Ontario

2019

Annual Report

on the use of electronic surveillance

As required under section 195
of the *Criminal Code* of Canada

Prepared by the Ministry of the Attorney General for Ontario

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I. INTRODUCTION

This report is prepared pursuant to the provisions of s. 195 of the *Criminal Code* of Canada ("*Code*"). The report sets out statistical data in respect of the use of the following four forms of electronic surveillance in criminal matters under the jurisdiction of the Attorney General of Ontario:[1]

(i) the interception of private communications pursuant to an authorization issued by a judge of the Superior Court of Justice under s. 186 of the *Code* ("wiretap authorization");

(ii) the observation, by a peace officer and by means of a television camera or other similar electronic device, of any person engaged in activity in circumstances in which the person has a reasonable expectation of privacy, pursuant to a warrant issued by a judge of the Superior Court of Justice under s. 487.01(1) of the *Code* ("video warrant");[2]

(iii) the interception of private communications for up to thirty-six hours, in urgent circumstances, pursuant to an authorization issued by a judge of the Superior Court of Justice specially designated by the Chief Justice under s. 188 of the *Code* ("s. 188 authorization"); and

(iv) the interception of private communications in exigent circumstances without prior judicial authorization, under s. 184.4 of the *Code* ("s. 184.4 interception").

In accordance with section 195 of the *Code*, this report does not address the interception of private communications with consent to prevent bodily harm ("s. 184.1 interception"), or the interception of private communications with consent, pursuant to an authorization issued by a judge of either the Ontario Court of Justice or the Superior Court of Justice under s. 184.2 of the *Code* ("consent authorization").

This report does not address the use of electronic surveillance by the Minister of Public Safety and Emergency Preparedness or the other provincial Attorneys General.

[1] For the purposes of this report, "electronic surveillance" is a compendious term for the investigative techniques to which Part VI of the *Code* applies.

[2] In accordance with sections 487.01(5) and 195 of the *Code*, this report only addresses video warrants that do not involve consenting parties.

II. SECTION 195 OF THE *CRIMINAL CODE*

Section 195(5) of the *Code* requires the Attorney General of Ontario to prepare an annual report relating to applications for wiretap authorizations, video warrants and s. 188 authorizations, and relating to s. 184.4 interceptions. The annual report must set out the information described in ss. 195(2)-(3), with any modifications that the circumstances may require. In this manner, the annual report is an "after-the-fact" requirement that builds "a measure of accountability" into the process.[3]

Section 195 is out in full below:

> **Annual report**
>
> **195 (1)** The Minister of Public Safety and Emergency Preparedness shall, as soon as possible after the end of each year, prepare a report relating to
>
> > **(a)** authorizations for which that Minister and agents specially designated in writing by that Minister for the purposes of section 185 applied and the interceptions made under those authorizations in the immediately preceding year;
> >
> > **(b)** authorizations given under section 188 for which peace officers specially designated by that Minister for the purposes of that section applied and the interceptions made under those authorizations in the immediately preceding year; and
> >
> > **(c)** interceptions made under section 184.4 in the immediately preceding year if the interceptions relate to an offence for which proceedings may be commenced by the Attorney General of Canada.
>
> **Information respecting authorizations — sections 185 and 188**
>
> **(2)** The report shall, in relation to the authorizations and interceptions referred to in paragraphs (1)(a) and (b), set out
>
> > **(a)** the number of applications made for authorizations;
> >
> > **(b)** the number of applications made for renewal of authorizations;
> >
> > **(c)** the number of applications referred to in paragraphs (a) and (b) that were granted, the number of those applications that were refused and the number

[3] *R. v. Tse*, 2012 SCC 16 at paras. 23 and 90.

of applications referred to in paragraph (a) that were granted subject to terms and conditions;

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

(i) an offence specified in the authorization,

(ii) an offence other than an offence specified in the authorization but in respect of which an authorization may be given, and

(iii) an offence in respect of which an authorization may not be given;

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

(i) an offence specified in such an authorization,

(ii) an offence other than an offence specified in such an authorization but in respect of which an authorization may be given, and

