

**Attorney General of Nova Scotia's Annual Report  
on the Use of Electronic Surveillance for the Year 2009**

**SECTION I INTRODUCTION****SECTION II OVERVIEW OF PART VI OF THE *CRIMINAL CODE*****SECTION III STATISTICS****SECTION I - INTRODUCTION**

The Attorney General of Nova Scotia is required under section 195 of the *Criminal Code* to prepare and publish an annual report on judicially authorized interceptions of private communications in connection with authorizations requested by agents designated by the Attorney General as well as interceptions granted for offences under provincial jurisdiction.

Section II of the report provides an overview of the key procedural requirements of Part VI of the *Criminal Code*.

Section III presents data provided by agents of the Attorney General of Nova Scotia who are designated pursuant to paragraph 185(1)(a) of the *Criminal Code* and information contained in the operational reports of police forces that requested that applications be made for authorized interception.

**SECTION II – OVERVIEW OF PART VI OF THE *CRIMINAL CODE***

The provisions of what is now Part VI of the *Criminal Code* came into force on July 1, 1974. The legislation protects the privacy of Canadians by making it an offence to intercept private communications except as provided for by law, while providing the police with the means to obtain judicial authorizations to conduct electronic surveillance to assist in criminal investigations.

The following are the key features of the requirements related to the application for and the granting of an authorization under section 185 and a warrant under section 487.01:

A police investigator must swear an affidavit deposing to the facts relied upon to justify the belief that an authorization or warrant should be given, and must provide reasonable and probable grounds to believe that electronic surveillance of certain persons may assist the investigation of the offence.

An agent designated by the Attorney General of Nova Scotia to make an application for an authorization to intercept private communications is responsible for ensuring that all matters relating to the application comply with the law. In addition, the agent must ensure that the offence, although provided for in law, is of a serious enough nature to warrant the application and that sufficient evidence does not already exist to prove the offence.

The judge, when considering the application, must be satisfied that granting the authorization would be in the best interests of the administration of justice and that other investigative procedures have been tried and failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures. The last two requirements do not apply to applications relating to criminal organization offences or, more recently, terrorism offences. The judge may also impose such terms and conditions regarding the implementation of the authorization as the judge considers appropriate.

The following are the key features of the procedural regime:

Only the Attorney General of Nova Scotia, or persons specially designated by the Attorney General of Nova Scotia, may make an application for an authorization. In practice, applications for authorizations are made by lawyers employed by or under contract with the Public Prosecution Service of Nova Scotia designated by the Attorney General of Nova Scotia, and peace officers who are specially designated by the Attorney General of Nova Scotia for the purpose of applying for emergency authorizations under section 188 of the *Criminal Code*.

An agent designated by the Attorney General of Nova Scotia can, on the basis of an affidavit sworn by a peace officer or public officer, apply for an audio or video surveillance authorization. A judge of a superior court of criminal jurisdiction or as defined in section 552 of the *Criminal Code* may grant an authorization if, among other things, the judge is satisfied that it conforms with the criteria specified in the *Criminal Code*.

Peace officers specially designated by the Attorney General of Nova Scotia may also apply directly to a judge for an audio or video authorization, if the urgency of the situation requires surveillance before a non-emergency audio or video authorization could be obtained with reasonable diligence. This emergency video or audio authorization may be granted for a period not exceeding thirty-six hours.

Applications may also be made for a renewal of an authorization. A judge may grant such an application if he or she is satisfied

that the same circumstances which applied to the original application for the authorization still apply. Renewals, therefore, serve to extend the period during which audio or video surveillance may lawfully be undertaken.

In granting an application for an authorization, a judge may impose such terms and conditions as the judge considers advisable in the public interest. The terms or conditions a judge may impose consist of restrictions or limitations on who, how, when, where or what interceptions may be made. Examples include such requirements as live monitoring, live monitoring accompanied by visual surveillance, or restrictions based on solicitor-client privilege or other confidential relationships.

### SECTION III – STATISTICS

What follows are statistical tables detailing judicially authorized interceptions of private communications in connection with authorizations requested by agents designated by the Attorney General of Nova Scotia as well as interceptions granted for offences under provincial jurisdiction.

