

## **PART SEVEN**

### **PRIVILEGE IN RELATION TO SEIZED THINGS**

#### DERIVATION OF PART SEVEN

##### LRC PUBLICATIONS

*Search and Seizure*, Report 24 (1984)

*Disposition of Seized Property*, Report 27 (1986)

*Toward a Unified Criminal Court*, Working Paper 59 (1989)

##### LEGISLATION

*Criminal Code*, s. 488.1

**"Source: *Report on Recodifying Criminal Procedure,*  
*Volume One, Police Powers, Title I,*  
*Search and Related Matters,*  
*Report 33, 1991.***

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## INTRODUCTORY COMMENTS

Provisions governing the handling of allegedly privileged things or information that officers are about to examine, photograph, copy or, in the case of things, seize, are to be found in Part Two (*Search and Seizure*), section 53. This Part regulates the manner of dealing with allegedly privileged things or information contained in them after the seized things are sealed or taken control of and placed in custody in accordance with the requirements of section 53.

The provisions of this Part are understandable if considered in the context of the evolution of the present law and our recommended reforms. Related provisions in other Parts of this Code should also be taken into account.

The *Criminal Code* contains special rules for handling seized things in relation to which a privilege is claimed. Former section 444.1 (now section 488.1),<sup>274</sup> enacted in 1985, incorporated into the *Code* procedures (previously confined to the *Income Tax Act*)<sup>275</sup> for dealing with a claim of solicitor-client privilege. The purpose of this reform was to ensure that documents subject to a claim of solicitor-client privilege were not examined or otherwise disclosed in the course of a search. The *Code* provisions provide for their examination only after a judge has decided that the claimed privilege does not apply to the documents.

The *Code*'s special sealing and application procedures permit a lawyer at the time of seizure to assert the privilege on behalf of a named client. If the lawyer asserts the claim at the point of seizure, the peace officer involved must seal the documents in a package without examining them and turn them over to a specified custodian. Affected parties (the Attorney General, the client or the lawyer on behalf of the client) then have fourteen days to apply to a judge for an order setting a date for a hearing before a superior court judge. The hearing, to determine whether the documents are to be treated as privileged, must begin not later than twenty-one days after the date of the order. If it is decided that the documents are privileged, they must be returned, unexamined. If no privilege is found, the documents are turned over to the officer who seized them, subject to such restrictions as the judge may impose.

We took note of the 1985 reform in Reports 24 and 27 and recommended two additional improvements,<sup>276</sup> which are now incorporated in this Part.

First, the present *Code* provisions are silent as to whether a client who is in possession of privileged documents can assert a claim of privilege during a search so as to bring the sealing provisions into play. We believe, consistent with the broad scope of the privilege described by the Supreme Court of Canada in *Descoteaux v. Mierzwinski*,<sup>277</sup> that the special sealing procedure should also apply in these cases. The

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274. *Criminal Law Amendment Act, 1985*, *supra*, note 227, s. 72.

275. R.S.C. 1952, c. 148; S.C. 1970-71-72, c. 63.

276. Report 24, Part 2, rec. 7 and the comment thereto at 58-61; Report 27, rec. 3(5).

277. *Supra*, note 54.

protection of privileged communications from disclosure should not depend on the location of the search.

Second, we believe that paragraph 488.1(4)(b) of the present *Criminal Code*, which permits the Crown to inspect the seized material at the hearing to determine the privilege, should be changed so as to prohibit such inspection. As we stated in Report 24 (at 60):

Granting counsel for the Crown access to confidential documents for the purpose of the application procedure breaches what has now been explicitly recognized by the Supreme Court of Canada as a person's substantive right to communicate in confidence with his legal adviser.

Our provisions also now regulate more than the area of solicitor-client privilege and encompass all categories of privilege claims.<sup>278</sup> This change is incorporated in the provisions of Part Two (*Search and Seizure*).

While the provisions of this Part continue some aspects of the 1985 reform, other aspects have been simplified or altered. Some notice and other time periods have been changed. The *Code's* complicated two-stage procedure (in which application must be made for an order setting a date for the hearing and then for another order actually deciding the privilege issue) is replaced by a single, simpler procedure that aligns better with the general procedures applicable with respect to other applications for orders under Part Six (*Disposition of Seized Things*). This Part, in section 293, continues the general approach of the present law by giving a judge the power, on application, to determine questions of privilege in respect of anything seized. However, consistent with the recognition of a distinction (discussed previously) between something seized and information contained in something seized, section 293 also provides that the judge's power includes the power to determine whether privilege exists in respect of information contained in a seized thing.

## CHAPTER I INTERPRETATION

Application of  
Part

**285. This Part applies to anything seized under Part Two (*Search and Seizure*) as an object of seizure where a claim of privilege is made in respect of the seized thing or information contained in it.**

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278. This follows upon the decision of the Supreme Court of Canada in *Slavutych v. Baker*, [1976] 1 S.C.R. 254, which, in turn, accepted Wigmore's test for determining whether a privilege exists. (Wigmore, *Evidence*, Vol. 8 (McNaughton rev., 1961) at 527, para. 2285.) The Supreme Court decision makes possible the emergence of additional kinds of privilege in Canada. See the analysis of priest-penitent privilege in relation to these authorities in *Re Church of Scientology and The Queen (No. 6)* (1987), 31 C.C.C. (3d) 449 (Ont. C.A.) at 529-543.

COMMENT

This section sets out the scope of this Part. It applies only to a claim of privilege made in relation to an object of seizure, or information that is contained in it, that is seized pursuant to Part Two (*Search and Seizure*). Other issues of privilege — for example, whether a blood sample taken at the request of an accused to test for drunk driving is privilege — are left to be determined either by other Parts of this Code or by developing case law.

**CHAPTER II  
DUTIES OF PEACE OFFICER ON SEIZURE**

Inventory and  
post-seizure  
report

**286. Sections 210 (inventory of seized things), 212 (preparation of post-seizure report) and 213 (return of post-seizure report) apply to the seizure of a thing that is the subject of a claim of privilege.**

COMMENT

This section sets out that, with one exception, the duties of a peace officer that arise on seizing things as outlined in Chapter II of Part Six (*Disposition of Seized Things*) apply to things seized in respect of which a claim of privilege is made. (The one exception is section 211, which allows a peace officer to return something seized to the person from whom it was seized.) Once a claim of privilege is made in respect of a thing or information contained in it, the thing must be kept in the custody of the police pending determination of the claim (see section 53). This is logical since, once a claim of privilege is made, the police cannot examine the thing to determine if the thing should be returned to the person asserting the claim (again, see section 53).

**CHAPTER III  
APPLICATION TO DETERMINE ISSUE  
OF PRIVILEGE**

**DIVISION I  
MAKING AN APPLICATION**

Applicant

**287. A prosecutor or a person who claims to have a privilege in respect of a seized thing or information contained in it may apply to have the issue of whether a privilege exists determined.**

Report 27, rec. 3(5)  
*Criminal Code*, s. 488.1(3)

COMMENT

The provisions of this Chapter establish a simpler one-stage procedure designed to enable the issue of privilege to be determined expeditiously. This section specifies clearly who may apply to have the issue of privilege determined.

Manner of making application

**288. The application shall be made in writing within fourteen days after the date of seizure to a judge in the judicial district in which the post-seizure report was filed, the thing is in custody or a charge in relation to which the thing is being held was laid.**

*Criminal Code, s. 488.1(3)*

COMMENT

This section sets out where an application to determine the issue of privilege may be brought. It is consistent with our policy as to where contested applications involving custody or disposition of seized things may generally be brought as set out in section 214. It also imposes a time-limit for bringing the application of fourteen days from the date of seizure.

Contents of application

**289. (1) The application shall disclose**  
**(a) the applicant's name;**  
**(b) the date and place the application is made;**  
**(c) the crime under investigation or charged;**  
**(d) a description of the seized thing that is the subject of the application;**  
**(e) the date the seizure was made;**  
**(f) the name of the custodian; and**  
**(g) the grounds in support of the application.**

Affidavit in support

**(2) The application shall be supported by an affidavit.**

Notice by applicant

**290. (1) Five clear days' notice of the application shall be given to the custodian and**  
**(a) to the prosecutor, if the applicant is the person who claims to have a privilege; or**  
**(b) to the person who claims to have a privilege, if the applicant is the prosecutor.**

Contents and  
service of notice

**(2) The notice shall set out the time, date and place the application is to be heard and shall be served together with the application and the supporting affidavit.**

*Criminal Code, s. 488.1(3)*

#### COMMENT

This section states how many days' notice must be given, to whom notice must be given and the contents of the notice.

Production of  
package or  
information

**291. (1) The custodian, on receiving notice of an application, shall produce the sealed package referred to in paragraph 53(2)(b) (claim of privilege during search) or the information contained in the seized thing on the date and at the time specified in the notice.**

Request for  
directions

**(2) Where it is impracticable to produce the sealed package or the information contained in the seized thing, the custodian shall request a judge in the judicial district in which the seizure was made to give directions as to the steps that should be taken to enable the thing or the information to be examined.**

*Criminal Code, s. 488.1(3)*

#### COMMENT

This provision is generally designed to enable the judge to examine the material in respect of which privilege is claimed.<sup>279</sup> Subsection (1) deals with the ordinary situation where the allegedly privileged material has been put in a sealed package. Subsection (2) recognizes that the nature of the material may make its production impracticable or inadvisable. (For example, privilege may be claimed in relation to hundreds of documents, which could not possibly be stored in one sealed package.)

Application of  
certain provisions

**292. Sections 217 (transferring file for hearing) and 225 to 229 (changing place of application) apply to an application made under this Division.**

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<sup>279</sup> See s. 294(e) of this Part.

## COMMENT

This section incorporates the same provisions dealing with changing the place of application as are provided for contested applications in respect of orders in Part Six (*Disposition of Seized Things*).

## DIVISION II HEARING THE APPLICATION

Authority and  
duty of judge

**293. A judge shall, on application, determine whether privilege exists in respect of a seized thing or information contained in it and shall hold a hearing in private for that purpose and determine the issue within thirty days after the date of seizure.**

*Criminal Code, s. 488.1(3)(c), (10)*

## COMMENT

This section gives a judge of the Criminal Court authority to determine a claim of privilege in relation to a seized thing or information contained in it. It also describes how the application is to be heard. The application, although designed to be contested, must be heard in private. Allowing the public to be present at the hearing to determine privilege could defeat the purpose of the sealing and application procedures. This “in private” provision continues the restriction now found in subsection 488.1(10) of the *Criminal Code*.

Powers at hearing

**294. At the hearing the judge may**  
**(a) compel the attendance of, and question, the custodian;**  
**(b) receive evidence, including evidence by affidavit; and**  
**(c) if the judge considers it necessary to do so to determine whether privilege exists, examine the thing or the information or require it to be produced for examination.**

Report 27, rec. 3(5)

*Criminal Code, s. 488.1(4)(a) to (d)*

## COMMENT

This section sets out the judge’s power to obtain relevant information at the hearing to determine the issue of privilege. Paragraphs (a) and (b) reflect the same policy as is provided for in Part Six (*Disposition of Seized Things*) in relation to a justice’s power to determine the various applications for orders. However, two major differences exist at this hearing. First, paragraph 294(c) restricts a judge’s power to examine the allegedly privileged material. This reflects the present law set out in *Code* paragraph



488.1(4)(a). Second, as noted, the present *Code*<sup>280</sup> gives the judge power to allow the prosecutor to inspect allegedly privileged documents if the judge is of the opinion that such inspection could assist in deciding whether or not a document is privileged. No such power is included here.<sup>281</sup> Under Chapter IV of this Part, only a person claiming to have a privilege may, on application, have access to allegedly privileged material before the claim is determined.

Application of certain provisions                    **295. Sections 219 to 221 (evidence at hearing) and 224 (filing) apply to a hearing held under this Division.**

COMMENT

This section incorporates various sections (governing the introduction, production and recording of evidence at a hearing, and the filing of documents) that are found in Part Six (*Disposition of Seized Things*).

Decision and reasons                    **296. The judge shall give reasons for the decision that contain sufficient information to indicate the basis of the decision without disclosing details of the thing or information in respect of which the privilege is claimed.**  
*Criminal Code, s. 488.1(4)(d)*

Order if privilege found to exist                    **297. (1) A judge who determines that a privilege exists shall order that**  
**(a) the thing be resealed and delivered by the custodian to the person from whom it was seized; or**  
**(b) control of the thing be delivered by the custodian to the person from whom it was seized, and until delivery, such steps as the judge directs be taken to ensure that the thing or the information contained in it is not examined or interfered with.**

Order if privilege not found                    **(2) A judge who determines that no privilege exists shall order the custodian to deliver the thing or control of the thing to the peace officer who seized it or to some other person named by the prosecutor, subject to any conditions that the judge considers necessary, and the thing shall be dealt with in accordance with Chapters III and IV of Part Six (*Disposition of Seized Things*).**  
*Report 27, rec. 3(5)*  
*Criminal Code, s. 488.1(4)(d).*

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280. *Criminal Code, s. 488.1(4)(b).*  
281. See Introductory Comments to this Part.

COMMENT

This provision continues generally the procedure found in the present *Code* (paragraph 488.1(4)(d)), but is drafted to allow for the fact that things may be seized under our Code by taking control rather than possession (see section 20). It also clarifies that, if it is determined that no privilege exists in respect of the thing or information contained in it, the thing is to be treated as any other object of seizure.

Form of order                    **298. (1) The order shall be in writing, in the prescribed form and signed by the judge who issues it.**

Contents of order                **(2) The order shall disclose**  
**(a) the applicant's name;**  
**(b) the crime under investigation or charged;**  
**(c) a description of the seized thing that is the subject of the order;**  
**(d) the date the seizure was made;**  
**(e) the name of the custodian;**  
**(f) the decision of the judge and any conditions imposed;**  
**(g) the date and place of issuance; and**  
**(h) the name and jurisdiction of the judge.**

Effect of determination of privilege                    **299. Where a seized thing or information contained in it is determined to be privileged, it remains privileged and inadmissible in evidence unless the person who has the privilege consents to its admission in evidence or the privilege is otherwise lost.**

*Criminal Code, s. 488.1(5)*

COMMENT

This provision continues the present law<sup>282</sup> but incorporates some minor changes in wording to align with the expansion of the privileges that may be considered and the consideration of privilege claims in relation to items other than documents.

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282. *Criminal Code, s. 488.1(5).*

**DIVISION III  
DISPOSITION IF NO APPLICATION MADE**

Delivery to  
peace officer

**300. (1) If the custodian of a seized thing that is the subject of a claim of privilege has not received notice of an application to determine whether a privilege exists within fourteen days after the date of seizure, the custodian shall deliver the thing or control of the thing to the peace officer who seized it.**

Disposition of  
seized thing

**(2) The seized thing shall be dealt with in accordance with Chapters III and IV of Part Six (*Disposition of Seized Things*).**  
*Criminal Code, s. 488.1(6)*

**COMMENT**

This section, modelled generally on present *Code* subsection 488.1(6), sets out in a clear manner what happens to the seized thing when no application to determine the issue of privilege has been made within the time-limit imposed by section 288.

**CHAPTER IV  
EXAMINING INFORMATION CLAIMED  
TO BE PRIVILEGED**

Applicant

**301. A person who claims to have a privilege in respect of a seized thing or information contained in it may apply for an order permitting the applicant to examine the thing or the information and to make a copy of it.**

*Criminal Code, s. 488.1(9)*

**COMMENT**

This section is designed to enable a person who claims to have a privilege to prepare for the hearing to determine the privilege claim, and to minimize the disruption caused by the seizure. The prosecutor cannot apply for access. Thus, the section restricts access to potentially privileged material, so that the purpose of the privilege claim is not defeated.

Manner of  
making  
application

**302. The application shall be made in writing, unilaterally and in private to a judge in the judicial district in which the post-seizure report was filed, the thing is in custody or a charge in relation to which the thing is being held was laid.**

*Criminal Code, s. 488.1(9)*

## COMMENT

This section states where the application is to be brought and describes how the application is to be brought. Unlike all other applications dealing with the custody and disposition of seized things, this application must be brought unilaterally and in private in order to preserve the confidentiality of the allegedly privileged information.

Contents of application

- 303. (1) The application shall disclose**
- (a) the applicant's name;**
  - (b) the date and place the application is made;**
  - (c) the crime under investigation or charged;**
  - (d) a description of the seized thing that is the subject of the application;**
  - (e) the date the seizure was made;**
  - (f) the name of the custodian;**
  - (g) the nature of the order requested; and**
  - (h) the reasons for requesting the order.**

Affidavit in support

- (2) The application shall be supported by an affidavit.**

Transferring file

**304. Section 217 (transferring file for hearing) applies to an application made under this Chapter.**

Powers of judge

- 305. (1) In determining the issue, the judge may**
- (a) compel the attendance of, and question, the custodian;**
  - (b) question the applicant;**
  - (c) receive evidence, including evidence by affidavit; and**
  - (d) if the judge considers it necessary, examine the thing or the information or require it to be produced for examination.**

Questioning deponent

- (2) Where affidavit evidence is received, the deponent may be questioned on the affidavit.**

Application of certain sections

**306. Sections 220 (evidence on oath), 221 (record of oral evidence) and 224 (filing) apply to a hearing held under this Chapter.**

Authority of judge

**307. A judge may, on application, make an order permitting the applicant, in the presence of the custodian or the**

judge, to examine the thing or the information and to make a copy of it, subject to such conditions as the judge considers necessary to preserve and safeguard it, if the judge is satisfied as to the sufficiency of the applicant's reasons for seeking the order.