(iii) an offence other than an offence specified in such an authorization and for which no such authorization may be given,

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

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

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

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

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

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

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

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

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

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

Information respecting interceptions — section 184.4

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

(a) the number of interceptions made;

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

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

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

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

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

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

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

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

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

Other information

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

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

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

Report to be laid before Parliament

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

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

Report by Attorneys General

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

> **(a)** authorizations for which the Attorney General and agents specially designated in writing by the Attorney General for the purposes of section 185 applied and to the interceptions made under those authorizations in the immediately preceding year;
>
> **(b)** authorizations given under section 188 for which peace officers specially designated by the Attorney General for the purposes of that section applied and to the interceptions made under those authorizations in the immediately preceding year; and
>
> **(c)** interceptions made under section 184.4 in the immediately preceding year, if the interceptions relate to an offence not referred to in paragraph (1)(c).

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

III. OVERVIEW OF PART VI OF THE *CRIMINAL CODE*

(a) Introduction

Part VI of the *Code* (sections 183 – 196.1) is entitled "Invasion of Privacy". It is an almost entirely self-contained statutory scheme that governs the use of electronic surveillance in criminal investigations. In sum, Part VI sets out the criteria and procedure for the issuance of judicial authorizations for electronic surveillance, limits the circumstances under which electronic surveillance may be conducted in the absence of prior judicial authorization, and imposes other requirements to ensure accountability.

Section 183 contains the definitions relevant to Part VI. Electronic surveillance is only available for an "offence" that is listed in this section. The section also defines "intercept" and "private communication" for the purposes of Part VI as follows:

> **"intercept"** includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof; …
>
> **"private communication"** means any oral communication, or any telecommunication, that is made by an originator who is in Canada or is intended by the originator to be received by a person who is in Canada and that is made under circumstances in which it is reasonable for the originator to expect that it will not be intercepted by any person other than the person intended by the originator to receive it, and includes any radio-based telephone communication that is treated electronically or otherwise for the purpose of preventing intelligible reception by any person other than the person intended by the originator to receive it; …

With two exceptions, the police must obtain prior judicial authorization before intercepting private communications. The first exception is a s. 184.1 interception (prevention of bodily harm). The second exception is a s. 184.4 interception (exigent circumstances). Subsections III.(b) and (c) address these two exceptions to the requirement for prior judicial authorization.

There are three types of prior judicial authorization for the interception of private communications. The first type is to intercept private communications with the consent of the originator or intended recipient, pursuant to s. 184.2 of the *Code* (consent authorization). The second type is to intercept private communications without consent, pursuant to s. 186 of the *Code* (wiretap authorization, also referred to as a 'third-party' or 'full-blown' authorization). The third type is to intercept private communications for up to 36 hours, in urgent circumstances, pursuant to s. 188 of the *Code* (s. 188 authorization). Subsections III.(d), (e) and (f) address these three types of prior judicial authorizations.

(b) Section 184.1 interception (prevention of bodily harm)

Section 184.1 permits a state agent to intercept a private communication, without prior judicial authorization, if the originator or intended recipient consents and the state agent believes on reasonable grounds that there is a risk of bodily harm to the consenting person, for the purpose of preventing bodily harm to that person.

The intercepted communications are not admissible as evidence except for proceedings in which actual, attempted or threatened bodily harm is alleged (including a subsequent application for a Part VI authorization, a search warrant or an arrest warrant).

Section 195 does not require the provincial Attorneys General to report on s. 184.1 interceptions.

(c) Section 184.4 interception (exigent circumstances)

Section 184.4 permits a police officer to intercept a private communication, without prior judicial authorization, if the officer has reasonable grounds to believe that the urgency of the situation is such that an authorization could not be obtained "with reasonable diligence", that the interception is "immediately necessary" to prevent an "offence" that would cause "serious harm to any person or property", and that the originator or the intended recipient is the person who would commit or the person who is or is intended to be the victim.

