communication pursuant to a subsequent authorization given under this section, where he finds that the application for the subsequent authorization was based on the same facts, and involved the interception of the private communications of the same person or persons, or related to the same offence, on which the application for the original authorization was based.</p>                                                                                                                                     | <p>f) au Yukon, dans les Territoires du Nord-Ouest et au Nunavut, le juge principal, au sens du paragraphe 22(3) de la <i>Loi sur les juges</i>.</p> <p>Irrecevabilité de la preuve</p> <p>(5) Le juge qui préside le procès peut juger irrecevable la preuve obtenue par voie d'interception d'une communication privée en application d'une autorisation subséquente donnée sous le régime du présent article, s'il conclut que la demande de cette autorisation subséquente était fondée sur les mêmes faits et comportait l'interception des communications privées de la même ou des mêmes personnes, ou se rapportait à la même infraction, constituant le fondement de la demande de la première autorisation.</p> |
| <p><b>195.</b> (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</p> <p>(a) authorizations for which he and agents to be named in the report who were specially designated in writing by him for the purposes of section 185 made application, and</p> <p>(b) authorizations given under section 188 for which peace officers to be named in the report who were specially designated by him for the purposes of that section made application,</p> <p>and interceptions made thereunder in the immediately preceding year.</p>                                        | <p><b>195.</b> (1) Le ministre de la Sécurité publique et de la Protection civile établit, chaque année, aussitôt que possible, un rapport relatif :</p> <p>a) aux autorisations dont lui-même et les mandataires, dont le nom doit apparaître au rapport, spécialement désignés par lui, par écrit, pour l'application de l'article 185 ont fait la demande;</p> <p>b) aux autorisations données en vertu de l'article 188 qui ont été demandées par des agents de la paix, dont le nom doit apparaître au rapport, spécialement désignés par lui pour l'application de cet article,</p> <p>et aux interceptions faites en vertu de ces autorisations au cours de l'année précédente.</p>                                |
| <p><b>196.</b> (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</p> | <p><b>196.</b> (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</p>                                    |