*Criminal Code, s. 488.1(9)*

Imposing requirements

**308. If the seized thing was in a sealed package, the judge shall, in the order, require that it be resealed without alteration or damage.**

*Criminal Code, s. 488.1(9)*

#### COMMENT

This section is based on present *Code* subsection 488.1(9). It ensures that allowing the applicant to examine the allegedly privileged material will not affect the integrity of the material.

Form of order

**309. The order shall be in writing, in the prescribed form and signed by the judge who issues it.**

Contents of order

**310. The order shall disclose**

- (a) the applicant's name;**
- (b) the crime under investigation or charged;**
- (c) a description of the seized thing that is the subject of the order;**
- (d) the date the seizure was made;**
- (e) the name of the custodian;**
- (f) the decision of the judge and any conditions imposed;**
- (g) the date and place of issuance; and**
- (h) the name and jurisdiction of the judge.**

## CHAPTER V APPEALS

Right to appeal

**311. Any person aggrieved by a decision under section 293 (issue of privilege) may appeal the decision to an appeal court within thirty days after the date of the decision.**

*Report 27, rec. 14(1)*

COMMENT

This section creates a right of appeal from a hearing to determine the issue of privilege. It is modelled on section 283. It should be noted that there is no appeal provided from a judge's decision denying the applicant an opportunity to examine the allegedly privileged material, since it would be inconsistent to allow an appeal of this decision within a thirty-day period when, by operation of section 293, the hearing and determination of the issue of privilege must be made within thirty days after the date of seizure.

Custody after  
decision or  
pending appeal

**312. The seized thing shall remain with the custodian, without being interfered with or examined, for thirty days after a decision on the issue of privilege is made or pending an appeal of that decision, unless all aggrieved persons waive their right to appeal in writing.**

Report 27. rcc. 14(2)

COMMENT

This section is modelled, with appropriate changes, on section 284 (disposition of seized things).

# **CODE OF CRIMINAL PROCEDURE**

## **VOLUME ONE**

### **Police Powers**

#### **TITLE I**

##### **Search and Related Matters**

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# An Act to revise and codify the law of criminal procedure

## PART ONE

### GENERAL

#### CHAPTER I SHORT TITLE

Short title                   **1.** This Act may be cited as the *Code of Criminal Procedure*.

#### CHAPTER II INTERPRETATION

Definitions	<b>2.</b> In this Act,
"clerk of the court" ( <i>greffier</i> )	"clerk of the court" includes a person, by whatever name or title the person may be designated, who from time to time performs the duties of a clerk of the court;
"court of appeal" ( <i>cour d'appel</i> )	"court of appeal" means (a) in the Provinces of Nova Scotia and Prince Edward Island, the Appeal Division of the Supreme Court, and (b) in any other province, the Court of Appeal;
"crime" ( <i>crime</i> )	"crime" means an offence that is defined by the proposed Criminal Code (LRC) or any other Act of Parliament and that is punishable by imprisonment otherwise than on default of payment of a fine;
"in private" ( <i>huis clos</i> )	"in private" means (a) in relation to an application made unilaterally, without any member of the public or any party other than the applicant being present, and (b) in relation to a hearing with respect to which notice must be given, without any member of the public being present;
"judge" ( <i>judge</i> )	"judge" means a judge of the Criminal Court;
"judicial district" ( <i>district judiciaire</i> )	"judicial district" means one of the territorial divisions into which a province is divided for the purposes of the Criminal Court or, if there are no such divisions, the province;

“justice” (*jugé de paix*)

“medical practitioner” (*médecin*)

“objects of seizure” (*choses saisissables*)

“peace officer” (*agent de la paix*)

“justice” means a justice of the peace or a judge;

“medical practitioner” means a person qualified under provincial law to practise medicine;

“objects of seizure” means things, including funds in a financial account, that constitute or provide evidence with respect to the commission of a crime, but does not include

- (a) residues adhering to the surface of a person’s body, or
- (b) a person’s tissues, bodily fluids or other bodily substances such as breath, hair or nails, unless they have been removed or have become dissociated from the person’s body;

“peace officer” includes

- (a) a sheriff, deputy sheriff and sheriff’s officer,
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard and any other officer or permanent employee of a prison,
- (c) a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,
- (d) an officer or person having the powers of a customs or excise officer when performing any duty in the administration of the *Customs Act* or *Excise Act*,
- (e) a person appointed or designated as a fishery officer under the *Fisheries Act* when performing any duties or functions pursuant to that Act,
- (f) the pilot in command of an aircraft
  - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
  - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as the owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight, and

- (g) officers and non-commissioned members of the Canadian Forces who are
  - (i) appointed for the purposes of section 156 of the *National Defence Act*, or
  - (ii) employed on duties that the Governor in Council, by regulations made under the *National Defence Act*, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;

“photograph”  
(*photographie*)

“photograph” means a picture, whether still or moving, that represents the appearance of a thing and that is produced with the aid of a camera;

“prescribed”  
(*prescrit*)

“prescribed” means prescribed by regulation;

“prosecutor”  
(*poursuivant*)

“prosecutor” means the Attorney General or, where the Attorney General does not intervene, the person who institutes proceedings to which this Act applies, and includes counsel acting on behalf of either of them;

“unilaterally”  
(*unilatéralement*  
et *unilatérale*)

“unilaterally”, in relation to the making of an application by a party, means without notice to any other party being required.

### CHAPTER III GENERAL PROVISIONS

Common law  
powers replaced

3. The provisions of Parts Two to Seven replace any common law powers of a peace officer, in relation to the investigation of a crime, to

(a) search a person, place or vehicle, seize a thing or retrieve a confined person, and maintain custody of and dispose of seized things;

(b) carry out or have carried out an investigative procedure to which Part Three (*Obtaining Forensic Evidence*) applies;

(c) take or have taken samples of a person’s breath or blood for the purpose of determining the presence or concentration of alcohol in the person’s blood; and

(d) intercept or have intercepted, by means of a surveillance device, a private communication.

Warning or  
informing person

4. A peace officer who is under a duty to warn a person or to tell a person anything shall do so in a language and in a manner understood by the person.

Shortening  
notice period for  
application

5. (1) The period of notice required for any application may be shortened if the persons to whom the notice must be given consent, or if a justice so orders.

Order shortening  
notice period

(2) A justice may, on an application made unilaterally, make an order shortening a period of notice if satisfied that doing so would be reasonable in the circumstances and would not prejudice any person to whom the notice must be given.

Expediting hearing                    **6.** A justice may give any directions considered necessary for expediting a hearing.

Execution in province                    **7.** A warrant or order issued by a justice may be executed or carried out anywhere in the province in which it is issued, unless a particular location is specified in the warrant or order.

Presumption of authenticity of warrant or order                    **8.** An original warrant or order purporting to be signed by a justice is, in the absence of evidence to the contrary, proof of the authenticity of the warrant or order, without proof of the signature of the justice appearing to have signed it.

## **CHAPTER IV GENERAL APPLICATION PROCEDURES FOR WARRANTS**

### **DIVISION I INTERPRETATION**

Application of Chapter                    **9.** This Chapter applies to applications for warrants under Part Two (*Search and Seizure*), Part Three (*Obtaining Forensic Evidence*) and Part Four (*Testing Persons for Impairment in the Operation of Vehicles*).

### **DIVISION II PROCEDURE ON HEARING APPLICATION**

Hearing evidence                    **10.** (1) A justice to whom an application for a warrant is made may question the applicant and hear or receive other evidence, including evidence by affidavit based on information and belief.

Questioning deponent                    (2) Where affidavit evidence is received, the justice may question the deponent on the affidavit.

Evidence on oath                    (3) The evidence of any person shall be on oath.

Recording oral application, evidence                    **11.** (1) An application made orally and any oral evidence heard by the justice shall be recorded verbatim, either in writing or by electronic means.



Identification of record

(2) The record of an oral application or of oral evidence shall be identified as to time, date and contents.

Certification of transcript

(3) Any transcription of the record of an oral application or of oral evidence shall be certified as to time, date and accuracy.

Procedure for issuing warrant on application by telephone

**12.** Where a warrant is issued on application made by telephone or other means of telecommunication, the justice shall

(a) complete the warrant; and

(b) transmit two copies of the warrant to the applicant, or direct the applicant to complete two copies of it.

### **DIVISION III FILING**

Filing application, evidence, warrant

**13.** A justice to whom an application for a warrant is made shall, as soon as practicable, have the following filed with the clerk of the court for the judicial district in which the application was received:

(a) the application received by the justice, or the record of the application or its transcription;

(b) the record of any oral evidence heard by the justice or its transcription;

(c) any other evidence received by the justice; and

(d) if a warrant is issued, the original warrant.

Notice of out-of-district execution

**14.** (1) A peace officer who executes a warrant in a judicial district other than the one in which it was issued shall, as soon as practicable, advise the clerk of the court for the judicial district in which the warrant was issued of the place of execution.

Filing material in district where warrant executed

(2) After being so advised, the clerk of the court for the judicial district in which the warrant was issued shall have the material or a copy of the material listed in section 13 filed, as soon as practicable, with the clerk of the court for the judicial district in which the warrant was executed.

**PART TWO**  
**SEARCH AND SEIZURE**

**CHAPTER I**  
**INTERPRETATION**

Definitions

“confined”  
(*séquestrée*)

“night” (*nuît*)

“vehicle”  
(*véhicule*)

Meaning of  
power to search  
person

Meaning of  
protective search

**15.** In this Part,

“confined” means confined or taken into custody unlawfully as defined in section 49 (confinement), 50 (kidnapping) or 51 (child abduction) of the proposed Criminal Code (LRC);

“night” means the period between 2100 hours and 0600 hours on the following day;

“vehicle” means a thing used or designed to be used as a means of transportation.

**16.** The power to search a person, otherwise than with consent, for an object of seizure or a confined person means the power to

(a) stop and detain the person;

(b) carry out a protective search of the person;

(c) search anything carried by the person in which it is reasonable to believe that the object of seizure or confined person might be found;

(d) search those areas of the surface of the person’s body where it is reasonable to believe that the object of seizure might be found;

(e) search those areas of the person’s clothing where it is reasonable to believe that the object of seizure or confined person might be found; and

(f) remove any article of the person’s clothing that it is reasonable and necessary to remove to see whether the person is carrying or concealing the object of seizure or confined person, or to effect seizure or retrieve the confined person.

**17.** The power to carry out a protective search of a person means the power to

(a) frisk the person and search the person’s clothing and anything carried by the person or within the person’s reach for weapons and instruments of escape;

- (b) if the frisk or search discloses that anything believed on reasonable grounds to be a weapon or instrument of escape is located under or in the person's clothing, remove any article of the person's clothing that it is reasonable and necessary to remove to effect a seizure; and
- (c) seize anything believed on reasonable grounds to be a weapon or instrument of escape.

Meaning of power to search vehicle

**18.** The power to search a vehicle, otherwise than with consent, for an object of seizure or a confined person means the power to stop and detain the vehicle, enter the vehicle and search those areas of the vehicle, or of anything within the vehicle, where it is reasonable to believe that the object of seizure or the confined person might be found.

Meaning of power to search place

**19.** The power to search a place, otherwise than with consent, for an object of seizure or a confined person means the power to enter the place and search those areas of the place, or of anything within the place, where it is reasonable to believe that the object of seizure or the confined person might be found.

Meaning of power to seize

- 20.** The power to seize means
- (a) in the case of a thing, the power to take possession or control of the thing; and
  - (b) in the case of funds in a financial account, the power to take control over the funds.

## CHAPTER II SEARCH AND SEIZURE WITH A WARRANT

### DIVISION I APPLICATION FOR SEARCH WARRANT

Applicant

**21.** Any person may apply for a search warrant.

Application in person or by telephone

**22.** (1) An application for a search warrant shall be made in person or, if the applicant is a peace officer and it is impracticable for the applicant to appear in person, by telephone or other means of telecommunication.

Manner of making application	(2) The application shall be made unilaterally, in private and on oath, orally or in writing.
Form of written application	(3) An application in writing shall be in the prescribed form.
Justice on application in person	<b>23.</b> (1) An application in person shall be made to a justice in the judicial district in which the crime under investigation is alleged to have been committed or in which the warrant is intended for execution.
Justice on application by telephone	(2) An application by telephone or other means of telecommunication shall be made to a justice designated for that purpose by the Chief Justice of the Criminal Court.
Contents of application	<b>24.</b> An application for a search warrant shall disclose <ul style="list-style-type: none"> <li>(a) the applicant's name;</li> <li>(b) the date and place the application is made;</li> <li>(c) the crime under investigation;</li> <li>(d) the person, place or vehicle to be searched;</li> <li>(e) if the application is for a warrant to search for and seize objects of seizure, <ul style="list-style-type: none"> <li>(i) the objects of seizure sought,</li> <li>(ii) the applicant's grounds for believing that the objects of seizure will be found on the person or in the place or vehicle, and</li> <li>(iii) a list of any previous applications, of which the applicant is aware, for a warrant in respect of the same person, place, vehicle or objects of seizure and the same or a related investigation, indicating the date each application was made, the name of the justice who heard each application and whether each application was withdrawn, refused or granted;</li> </ul> </li> <li>(f) if the application is for a warrant to search for and retrieve a confined person, <ul style="list-style-type: none"> <li>(i) the person sought,</li> <li>(ii) the applicant's grounds for believing that the person will be found in the place or vehicle or concealed on the person to be searched, and</li> <li>(iii) a list of any previous applications, of which the applicant is aware, for a warrant in respect of the same person, place, vehicle or confined person and the same or a related investigation, indicating the date each application was made, the name of the justice who heard each application</li> </ul> </li> </ul>

and whether each application was withdrawn, refused or granted;

(g) if the applicant requests authority for the warrant to be executed during the night, the applicant's grounds for believing that it is necessary for the warrant to be executed during the night;

(h) if the applicant, on application made in person, requests authority for the warrant to be executed more than ten days after it is issued, the applicant's grounds for believing that the longer period is necessary; and

(i) in the case of an application made by telephone or other means of telecommunication, the circumstances that make it impracticable for the applicant to appear in person before a justice.

## DIVISION II ISSUANCE OF SEARCH WARRANT

Grounds for  
issuing warrant  
for object of  
seizure

**25.** (1) A justice who, on application, is satisfied there are reasonable grounds to believe that an object of seizure will be found on a person or in a place or vehicle may issue a warrant authorizing a peace officer to search the person, place or vehicle for the object of seizure and to seize the object of seizure.

Grounds for  
issuing warrant  
for confined  
person

(2) A justice who, on application, is satisfied there are reasonable grounds to believe that a confined person will be found in a place or vehicle or concealed on the person to be searched may issue a warrant authorizing a peace officer to search the person, place or vehicle for the confined person and to retrieve the confined person.

Additional  
ground if  
application by  
telephone

**26.** If the application is made by telephone or other means of telecommunication, a warrant shall not be issued unless the justice is satisfied, in addition, that there are reasonable grounds to believe that it is impracticable for the applicant to appear in person before a justice.

Conditions  
relating to  
execution

**27.** A justice who issues a search warrant may, by the warrant, impose any conditions relating to its execution that the justice considers appropriate.

Authorizing execution by night

**28.** If the applicant has specified grounds for believing that it is necessary for the search warrant to be executed during the night and the justice is satisfied there are reasonable grounds for that belief, the justice may, by the warrant, authorize its execution during the night.

Form of warrant

**29.** A search warrant shall be in writing, in the prescribed form and signed by the justice who issues it.

Contents of warrant

**30.** A search warrant shall disclose

- (a) the applicant's name;
- (b) the crime under investigation;
- (c) the objects of seizure or confined person sought;
- (d) the person, place or vehicle to be searched;
- (e) any conditions imposed relating to its execution;
- (f) the date it expires if not executed;
- (g) the date and place of issuance; and
- (h) the name and jurisdiction of the justice.

### **DIVISION III EXPIRATION OF SEARCH WARRANT**

Warrant issued on application in person

**31.** (1) A search warrant issued on application made in person expires ten days after it is issued.

Shortening expiration period

(2) A justice who is satisfied that a shorter expiration period is sufficient may issue a warrant with an expiry date that is less than ten days after the date of issue.

Extending expiration period

(3) A justice who is satisfied there are reasonable grounds to believe that a longer expiration period is required may issue a warrant with an expiry date that is more than ten days but not more than twenty days after the date of issue.

Warrant issued on application by telephone

**32.** A search warrant issued on application made by telephone or other means of telecommunication expires three days after it is issued.

Expiry on execution

**33.** A search warrant that is executed before the expiry date disclosed in it expires on execution.

Return of  
expired warrant

**34.** If a search warrant expires without having been executed, a copy of the warrant shall have noted on it the reasons why the warrant was not executed, and shall be filed as soon as practicable with the clerk of the court for the judicial district in which it was issued.

#### **DIVISION IV EXECUTION OF SEARCH WARRANT**

Who may  
execute warrant

**35.** A search warrant may be executed in the province in which it is issued by a peace officer of the province.

Execution in  
different province

**36.** (1) A search warrant may be executed in another province if it is endorsed by a justice of that province.

Endorsement by  
justice

(2) The justice may endorse the warrant if it was issued on application made in person and the justice is satisfied that the person, place or vehicle to be searched is in the province.

Form of  
endorsement

(3) The endorsement shall be in the prescribed form.

Effect of  
endorsement

(4) The endorsement authorizes peace officers of the province in which the warrant was issued or endorsed to execute the warrant in the province in which it was endorsed.

Power under  
warrant

**37.** A peace officer may, under the authority of a search warrant,

- (a) search a person, place or vehicle specified in the warrant;
- (b) search a person who is found in a place or vehicle specified in the warrant if the officer believes on reasonable grounds that the person is carrying or concealing the object of seizure or the confined person identified in the warrant;
- (c) seize anything believed on reasonable grounds to be the object of seizure identified in the warrant; and
- (d) retrieve any person believed on reasonable grounds to be the person identified in the warrant as a confined person.