In *Tse*, *supra*, the Supreme Court of Canada identified constitutional shortcomings in the previous version of s. 184.4. In response, Parliament amended the *Code* to require that persons intercepted under s. 184.4 be notified (s. 196.1), and that s. 184.4 be included in the annual report of the provincial Attorneys General (s. 195(5)(c)).[4]

(d) Section 184.2 consent authorization

Pursuant to section 184.2 of the *Code,* a peace officer may apply, *ex parte* and in writing, to a judge of the Ontario Court of Justice or the Superior Court of Justice for an authorization to intercept private communications, with the consent of at least one of the

[4] Response to the Supreme Court of Canada Decision in R. v. Tse Act, S.C. 2013, c. 8, s. 5 (in force September 27, 2013).

originator(s) or intended recipient(s).[5] The officer must swear an affidavit in support of the application. The application must meet the pre-requisites set out in section.

Section 195 does not require the provincial Attorneys General to report on consent authorizations.

(e) Section 186 wiretap authorization

Pursuant to section 186 of the *Code*, a judge of the Superior Court of Justice may grant an authorization to intercept private communications. The application is brought under section 185 of the *Code*. In recognition of the unique and significant privacy interests engaged by a "third-party" wiretap, the applicant must be the Attorney General of Ontario or an agent specially designated in writing in accordance with s. 185(1)(b) of the *Code*. In Ontario, the Deputy Attorney General has designated a number of Crown agents, representing each juridical Region, to bring applications for a wiretap authorization.

A Crown agent designated by the Deputy Attorney General of Ontario may bring an application for an authorization to intercept private communications for an offence listed in s. 183 over which the Attorney General of Ontario has prosecutorial authority. For s. 183 offences over which the Attorney General of Canada has prosecutorial authority, the Crown agent must be designated by the Deputy Minister of Public Safety and Emergency Preparedness. A joint application is brought in cases where the offences under investigation engage the authority of both the Attorney General of Ontario and the Attorney General of Canada.

The application must be accompanied by an affidavit, sworn by a peace officer or public officer. The affidavit must address the factors set out in ss. 185(1)(c) – (h):

> **(c)** the facts relied on to justify the belief that an authorization should be given together with particulars of the offence,
>
> **(d)** the type of private communication proposed to be intercepted,
>
> **(e)** the names, addresses and occupations, if known, of all persons, the interception of whose private communications there are reasonable grounds to believe may assist the investigation of the offence, a general description of the

[5] Section 183.1 states, "Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of those persons is sufficient consent for the purposes of any provision of this Part".

> nature and location of the place, if known, at which private communications are proposed to be intercepted and a general description of the manner of interception proposed to be used,
>
> **(f)** the number of instances, if any, on which an application has been made under this section in relation to the offence and a person named in the affidavit pursuant to paragraph (e) and on which the application was withdrawn or no authorization was given, the date on which each application was made and the name of the judge to whom each application was made,
>
> **(g)** the period for which the authorization is requested, and
>
> **(h)** whether other investigative procedures have been tried and have failed or why it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

A judge of the Superior Court of Justice may grant the application and issue an authorization to intercept private communications if they are satisfied of the criteria in ss. 186(1)(a) – (b):

> **(a)** that it would be in the best interests of the administration of justice to do so; and
>
> **(b)** that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

The factor in s. 185(1)(h) and the criterion in s. 186(1)(b) are commonly referred to as "investigative necessity". Pursuant to ss. 185(1.1) and 186(1.1) respectively, investigative necessity is not required for applications brought and authorizations issued in relation to criminal organization or terrorism offences.

Sections 186(2) and (3) refer to the special circumstances surrounding the interception of private communications that may be the subject of solicitor-client privilege. Section 186(4) sets out several requirements for the contents of the authorization. In particular, s. 186(4)(e) allows an authorization to be valid for a period up to, but not exceeding, sixty days. Pursuant to s.186.1, the sixty-day limitation does not apply to authorizations issued in relation to criminal organization or terrorism offences; those authorizations may be valid for a period up to, but not exceeding, one year.

Section 195 requires the provincial Attorneys General to report on s. 186 authorizations.

(f) Section 188 authorization

Pursuant to s. 188 of the *Code*, in urgent circumstances, a specially designated judge of the Superior Court of Justice, appointed from time-to-time by the Chief Justice, may grant an authorization to intercept private communications for a period up to thirty-six hours. The application may only be brought by a peace officer who has been specially designated in writing, by name or otherwise, by the Attorney General of Ontario or his designate.