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| <p>authorization that the person has been so notified.</p> <p><b>Extension of period for notification</b></p> <p>(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 to a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 for an extension or a subsequent extension of the period for which the authorization was given or renewed has been heard and disposed of.</p> <p><b>Where extension to be granted</b></p> <p>(3) Where the judge to whom an application referred to in subsection (2) is made, on the basis of an affidavit submitted in support of the application, is satisfied that</p> <p class="list-item-l1">(a) the investigation of the offence to which the authorization relates, or</p> <p class="list-item-l1">(b) a subsequent investigation of an offence listed in section 183 commenced as a result of information obtained from the investigation referred to in paragraph (a),</p> <p>is continuing and is of the opinion that the interests of justice warrant the granting of the application, the judge shall grant an extension, or a subsequent extension, of the period, each extension not to exceed three years.</p> <p><b>Application to be accompanied by affidavit</b></p> <p>(4) An application pursuant to subsection (2) shall be accompanied by an affidavit deposing to</p> <p class="list-item-l1">(a) the facts known or believed by the deponent and relied on to justify the belief that an extension should be granted; and</p> <p class="list-item-l1">(b) the number of instances, if any, on which an application has, to the knowledge or belief of the deponent, been made under that subsection in relation to the particular authorization and on which the application was withdrawn or the application was not granted, the date on which each application was made and the judge to whom each application was</p> | <p>tribunal qui a accordé l'autorisation que cette personne a été ainsi avisée.</p> <p><b>Prolongation du délai</b></p> <p>(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 sens de l'article 552, en vue d'une prolongation — initiale ou ultérieure — de la période pour laquelle l'autorisation a été donnée ou renouvelée.</p> <p><b>Cas où la prolongation est accordée</b></p> <p>(3) Le juge saisi de la demande visée au paragraphe (2) doit, s'il est convaincu par la déclaration sous serment appuyant la demande :</p> <p class="list-item-l1">a) soit que l'enquête au sujet de l'infraction visée par l'autorisation;</p> <p class="list-item-l1">b) soit que toute enquête subséquente à l'égard d'une infraction mentionnée à l'article 183 entreprise en raison de renseignements obtenus lors de l'enquête visée à l'alinéa a),</p> <p>continue et que les intérêts de la justice justifient qu'il l'accepte, accorder une prolongation — initiale ou ultérieure — de la période, d'une durée maximale de trois ans.</p> <p><b>Demande accompagnée d'un affidavit</b></p> <p>(4) La demande visée au paragraphe (2) est accompagnée d'un affidavit indiquant ce qui suit :</p> <p class="list-item-l1">a) les faits connus du déclarant ou auxquels il croit et sur lesquels il se fonde pour justifier qu'à son avis il y a lieu d'accorder une prolongation;</p> <p class="list-item-l1">b) le nombre de cas, s'il y a lieu, où une demande, à la connaissance du déclarant ou selon ce qu'il croit, a été faite en vertu de ce paragraphe au sujet de cette autorisation et où la demande a été retirée ou refusée, la date de chacune de ces demandes et le juge auquel chacune a été présentée.</p> <p><b>Exception dans le cas d'une organisation criminelle</b></p> |
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| <p>made.</p> <p>Exception for criminal organizations and terrorist groups</p> <p>(5) Notwithstanding subsections (3) and 185(3), where the judge to whom an application referred to in subsection (2) or 185(2) is made, on the basis of an affidavit submitted in support of the application, is satisfied that the investigation is in relation to</p> <p>(a) an offence under section 467.11, 467.12 or 467.13,</p> <p>(b) an offence committed for the benefit of, at the direction of or in association with a criminal organization, or</p> <p>(c) a terrorism offence,</p> <p>and is of the opinion that the interests of justice warrant the granting of the application, the judge shall grant an extension, or a subsequent extension, of the period, but no extension may exceed three years.</p>                                                                                                                                                                                                                                                                          | <p>ou d'une infraction de terrorisme</p> <p>(5) Par dérogation aux paragraphes (3) et 185(3), le juge saisi de la demande visée aux paragraphes (2) ou 185(2) doit accorder une prolongation — initiale ou ultérieure — de la période, d'une durée maximale de trois ans, s'il est convaincu par l'affidavit appuyant la demande que l'autorisation vise les éléments suivants et que les intérêts de la justice justifient la prolongation :</p> <p>a) une infraction prévue aux articles 467.11, 467.12 ou 467.13;</p> <p>b) une infraction commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle;</p> <p>c) une infraction de terrorisme.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>492.2</b> (1) A justice who is satisfied by information on oath in writing that there are reasonable grounds to suspect that an offence under this or any other Act of Parliament has been or will be committed and that information that would assist in the investigation of the offence could be obtained through the use of a number recorder, 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</p> <p>(a) to install, maintain and remove a number recorder in relation to any telephone or telephone line; and</p> <p>(b) to monitor, or to have monitored, the number recorder.</p> <p>Order re telephone records</p> <p>(2) When the circumstances referred to in subsection (1) exist, a justice may order that any person or body that lawfully possesses records of telephone calls originated from, or received or</p> | <p><b>492.2</b> (1) Le juge de paix qui est convaincu, à la suite d'une dénonciation par écrit faite sous serment, qu'il existe des motifs raisonnables de soupçonner qu'une infraction à la présente loi ou à toute autre loi fédérale a été ou sera commise et que des renseignements utiles à l'enquête relative à l'infraction pourraient être obtenus au moyen d'un enregistreur de numéro peut 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 :</p> <p>a) à placer sous enregistreur de numéro un téléphone ou une ligne téléphonique, à entretenir l'enregistreur et à les en dégager;</p> <p>b) à surveiller ou faire surveiller l'enregistreur.</p> <p>Ordonnance : registre de téléphone</p> <p>(2) Dans les circonstances visées au paragraphe (1), le juge peut ordonner à la personne ou à l'organisme qui possède légalement un registre des appels provenant d'un téléphone ou reçus ou</p> |