Execution by day

**38.** A peace officer shall execute a search warrant during the period beginning at 0600 hours and ending at 2100 hours, unless the issuing justice has, by the warrant, authorized its execution during the night.

Execution in presence of occupier

**39.** A peace officer shall execute a search warrant in the presence of a person who occupies or is in apparent control of the place or vehicle being searched, unless it is impracticable to do so.

Providing copy of warrant

**40.** (1) A peace officer shall, before starting a search or as soon as practicable, give a copy of the warrant

(a) in the case of a warrant to search a person, to the person; or

(b) in the case of a warrant to search a place or vehicle, to a person present and in apparent control of the place or vehicle.

Copy in unoccupied place or vehicle

(2) A peace officer who executes a warrant to search a place or vehicle where there is no person present and in apparent control shall, when the search is done, indicate on a copy of the warrant the date and time of the search and whether anything was seized, and shall affix the copy of the warrant in a prominent location in the place or vehicle.

**DIVISION V  
EVIDENTIARY RULE WHERE  
ORIGINAL OF WARRANT ABSENT**

Absence of original warrant

**41.** In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a warrant issued on application made by telephone or other means of telecommunication, the absence of the original warrant is, in the absence of evidence to the contrary, proof that the search or seizure was not authorized by a warrant.

**CHAPTER III  
SEARCH AND SEIZURE  
WITHOUT A WARRANT**

**DIVISION I  
SEARCH AND SEIZURE IN EXIGENT  
CIRCUMSTANCES**

Power to search

**42.** (1) A peace officer may, without a search warrant, search a person, place or vehicle for an object of seizure or a confined person if the officer believes on reasonable grounds that



- (a) the object of seizure or confined person will be found on the person or in the place or vehicle; and
- (b) the delay involved in obtaining a warrant would endanger anyone's life or safety.

Power to seize

(2) The peace officer may seize anything believed on reasonable grounds to be the object of seizure, or retrieve any person believed on reasonable grounds to be the confined person, found in the course of the search.

## DIVISION II SEARCH AND SEIZURE INCIDENT TO ARREST

Protective search

**43.** Anyone who has arrested another person may, incident to the arrest and without a search warrant, carry out a protective search of the person.

Additional power of peace officer

**44.** A peace officer who has arrested a person may, incident to the arrest and without a search warrant,

(a) if the officer believes on reasonable grounds that an object of seizure will be found on the person and that the delay involved in obtaining a warrant would result in the loss or destruction of the object of seizure, search the person for the object of seizure and seize anything believed on reasonable grounds to be the object of seizure; or

(b) if the person is in present control of, or is an occupant of, a vehicle, and the officer believes on reasonable grounds that an object of seizure will be found in the vehicle and that the delay involved in obtaining a warrant would result in the loss or destruction of the object of seizure, search the vehicle for the object of seizure and seize anything believed on reasonable grounds to be the object of seizure.

## DIVISION III SEARCH WITH CONSENT AND SEIZURE

Power to search

**45.** (1) A peace officer may search without a warrant

(a) a person or anything carried by the person if the person consents to the search; and

(b) a place or vehicle with the consent of a person who is present and in apparent control and who is apparently competent to consent to the search.

Restriction on consent under this Part (2) A person may not consent, under this Part, to a search for an object of seizure inside the person's body.

Information required to be disclosed 46. (1) When asking a person for consent, a peace officer shall tell the person  
(a) what crime is being investigated;  
(b) what the officer is looking for;  
(c) what the proposed search will involve; and  
(d) that consent may be refused or, if given, may be withdrawn at any time.

Form of consent (2) Consent may be given orally or in writing.

Power to seize 47. The peace officer may seize anything believed on reasonable grounds to be an object of seizure, or retrieve any person believed on reasonable grounds to be a confined person, found in the course of the search.

#### CHAPTER IV SEIZURE OF OBJECTS IN PLAIN VIEW

Power to seize 48. (1) Where a peace officer engaged in the lawful execution of duty discovers in plain view anything believed on reasonable grounds to be an object of seizure, the officer may seize it.

Private premises (2) Subsection (1) does not confer authority to enter private premises.

Object of seizure not in plain view 49. An object of seizure is not in plain view if movement or manipulation of it is required in order for the peace officer to acquire reasonable grounds for believing it to be an object of seizure.

#### CHAPTER V EXERCISING SEARCH AND SEIZURE POWERS

Manner of carrying out search 50. (1) A search of the person shall be carried out in a manner that respects the dignity of the person and that, having regard to the nature of the search and the circumstances,

	<p>(a) involves as little intrusion as is reasonably practicable; and</p> <p>(b) provides as much privacy as is reasonably practicable.</p>
Waiver of requirements	<p>(2) A person who is to be searched may waive the requirement set out in paragraph (1)(a) or (b), orally or in writing.</p>
Obtaining assistance to search	<p><b>51.</b> A peace officer who carries out a search may obtain the assistance of any person whose assistance the officer reasonably believes is necessary to carry out the search effectively.</p>
Demand to enter private premises	<p><b>52.</b> A peace officer who is authorized to enter private premises to carry out a search shall, before entering the premises, identify himself or herself as a peace officer, make a demand to enter, state the purpose of the entry and allow the occupant a reasonable time to let the officer in, unless the officer believes on reasonable grounds that doing so would result in the loss or destruction of an object of seizure in relation to which the search is authorized, or would endanger anyone's life or safety.</p>
Opportunity to make claim of privilege	<p><b>53.</b> (1) No peace officer, or person assisting a peace officer, who knows of the possible existence of a privilege in respect of a thing or in respect of information contained in a thing shall examine or seize the thing or examine the information without affording a reasonable opportunity for a claim of privilege to be made.</p>
Procedure if claim made	<p>(2) If a privilege is claimed, the officer shall, without examining the thing or the information or having it photographed or copied,</p> <p>(a) seize the thing by taking control of it, and take steps to ensure that the thing or the information contained in it is not examined or interfered with; or</p> <p>(b) seize the thing by taking possession of it, place it in a package, suitably seal and identify the package and place the package in the custody of the sheriff of the district or county in which the seizure was made or, if there is an agreement in writing between the officer and the person claiming the privilege that a specified person will act as custodian, in the custody of that person.</p>
Custodian of seized thing	<p>(3) The peace officer who seizes the thing by taking control of it, or the sheriff or person in whose custody the sealed package is placed, is the custodian of the seized thing for the purposes of Part Seven (<i>Privilege in Relation to Seized Things</i>).</p>

Return of seized  
weapons

**54.** (1) A peace officer who, during a protective search, seizes anything believed to be a weapon or instrument of escape shall have the thing returned to the person from whom it was seized as soon after the seizure as it is safe and practicable to do so, unless seizure or retention of the thing is otherwise authorized.

Delivery of  
seized weapons  
to peace officer

(2) If a person other than a peace officer seizes, during a protective search, anything believed to be a weapon or instrument of escape, the seized thing shall be delivered, as soon as practicable, to a peace officer to be dealt with in accordance with subsection (1).

**PART THREE**  
**OBTAINING FORENSIC EVIDENCE**

**CHAPTER I**  
**INTERPRETATION**

Application of  
Part

**55.** (1) This Part applies to any investigative procedure that is carried out by or at the request of a peace officer for the purpose of obtaining evidence or information relating to a person's responsibility for the commission of a crime, in a manner that requires physical contact with the person or the person's participation in the procedure and awareness of that participation.

Exception

(2) This Part does not apply to an investigative procedure that merely involves questioning the person, searching the person pursuant to Part Two (*Search and Seizure*) or taking samples of the person's breath or blood pursuant to Part Four (*Testing Persons for Impairment in the Operation of Vehicles*).

**CHAPTER II**  
**INVESTIGATIVE PROCEDURES**  
**WITH A WARRANT**

**DIVISION I**  
**APPLICATION FOR WARRANT**

Applicant and  
nature of warrant

**56.** A peace officer may apply for a warrant authorizing the carrying out of one or more of the following investigative procedures:

- (a) the visual inspection of the surface of a person's body;
- (b) the visual inspection of a person's body cavities and the probing for, removal of and seizure of any object of seizure concealed in a body cavity;
- (c) the taking of prints or impressions from any exterior part of a person's body;
- (d) the taking of dental or bite impressions from a person;
- (e) the taking of hair samples from a person;

- (f) the taking of scrapings or clippings from a person's finger-nails or toe-nails;
- (g) the removal of residues or substances from the surface of a person's body by means of washings, swabs or adhesive materials;
- (h) the taking of saliva samples or swabs from a person's mouth for purposes other than the detection of intoxicating substances;
- (i) the physical examination of a person by a medical practitioner; or
- (j) the examination of a person by means of X-rays or ultrasound.

Application in person or by telephone

**57.** (1) An application for a warrant shall be made in person or, if it is impracticable for the applicant to appear in person, by telephone or other means of telecommunication.

Manner of making application

(2) The application shall be made unilaterally, in private and on oath, orally or in writing.

Form of written application

(3) An application in writing shall be in the prescribed form.

Justice on application in person

**58.** (1) An application in person shall be made to a justice in the judicial district in which the crime under investigation is alleged to have been committed or in which the warrant is intended for execution.

Justice on application by telephone

(2) An application by telephone or other means of telecommunication shall be made to a justice designated for that purpose by the Chief Justice of the Criminal Court.

Contents of application

**59.** An application for a warrant shall disclose

- (a) the applicant's name;
- (b) the date and place the application is made;
- (c) the crime under investigation;
- (d) the person who is to be subjected to the investigative procedure;
- (e) whether the person has been arrested for, charged with or issued an appearance notice in relation to the crime under investigation;
- (f) the procedure to be carried out;

- (g) the applicant's grounds for believing that carrying out the procedure will provide probative evidence of the person's involvement in the crime and that there is no practicable and less intrusive means for obtaining the evidence;
- (h) if the application is for a warrant for an examination of the person by means of X-rays or ultrasound, the applicant's grounds for believing that carrying out the examination would not endanger life or health;
- (i) a list of any previous applications, of which the applicant is aware, for a warrant in respect of the same person and the same or a related investigation, indicating the date each application was made, the name of the justice who heard each application and whether each application was withdrawn, refused or granted;
- (j) the name of a person or a class of persons believed by the applicant to be competent, by virtue of training or experience, to carry out the procedure;
- (k) if the applicant, on application made in person, requests authority for the warrant to be executed more than ten days after it is issued, the applicant's grounds for believing that the longer period is necessary; and
- (l) in the case of an application made by telephone or other means of telecommunication, the circumstances that make it impracticable for the applicant to appear in person before a justice.

## DIVISION II ISSUANCE OF WARRANT

Grounds for  
issuing warrant

**60.** (1) A justice may, on application, issue a warrant authorizing the carrying out of an investigative procedure listed in section 56 if

- (a) the person who is to be subjected to the procedure has been arrested for, charged with or issued an appearance notice in relation to a crime punishable by more than two years' imprisonment; and
- (b) the justice is satisfied there are reasonable grounds to believe that
  - (i) carrying out the procedure will provide probative evidence of the person's involvement in the crime,
  - (ii) there is no practicable and less intrusive means for obtaining the evidence, and

(iii) if the application is for a warrant for an examination of the person by means of X-rays or ultrasound, the carrying out of the examination would not endanger life or health.

Additional ground if application by telephone

(2) If the application is made by telephone or other means of telecommunication, the warrant shall not be issued unless the justice is satisfied, in addition, that there are reasonable grounds to believe that it is impracticable for the applicant to appear in person before a justice.

Conditions relating to execution

**61.** A justice who issues a warrant may, by the warrant, impose any conditions relating to its execution that the justice considers appropriate.

Form of warrant

**62.** A warrant shall be in writing, in the prescribed form and signed by the justice who issues it.

Contents of warrant

**63.** A warrant shall disclose

- (a) the applicant's name;
- (b) the crime under investigation;
- (c) the person who is to be subjected to the investigative procedure;
- (d) the procedure to be carried out;
- (e) any conditions imposed relating to its execution;
- (f) the date it expires if not executed;
- (g) the date and place of issuance; and
- (h) the name and jurisdiction of the justice.

### DIVISION III EXPIRATION OF WARRANT

Warrant issued on application in person

**64.** (1) A warrant issued on application made in person expires ten days after it is issued.

Shortening expiration period

(2) A justice who is satisfied that a shorter expiration period is sufficient may issue a warrant with an expiry date that is less than ten days after the date of issue.

Extending expiration period

(3) A justice who is satisfied there are reasonable grounds to believe that a longer expiration period is required may issue a



warrant with an expiry date that is more than ten days but not more than twenty days after the date of issue.

Warrant issued on application by telephone

**65.** A warrant issued on application made by telephone or other means of telecommunication expires three days after it is issued.

Expiry on execution

**66.** If all of the procedures authorized by a warrant are carried out before the expiry date set out in the warrant, the warrant expires on the date that the last procedure is carried out.

Expiration of unexecuted warrant

**67.** (1) If none of the procedures authorized by a warrant is carried out before the warrant expires, a copy of the warrant shall have noted on it the reasons why no procedure was carried out.

Filing copy of warrant

(2) The copy shall be filed as soon as practicable with the clerk of the court for the judicial district in which the warrant was issued.

#### **DIVISION IV EXECUTION OF WARRANT**

Who may execute warrant

**68.** A warrant may be executed by a peace officer of the province in which it is issued.

Providing copy of warrant

**69.** A peace officer shall, before executing a warrant or as soon as practicable, give a copy of the warrant to the person who is subjected to the procedure.

#### **DIVISION V EVIDENTIARY RULE WHERE ORIGINAL OF WARRANT ABSENT**

Absence of original warrant

**70.** In any proceeding in which it is material for a court to be satisfied that the carrying out of an investigative procedure was authorized by a warrant issued on application made by telephone or other means of telecommunication, the absence of the original warrant is, in the absence of evidence to the contrary, proof that the carrying out of the procedure was not authorized by a warrant.

**CHAPTER III  
INVESTIGATIVE PROCEDURES WITHOUT  
A WARRANT**

**DIVISION I  
INVESTIGATIVE PROCEDURES IN EXIGENT  
CIRCUMSTANCES**

Grounds for  
carrying out  
procedure

**71.** Where a person has been arrested for, charged with or issued an appearance notice in relation to a crime punishable by more than two years' imprisonment, a peace officer may, without a warrant, carry out or have carried out with respect to that person any investigative procedure listed in paragraphs 56(a) to (i) if the officer believes on reasonable grounds that

- (a) doing so will provide probative evidence of the person's involvement in the crime;
- (b) the delay involved in obtaining a warrant would result in the loss or destruction of the evidence; and
- (c) there is no practicable and less intrusive means for obtaining the evidence.

**DIVISION II  
INVESTIGATIVE PROCEDURES INCIDENT  
TO ARREST**

Visual inspection

**\*72.** A peace officer who has arrested a person for a crime punishable by more than two years' imprisonment may, incident to the arrest and without a warrant, carry out or have carried out the visual inspection of the surface of the person's body, excluding the person's genitals, buttocks and, where the person is female, breasts, if the officer believes on reasonable grounds that

- (a) doing so will provide probative evidence of the person's involvement in the crime; and
- (b) there is no practicable and less intrusive means for obtaining the evidence.

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\* A minority of the Commission dissents with respect to the inclusion of this section in the Code.

**DIVISION III  
INVESTIGATIVE PROCEDURES  
WITH CONSENT**

Procedures that may be conducted with consent

**73.** (1) A peace officer may, without a warrant, carry out or have carried out any investigative procedure, other than an investigative procedure that involves the administration of a drug known or designed to affect mood, inhibitions, judgment or thinking, if the person who is to be subjected to the procedure consents.

Information required to be disclosed

(2) Where a person's consent is sought,

(a) the person shall be given a description of the investigative procedure, an explanation of its nature and the reasons for its being carried out;

(b) the individual who is to carry out the procedure shall tell the person whether there are any significant risks to health or safety associated with the procedure and, if so, what those risks are; and

(c) a peace officer shall tell the person that the person has the right to consult with counsel before deciding whether to consent to the procedure, and that consent may be refused or, if given, may be withdrawn at any time.

Form of consent

(3) Consent may be given orally or in writing.

**CHAPTER IV  
EXERCISING POWER TO CARRY OUT  
INVESTIGATIVE PROCEDURES**

**DIVISION I  
REQUIREMENTS FOR CARRYING OUT PROCEDURES**

Competence of person carrying out procedure

**74.** (1) An investigative procedure shall be carried out by a person who, by virtue of training or experience, is competent to carry it out.

Dental impressions

(2) Dental or bite impressions shall be taken by a person who is qualified under provincial law to take dental or bite impressions.

Medical procedures

(3) An investigative procedure that involves probing for or removing an object of seizure that is inside a person's body shall be carried out by a medical practitioner.

Exception	(4) A peace officer may probe for or remove an object of seizure concealed in a person's mouth if the officer is carrying out the procedure pursuant to section 71 (exigent circumstances).
Information required to be disclosed	<p><b>75.</b> (1) A person who is to be subjected to an investigative procedure carried out without the person's consent shall be</p> <p>(a) given a description of the procedure, an explanation of its nature and the reasons for its being carried out; and</p> <p>(b) told that the person is required by law to submit to the procedure and that such force as is necessary and reasonable in the circumstances may be used to carry it out.</p>
Time of disclosure	(2) The information shall be provided to the person before the procedure is carried out or, if that is impracticable, at the first reasonable opportunity.
Waiver of requirement	(3) The person may waive the requirement set out in paragraph (1)(a), orally or in writing.
Manner of carrying out procedure	<p><b>76.</b> (1) An investigative procedure shall be carried out in a manner that respects the dignity of the person and that, having regard to the nature of the procedure and the circumstances,</p> <p>(a) involves as little discomfort as is reasonably practicable; and</p> <p>(b) provides as much privacy as is reasonably practicable.</p>
Waiver of requirements	(2) A person who is to be subjected to an investigative procedure may waive the requirement set out in paragraph (1)(a) or (b), orally or in writing.
Exemption from criminal liability	<b>77.</b> No person is guilty of a crime by reason of a failure or refusal to carry out an investigative procedure with respect to another person.