A s. 188 authorization is available where the statutory pre-conditions for a s. 186 authorization exist, but the urgency of the situation requires interception of private communications before a s. 186 authorization could be obtained with reasonable diligence.

Section 195 requires the provincial Attorneys General to report on s. 188 authorizations.

(g) Other provisions

Part VI of the *Code* also contains offence, penalty/damages and exemption provisions relating to the interception of private communications and to the disclosure of information relating any such interception (*e.g.* ss. 184, 188.2, 191, 193, 193.1, 194), as well as provisions relating to the procedure for applications and to the execution of authorizations (*e.g.* ss. 187, 188.1 and 189).

IV. VIDEO-WARRANTS: SECTION 487.01 OF THE *CRIMINAL CODE*

The statutory authority for a warrant to engage in video observations ("video-warrant") is found in Part XV of the *Code*, which is entitled "Special Procedure and Powers". However, the restrictions and guidelines from Part VI of the *Code* apply in the context of video surveillance.

Pursuant to s. 487.01(1), a judge of the Ontario Court of Justice or the Superior Court of Justice may issue a warrant, in writing, authorizing a peace officer to "use any device or investigative technique or procedure or do anything described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property". This type of warrant is known as a "general warrant". The general warrant provisions include specific reference to video surveillance, and explicitly incorporate the protections and obligations in Part VI of the *Code* in that context:

> **Information for general warrant**
> **487.01 (1)** A provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 may issue a warrant in writing authorizing a peace officer to, subject to this section, use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if
>
> > **(a)** the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;
> >
> > **(b)** the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and
> >
> > **(c)** there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.
>
> **Limitation**
> **(2)** Nothing in subsection (1) shall be construed as to permit interference with the bodily integrity of any person.
>
> **Search or seizure to be reasonable**

(3) A warrant issued under subsection (1) shall contain such terms and conditions as the judge considers advisable to ensure that any search or seizure authorized by the warrant is reasonable in the circumstances.

Video surveillance
(4) A warrant issued under subsection (1) that authorizes a peace officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy shall contain such terms and conditions as the judge considers advisable to ensure that the privacy of the person or of any other person is respected as much as possible.

Other provisions to apply
(5) The definition "offence" in section 183 and sections 183.1, 184.2, 184.3 and 185 to 188.2, subsection 189(5), and sections 190, 193 and 194 to 196 apply, with such modifications as the circumstances require, to a warrant referred to in subsection (4) as though references in those provisions to interceptions of private communications were read as references to observations by peace officers by means of television cameras or similar electronic devices of activities in circumstances in which persons had reasonable expectations of privacy.

…

Accordingly, although the authorizing provisions for a video-warrant are found in Part XV of the *Code,* the video-warrant provisions operate, for all intents and purposes, as if they were found in Part VI. Significantly, s. 487.01(5) adopts ss. 184.2, 185, 186, 188 and 195. This means that all consent video-warrants (s. 184.2), third-party video warrants (ss. 185-186) and emergency video-warrants (s. 188) are governed by the specific statutory criteria contained within the Part VI provisions.

The combined effect of ss. 487.01(5) and 195 requires the provincial Attorneys General to report on third-party and emergency video-warrants.

V. STATISTICS

1. Overview

(a) Total Authorizations

From January 1 to December 31, 2019, 34 authorizations and/or video-warrants were issued from the Ontario Superior Court of Justice pursuant to ss. 186, 188, and/or 487.01 of the *Code*.[6] The following table places these authorizations/warrants in the context of previous years:

Year	Number of Authorizations Issued
2000	69
2001	58
2002	60
2003	57
2004	64
2005	43
2006	38
2007	43
2008	48
2009	37
2010	28
2011	43
2012	57
2013	54
2014	40
2015	34
2016	43
2017	35
2018	55
2019	34

[6] Video-warrants are most frequently sought in conjunction with an authorization under s. 186 of the *Code.* Depending on jurisdictional practice, an omnibus order encompassing both applications may be granted. For the purposes of this annual report, where a video-warrant is part of an omnibus order that grants an authorization under s. 186 of the *Code,* the order is counted as a single authorization for purposes of the total number of authorizations.