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| <p>intended to be received at, any telephone give the records, or a copy of the records, to a person named in the order.</p> <p>Other provisions to apply</p> <p>(3) Subsections 492.1(2) and (3) apply to warrants and orders issued under this section, with such modifications as the circumstances require.</p> <p>Definition of “number recorder”</p> <p>(4) For the purposes of this section, “number recorder” means any device that can be used to record or identify the telephone number or location of the telephone from which a telephone call originates, or at which it is received or is intended to be received.</p> | <p>destinés à être reçus à ce téléphone de donner le registre ou une copie de celui-ci à toute personne nommée dans l’ordonnance.</p> <p>Autres dispositions applicables</p> <p>(3) Les paragraphes 492.1(2) et (3) s’appliquent, avec les adaptations nécessaires, aux mandats décernés et aux ordonnances rendues en vertu du présent article.</p> <p>Définition de « enregistreur de numéro »</p> <p>(4) Pour l’application du présent article, « enregistreur de numéro » s’entend d’un dispositif qui peut enregistrer ou identifier le numéro ou la localisation du téléphone d’où provient un appel ou auquel l’appel est reçu ou destiné à être reçu.</p> |
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***Criminal Law Amendment Act, 1977, c C-53, 12***

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| <p><b>11.1</b> Subsection 178.22(2) of the said Act is amended by adding thereto, immediately after paragraph (g) thereof, the following paragraph:</p> <p>"(g.1) the number of notifications given pursuant to section 178.23;"</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>11.1</b> Le paragraphe 178. 22(2) de ladite loi est modifié par l'insertion, immédiatement après l'alinéa g), de l'alinéa suivant:</p> <p>«g.1) le nombre d'avis données conformément a l'article 178.23;»</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>12.</b> Section 178.23 of the said Act is repealed and the following substituted therefore :</p> <p><b>"178.23</b> (1) The Attorney General of the province in which an application for an authorization was made or the Solicitor General of Canada if the application was made by him or on his behalf shall, within ninety days next following the period for which the authorization was given or renewed or within such other period as is fixed pursuant to subsection 178.12(3) or subsection (4) 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 issued the authorization that such person has been so notified.</p> <p>(2) Subsection (1) does not apply in the case of a warrant issued under subsection 16(2) of the <i>Official Secrets Act</i>.</p> <p>(3) At any time within the ninety day period mentioned in subsection (1) or any other period that is less than three years that was fixed by a judge pursuant to subsection 178.12(3) or substituted pursuant to this subsection in relation to a particular authorization, the Attorney General by or on whose behalf of the application for the authorization was made or the Solicitor General of Canada if the application was made by him or on his behalf may apply to a judge of a superior court of criminal jurisdiction or a judge as defined in section 482 to substitute for the ninety day period mentioned in subsection (1) or the other period so fixed or substituted, such longer period not exceeding three years as is set forth in the application.</p> <p>(4) Where the judge to whom an application</p> | <p><b>12.</b> L'article 178.23 de ladite loi est abrogé et remplace par ce qui suit:</p> <p>« <b>178.23</b> (1) Le procureur général de la province ou une demande d'autorisation a été présentée ou le solliciteur général du Canada, dans le cas ou la demande a été présentée par lui ou en son nom, doit aviser 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 178.12(3) ou du paragraphe (4) du présent article, la personne qui a fait l'objet de l'interception en vertu de cette autorisation et doit, de la façon prescrite par règlement établi par le gouverneur en conseil, certifier au tribunal qui a octroyé l'autorisation que cette personne a été ainsi avisée.</p> <p>(2) Le paragraphe (1) ne s'applique pas dans le cas d'un mandat délivré en vertu du paragraphe 16(2) de la <i>Loi sur les secrets officiels</i>.</p> <p>(3) A tout moment pendant la période de quatre-vingt-dix jours prévue au paragraphe (1) ou pendant toute autre période inférieure a trois ans fixée par un juge en vertu du paragraphe 178.12(3) ou fixée en remplacement en vertu de ce paragraphe au sujet d'une autorisation donnée, le procureur général qui a présenté ou au nom duquel a été présentée la demande ou le solliciteur général du Canada, dans le cas ou la demande a été présentée par lui ou en son nom, peut demander a un juge d'une cour supérieure de juridiction criminelle ou a un juge tel que défini a l'article 482, le remplacement de la période de quatre-vingt-dix jours mentionnée au paragraphe (1) ou de toute autre période ainsi fixée ou fixée en remplacement, par une autre période plus longue d'au plus trois ans, qu'il indique dans la demande.</p> <p>(4) Le juge auquel une demande visée au</p> |