**DIVISION II  
SCOPE OF POWER**

Visual inspection and power to photograph	<b>78.</b> The authority to inspect visually a person's body cavities or the surface of a person's body without the person's consent includes the authority to take a photograph of any probative evidence revealed by the inspection.
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Power to examine, test or analyze

**79.** (1) A peace officer may have anything taken or obtained in the course of carrying out an investigative procedure examined, tested or analyzed.

Safeguarding of evidence

(2) If probative evidence is revealed, the thing, or that portion of it remaining after the examination, test or analysis, shall be safeguarded so as to preserve it for use in subsequent proceedings.

Application of section

(3) This section does not apply to anything seized under this Part as an object of seizure.

### **DIVISION III REPORT OF PROCEDURES CARRIED OUT**

Requirement for and contents of report

**80.** (1) Where an investigative procedure has been carried out pursuant to a warrant, section 71 (exigent circumstances) or 72 (incident to arrest), or where anything has been taken or obtained in the course of carrying out an investigative procedure with a person's consent, a peace officer shall, as soon as practicable, complete and sign a report that discloses

- (a) the crime under investigation;
- (b) the person who was subjected to the procedure;
- (c) the procedure that was carried out and a description of anything that was taken or obtained;
- (d) the time, date and place that the procedure was carried out;
- (e) the name of the person who carried out the procedure; and
- (f) the name of the peace officer.

Additional contents where procedure carried out in exigent circumstances

(2) Where the procedure was carried out pursuant to section 71 (exigent circumstances), the report shall disclose, in addition, the grounds for the peace officer's belief that carrying out the procedure would provide probative evidence of the person's involvement in the crime, that the delay involved in obtaining a warrant would result in the loss or destruction of the evidence and that there was no practicable and less intrusive means for obtaining the evidence.

Additional contents where procedure carried out incident to arrest

(3) Where the procedure was carried out pursuant to section 72 (incident to arrest), the report shall disclose, in addition, the grounds for the peace officer's belief that carrying out the procedure would provide probative evidence of the person's involvement in the crime and that there was no practicable and less intrusive means for obtaining the evidence.

Additional contents where all authorized procedures not carried out

(4) Where the procedure was carried out pursuant to a warrant issued for more than one investigative procedure and not all of the authorized procedures were carried out, the report shall disclose, in addition, the reasons why each of the authorized procedures was not carried out.

Providing copy of report and filing

**81.** The peace officer shall, as soon as practicable,

(a) give a copy of the report to the person who was subjected to the procedure; and

(b) have the report filed with the clerk of the court for the judicial district in which the procedure was carried out.

**PART FOUR**  
**TESTING PERSONS FOR IMPAIRMENT**  
**IN THE OPERATION OF VEHICLES**

**CHAPTER I**  
**INTERPRETATION**

Definitions

“analyst”  
(*analyste*)

**82.** In this Part,

“analyst” means a person designated by the Attorney General as an analyst for the purposes of this Part;

“breath analysis instrument”  
(*analyseur d’haleine*)

“breath analysis instrument” means an instrument designed to receive and analyze a sample of a person’s breath in order to measure the concentration of alcohol in the person’s blood, and of a kind approved as suitable for the purposes of this Part by order of the Attorney General of Canada;

“container”  
(*contenant*)

“container” means

(a) in respect of breath samples, a container designed to receive a sample of a person’s breath for analysis, and of a kind approved as suitable for the purposes of this Part by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container designed to receive a sample of a person’s blood for analysis, and of a kind approved as suitable for the purposes of this Part by order of the Attorney General of Canada;

“operate”  
(*conduire*)

“operate” includes, in respect of a vessel or an aircraft, navigate;

“preliminary breath testing device”  
(*alcootest*)

“preliminary breath testing device” means a device designed to ascertain the presence of alcohol in a person’s blood, and of a kind approved as suitable for the purposes of this Part by order of the Attorney General of Canada;

“technician”  
(*technicien*)

“technician” means

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate a breath analysis instrument, and

(b) in respect of blood samples, a person or member of a class of persons designated by the Attorney General as being qualified to take a sample of a person’s blood for the purposes of this Part;

“vehicle”  
(*véhicule*)

“vehicle” means a motor vehicle, train, vessel or aircraft, but does not include anything driven by, propelled by or drawn by means of muscular power.

## CHAPTER II PRELIMINARY BREATH TESTS

Request for  
preliminary  
breath sample

**83.** (1) Where a peace officer reasonably suspects that there is alcohol in the body of a person who is operating or has the care or control of a vehicle, the peace officer may request that the person

(a) provide, as soon as practicable, such a breath sample as the peace officer considers necessary to enable a proper analysis to be made with a preliminary breath testing device; and

(b) if necessary, accompany the peace officer for the purpose of enabling the breath sample to be taken.

Warning

(2) When making the request, the peace officer shall warn the person that, in case of failure or refusal to comply, the officer may arrest the person and convey the person to a site where a breath analysis instrument is available.

## CHAPTER III REQUEST FOR SAMPLES FOR BLOOD-ALCOHOL ANALYSIS

### DIVISION I REFUSAL TO PROVIDE PRELIMINARY BREATH SAMPLE

Request for  
breath samples

**84.** Where a person has been arrested for failure or refusal to provide a breath sample for a preliminary breath testing device or to accompany a peace officer for the purpose of enabling the breath sample to be taken, a peace officer may request that the person provide, as soon as practicable, such breath samples as a technician considers necessary to enable a proper analysis to be made with a breath analysis instrument.



**DIVISION II  
COMMISSION OF ALCOHOL-RELATED CRIME**

Request for  
breath samples

**85.** (1) Where a peace officer believes on reasonable grounds that a person, at any time within the preceding two hours, has committed an alcohol-related crime under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC), the peace officer may, as soon as practicable, request that the person

(a) provide, as soon as practicable, such breath samples as a technician considers necessary to enable a proper analysis to be made with a breath analysis instrument; and

(b) if necessary, accompany the peace officer for the purpose of enabling the breath samples to be taken.

Warning

(2) When making a request that the person accompany the peace officer, the peace officer shall warn the person that, in case of failure or refusal to comply, the officer may arrest the person and convey the person to a site where a breath analysis instrument is available.

Request for  
blood samples

**86.** (1) If the peace officer believes on reasonable grounds that, because of any physical condition of the person, it would be impracticable to obtain breath samples from the person or the person would be incapable of providing breath samples, the peace officer may, as soon as practicable, request that the person

(a) submit, as soon as practicable, to having blood samples taken for the purpose of determining the concentration of alcohol in the person's blood; and

(b) if necessary, accompany the peace officer for the purpose of enabling the blood samples to be taken.

Warning

(2) When making a request that the person accompany the peace officer, the peace officer shall warn the person that, in case of failure or refusal to comply, the officer may arrest the person and convey the person to a site where blood samples can be taken.

**DIVISION III  
WARNING REGARDING REFUSAL**

Warning

**87.** When making a request for breath samples or blood samples, the peace officer shall warn the person that it is a crime under section 59 (failure or refusal to provide breath sample) of the

proposed Criminal Code (LRC) to fail or refuse, without a reasonable excuse, to comply with the request.

**DIVISION IV  
RESTRICTION ON REQUEST FOR SAMPLES**

Request not  
prejudicial to  
medical treatment

**88.** A peace officer may not request that a person who has been admitted to hospital or is undergoing emergency medical treatment provide breath samples or submit to having blood samples taken unless the attending medical practitioner is of the opinion that making the request and taking the samples would not be prejudicial to the person's proper care or treatment.

**DIVISION V  
REQUEST FOR BLOOD SAMPLES AFTER DISCLOSURE  
OF BREATH ANALYSES RESULTS**

Disclosure of  
results

**89.** (1) As soon as practicable after the results of breath analyses are known, a peace officer shall tell the person who provided the breath samples the results.

Request for  
blood samples

(2) A person who is detained in custody may, after being told the results of the breath analyses, request that blood samples be taken and, if a request is made, a peace officer shall arrange for the samples to be taken.

**CHAPTER IV  
WARRANT TO TAKE BLOOD SAMPLES**

**DIVISION I  
APPLICATION FOR WARRANT**

Applicant

**90.** A peace officer may apply for a warrant authorizing the taking of samples of a person's blood.

Application in  
person or by  
telephone

**91.** (1) An application for a warrant shall be made in person or, if it is impracticable for the applicant to appear in person, by telephone or other means of telecommunication.

Manner of making application

(2) The application shall be made unilaterally and on oath, orally or in writing.

Form of written application

(3) An application in writing shall be in the prescribed form.

Justice on application in person

**92.** (1) An application in person shall be made to a justice in the judicial district in which the crime under investigation is alleged to have been committed or in which the warrant is intended for execution.

Justice on application by telephone

(2) An application by telephone or other means of telecommunication shall be made to a justice designated for that purpose by the Chief Justice of the Criminal Court.

Contents of application

**93.** An application for a warrant shall disclose

(a) the applicant's name;

(b) the date and place the application is made;

(c) the crime under investigation;

(d) the person from whom the blood samples are to be taken;

(e) the applicant's grounds for believing that the person, within the preceding two hours, has committed an alcohol-related crime under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC) and was involved in an accident resulting in the death of, or bodily harm to, someone;

(f) the applicant's grounds for believing that a medical practitioner is of the opinion that

(i) the person is unable to consent to the taking of the blood samples because of a physical or mental condition resulting from the consumption of alcohol, the accident or an occurrence related to or resulting from the accident, and

(ii) taking the blood samples would not endanger the person's life or health;

(g) a list of any previous applications, of which the applicant is aware, for a warrant in respect of the same person and the same or a related investigation, indicating the date each application was made, the name of the justice who heard each application and whether each application was withdrawn, refused or granted; and

(h) in the case of an application made by telephone or other means of telecommunication, the circumstances that make it impracticable for the applicant to appear in person before a justice.

**DIVISION II  
ISSUANCE OF WARRANT**

Grounds for  
issuing warrant

**94.** (1) A justice may, on application, issue a warrant authorizing the taking of samples of a person's blood if the justice is satisfied there are reasonable grounds to believe that

(a) the person, within the preceding two hours, has committed an alcohol-related crime under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC) and was involved in an accident resulting in the death of, or bodily harm to, someone; and

(b) a medical practitioner is of the opinion that

(i) the person is unable to consent to the taking of blood samples because of a physical or mental condition resulting from the consumption of alcohol, the accident or an occurrence related to or resulting from the accident, and

(ii) taking the blood samples would not endanger the person's life or health.

Additional  
ground if  
application by  
telephone

(2) If the application is made by telephone or other means of telecommunication, the warrant shall not be issued unless the justice is satisfied, in addition, that there are reasonable grounds to believe that it is impracticable for the applicant to appear in person before a justice.

Conditions  
relating to  
execution

**95.** A justice who issues a warrant may, by the warrant, impose any conditions relating to its execution that the justice considers appropriate.

Form of warrant

**96.** A warrant shall be in writing, in the prescribed form and signed by the justice who issues it.

Contents of  
warrant

**97.** The warrant shall disclose

(a) the applicant's name;

(b) the crime under investigation;

(c) the person from whom the blood samples are to be taken;

(d) the time and date the application was made;

(e) any conditions imposed relating to its execution;

(f) the time and date it expires if not executed;

(g) the time, date and place of issuance; and

(h) the name and jurisdiction of the justice.

**DIVISION III  
EXPIRATION OF WARRANT**

Six-hour  
expiration period

**98.** A warrant authorizing the taking of blood samples expires six hours after it is issued or, if it is executed less than six hours after it is issued, on execution.

Return of  
expired warrant

**99.** If a warrant expires without having been executed, a copy of the warrant shall have noted on it the reasons why the warrant was not executed, and shall be filed as soon as practicable with the clerk of the court for the judicial district in which it was issued.

**DIVISION IV  
PROVISION OF COPY OF WARRANT**

Person to whom  
copy given

**100.** A peace officer shall, as soon as practicable after executing a warrant, give a copy of the warrant to the person from whom the blood samples were taken, unless the justice who issued the warrant imposed a condition requiring that the copy be given to another designated person.

**CHAPTER V  
TAKING, TESTING AND RELEASING  
BLOOD SAMPLES**

**DIVISION I  
INTERPRETATION**

Application of  
Chapter

**101.** This Chapter applies to blood samples taken pursuant to a warrant, a request made under paragraph 86(1)(a) (request by peace officer) or a request made in the circumstances described in subsection 89(2) (request by person detained in custody).

**DIVISION II**  
**TAKING AND TESTING BLOOD SAMPLES**

Conditions for taking samples

**102.** (1) Blood samples shall be taken from a person  
(a) as soon as practicable after the request for the samples has been made or the warrant has been issued;  
(b) by a medical practitioner or a technician acting under the direction of a medical practitioner; and  
(c) in a manner that ensures the least discomfort to the person.

Opinion of medical practitioner

(2) Blood samples shall not be taken unless the medical practitioner is of the opinion, before each sample is taken,  
(a) that taking the sample would not endanger the person's life or health; and  
(b) in the case of a blood sample taken pursuant to a warrant, that the person is unable to consent to the taking of the sample because of a physical or mental condition resulting from the consumption of alcohol, the accident with respect to which the warrant was issued or an occurrence related to or resulting from the accident.

Number of samples

**103.** (1) No more than two separate blood samples may be taken from a person.

Size of sample

(2) Each blood sample shall be taken in such an amount as a medical practitioner considers necessary to enable the sample to be divided into two parts suitable for separate analysis for the purpose of determining the concentration of alcohol in the person's blood.

Dividing and sealing samples

**104.** (1) Each blood sample shall be divided into two parts and each part shall be placed in a separate sealed container.

Custody and safeguarding of samples

(2) The peace officer investigating the crime in relation to which the blood samples were taken shall have custody of the samples, and shall take steps to ensure their preservation and safeguarding.

Analysis on behalf of peace officer

**105.** (1) The peace officer may have one part of each blood sample analyzed by an analyst for the purpose of determining the concentration of alcohol in the blood.

Retaining sample for separate analysis

(2) The peace officer shall retain the other part of each sample so as to permit an analysis to be made on behalf of the person from whom the samples were taken.

Testing blood sample for drugs

**106.** A blood sample may be tested for the presence of drugs.

**DIVISION III  
APPLICATION TO RELEASE BLOOD SAMPLES**

Applicant and notice

**107.** A person from whom blood samples are taken may, on reasonable notice to the prosecutor, apply for an order to release one part of each sample for the purpose of analysis or testing.

Time and manner of making application

**108.** The application shall be made in writing to a justice within three months after the day on which the blood samples were taken.

Contents of application

**109.** (1) The application shall disclose  
(a) the applicant's name;  
(b) the date and place the application is made;  
(c) the crime under investigation or charged;  
(d) the date the blood samples were taken; and  
(e) the nature of the order requested.

Affidavit in support

(2) The application shall be supported by an affidavit.

Service of notice

**110.** A notice setting out the time, date and place the application is to be heard shall be served, together with the application and the supporting affidavit, on the prosecutor.

Hearing evidence

**111.** A justice to whom an application is made may receive evidence, including evidence by affidavit.

Service of affidavit

**112.** (1) Where an affidavit is to be tendered as evidence, the affidavit shall be served, within a reasonable time before the application is to be heard, on the prosecutor.

Questioning deponent

(2) Where affidavit evidence is received, the deponent may be questioned on the affidavit.

Evidence on oath

**113.** The evidence of any person shall be on oath.

Recording evidence	<b>114.</b> (1) Any oral evidence heard by the justice shall be recorded verbatim, either in writing or by electronic means.
Identification of record	(2) The record of oral evidence shall be identified as to time, date and contents.
Certification of transcript	(3) Any transcription of the record of oral evidence shall be certified as to time, date and accuracy.
Order to release samples	<b>115.</b> The justice shall, on application, order the release of one part of each sample, subject to any conditions that the justice considers necessary to ensure its preservation for use in any proceeding.
Form of order	<b>116.</b> The order shall be in writing, in the prescribed form and signed by the justice who issues it.
Contents of order	<b>117.</b> The order shall disclose <ul style="list-style-type: none"> <li>(a) the applicant's name;</li> <li>(b) the crime under investigation or charged;</li> <li>(c) the date the blood samples were taken;</li> <li>(d) any conditions imposed by the justice;</li> <li>(e) the date and place of issuance; and</li> <li>(f) the name and jurisdiction of the justice.</li> </ul>
Filing application, evidence, order	<b>118.</b> The justice shall, as soon as practicable after the hearing, have the following filed with the clerk of the court for the judicial district in which the application was made: <ul style="list-style-type: none"> <li>(a) the notice of the application;</li> <li>(b) the application;</li> <li>(c) the record of any oral evidence heard by the justice or its transcription;</li> <li>(d) any other evidence received by the justice; and</li> <li>(e) the original of the order.</li> </ul>

**DIVISION IV  
EXEMPTION FROM CRIMINAL LIABILITY**

Refusal to take blood sample	<b>119.</b> No medical practitioner or technician is guilty of a crime because of a failure or refusal to take a blood sample from a
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person and no medical practitioner is guilty of a crime because of the practitioner's failure or refusal to have a blood sample taken from a person by a technician acting under the practitioner's direction.