(b) Video Authorizations

From January 1 to December 31, 2019, there was 1 stand-alone video-warrant. There were 13 video-warrants obtained in conjunction with an authorization pursuant to s. 186 of the *Code.*

(c) Emergency Interception – 184.4

From January 1 to December 31, 2019, there were 3 interceptions conducted pursuant to s. 184.4.

(d) Investigations

The 34 authorizations/video-warrants granted in 2019 relate to 19 separate police investigations. Of those 19 police investigations, 9 involved more than one authorization/warrant, as set out in the table below:[7]

Number of Authorizations/Warrants obtained *per* investigation	Number of Investigations	Total Number of Authorizations/Warrants
1	10	10
2	5	10
3	3	9
4	0	0
5	1	5
Total	**19**	**34**

(e) Renewals and new authorizations

A police investigation will often give rise to multiple authorizations. A subsequent authorization may be granted on different terms than the one preceding it. The differences can relate to the named people, the places of interception, the manner in which interceptions may occur, and/or the named offences, and can reflect new information or

[7] The annual report requires tracking by calendar year. This table contains the number of authorizations issued in 2019 for each investigation. If an investigation carried into 2020 or commenced in 2018, there may be additional authorizations attached to an investigation which are accounted for in the appropriate annual report.

changes in the investigative focus. Where the police seek a subsequent authorization with such differences, they must bring a new application under s. 185 and obtain a new authorization under s. 186. Although ss. 186(6)-(7) permit an application to renew an authorization in the same form, these "renewal" applications are rare because the required parameters of an authorization almost inevitably evolve over time.

For the purposes of this annual report, where multiple authorizations/warrants have been granted in respect of the same investigation (even where they are not "renewals") the relevant statistical data relating to the following areas identified in s. 195(2) has not been "double counted":

s. 195(2)(d): the number of persons identified in an authorization against whom proceedings were commenced

s. 195(2)(e): the number of persons not identified in an authorization against whom proceedings were commenced

s. 195(2)(l): the number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization

s. 195(2)(h): the number of notifications given pursuant to section 196

(f) Limitations to Annual Statistics

Given the length of time it takes to commence and conclude criminal proceedings – especially with the added complexity of wiretap evidence – a single calendar year is rarely sufficient to get a complete picture of a wiretap investigation. For example, pursuant to s. 195(2)(m) of the *Code*, the Attorney for Ontario must report on the number of criminal proceedings commenced at its instance in which private communications obtained by interception under an authorization were adduced in evidence, and the number of convictions that resulted from such proceedings. These facts will almost never crystallize in a single calendar year.

The existence of an authorization will be reported in the year that it was issued. A wiretap project may involve more than one authorization, and an authorization can bridge two consecutive years. Accordingly, the statistics related to an authorization may be reported in the previous or subsequent years' annual report.

If a delay of notification order (pursuant to sections 196(5) or 196.1(5) of the *Code*) is in place, the existence of an authorization will be reported in the year that it was issued, but the aggregate number of notifications that year may not include any notifications in respect of that authorization.

2. Information Respecting Authorizations (s. 185 and s. 188)

Table 1: Sections 195(2)(a) – (c)

Pursuant to Criminal Code	Type of Application	Number of applications
s. 195(2)(a)	Applications made for authorizations.	**34**[8]
s. 195(2)(b)	Applications made for renewal of authorizations.[9]	**0**
s. 195(2)(c)	Applications made for authorizations and renewals that were granted.	**34**
s. 195(2)(c)	Applications made for authorizations and renewals that were refused. [10]	**0**
s. 195(2)(c)	Applications made for authorizations and renewals that were granted subject to terms and conditions.	**34**

Table 2: Sections 195(2)(d)(i) – (iii)

Pursuant to Criminal Code	Category of Offence	Number of persons identified in an authorization against whom proceedings were commenced (at the instance of the Attorney General of Ontario)

[8] This statistic includes one standalone video warrant, in accordance with section 487.01(5) of the *Criminal Code*.