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| <p>referred to in subsection (3) is made, on the basis of an affidavit submitted in support of the application, is satisfied that the investigation of the offence to which the authorization relates is continuing and is of the opinion that the interests of justice warrant the granting of the application, he shall fix a period, not exceeding three years, in substitution for the ninety day period mentioned in subsection (1) or the period fixed pursuant to subsection 178.12(3),</p> <p>(5) An application pursuant to subsection (3) shall be accompanied by an affidavit which may be sworn on the information and belief of a peace officer or public officer deposing to</p> <p>(a) the facts relied on to justify the belief that an extension of the ninetyday period mentioned in subsection (1) or any other period fixed or substitutedtherefore should be granted; and</p> <p>(b) the number of instances, if any on which an application has been made under that subsection in relation to the particular authorization and on which the application was withdrawn or the application was not granted, the date on which each such application was made and the name of the judge to whom each such application was made."</p> | <p>paragraphe (3) est présentée doit, s'il est convaincu, sur la base de la déclaration assermentée appuyant la demande, que l'enquête au sujet de l'infraction pour laquelle l'autorisation est demandée continue et que les intérêts de la justice justifient qu'il accepte cette demande, fixer une autre période d'au plus trois ans, en remplacement de la période quatre-vingt-dix jours visée au paragraphe (1) ou de celle fixée en vertu du paragraphe 178.12(3).</p> <p>(5) Une demande en vertu du paragraphe (3) doit être accompagnée d'une déclaration assermentée d'un agent de la paix ou d'un fonctionnaire public pouvant être faite sur la foi de renseignements tenus pour véridiques et déposant ce qui suit:</p> <p>a) les faits sur lesquels le déclarant se fonde pour justifier qu'a son avis, il y a lieu d'accorder une prolongation de la période de quatre-vingt-dix jours mentionnée au paragraphe (1) ou toute autre période fixée ou fixée en remplacement; et</p> <p>b) le nombre de cas, s'il y a lieu, au une demande a été faite en vertu de ce paragraphe au sujet de cette autorisation et ou la demande a été retirée ou refusée, la date de chacune de ces demandes et le nom du juge auquel chacune a été présentée.</p> |
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*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*

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***Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982***

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| <p><b>1.</b> The <i>Canadian Charter of Rights and Freedoms</i> 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.</p> | <p><b>1.</b> La <i>Charte canadienne des droits et libertés</i> garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.</p> |
| <p><b>7.</b> 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.</p>                                                    | <p><b>7.</b> Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p>                                                                                                                              |
| <p><b>8.</b> Everyone has the right to be secure against unreasonable search or seizure.</p>                                                                                                                                                     | <p><b>8.</b> Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.</p>                                                                                                                                                                                                             |
| <p><b>11.</b> Any person charged with an offence has the right</p> <p>(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;</p>                                | <p><b>11.</b> Tout inculpé a le droit :</p> <p>d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;</p>                                                                                             |

*Constitution Act, 1982*

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***Constitution Act, 1982***

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| <p><b>52.</b> (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.</p> | <p><b>52.</b> (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.</p> |
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