*[Alternative — A minority of the Commission would propose an alternative draft of Chapter V.*

*As in the majority draft, subsections 102(1) to 104(1) would apply to blood samples taken pursuant to a warrant or pursuant to a request made by a peace officer under paragraph 86(1)(a) or a request made by a detained person in the circumstances described in subsection 89(2). Section 119 would also be of general application.*

*Subsection 104(2) to section 118 would be made applicable only to blood samples taken pursuant to a warrant or pursuant to a request made by a peace officer.*

*The following provisions would be added and made applicable to blood samples taken pursuant to a request made by a detained person in the circumstances described in subsection 89(2):*

*Providing  
sample to person*

*119.1 (1) One part of each blood sample shall be given to the person from whom the samples were taken.*

*Results  
confidential and  
privileged*

*(2) The results of any analysis or test carried out with respect to that part of a blood sample are confidential and privileged with respect to the person from whom the samples were taken.*

*Notice of  
intention to  
tender results*

*(3) If the person intends to tender the results in evidence in any proceeding, reasonable notice shall be given to the prosecutor of that intention.*

*Custody and  
safeguarding of  
samples*

*119.2 (1) The peace officer investigating the crime in relation to which the blood samples were taken shall have custody of the other part of each blood sample, and shall take steps to ensure its preservation and safeguarding.*

*Analysis and  
testing on behalf  
of peace officer*

*(2) The peace officer may have that part of each blood sample analyzed by an analyst for the purpose of determining the concentration of alcohol in the blood and tested for the presence of drugs.*

*Disclosure of  
results*

*(3) The results of the analysis or test shall not be disclosed by the analyst or individual who carried out the test unless the person from whom the samples were taken has given notice under subsection 119.1(3).*

*Inadmissibility of  
evidence*

*119.3 If a person from whom blood samples were taken has not given notice under subsection 119.1(3), the fact that blood samples were taken and the results of any analysis or test carried*

*out with respect to them are not admissible in evidence in any proceeding, and the fact that blood samples were taken shall not be the subject of comment by anyone in the proceeding.]*

## CHAPTER VI EVIDENTIARY RULES

### DIVISION I ABSENCE OF ORIGINAL OF WARRANT

Original warrant  
absent

**120.** In any proceeding in which it is material for a court to be satisfied that the taking of a blood sample was authorized by a warrant issued on application made by telephone or other means of telecommunication, the absence of the original warrant is, in the absence of evidence to the contrary, proof that the taking of the blood sample was not authorized by a warrant.

### DIVISION II RESULTS OF ANALYSES

Presumption  
relating to breath  
sample results

**121.** (1) In any proceeding in respect of a crime committed under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC), where samples of a person's breath have been taken and analyzed in accordance with the conditions set out in subsection (2),

(a) if the results of the analyses are the same, the concentration of alcohol in the person's blood at the time the crime was alleged to have been committed shall be presumed, in the absence of evidence to the contrary, to be the concentration determined by the analyses; and

(b) if the results of the analyses are different, the concentration of alcohol in the person's blood at the time the crime was alleged to have been committed shall be presumed, in the absence of evidence to the contrary, to be the lowest of the concentrations determined by the analyses.

Conditions for  
presumption to  
apply

(2) The conditions for the purposes of subsection (1) are as follows:

(a) at least two samples of the person's breath were taken;

(b) the samples were taken pursuant to a request made by a peace officer under section 84 or paragraph 85(1)(a);

- (c) the samples were taken as soon as practicable after the crime was alleged to have been committed;
- (d) the first sample was taken not more than two hours after the crime was alleged to have been committed;
- (e) an interval of at least fifteen minutes passed between the taking of the samples;
- (f) each sample was received from the person directly into a container or into a breath analysis instrument operated by a technician; and
- (g) an analysis of each sample was made with a breath analysis instrument operated by a technician.

Presumption inoperative

(3) Subsection (1) does not apply if a peace officer failed to tell the person who provided the breath samples the results of the breath analyses in accordance with subsection 89(1) or failed to arrange for the taking of samples of the person's blood in accordance with subsection 89(2).

Presumption relating to blood sample results

**122.** (1) In any proceeding in respect of a crime committed under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC), where samples of a person's blood have been taken and analyzed in accordance with the conditions set out in subsection (2),

- (a) if the results of the analyses are the same, the concentration of alcohol in the person's blood at the time the crime was alleged to have been committed shall be presumed, in the absence of evidence to the contrary, to be the concentration determined by the analyses; and
- (b) if the results of the analyses are different, the concentration of alcohol in the person's blood at the time the crime was alleged to have been committed shall be presumed, in the absence of evidence to the contrary, to be the lower of the concentrations determined by the analyses.

Conditions for presumption to apply

(2) The conditions for the purposes of subsection (1) are as follows:

- (a) the blood samples were taken pursuant to a warrant or a request made by a peace officer under paragraph 86(1)(a);
- (b) two samples of the person's blood were taken;
- (c) the samples were taken as soon as practicable after the crime was alleged to have been committed;
- (d) the first sample was taken not more than two hours after the crime was alleged to have been committed;

- (e) an interval of at least fifteen minutes passed between the taking of the samples;
- (f) each sample was taken by a medical practitioner or a technician acting under the direction of a medical practitioner;
- (g) at the time each sample was taken, the individual taking the sample divided it into two parts;
- (h) both parts of each sample were received from the person directly into, or placed directly into, containers that were subsequently sealed;
- (i) one part of each sample was retained to permit an analysis to be made by or on behalf of the person;
- (j) an analyst made an analysis of one part of each sample that was contained in a sealed container; and
- (k) if an order to release one part of each sample has been made pursuant to section 115, that order has been complied with.

### DIVISION III CERTIFICATE EVIDENCE

Proof of facts  
alleged in  
certificate

**123.** In any proceeding in respect of a crime committed under section 58 (operation of vehicle while impaired) of the proposed Criminal Code (LRC), each of the following certificates is evidence of the facts alleged in the certificate without proof of the signature or the official character of the individual appearing to have signed the certificate:

- (a) a certificate of an analyst stating that the analyst has made an analysis of a sample of an alcohol standard that is identified in the certificate and intended for use with a breath analysis instrument and that the sample of the standard so analyzed is suitable for use with a breath analysis instrument;
- (b) where samples of a person's breath have been taken pursuant to a request made by a peace officer under section 84 or paragraph 85(1)(a), a certificate of a technician stating
  - (i) that the analysis of each of the samples has been made with a breath analysis instrument operated by the technician and ascertained by the technician to be in proper working order by means of an alcohol standard, identified in the certificate, that is suitable for use with a breath analysis instrument,
  - (ii) the results of the analyses so made, and
  - (iii) if the technician took the samples,
    - (A) the time and place each sample was taken, and

- (B) that each sample was received from the person directly into a container or into a breath analysis instrument operated by the technician;
- (c) a certificate of an analyst stating that the analyst has made an analysis of one part of each sample of a person's blood that was contained in a sealed container identified in the certificate, the date and place it was analyzed and the result of the analysis;
- (d) where samples of a person's blood have been taken pursuant to a warrant or a request made by a peace officer under paragraph 86(1)(a) or a request made by the person under subsection 89(2), a certificate of a medical practitioner or a technician, stating
- (i) that the medical practitioner or technician took the samples,
  - (ii) the time and place each sample was taken,
  - (iii) that, at the time the samples were taken, the medical practitioner or technician divided each sample into two parts, and
  - (iv) that both parts of each sample were received from the person directly into, or placed directly into, containers that were subsequently sealed and that are identified in the certificate;
- (e) where samples of a person's blood have been taken by a technician pursuant to a warrant or a request made by a peace officer under paragraph 86(1)(a) or a request made by the person under subsection 89(2), a certificate of a medical practitioner stating that the technician was acting under the practitioner's direction;
- (f) where samples of a person's blood have been taken pursuant to a warrant or a request made by a peace officer under paragraph 86(1)(a) or a request made by the person under subsection 89(2), a certificate of a medical practitioner stating that before each sample was taken the practitioner was of the opinion that taking the blood sample would not endanger the person's life or health; and
- (g) where samples of a person's blood have been taken pursuant to a warrant, a certificate of a medical practitioner stating that before each sample was taken the practitioner was of the opinion that the person was unable to consent to the taking of the blood sample because of a physical or mental condition resulting from the consumption of alcohol, the accident with respect to which the warrant was issued or an occurrence related to or resulting from the accident.

Notice of  
intention to  
tender certificate

**124.** (1) No certificate is admissible in evidence in a proceeding unless the party intending to tender it has, before the proceeding, given to the other party reasonable notice of that intention and a copy of the certificate.

Leave to  
cross-examine on  
certificate

(2) A party against whom a certificate is tendered may, with leave of the court, require the attendance of the medical practitioner, analyst or technician for the purpose of cross-examination.

**PART FIVE**  
**ELECTRONIC SURVEILLANCE**

**CHAPTER I**  
**INTERPRETATION**

Definitions

“federally designated”  
(*désigné par les autorités fédérales*)

“general interception clause” (*clause d’interception d’application générale*)

“intercept”  
(*intercepter et interception*)

“private communication”  
(*communication privée*)

“provincial minister”  
(*ministre provincial*)

“provincially designated”  
(*désigné par les autorités provinciales*)

“solicitor”  
(*avocat*)

“surveillance device”  
(*dispositif de surveillance*)

**125.** In this Part,

“federally designated” means designated by the Solicitor General of Canada for the purpose of applying for warrants under this Part or intercepting private communications under a warrant;

“general interception clause” means a clause in a warrant authorizing the interception of private communications of persons who are not individually identified or authorizing the interception of private communications at unknown places;

“intercept”, in relation to a private communication, means listen to, record or acquire the contents, substance or meaning of the communication;

“private communication” means any oral communication or any telecommunication made under circumstances in which it is reasonable for a party to it to expect that it will not be intercepted by a person other than a party to the communication, even if any party to it suspects that it is being intercepted by such a person;

“provincial minister” means, in the Province of Quebec, the Minister of Public Security and, in any other province, the Solicitor General of the province or, if there is no Solicitor General, the Attorney General of the province;

“provincially designated” means designated by a provincial minister for the purpose of applying for warrants under this Part or intercepting private communications under a warrant;

“solicitor” means, in the Province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor;

“surveillance device” means any device capable of being used to intercept a private communication.

**CHAPTER II  
INTERCEPTING PRIVATE COMMUNICATIONS  
WITHOUT A WARRANT**

Interception with  
consent

**126.** A peace officer or agent of a peace officer may, by means of a surveillance device, intercept a private communication without a warrant if all the parties to the communication consent to the interception.

Interception to  
protect life or  
safety

**127.** A peace officer may, without a warrant, use a surveillance device to listen to but not record a private communication to which a peace officer or agent of a peace officer is a party if it is reasonable to believe that the life or safety of the officer or agent may be in danger.

**CHAPTER III  
WARRANT TO INTERCEPT PRIVATE  
COMMUNICATIONS**

**DIVISION I  
GENERAL RULE FOR WARRANTS**

*1. Application for Warrant*

Federal applicant

**128.** (1) A federally designated agent designated in writing personally may apply for a warrant to intercept, by means of a surveillance device, a private communication if the crime under investigation is one in respect of which proceedings may be instituted at the instance of the Government of Canada and conducted by or on behalf of the Attorney General of Canada.

Provincial  
applicant

(2) A provincially designated agent designated in writing personally may apply in the province of designation for a warrant to intercept, by means of a surveillance device, a private communication if the private communication is to be intercepted in that province and the crime under investigation is one in respect of which proceedings may be instituted at the instance of the government of a province and conducted by or on behalf of the Attorney General of a province.



Manner of making application	<b>129.</b> (1) An application for a warrant shall be made unilaterally, in person and in private, orally or in writing.
Form of written application	(2) An application in writing shall be in the prescribed form.
Place of application	<b>130.</b> An application for a warrant shall be made to a judge of the province in which the private communication is to be intercepted.
Presentation of application	<b>131.</b> (1) The application shall be presented by the applicant, and its contents shall be sworn by a peace officer.
Contents of application	<p>(2) The application shall disclose</p> <p>(a) the applicant's name;</p> <p>(b) the date and place the application is made;</p> <p>(c) the crime under investigation, and the facts and circumstances of that crime and their seriousness;</p> <p>(d) the type of private communication to be intercepted;</p> <p>(e) a general description of the means of interception to be used;</p> <p>(f) the names of all persons whose private communications are to be intercepted or, if the names cannot be ascertained, a description or other means of identifying those persons individually or, if that is not possible, the class of those unidentified persons;</p> <p>(g) the places, if known, at which the interception would occur;</p> <p>(h) whether any privileged communications are likely to be intercepted;</p> <p>(i) the grounds for believing that the interception may assist in the investigation of the crime;</p> <p>(j) the period for which the warrant is requested;</p> <p>(k) any other investigative method that has been tried without success or, if no other method has been tried, the reasons why no other method is likely to succeed or why the urgency is such that no other method is practicable;</p> <p>(l) a list of any previous applications for a warrant in respect of the same crime and the same persons or class of persons indicating the date each application was made, the name of the judge who heard each application and whether each application was withdrawn, refused or granted;</p>

(*m*) if the applicant requests authority to make a surreptitious entry to install, service or remove a surveillance device,

(i) why the entry is required and why other less intrusive means of installation, service or removal are unlikely to be effective, and

(ii) the place where the entry would be made; and

(*n*) if the applicant requests an assistance order referred to in section 139, the nature of the assistance required.

Procedure on hearing application

**132.** Sections 10 and 11 apply to an application for a warrant under this Division.

## *2. Issuance of Warrant*

Grounds for issuing warrant

**133.** (1) A judge may, on application, issue a warrant authorizing the interception of a private communication by means of a surveillance device if the judge is satisfied that

(*a*) there are reasonable grounds to believe that

(i) a crime punishable by more than two years' imprisonment, or a conspiracy to commit, an attempt to commit, a furthering of or an attempted furthering of such a crime, has been or is being committed, and

(ii) the interception of the private communication will assist in the investigation of the crime:

(*b*) other investigative methods have been tried without success, no other method is likely to succeed or the urgency is such that no other method is practicable; and

(*c*) it would be in the best interests of the administration of justice, having regard to the seriousness of the facts and circumstances of the crime under investigation.

Undercover investigation

(2) The judge shall not refuse to issue a warrant on the basis that a peace officer or an agent of a peace officer will be a party to the communication.

Office of solicitor

**134.** A judge shall not issue a warrant to intercept a private communication at the office of a solicitor or any place ordinarily used by a solicitor for the purpose of consulting with clients, unless the judge is satisfied, in addition, that there are reasonable grounds to believe that the solicitor or any of the solicitor's partners, associates or employees

(*a*) is or is about to become a participant in the crime under investigation; or

(b) is the victim of the crime under investigation and has requested that the interception be made.

Home of solicitor

**135.** A judge shall not issue a warrant to intercept a private communication at the home of a solicitor, unless the judge is satisfied, in addition, that there are reasonable grounds to believe that the solicitor or any member of the solicitor's household

(a) is or is about to become a participant in the crime under investigation; or

(b) is the victim of the crime under investigation and has requested that the interception be made.

Unknown places

**136.** A judge shall not issue a warrant to intercept private communications at unknown places, unless the person whose private communications are to be intercepted is individually identified in the warrant.

Unidentified persons

**137.** A judge shall not issue a warrant to intercept private communications of persons who are not individually identified, unless the places at which the interception is to occur are identified in the warrant.

Authority to make surreptitious entry

**138.** At the request of the applicant, the judge may, by the warrant, grant authority to enter any place surreptitiously to install, service or remove a surveillance device, if the judge is satisfied there are reasonable grounds to believe that less intrusive means of installation, service or removal are unlikely to be effective.

Assistance order

**139.** (1) When issuing a warrant, the judge may, at the request of the applicant, make an order directing any person engaged in providing a communication or telecommunication service, or the owner of or any person engaged in managing or taking care of the place in which a surveillance device is to be installed, to give such assistance as the judge may specify in the order.

Compensation

(2) The order may provide that reasonable compensation be paid for the assistance.

Form of order

(3) The order shall be in writing, in the prescribed form and signed by the judge who issues it.

Contents of order

(4) The order shall be directed to a named person or organization and shall disclose

- (a) the applicant's name;
- (b) the nature of the assistance to be given;
- (c) the date and place of issuance; and
- (d) the name and jurisdiction of the judge.

Warning in order

(5) The order shall contain a warning that failure to obey the order is a crime under paragraph 121(b) of the proposed Criminal Code (LRC) (disobeying a court order).

Imposition of conditions to minimize intrusion

**140.** A judge who issues a warrant may include in it any of the following conditions:

- (a) that the interception be monitored by a person at all times;
- (b) that, so far as is reasonably practicable, only the communications of persons individually identified or encompassed by a general interception clause in the warrant be intercepted;
- (c) where private communications at a telephone available to the public will be intercepted, that the interception be monitored by a person at all times and that, where practicable, the telephone be observed at all times;
- (d) that reasonable steps be taken not to intercept communications between persons in such privileged or confidential relationships as may be specified by the judge;
- (e) that the interception stop when the objective of the investigation, as disclosed in the application for the warrant, is attained;
- (f) where private communications on a party line will be intercepted, that the interception be monitored by a person at all times;
- (g) where authority is given to enter a place surreptitiously, that the entry be made or not be made by certain means;
- (h) that periodic reports be made to the judge identifying any person who is not individually identified in the warrant but whose private communications are being intercepted;
- (i) that periodic reports be made to the judge identifying any place that is not identified in the warrant but where interceptions are occurring;
- (j) that any application for a renewal of the warrant, for an amendment to the warrant or for a separate warrant in respect of the same investigation be made to the same judge who issued the original warrant; and
- (k) any other conditions that the judge considers advisable to minimize interceptions that would not assist in the investigation of the crime.