[9] As noted above at p. 16, a "renewal" is an authorization that is issued with no changes and in exactly the same form as the original authorization, but for a further period of time.

[10] For purposes of this annual report, a refusal is reported where an application is brought, refused, and is *never* granted; this situation should be distinguished from one in which an application is brought, initially refused for a deficiency that is later remedied, and later granted on that remedial basis.

s. 195(2)(d)(i)	Offence specified in authorization	**131**
s. 195(2)(d)(ii)	Offence not specified in the authorization but in respect of which an authorization may be issued	**131**
s. 195(2)(d)(iii)	Offence in respect of which an authorization may not be issued	**31**

Table 3: Sections 195(2)(e)(i) – (iii)

Pursuant to Criminal Code	**Category of Offence**	**Number of persons not identified in an authorization against whom proceedings were commenced (at the instance of the Attorney General of Ontario)**
s. 195(2)(e)(i)	Offence specified in authorization	**26**
s. 195(2)(e)(ii)	Offence not specified in the authorization but in respect of which an authorization may be issued	**24**
s. 195(2)(e)(iii)	Offence in respect of which an authorization may not be issued	**7**

Table 4: Section 195(2)(f)

Pursuant to Criminal Code	**The average period of days for which authorizations were given[11]**
s. 195(2)(f)	**59.33**

Table 5: Section 195(2)(g)

[11] Section 195(2)(f) of the *Criminal Code* also requires a report on "the average period…for which renewals thereof were granted". As explained at p. 16 and reported at p. 18 and fn 9, there were no renewals within the meaning of ss. 186(6)-(7) of the *Criminal Code* in 2019.

Authorizations that by virtue of one or more renewals or expansions thereof were valid for[12]	Number of authorizations
More than 60 days	**5**
More than 120 days	**1**
More than 180 days	**0**
More than 240 days	**1**

Table 6: Section 195(2)(h)

Pursuant to Criminal Code	Persons given notification to pursuant to s. 196[13]
s. 195(2)(h)	**283**[14]

Table 7: Section 195(2)(i)[15]

Criminal Code provision	Offences Specified	Number of Authorizations

[12] These statistics are counted by adding the total number of days wiretap authorization(s) were valid in relation to a single investigation. It includes renewals and subsequent orders made on the same project.

[13] Some people cannot be notified because their whereabouts are unknown. People may be identified in an authorization when their proper names or addresses are unknown, or they may have moved to an unknown address in the interim. Pursuant to s. 196(3), a judge may delay notification for up to three years. This annual report does not track notifications on authorizations granted in prior years. For joint applications, one agency takes carriage of the notifications. This annual report does not track notifications completed by the Minister of Public Safety and Emergency Preparedness.

[14] Notifications that were returned as "undeliverable" are not counted in this total. In 2019, a total of 117 notifications were returned as "undeliverable".

[15] A total of 22 authorizations and/or video warrants named both a specified offence and "Conspiracy to commit, attempt to commit, or being an accessory after the fact to the commission of, or any counseling in relation to [the specified offence]". In those situations, the specified offence is counted in this table; the conspiracy/attempt/accessory after the fact/counseling in relation to that specified offence is not.

s.86(1)	Careless storage of a firearm	**1**
s.91(1)	Unauthorized possession of a firearm	**1**
s.201	Keeping a gaming or betting house	**7**
s.202	Betting/book-keeping	**5**
s. 235	Murder	**12**
s. 239(1)(a)	Attempted murder	**2**
s. 279.01	Trafficking in persons	**2**
s.286.3	Procuring	**2**
s.334(b)	Theft under $5,000	**3**
s. 344	Robbery	**1**
s.344(1) (a.1)	Robbery with a firearm	**3**
s. 346	Extortion	**1**
s.347(1)	Criminal Interest Rate	**2**
s. 354(1)(a)	Possession of proceeds of crime	**3**
s.354(1)(b)	Possession of property obtained by crime	**5**
s. 355.4	Possession of property obtained by crime - Trafficking	**1**
s.380(1)	Fraud	**9**
s. 462.31(1)	Laundering proceeds of crime	**7**
s.463	Accessory after the fact to murder	**1**
s.464	Counseling to commit murder	**1**
s.465	Conspiracy to commit robbery	**2**
s. 467.11	Participation in criminal organization	**11**

s. 467.12	Commission of offence for criminal organization	**12**
s. 467.13	Instructing commission of offence for criminal organization	**6**