#### A) The number of applications made for authorizations:

		All designated agents * - 2009*
(i)	Section 185 CC	4
(ii)	Section 188 CC	0

\* All designated agents' include RCMP, Halifax Regional Police and Cape Breton Regional Police

#### B) The number of applications made for renewals of authorizations:

		All designated agents - 2009
(i)	Section 185 CC	1
(ii)	Renewals granted under Section 188 CC	0

#### C) The number of applications granted:

		All designated agents - 2009
(i)	Original Authorizations Section 185 CC	4
(ii)	Original Authorizations Section 188 CC	0
(iii)	Renewals of Authorizations	1

#### The number of authorizations refused:

		All designated agents - 2009
(i)	Original Authorizations Section 185 CC	0
(ii)	Original Authorizations Section 188 CC	0

#### The number of applications granted with terms and conditions under:

		All designated agents - 2009
(i)	Section 185 CC	4
(ii)	Section 188 CC	0

#### D) The number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Nova Scotia in respect of:

		All designated agents - 2009
(i)	An offence specified in the authorizations	4
(ii)	An offence other than an offence specified in such an authorization but in respect of which an authorization may be given.	6
(iii)	An offence in respect of which an authorization may not be given.	3

**E) The number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Nova Scotia in respect of:**

		All designated agents - 2009
(i)	An offence specified in the authorizations	0
(ii)	An offence other than an offence specified in such an authorization but in respect of which an authorization may be given.	6
(iii)	An offence in respect of which an authorization may not be given.	4

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

**F) The average period for which authorizations were given and for which renewals thereof were granted:**

		All designated agents
(i)	Section 185 CC	60 days
(ii)	Section 188 CC	0

**G) The number of authorizations by virtue of one or more renewals thereof were valid:**

		All designated agents - 2009
(i)	For more than 60 days	1
(ii)	For more than 120 days	0
(iii)	For more than 180 days	0
(iv)	For more than 240 days	0

**H) The number of notifications given pursuant to Section 196 *Criminal Code*:**

All designated agents - 2009	25
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**I) The offences in respect of which authorizations were given, specifically the number of authorizations, given in respect of each offence:**

All designated agents - 2009		
STATUTE	SECTION	NUMBER OF AUTHORIZATIONS
<i>Criminal Code</i>	380	2
<i>Criminal Code</i>	355	2
<i>Criminal Code</i>	368	2

<i>Criminal Code</i>	465	4
<i>Criminal Code</i>	344	2
<i>Criminal Code</i>	235	3

**J) A description of all classes of places specified in authorizations and the number of authorizations in which each such class of place was specified:**

All designated agents - 2009		
CLASSES OF PLACES		NUMBER OF AUTHORIZATIONS
(i)	Residence - Permanent or Temporary	4
(ii)	Commercial Premises	2
(iii)	Vehicles	3
(iv)	Other-Container, Pager or Facsimile/cellular/payphones	2

**K) A general description of the methods of interception involved in each interception under an authorization:**

All designated agents - 2009		
METHOD OF INTERCEPTION		NUMBER OF AUTHORIZATIONS
(i)	Telecommunications	4
(ii)	Microphone	2
(iii)	Other- Vehicle microphone, pay telephone, facsimile	2

**L) The number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization:**

		All designated agents - 2009
(i)	Number of persons arrested	9

**M) The number of criminal proceedings commenced at the instance of the Attorney General of Nova Scotia in which private communications obtained by interception under any authorization were adduced in evidence and the number of such proceedings resulted in a conviction:**

		All designated agents - 2009
(i)	From interceptions reported in the current year	5
(ii)	From interceptions reported in the previous year	0

**N) The number of criminal proceedings in which information obtained as a result of the interception of a private communication under an authorization, was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Nova Scotia as a result of the investigation:**

		All designated agents - 2009
(i)	From interceptions reported in the previous year	0
(ii)	From interceptions reported in the current year.	15

**O) The number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces, for offences under Section 184 or Section 193:**

		All designated agents - 2009
(i)	Number of prosecutions commenced	0

Dated this 11<sup>th</sup> day of March, 2015.

Honourable Lena Metlege Diab  
Minister of Justice & Attorney General of Nova Scotia

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