Form of warrant                    **141.** A warrant shall be in writing, in the prescribed form and signed by the judge who issues it.

Contents of warrant                **142.** The warrant shall disclose

- (a) the applicant's name;
- (b) the crime under investigation;
- (c) the type of private communication that may be intercepted;
- (d) a general description of the means of interception that may be used;
- (e) as precisely as possible, the persons or class of persons whose private communications may be intercepted;
- (f) the places, if known, at which the interception may occur;
- (g) if authority to make a surreptitious entry is being granted, the place that may be entered;
- (h) any conditions imposed by the judge;
- (i) the date the warrant expires;
- (j) the date and place of issuance; and
- (k) the name and jurisdiction of the judge.

Expiration period                    **143.** The judge shall set out in the warrant an expiry date not more than sixty days after the date of issue.

### ***3. Renewal of Warrant***

Applicant                                **144.** An application to renew a warrant may be made by the designated agent who applied for the warrant or any other agent of the same designation.

Manner of making application        **145.** (1) The application shall be made unilaterally, in person and in private, orally or in writing.

Form of written application            (2) An application in writing shall be in the prescribed form.

Time and place of application        **146.** An application to renew a warrant shall be made before the warrant expires, and shall be made to a judge of the province in which the warrant was issued.

Presentation of application         **147.** (1) The application shall be presented by the applicant, and its contents shall be sworn by a peace officer.

Contents of application

- (2) The application shall disclose
- (a) the applicant's name;
  - (b) the date and place the application is made;
  - (c) the crime under investigation;
  - (d) the reasons for requesting a renewal of the warrant;
  - (e) full particulars, including dates and times, of any interception made or attempted under the warrant;
  - (f) any information that was obtained by interception under the warrant;
  - (g) a list of any previous applications to renew the warrant, including the date each application was made, the name of the judge who heard each application and whether each application was withdrawn, refused or granted;
  - (h) whether the warrant being renewed contains a general interception clause;
  - (i) whether an application to amend the warrant is being brought, together with the application for a renewal, to add new persons whose private communications may be intercepted or new places at which interceptions may occur;
  - (j) the period for which the renewal is requested; and
  - (k) if the applicant requests that the warrant be renewed for a period exceeding thirty days, the grounds for believing that the longer period is necessary.

Procedure on hearing application

**148.** Sections 10 and 11 apply to an application to renew a warrant.

Grounds for renewal

**149.** A judge who, on application, is satisfied that the grounds on which a warrant was issued still exist may renew the warrant by endorsing it, signing the endorsement and indicating the date and place of renewal.

Restriction on renewal of warrant containing general interception clause

**150.** A warrant that contains a general interception clause may not be renewed unless the warrant is amended, in accordance with the amendment procedure, to specify the identities of persons or locations of places previously encompassed by the clause but since ascertained.

Expiration period

**151.** (1) A warrant expires thirty days after the date of renewal.

Extending  
expiration period

(2) A judge who is satisfied that the investigation will probably take more than thirty days to complete and that it would be impracticable for the applicant to apply for a further renewal may renew the warrant for a period of more than thirty days but not more than sixty days after the date of renewal.

#### ***4. Amendment of Warrant***

Applicant

**152.** An application to amend a warrant may be made by the designated agent who applied for the warrant or any other agent of the same designation.

Manner of  
making  
application

**153.** (1) The application shall be made unilaterally, in person and in private, orally or in writing.

Form of written  
application

(2) An application in writing shall be in the prescribed form.

Time and place  
of application

**154.** An application to amend a warrant shall be made before the warrant expires, and shall be made to a judge of the province in which the warrant was issued.

Presentation of  
application

**155.** (1) The application shall be presented by the applicant, and its contents shall be sworn by a peace officer.

Contents of  
application

(2) The application shall disclose

- (a) the applicant's name;
- (b) the date and place the application is made;
- (c) the crime under investigation;
- (d) the amendment being requested;
- (e) the reasons for requesting the amendment;
- (f) full particulars, including dates and times, of any interception made or attempted under the warrant;
- (g) any information that was obtained by interception under the warrant; and
- (h) a list of any previous applications to amend the warrant, including the date each application was made, the name of the judge who heard each application and whether each application was withdrawn, refused or granted.

Procedure on hearing application

**156.** Sections 10 and 11 apply to an application to amend a warrant.

Grounds for and nature of amendment

**157.** A judge may, on application, amend a warrant to provide for any of the following if the judge is satisfied that the amendment relates to the investigation of the same crime disclosed in the warrant:

- (a) a more accurate description of individually identified persons whose private communications may be intercepted under the warrant;
- (b) the identity of persons, previously encompassed by a general interception clause but since ascertained, whose private communications may be intercepted under the warrant;
- (c) the places, previously encompassed by a general interception clause but since ascertained, at which the interception may occur under the warrant;
- (d) the addition of new persons whose private communications may be intercepted or new places at which interceptions may occur, if the judge is satisfied, in addition, that the grounds for issuing a warrant to intercept private communications of such persons or at such places exist;
- (e) the deletion of persons whose private communications may be intercepted or places at which the interception may occur;
- (f) authority to enter a place surreptitiously to install, service or remove a surveillance device, if the judge is satisfied, in addition, that there are reasonable grounds to believe that less intrusive means of installation, service or removal are unlikely to be effective;
- (g) a change in the means of interception that may be used;
- (h) changes in the conditions of the warrant; and
- (i) any condition that a judge may include when issuing a warrant.

Making the amendment

**158.** A judge may amend a warrant by endorsing an amendment on it and signing the endorsement, or by signing an amendment and appending it to the warrant, and indicating the date and place of the amendment.

Assistance order

**159.** On an application to amend a warrant, a judge may, at the request of the applicant, make an assistance order pursuant to section 139.



**DIVISION II**  
**WARRANT UNDER URGENT CIRCUMSTANCES**

Grounds for  
urgent warrant

**160.** (1) A judge of the province in which a private communication is to be intercepted who is designated by the Chief Justice of the Criminal Court to hear applications for warrants in urgent circumstances may, on application, issue a warrant authorizing the interception, by means of a surveillance device, of the private communication if the judge is satisfied that the grounds for issuing a warrant exist and that there are reasonable grounds to believe that the warrant is urgently required and cannot with reasonable diligence be obtained under Division I.

Additional  
ground if  
application by  
telephone

(2) The judge may issue the warrant on an application made by telephone or other means of telecommunication if the judge is satisfied, in addition, that there are reasonable grounds to believe that it is impracticable for the applicant to appear in person.

Federal applicant

**161.** (1) A federally designated peace officer designated in writing may make the application if the crime under investigation is one in respect of which proceedings may be instituted at the instance of the Government of Canada and conducted by or on behalf of the Attorney General of Canada.

Provincial  
applicant

(2) A provincially designated peace officer designated in writing may make the application in the province of designation if the private communication is to be intercepted in that province and the crime under investigation is one in respect of which proceedings may be instituted at the instance of the government of a province and conducted by or on behalf of the Attorney General of a province.

Application in  
person or by  
telephone

**162.** (1) The application shall be made in person or, if it is impracticable for the applicant to appear in person, by telephone or other means of telecommunication.

Manner of  
making  
application

(2) The application shall be made orally, unilaterally, in private and on oath.

Additional  
contents of  
application

**163.** In addition to disclosing the information required to be disclosed in an application for a warrant under subsection 131(2), the application shall disclose

(a) the time the application is made;

(b) the grounds for believing that the warrant is urgently required and cannot with reasonable diligence be obtained under Division I; and

(c) in the case of an application made by telephone or other means of telecommunication, the circumstances that make it impracticable for the applicant to appear in person.

Application of general rules for warrants

**164.** Sections 10 to 12 apply to an application for a warrant under this Division and sections 134 to 142 apply to the issuance of a warrant.

Expiration period

**165.** (1) The judge shall set out in the warrant an expiry date and time not more than thirty-six hours after the time of issue.

Renewal or amendment of warrant

(2) The warrant may not be renewed or amended.

#### **CHAPTER IV CONFIDENTIALITY OF MATERIALS AND OBSCURING INFORMATION**

Confidential documents

**166.** The following material is confidential:

(a) a warrant;

(b) an order extending the time for giving notice of an interception or a surreptitious entry;

(c) an application to issue, renew or amend the warrant or to make the order extending time, or the record of the application and its transcription;

(d) any evidence received by a judge when hearing the application, and the record of any oral evidence received and its transcription;

(e) an assistance order made pursuant to section 139; and

(f) an order to obscure information.

Order to obscure information

**167.** (1) A judge may, on the request of an applicant at the time an application to issue, renew or amend a warrant or to make an order extending the time for giving notice of an interception or a surreptitious entry is made, obscure or order obscured any information contained in confidential material.

Grounds for obscuring information	<p>(2) The judge may obscure the information or order it obscured if the judge is satisfied that the information, if revealed, would</p> <ul style="list-style-type: none"> <li>(a) pose a risk to anyone's safety;</li> <li>(b) frustrate an ongoing police investigation;</li> <li>(c) reveal particular intelligence gathering techniques that ought to remain secret; or</li> <li>(d) cause substantial prejudice to the interests of innocent persons.</li> </ul>
Form and contents of order	<p><b>168.</b> An order to obscure information shall be in writing, in the prescribed form and signed by the judge who issues it, and shall disclose</p> <ul style="list-style-type: none"> <li>(a) the applicant's name;</li> <li>(b) the information to be obscured;</li> <li>(c) the date and place of issuance; and</li> <li>(d) the name and jurisdiction of the judge.</li> </ul>
Copy of material	<p><b>169.</b> (1) Where information is to be obscured, a copy shall be made of the material that contains the information.</p>
Obscuring information on copy	<p>(2) The information shall be obscured on the copy, leaving the information on the original material unobscured.</p>
Sealed packet	<p><b>170.</b> (1) Immediately after determining an application to issue, renew or amend a warrant or to make an order extending the time for giving notice of an interception or surreptitious entry, the judge shall seal in a packet</p> <ul style="list-style-type: none"> <li>(a) the original of all the confidential material; and</li> <li>(b) the copy of any material on which information has been obscured.</li> </ul>
Custody of packet	<p>(2) The sealed packet shall be kept in the custody of the court in a place, specified by the judge, to which the public has no access.</p>
Copy of packet	<p><b>171.</b> The applicant may keep a copy of all the materials contained in the sealed packet.</p>

Prohibition **172.** No one shall open or remove the contents of a sealed packet except as directed by a judge.

Examining contents on hearing other applications **173.** A judge may have the sealed packet opened and may examine the contents in dealing with any application if the judge considers it necessary to do so in order to determine the application.

Opening packet to prepare transcript **174.** A judge may direct that the sealed packet be opened and the contents removed to have a transcript prepared of any oral record contained in the packet.

## **CHAPTER V INTERCEPTING AND ENTERING**

Person who may intercept **175.** Where the interception of a private communication is authorized under a warrant, the communication may be intercepted by

- (a) a federally designated person, if the application for the warrant was made by a federally designated applicant;
- (b) a provincially designated person, if the application for the warrant was made by a provincially designated applicant; or
- (c) a person who is a party to the communication.

Repair and compensation for entry **176.** Where, as a result of an entry to install, service or remove a surveillance device, property is damaged, the government or agency whose servant or agent caused the damage shall take prompt and reasonable steps to repair it and, after notice of the entry is given, compensate the owner of the property for any unrepaired damage.

**CHAPTER VI  
NOTIFICATION OF INTERCEPTION  
AND SURREPTITIOUS ENTRY**

**DIVISION I  
GIVING NOTICE**

Written notice	<p><b>177.</b> The Solicitor General of Canada or the provincial minister on whose behalf an application for a warrant was made shall notify in writing</p> <p>(a) any person who was the object of an interception made pursuant to the warrant unless the person has already been given notice of an intention to tender evidence of the interception; and</p> <p>(b) any person whose place was entered surreptitiously pursuant to the warrant.</p>
Time of notice	<p><b>178.</b> The notice shall be given within ninety days after the warrant expires.</p>
Contents of notice of interception	<p><b>179.</b> (1) A notice of an interception shall disclose the date of the interception, and shall be accompanied by a copy of the warrant.</p>
Contents of notice of entry	<p>(2) A notice of a surreptitious entry shall disclose the place that was entered and the date of the entry, and shall be accompanied by a copy of the warrant.</p>
Service of notice	<p><b>180.</b> (1) Service of the notice shall be made and proof of its service shall be given in accordance with such regulations as the Governor in Council may make for the purpose.</p>
Inability to serve notice	<p>(2) Where the notice cannot be served, a peace officer with knowledge of the facts shall provide the court with an affidavit setting out the reason why the notice was not served and the efforts that were made to locate the person.</p>

**DIVISION II**  
**APPLICATION TO EXTEND TIME FOR NOTICE**

Power to extend  
time of notice

**181.** (1) A judge who, on application, is satisfied that  
(a) the investigation of the crime to which a warrant relates, or a subsequent investigation of another crime referred to in subparagraph 133(1)(a)(i) commenced as a result of the earlier investigation, is continuing, and  
(b) it would be in the best interests of the administration of justice

may order that the time for giving notice of an interception or surreptitious entry be extended.

Successive  
extensions

(2) A judge may grant more than one extension of time as long as the total extra time granted does not exceed three years.

Applicant

**182.** An application for extension may be made by the Solicitor General of Canada or the provincial minister who is required to give notice of the interception or surreptitious entry.

Manner of  
making  
application

**183.** (1) The application shall be made to a judge unilaterally, in person and in private, orally or in writing, before the ninety-day period or an extension of that period ends and shall be supported by an affidavit of a peace officer.

Contents of  
affidavit

(2) The affidavit shall disclose  
(a) the facts relied on to justify the granting of an extension; and  
(b) a list of any previous applications for extensions in respect of the same warrant indicating the date each previous application was made, the name of the judge who heard each application and whether each application was withdrawn, refused or granted.

**CHAPTER VII**  
**APPLICATION FOR DETAILS**  
**OF INTERCEPTION**

Applicant and  
notice

**184.** An accused who discovers that a private communication to which the accused was a party has been intercepted by means of a surveillance device may apply in writing to a judge on two clear

days' notice to the prosecutor for an order requiring the prosecutor to disclose details of the intercepted private communication.

Contents of application

- 185.** (1) The application shall disclose
- (a) the applicant's name;
  - (b) the date and place the application is made;
  - (c) the crime with which the applicant is charged;
  - (d) the nature of the order requested; and
  - (e) the reasons for requesting the order.

Affidavit in support

- (2) The application shall be supported by an affidavit.

Service of notice

**186.** A notice setting out the time, date and place the application is to be heard shall be served, together with the application and the supporting affidavit, on the prosecutor.

Hearing evidence

**187.** A judge to whom an application is made may receive evidence, including evidence by affidavit.

Service of affidavit

**188.** (1) Where an affidavit is to be tendered as evidence, the affidavit shall be served, within a reasonable time before the application is to be heard, on the prosecutor.

Questioning deponent

(2) Where affidavit evidence is received, the deponent may be questioned on the affidavit.

Evidence on oath

**189.** The evidence of any person shall be on oath.

Recording evidence

**190.** (1) Any oral evidence heard by the judge shall be recorded verbatim, either in writing or by electronic means.

Identification of record

(2) The record of oral evidence shall be identified as to time, date and contents.

Certification of transcript

(3) Any transcription of the record of oral evidence shall be certified as to time, date and accuracy.

Disclosure of further details

**191.** A judge who, on application, is satisfied that details of an intercepted private communication are relevant to the crime with which the applicant is charged and are necessary for the

applicant to make full answer and defence may order the prosecutor to disclose such details as can be ascertained by due diligence.

Form of order                   **192.** The order shall be in writing, in the prescribed form and signed by the judge who issues it.

Contents of order               **193.** The order shall disclose  
(a) the applicant's name;  
(b) the crime with which the applicant is charged;  
(c) the decision of the judge;  
(d) the date and place of issuance; and  
(e) the name and jurisdiction of the judge.

**CHAPTER VIII  
PROCEDURE FOR TENDERING EVIDENCE  
AND OBTAINING ADDITIONAL INFORMATION**

**DIVISION I  
NOTICE OF INTENT TO TENDER EVIDENCE**

Notice                           **194.** (1) A prosecutor who intends to tender evidence of a private communication that was intercepted by means of a surveillance device shall give the accused reasonable notice of that intention.

Accompanying documents       (2) The notice shall contain  
(a) a transcript of any private communication that will be tendered in the form of a recording, or a statement giving full particulars of any private communication that will be tendered by a witness;  
(b) the time, date and place of the private communication and the names of all parties to it, if known; and  
(c) if the private communication was intercepted pursuant to a warrant, a copy of the warrant and any material relating to an application to issue, renew or amend the warrant.



**DIVISION II  
APPLICATION FOR FURTHER PARTICULARS**

Applicant and  
notice

**195.** An accused who has received notice of the prosecutor's intention to tender evidence of an intercepted private communication may apply in writing to a judge on two clear days' notice to the prosecutor for further particulars of the private communication.

Order for further  
particulars

**196.** A judge who, on application, is satisfied that further particulars are necessary for the accused to make full answer and defence may order that further particulars be given.

Additional  
procedures

**197.** Sections 185 to 190, 192 and 193 apply to this application.

**DIVISION III  
APPLICATION TO REVEAL  
OBSCURED INFORMATION**

Applicant

**198.** An accused who has received notice of the prosecutor's intention to tender evidence of an intercepted private communication may apply in writing for an order to reveal information obscured in the material that accompanied the notice.

Manner of  
making  
application

**199.** The application shall be made in person to a judge on two clear days' notice to the prosecutor.

Hearing the  
application

**200.** On hearing the application, the judge shall examine the material contained in the sealed packet in the presence of the accused and the prosecutor without allowing the accused to examine it.

Order to reveal  
information

**201.** A judge who, on application, is satisfied that information that has been obscured in any material given to the accused relating to the warrant is necessary for the accused to make full answer and defence may order that the information be revealed to the accused.

Additional procedures

**202.** Sections 185 to 190, 192 and 193 apply to this application.

Appeal

**203.** The judge's decision may be appealed to a judge of the court of appeal.

## CHAPTER IX EVIDENTIARY RULES

Affidavit evidence

**204.** Evidence of the following matters may be tendered by affidavit:

- (a) the times when and the places at which a private communication was intercepted;
- (b) the means by which a private communication was intercepted;
- (c) the history of the custody of any recording of an intercepted private communication; and
- (d) service of a notice of intention to tender evidence.

Status of applicant

**205.** The recital in a warrant that a person is a designated agent or a designated peace officer is, in the absence of evidence to the contrary, proof of that fact.

Absence of original warrant

**206.** In any proceeding in which it is material for a court to be satisfied that an interception of a private communication was authorized by a warrant issued on application made by telephone or other means of telecommunication, the absence of the original warrant is, in the absence of evidence to the contrary, proof that the interception was not authorized by a warrant.

## CHAPTER X ANNUAL REPORT

Preparation of report

**207.** (1) The Solicitor General of Canada and each provincial minister shall, as soon as possible after the end of each year, prepare a report on the electronic surveillance activity conducted on each of their behalf during the year.

Laying before  
Parliament

(2) The Solicitor General of Canada shall have the report laid before Parliament without delay.

Publication

(3) Each provincial minister shall publish the report or otherwise make it available to the public without delay.

Contents of  
annual reports

**208.** The annual reports shall set out

(a) the number of applications for warrants, renewals and amendments, listed separately;

(b) the number of warrants, renewals and amendments that were issued, refused or issued with judicially-imposed conditions;

(c) the number of persons identified in warrants who were prosecuted by the Attorney General of Canada or of the province, as a result of interceptions made under warrants, for

(i) a crime specified in the warrant,

(ii) a crime referred to in subparagraph 133(1)(a)(i) that was not specified in the warrant, and

(iii) a crime other than a crime referred to in subparagraph 133(1)(a)(i);

(d) the number of persons not identified in warrants who, because of information obtained from intercepted private communications made under warrants, were prosecuted by the Attorney General of Canada or of the province for

(i) a crime specified in a warrant,

(ii) a crime referred to in subparagraph 133(1)(a)(i) that was not specified in a warrant, and

(iii) a crime other than a crime referred to in subparagraph 133(1)(a)(i);

(e) the average period for which warrants and renewals were issued;

(f) the number of warrants that, when renewed, were valid for periods of

(i) sixty to one hundred and nineteen days,

(ii) one hundred and twenty to one hundred and seventy-nine days,

(iii) one hundred and eighty to two hundred and thirty-nine days, and

(iv) two hundred and forty days or more;

(g) the crimes specified in warrants and the number of warrants, renewals and amendments issued for each crime;

(h) a description of all classes of places specified in warrants and the number of warrants issued for each class of place;

- (i)* a general description of the means of interception specified in warrants;
- (j)* the number of persons arrested because of information obtained from a private communication intercepted under a warrant;
- (k)* the number of notices of interception of private communications or of surreptitious entry given;
- (l)* the number of criminal proceedings, commenced by the Attorney General of Canada, or of the province, in which private communications intercepted under a warrant were tendered as evidence and the number of those proceedings where the accused was convicted;
- (m)* the number of investigations in which information obtained from a private communication intercepted under a warrant was used, although the private communication was not adduced in evidence in criminal proceedings;
- (n)* the number of prosecutions commenced against officers or servants of Her Majesty for crimes under section 66 (interception of private communications), 67 (entry to install instrument) or 68 (disclosure of private communications) of the proposed Criminal Code (LRC); and
- (o)* a general assessment of the importance of the interception of private communications for the investigation, prevention and prosecution of crimes in Canada or the province.

**PART SIX**  
**DISPOSITION OF SEIZED THINGS**

**CHAPTER I**  
**INTERPRETATION**

Application of  
Part

**209.** (1) This Part applies to anything seized under Part Two (*Search and Seizure*) as an object of seizure or seized under Part Three (*Obtaining Forensic Evidence*) as an object of seizure that was removed from inside a person's body.

Exception if  
privilege claimed

(2) If a claim of privilege is made in respect of the seized thing or information contained in it, the seized thing shall be dealt with in accordance with Part Seven (*Privilege in Relation to Seized Things*).

**CHAPTER II**  
**DUTIES OF PEACE OFFICER ON SEIZURE**

**DIVISION I**  
**INVENTORY OF SEIZED THINGS**

Preparation and  
offer of inventory

**210.** (1) A peace officer shall, at the time of seizure or as soon as practicable after the seizure,

(a) prepare and sign an inventory of any seized things that describes them with reasonable particularity; and

(b) offer to provide a copy of the inventory to any person who was in apparent possession of the seized things at the time of the seizure, and shall, at the person's request, provide a copy of the inventory.

Inventory for  
copied  
information

(2) If a copy of information contained in a seized thing is taken by a peace officer, the inventory shall indicate that fact.

Posting copy of  
inventory

(3) If no one was in apparent possession of the seized things, the peace officer may post a copy of the inventory where the seizure was made.

Copy to person with ownership or possessory interest

(4) A peace officer who seizes anything shall, where practicable, offer to provide a copy of the inventory to any other person who the officer believes has an ownership or a possessory interest in the seized thing and shall, at the person's request, provide a copy of the inventory.

## DIVISION II RETURN OF SEIZED THINGS BY PEACE OFFICER

Return to person lawfully entitled to possession

**211.** (1) A peace officer may, before a post-seizure report is given to a justice, return a seized thing to the person who is believed to be lawfully entitled to possession if, to the knowledge of the peace officer, there is no dispute as to possession and the thing is no longer required for investigation or use in any proceeding.

Receipt

(2) The officer shall get a receipt for anything returned.

## DIVISION III POST-SEIZURE REPORT

Preparation of report

**212.** (1) A peace officer shall prepare a post-seizure report for anything that was seized and not returned.

Contents of report

(2) The post seizure report shall disclose

(a) the time and place of seizure;

(b) the name of the officer who made the seizure and the name of the police force or other organization that the officer acted for when making the seizure;

(c) the name of any person who was given a copy of the inventory;

(d) where anything not referred to in a search warrant was seized in the course of executing the warrant, or where anything was seized without a warrant, the reasons for seizing it;

(e) the names of any persons who, to the officer's knowledge, may have an ownership or a possessory interest in anything seized; and

(f) where the search was carried out pursuant to a warrant issued for more than one object of seizure, and not all of the objects of seizure were searched for, the reasons why a search was not carried out for each object of seizure.

Inventory and receipt to be attached

(3) The peace officer shall attach to the report the inventory of seized things and the receipt for anything that was returned.

Return of post-seizure report

**213.** (1) A post-seizure report shall be given, as soon as practicable after the seizure, to a justice in the judicial district in which the seizure was made.

Receipt and filing of post-seizure report

(2) The justice who receives the post-seizure report shall have it filed with the clerk of the court for the judicial district in which the seizure was made.

### **CHAPTER III CUSTODY AND DISPOSAL OF SEIZED THINGS**

#### **DIVISION I GENERAL PROVISIONS DEALING WITH ORDERS**

##### ***1. Making an Application***

Manner of making application

**214.** An application for an order shall be made in writing to a justice in the judicial district in which the post-seizure report was filed, the thing is in custody or a charge in relation to which the thing is being held was laid.

Contents of application

**215.** (1) An application shall disclose

- (a) the applicant's name;
- (b) the date and place the application is made;
- (c) the crime under investigation or charged;
- (d) a description of the seized thing that is the subject of the application;
- (e) the date the seizure was made;
- (f) the name of the custodian;
- (g) the nature of the order requested;
- (h) the reasons for requesting the order; and
- (i) any additional information required by this Part for the application.

Affidavit in support

(2) The application shall be supported by an affidavit.

Notice of application

**216.** A notice setting out the time, date and place the application is to be heard shall be served, together with the application and the supporting affidavit, on all parties to whom notice is required to be given.

Transferring file for hearing

**217.** If an application is brought in a judicial district other than the judicial district in which the post-seizure report is filed, the clerk of the court for the judicial district in which the post-seizure report is filed shall, on the written request of the applicant, have the post-seizure report and all accompanying material transferred to the clerk of the court for the judicial district in which the application is to be heard.

## ***2. The Hearing***

Power of justice

**218.** A justice to whom an application is made or who is authorized to make an order without an application being made may, in determining whether to make an order,

- (a) compel the attendance of, and question, the custodian;
- (b) examine a seized thing or require it to be produced for examination; and
- (c) receive evidence, including evidence by affidavit.

Service of affidavit evidence

**219.** (1) Where an affidavit is to be tendered as evidence, the affidavit shall be served, within a reasonable time before the application is to be heard, on all parties who received notice of the application.

Questioning deponent

(2) Where affidavit evidence is received, the deponent may be questioned on the affidavit.

Evidence on oath

**220.** The evidence of any person shall be on oath.

Recording evidence

**221.** (1) Any oral evidence heard by the justice shall be recorded verbatim, either in writing or by electronic means.

Identification of record

(2) The record of oral evidence shall be identified as to time, date and contents.

Certification of transcription

(3) Any transcription of the record of oral evidence shall be certified as to time, date and accuracy.



### 3. Issuance of Order

Form of order

**222.** An order shall be in writing, in the prescribed form and signed by the justice who issues it.

Contents of order

**223.** An order shall disclose

- (a) the applicant's name if the order is made on application;
- (b) the crime under investigation or charged;
- (c) a description of the seized thing that is the subject of the order;
- (d) the date the seizure was made;
- (e) the name of the custodian;
- (f) the decision of the justice and any conditions imposed;
- (g) the date and place of issuance;
- (h) the name and jurisdiction of the justice; and
- (i) any additional information required by this Part for the order.

### 4. Filing

Filing application, evidence, order

**224.** (1) The justice shall, as soon as practicable after the hearing, have the following filed with the clerk of the court for the judicial district in which the post-seizure report was filed:

- (a) the notice of the application;
- (b) the application;
- (c) the record of any oral evidence heard by the justice or its transcription;
- (d) any other evidence received by the justice; and
- (e) if an order is issued, the original of the order.

Return of material

(2) If the post-seizure report and any accompanying material were transferred for a hearing from the judicial district in which they were filed, the justice shall have them returned after the hearing.

### 5. Changing Place of Application

Order changing place of application

**225.** (1) Where an application is filed and notice given, the justice before whom the application is to be brought may, on separate application, order that the application be transferred to and heard, or that a new application be made, in another judicial

district if the justice is satisfied that it would be in the best interests of justice, having regard to the interest of the witnesses and the parties.

Different judicial districts

(2) The justice may order that the application be transferred to or that a new application be made in the judicial district in which the post-seizure report was filed, the thing is in custody or the charge in relation to which the thing is being held was laid.

Application for changing place of application

**226.** An application for change of place may be made by any person who received notice of the application for which a change of place is requested.

Notice

**227.** The application shall be made on three clear days' notice to

- (a) the person who made the application for which a change of place is requested; and
- (b) anyone else who received notice of that application.

Additional contents of application

**228.** In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose the reasons for believing that a change of place for the application would be in the best interests of justice, having regard to the interest of the witnesses and the parties.

Transferring file

**229.** A justice who orders that an application be transferred to or made in another judicial district shall have the file transferred to the clerk of the court for that judicial district.

## **DIVISION II PRESERVATION AND SAFEGUARDING**

Custodian

**230.** A peace officer who seizes anything and does not return it shall act as its custodian by taking steps to ensure its preservation and safeguarding.

Entrusting seized thing to another

**231.** The custodian may entrust a seized thing to any person, including a person from whom it was seized, on such reasonable conditions as are consistent with its preservation and safeguarding.

Order on application	<b>232.</b> A justice may, on application, make an order for the preservation and safeguarding of a seized thing, including an order substituting or adding custodians.
Applicant	<b>233.</b> An application may be made by a peace officer, the accused, the prosecutor or any person who claims an ownership or a possessory interest in a seized thing.
Notice by applicant	<b>234.</b> The applicant shall give three clear days' notice to any person who, to the knowledge of the applicant, may have an ownership or a possessory interest in the seized thing and to any other person named by the justice hearing the application.
Additional contents of application	<p><b>235.</b> In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose</p> <p>(a) whether the applicant is a peace officer, the accused, the prosecutor or a person who claims an ownership or a possessory interest in the seized thing; and</p> <p>(b) if the applicant is a person who claims an ownership or a possessory interest in the seized thing, the nature of that interest.</p>
Order without application	<b>236.</b> (1) A justice who receives a post-seizure report may, without an application being made, make an order for the preservation and safeguarding of a seized thing that is the subject of the report, including an order substituting or adding custodians.
Notice by justice	(2) A justice who is considering making the order without an application being made shall give three clear days' notice of a hearing to determine the issue to the prosecutor and to any person who, to the justice's knowledge, may have an ownership or a possessory interest in the seized thing.
Additional contents of order	<b>237.</b> In addition to disclosing the information required by paragraphs 223(a) to (h), the order shall disclose the name of any added or substituted custodian.

**DIVISION III  
TESTING OR EXAMINATION**

Release for analysis                    **238.** A peace officer may have a seized thing examined, tested or analyzed, and the custodian shall release it for that purpose.

Order for release                    **239.** A justice who, on application, is satisfied that it is necessary to do so to enable the accused to make full answer and defence may order that a seized thing be released for examination, testing or analysis, subject to any conditions that the justice considers necessary to preserve and safeguard it.

Application for release                    **240.** The application may be made by an accused on three clear days' notice to the prosecutor.

**DIVISION IV  
ACCESS TO SEIZED THINGS**

Asking for access                    **241.** (1) A person who has an interest in a seized thing may ask the custodian for permission to examine it at the place of custody.

Power of custodian                    (2) A custodian who believes  
(a) that the person has an interest in the seized thing, and  
(b) that giving permission would not frustrate an ongoing police investigation, pose a risk to anyone's safety, interfere with an ownership or a possessory interest in the seized thing or jeopardize its preservation and safeguarding  
may give permission, subject to any conditions that the custodian considers necessary to preserve and safeguard the seized thing.

Asking for copies                    **242.** (1) A person who has an interest in information contained in a seized thing that is capable of being reproduced may ask the custodian to provide copies of the information.

Power of custodian                    (2) A custodian who  
(a) believes that the person has an interest in the information,  
(b) believes that providing copies would not frustrate an ongoing police investigation, pose a risk to anyone's safety, interfere with an ownership or a possessory interest in the

seized thing or jeopardize its preservation and safeguarding, and

(c) is able to provide copies of the information may provide the copies on payment of a prescribed fee.

Order dealing with access

**243.** (1) A justice who, on application, is satisfied that a person should be given permission to examine a seized thing, or that a person should be provided with copies, may make an order requiring the custodian to permit the applicant to examine the seized thing or to provide copies of the information, subject to any conditions that the justice considers necessary to preserve and safeguard the seized thing.

Dispensing with fee

(2) A justice who, on application, is satisfied that the fee fixed for copies would result in financial hardship to the applicant or would be inequitable in the circumstances may make an order dispensing with the fee.

Application for access, copies, or dispensing with fee

**244.** An application may be made by any person who has been refused permission to examine a seized thing, who has been denied copies of information contained in a seized thing or who has been allowed copies but for whom payment of the fee would result in financial hardship or would be inequitable.

Notice

**245.** An application shall be made on three clear days' notice to the prosecutor.

Additional contents of application

**246.** In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose the nature of the applicant's interest in the seized thing.

## **DIVISION V RELEASE OR SALE OF PERISHABLE THINGS**

Order on application

**247.** A justice who is satisfied that a seized thing is perishable or likely to depreciate rapidly in value may, on application, order that it be

(a) released, with or without conditions, to its lawful possessor if there is no dispute as to the right to possession; or

(b) sold on such conditions as the justice directs if there is a dispute as to the right to possession.

Applicant	<b>248.</b> An application may be made by a peace officer, the accused, the prosecutor or any person who claims an ownership or a possessory interest in anything seized.
Notice by applicant	<b>249.</b> An applicant shall give one clear day's notice to any person who, to the knowledge of the applicant, may have an ownership or a possessory interest in the seized thing and to any other person named by the justice hearing the application.
Additional contents of application	<b>250.</b> In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose <ul style="list-style-type: none"> <li>(a) whether the applicant is a peace officer, the accused, the prosecutor or a person who claims an ownership or a possessory interest in the seized thing; and</li> <li>(b) if the applicant is a person who claims an ownership or a possessory interest in the seized thing, the nature of that interest.</li> </ul>
Order without application	<b>251.</b> (1) A justice who receives a post-seizure report and who is satisfied that a seized thing is perishable or likely to depreciate rapidly in value may, without an application being made, order that it be <ul style="list-style-type: none"> <li>(a) released, with or without conditions, to its lawful possessor if there is no dispute as to the right to possession; or</li> <li>(b) sold on such conditions as the justice directs if there is a dispute as to the right to possession.</li> </ul>
Notice by justice	(2) A justice who is considering making the order without an application being made shall give one clear day's notice of a hearing to determine the issue to the prosecutor and to any person who, to the justice's knowledge, may have an ownership or a possessory interest in the seized thing.
Proceeds of sale	<b>252.</b> Where a seized thing has been sold, the custodian shall deposit the proceeds of the sale in an interest-bearing account on such conditions as the justice directs.

**DIVISION VI  
REMOVING DANGEROUS THINGS**

Duty of peace officer

**253.** A peace officer who believes that a seized thing poses a serious danger to public health or safety shall, as soon as practicable, remove it or have it removed to a place of safety.

Order dealing with dangerous things

**254.** A justice who, on application, is satisfied that a seized thing poses a serious danger to public health or safety, may order that it be destroyed or otherwise disposed of, subject to any conditions that the justice considers necessary to eliminate or alleviate the danger.

Applicant and notice

**255.** An application may be made by a peace officer on reasonable notice to any person who the peace officer believes may have an interest in the seized thing and to any person named by the justice hearing the application.

Preparing report

**256.** (1) A report confirming that the order was carried out and explaining how the seized thing was destroyed or otherwise disposed of shall be prepared and given as soon as practicable to a justice in the judicial district in which the order was issued.

Filing report

(2) The justice shall have the report filed with the clerk of the court for the judicial district in which the post-seizure report was filed.

**DIVISION VII  
DESTROYING THINGS POSING IMMINENT  
AND SERIOUS DANGER**

Power of peace officer

**257.** A peace officer who believes on reasonable grounds that a seized thing poses an imminent and serious danger to public health or safety may destroy or otherwise dispose of it.

Notice and report

**258.** After the thing is destroyed or otherwise disposed of, the peace officer shall

(a) notify the person from whom the thing was seized and any other person who the peace officer believes has an ownership or a possessory interest in it; and

(b) prepare a report describing the seized thing and explaining why and how it was disposed of.

Return of report

**259.** (1) The report shall be given, as soon as practicable, to a justice in the judicial district in which the post-seizure report was filed.

Filing

(2) The report shall be filed with the post-seizure report.

### **DIVISION VIII RESTORATION ORDERS**

Restoration

**260.** A justice shall, on application, order that a seized thing or the proceeds of its sale be restored to the applicant if the justice is satisfied that

(a) there is no dispute as to the right to possession of the thing or the proceeds;

(b) possession by the applicant would be lawful;

(c) the thing or the proceeds are not subject by statute to forfeiture; and

(d) it is not necessary for the thing or the proceeds to be kept in custody for investigation or use in any proceeding.

Applicant

**261.** An application may be made by any person claiming an ownership or a possessory interest in the seized thing or in the proceeds of its sale.

Notice

**262.** The applicant shall give eight clear days' notice to the prosecutor, the accused, any person who, to the applicant's knowledge, may have an ownership or a possessory interest in the seized thing and any other person named by the justice.

Additional contents of application

**263.** In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose the nature of the applicant's interest in the seized thing.

Condition

**264.** A justice may, as a condition to making a restoration order, require the applicant to return the seized thing when required by the court, and may impose any other conditions that the



justice considers necessary to preserve and safeguard it for investigation or use in any proceeding.

Effect of  
restoration order

**265.** A restoration order does not affect an ownership or a possessory interest in a seized thing or in the proceeds of its sale.

#### **DIVISION IX REPRODUCTION OF SEIZED THINGS**

Photograph of  
seized thing

**266.** (1) A peace officer may have a photograph taken of a seized thing.

Admissibility of  
photograph

(2) The photograph, when accompanied by a certificate described in subsection 268(1), is admissible in evidence for the purpose of identifying the seized thing and has, in the absence of evidence to the contrary, the same probative force for the purpose of identification as the seized thing.

Copying  
information

**267.** (1) A peace officer may have a copy made of any information that is contained in a seized thing.

Admissibility of  
copy

(2) The copy of the information, when accompanied by a certificate described in subsection 268(1), is admissible in evidence and has, in the absence of evidence to the contrary, the same probative force as the information.

Certificate

**268.** (1) A certificate of a person stating that

- (a) the person made a copy or took a photograph under the authority of this Division,
- (b) the person is a peace officer or made the copy or took the photograph under the direction of a peace officer, and
- (c) the copy or photograph is a true copy or photograph

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate without proof of the signature of the person appearing to have signed the certificate.

Affidavit of  
peace officer

(2) An affidavit of a peace officer stating that

- (a) the peace officer has seized a thing and has had custody of it from the time of seizure until a copy was made of the information contained in it or a photograph was taken of it, and

(b) the thing or the information was not altered in any way before the copy was made or the photograph was taken

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in the affidavit without proof of the signature or official character of the person appearing to have signed it.

Power to require person to appear

(3) The court may require the person appearing to have signed a certificate or an affidavit to attend before it for examination or cross-examination about the statements contained in the certificate or the affidavit.

Notice of intention to produce photograph or copy

**269.** Unless the court orders otherwise, no copy, photograph, certificate or affidavit shall be received in evidence unless the prosecutor has, before the proceeding, given a copy of it, and reasonable notice of intention to produce it, to the accused.

## DIVISION X TERMINATION OF CUSTODY AND DISPOSITION

### *1. Period of Authorized Custody*

Period of custody

**270.** A seized thing or the proceeds of its sale may be held in custody for ninety days after seizure.

Extension of period of custody

**271.** The seized thing or the proceeds may be held for a longer period if

(a) within ninety days after seizure

(i) proceedings have begun in which the seized thing may be required as evidence or in which the thing or the proceeds are subject by statute to forfeiture, or

(ii) an application for extension of the period of custody has been made; or

(b) before an extended period of custody ends, proceedings have begun or another application for extension has been made.

Custody after end of proceedings

**272.** The seized thing or the proceeds may be held in custody for a period no longer than thirty days after the end of all proceedings in respect of which the thing or the proceeds were detained.

## ***2. Application for Extension of Custody***

Application by  
prosecutor

**273.** (1) A justice who, on application by the prosecutor, is satisfied that a seized thing or the proceeds of its sale are required to be kept in custody because of the complex nature of the investigation may order that the period of custody be extended for further periods not exceeding ninety days each.

Application by  
other person

(2) A justice who, on application by a person with an interest in a seized thing, is satisfied that the seized thing is required to be kept in custody to preserve it as evidence may order that the period of custody be extended for further periods not exceeding ninety days each.

Notice

**274.** The applicant shall give three clear days' notice to any person who, to the applicant's knowledge, may have an ownership or a possessory interest in the seized thing or the proceeds of its sale, to the prosecutor and to any other person named by the justice.

## ***3. Return of Seized Things***

Power of  
prosecutor to  
return seized  
things

**275.** The prosecutor may have a seized thing or the proceeds of its sale returned to the person who is believed to be lawfully entitled to possession if

(a) the period of authorized custody has expired or the seized thing or the proceeds are no longer needed;

(b) to the knowledge of the prosecutor, there is no dispute as to the right to possession; and

(c) the seized thing or the proceeds are not subject by statute to forfeiture.

Notice

**276.** A prosecutor who intends to have a seized thing or the proceeds of its sale returned shall notify the custodian in writing and shall file a copy of the notice with the clerk of the court for the judicial district in which the post-seizure report is filed.

Returning seized  
thing

**277.** The custodian shall return the seized thing or the proceeds of its sale as soon as practicable after receiving the notice.

#### 4. Disposition Order

Duty of  
prosecutor

**278.** If the prosecutor does not have a seized thing or the proceeds of its sale returned when the period of authorized custody has expired or the seized thing or the proceeds are no longer needed, the prosecutor shall apply as soon as practicable for an order to dispose of the seized thing or the proceeds.

Notice

**279.** The prosecutor shall give eight clear days' notice to the custodian, the accused, any person who, to the prosecutor's knowledge, may have an ownership or a possessory interest in the seized thing or the proceeds and to any other person named by the justice.

Additional  
contents of  
application

**280.** In addition to disclosing the information required by paragraphs 215(1)(a) to (h), the application shall disclose

- (a) whether the period of authorized custody has expired or the seized thing or the proceeds are no longer needed;
- (b) if the period of authorized custody has expired, the date on which it expired; and
- (c) whether the thing or the proceeds are subject by statute to forfeiture.

Power of justice

**281.** The justice shall order that the thing or the proceeds be

- (a) returned to the lawful possessor if there is no dispute as to the right to possession;
- (b) returned to the person from whom it was seized if possession by that person is lawful and if there is a dispute as to the right to possession but no civil proceedings in respect of any possessory interest in the thing or the proceeds have been commenced;
- (c) transferred to the custody of any court in which there are pending civil proceedings in respect of any possessory interest in the thing or the proceeds; or
- (d) forfeited to Her Majesty, to be disposed of as the Attorney General directs, if
  - (i) there is no person known or claiming to be the lawful owner or possessor,
  - (ii) possession by the person from whom it was seized is unlawful and if there is a dispute as to the right to possession but no civil proceedings in respect of any possessory interest in the thing or the proceeds have been commenced,
  - (iii) the thing or the proceeds are subject by statute to forfeiture, or

(iv) the lawful owner or possessor cannot be found.

Things of negligible value

**282.** If the seized thing is of negligible value, the justice may order that it be destroyed or otherwise disposed of.

## CHAPTER IV APPEALS

Right to appeal

**283.** Any person aggrieved by a decision under section 232 (preservation and safeguarding), subsection 236(1) (preservation and safeguarding), 243(1) (access, copies) or (2) (dispensing with fee), section 254 (dangerous things) or 260 (restoration) or paragraph 281(*d*) (forfeiture) respecting anything seized or the proceeds of its sale may appeal the decision to an appeal court within thirty days after the date of the decision.

Custody after order or pending appeal

**284.** A seized thing or the proceeds of its sale shall not be disposed of until 30 days after an order is made pursuant to a provision referred to in section 283 or pending an appeal of any such order unless all aggrieved persons waive their right of appeal in writing or unless the thing seized poses an imminent and serious danger to public health or safety.

**PART SEVEN**  
**PRIVILEGE IN RELATION**  
**TO SEIZED THINGS**

**CHAPTER I**  
**INTERPRETATION**

Application of  
Part

**285.** This Part applies to anything seized under Part Two (*Search and Seizure*) as an object of seizure where a claim of privilege is made in respect of the seized thing or information contained in it.

**CHAPTER II**  
**DUTIES OF PEACE OFFICER ON SEIZURE**

Inventory and  
post-seizure  
report

**286.** Sections 210 (inventory of seized things), 212 (preparation of post-seizure report) and 213 (return of post-seizure report) apply to the seizure of a thing that is the subject of a claim of privilege.

**CHAPTER III**  
**APPLICATION TO DETERMINE ISSUE**  
**OF PRIVILEGE**

**DIVISION I**  
**MAKING AN APPLICATION**

Applicant

**287.** A prosecutor or a person who claims to have a privilege in respect of a seized thing or information contained in it may apply to have the issue of whether a privilege exists determined.

Manner of  
making  
application

**288.** The application shall be made in writing within fourteen days after the date of seizure to a judge in the judicial district in which the post-seizure report was filed, the thing is in custody or a charge in relation to which the thing is being held was laid.

Contents of application

**289.** (1) The application shall disclose

- (a) the applicant's name;
- (b) the date and place the application is made;
- (c) the crime under investigation or charged;
- (d) a description of the seized thing that is the subject of the application;
- (e) the date the seizure was made;
- (f) the name of the custodian; and
- (g) the grounds in support of the application.

Affidavit in support

(2) The application shall be supported by an affidavit.

Notice by applicant

**290.** (1) Five clear days' notice of the application shall be given to the custodian and

- (a) to the prosecutor, if the applicant is the person who claims to have a privilege; or
- (b) to the person who claims to have a privilege, if the applicant is the prosecutor.

Contents and service of notice

(2) The notice shall set out the time, date and place the application is to be heard and shall be served together with the application and the supporting affidavit.

Production of package or information

**291.** (1) The custodian, on receiving notice of an application, shall produce the sealed package referred to in paragraph 53(2)(b) (claim of privilege during search) or the information contained in the seized thing on the date and at the time specified in the notice.

Request for directions

(2) Where it is impracticable to produce the sealed package or the information contained in the seized thing, the custodian shall request a judge in the judicial district in which the seizure was made to give directions as to the steps that should be taken to enable the thing or the information to be examined.

Application of certain provisions

**292.** Sections 217 (transferring file for hearing) and 225 to 229 (changing place of application) apply to an application made under this Division.

**DIVISION II  
HEARING THE APPLICATION**

Authority and  
duty of judge

**293.** A judge shall, on application, determine whether privilege exists in respect of a seized thing or information contained in it and shall hold a hearing in private for that purpose and determine the issue within thirty days after the date of seizure.

Powers at hearing

**294.** At the hearing the judge may

- (a) compel the attendance of, and question, the custodian;
- (b) receive evidence, including evidence by affidavit; and
- (c) if the judge considers it necessary to do so to determine whether privilege exists, examine the thing or the information or require it to be produced for examination.

Application of  
certain provisions

**295.** Sections 219 to 221 (evidence at hearing) and 224 (filing) apply to a hearing held under this Division.

Decision and  
reasons

**296.** The judge shall give reasons for the decision that contain sufficient information to indicate the basis of the decision without disclosing details of the thing or information in respect of which the privilege is claimed.

Order if  
privilege found  
to exist

**297.** (1) A judge who determines that a privilege exists shall order that

- (a) the thing be resealed and delivered by the custodian to the person from whom it was seized; or
- (b) control of the thing be delivered by the custodian to the person from whom it was seized, and, until delivery, such steps as the judge directs be taken to ensure that the thing or the information contained in it is not examined or interfered with.

Order if  
privilege not  
found

(2) A judge who determines that no privilege exists shall order the custodian to deliver the thing or control of the thing to the peace officer who seized it or to some other person named by the prosecutor, subject to any conditions that the judge considers necessary, and the thing shall be dealt with in accordance with Chapters III and IV of Part Six (*Disposition of Seized Things*).



Form of order	<b>298.</b> (1) The order shall be in writing, in the prescribed form and signed by the judge who issues it.
Contents of order	(2) The order shall disclose <ul style="list-style-type: none"> <li>(a) the applicant's name;</li> <li>(b) the crime under investigation or charged;</li> <li>(c) a description of the seized thing that is the subject of the order;</li> <li>(d) the date the seizure was made;</li> <li>(e) the name of the custodian;</li> <li>(f) the decision of the judge and any conditions imposed;</li> <li>(g) the date and place of issuance; and</li> <li>(h) the name and jurisdiction of the judge.</li> </ul>
Effect of determination of privilege	<b>299.</b> Where a seized thing or information contained in it is determined to be privileged, it remains privileged and inadmissible in evidence unless the person who has the privilege consents to its admission in evidence or the privilege is otherwise lost.

**DIVISION III  
DISPOSITION IF NO APPLICATION MADE**

Delivery to peace officer	<b>300.</b> (1) If the custodian of a seized thing that is the subject of a claim of privilege has not received notice of an application to determine whether a privilege exists within fourteen days after the date of seizure, the custodian shall deliver the thing or control of the thing to the peace officer who seized it.
Disposition of seized thing	(2) The seized thing shall be dealt with in accordance with Chapters III and IV of Part Six ( <i>Disposition of Seized Things</i> ).

**CHAPTER IV  
EXAMINING INFORMATION CLAIMED  
TO BE PRIVILEGED**

Applicant	<b>301.</b> A person who claims to have a privilege in respect of a seized thing or information contained in it may apply for an order permitting the applicant to examine the thing or the information and to make a copy of it.
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Manner of making application

**302.** The application shall be made in writing, unilaterally and in private to a judge in the judicial district in which the post-seizure report was filed, the thing is in custody or a charge in relation to which the thing is being held was laid.

Contents of application

**303.** (1) The application shall disclose

- (a) the applicant's name;
- (b) the date and place the application is made;
- (c) the crime under investigation or charged;
- (d) a description of the seized thing that is the subject of the application;
- (e) the date the seizure was made;
- (f) the name of the custodian;
- (g) the nature of the order requested; and
- (h) the reasons for requesting the order.

Affidavit in support

(2) The application shall be supported by an affidavit.

Transferring file

**304.** Section 217 (transferring file for hearing) applies to an application made under this Chapter.

Powers of judge

**305.** (1) In determining the issue, the judge may

- (a) compel the attendance of, and question, the custodian;
- (b) question the applicant;
- (c) receive evidence, including evidence by affidavit; and
- (d) if the judge considers it necessary, examine the thing or the information or require it to be produced for examination.

Questioning deponent

(2) Where affidavit evidence is received, the deponent may be questioned on the affidavit.

Application of certain sections

**306.** Sections 220 (evidence on oath), 221 (record of oral evidence) and 224 (filing) apply to a hearing held under this Chapter.

Authority of judge

**307.** A judge may, on application, make an order permitting the applicant, in the presence of the custodian or the judge, to examine the thing or the information and to make a copy of it, subject to such conditions as the judge considers necessary to

preserve and safeguard it, if the judge is satisfied as to the sufficiency of the applicant's reasons for seeking the order.

Imposing requirements

**308.** If the seized thing was in a sealed package, the judge shall, in the order, require that it be resealed without alteration or damage.

Form of order

**309.** The order shall be in writing, in the prescribed form and signed by the judge who issues it.

Contents of order

**310.** The order shall disclose

- (a) the applicant's name;
- (b) the crime under investigation or charged;
- (c) a description of the seized thing that is the subject of the order;
- (d) the date the seizure was made;
- (e) the name of the custodian;
- (f) the decision of the judge and any conditions imposed;
- (g) the date and place of issuance; and
- (h) the name and jurisdiction of the judge.

## **CHAPTER V APPEALS**

Right to appeal

**311.** Any person aggrieved by a decision under section 293 (issue of privilege) may appeal the decision to an appeal court within thirty days after the date of the decision.

Custody after decision or pending appeal

**312.** The seized thing shall remain with the custodian, without being interfered with or examined, for thirty days after a decision on the issue of privilege is made or pending an appeal of that decision, unless all aggrieved persons waive their right to appeal in writing.

## APPENDIX

### Special Contributors

#### Advisory Panel of Judges

The Hon. Madame Justice Claire Barrette-Joncas,  
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