Table 8: Section 195(2)(j)[16]

Classes of places specified in authorizations	Number of authorizations in which this class of place was specified
Residences	**27**
Vehicles	**28**
Hotels	**1**
Commercial Establishments	**11**
Custodial Settings[17]	**21**
Common Areas[18]	**4**
Other	**0**

[16] The Ministry of the Attorney General of Ontario changed how this statistic was reported in 2016. Starting in 2017, the annual report lists the number of authorizations that named a class of place. Before then, the annual report listed the number of times that a place that fell into the named class, across all authorizations. Take, for example, an authorization that specified five places that fell into the class of "hotels". Under the former approach, that authorization would have contributed five to the total. Under the current approach, that authorization would contribute one to the total.

[17] Starting in 2021, the Ministry of the Attorney General of Ontario changed how this statistic is reported. Prior to this year, the annual report described this class of place as "Correctional Institution". For additional clarity, going forward, the annual report will describe this class of place as "Custodial Settings", which includes Correctional Institutions, Police Custodial Facilities, and Courthouse Holding Cells.

[18] Starting in 2021, the Ministry of the Attorney General of Ontario changed how this statistic is reported. Prior to this year, the annual report did not have a specific descriptor for common areas. For additional precision, going forward, the annual report will include a descriptor for "Common Areas".

Table 9: Section 195(2)(k)[19]

Method involved in each interception under an authorization	Number of interceptions in which this method was involved
Telephone	**58**
Mobile phone	**434**
Telecommunications	**56**
Room Probes	**165**
Body packs	**49**
Other	**6**

Table 10: Section 195(2)(l)

Pursuant to Criminal Code	The number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization
s. 195(2)(l)	**99**

Table 11: Section 195(2)(m)

…which requires information relating to the number of criminal proceedings[20] *commenced at the instance of the Attorney General of [Ontario] in which private communications obtained by interception under an authorization were adduced in evidence and the number of those proceedings that resulted in a conviction*.[21]

[19] This statistic reports the number of times that a method was involved in executing an authorization, across all authorizations. Take, for example, an authorization pursuant to which five mobile phones were each intercepted two times. That authorization would contribute five, not ten, to the total.

[20] For clarity, this annual report defines a "proceeding" as a trial and/or a preliminary inquiry. A proceeding may involve one or more accused persons.

[21] This number only includes convictions entered in the same year that the authorization was issued (or before the annual report for that year is written). As mentioned on p. 17, the issuance of an authorization will rarely fall in the same calendar year as the verdict on the merits. Further, this total does not include guilty pleas on which no evidence is

	Number of criminal proceedings
Evidence adduced	**54**
Conviction	**19**

Table 12: Section 195(2)(n)

…which requires information relating to the number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Ontario as a result of the investigations.

	Number of criminal proceedings
Information used but evidence not adduced	**16**

adduced. The total is the number of proceedings that resulted in convictions, as distinct from the number of accused or the number of convictions.

3. Interceptions in Exigent Circumstances (Section 184.4)

Table 13: Section 195(2.1)(a)

…which requires reporting on the number of "interceptions" made pursuant to s. 184.4. In order to give a more meaningful description of the use of the 184.4 power, the number of interceptions is reported here in two ways: the number of times 184.4 was invoked, and the number of total individual intercepts (which includes all text-messages, unanswered phone calls, voice message calls, etc). The individual interceptions are further broken down under s. 195(2.1)(j) by duration.

Number of times s. 184.4 was invoked	**3**
Total number of interceptions made	**60**

Table 14: Section 195(2.1)(b)

The number of parties to each intercepted private communication against whom proceedings were commenced in respect of the offence that the police officer sought to prevent in intercepting the private communication or in respect of any other offence that was detected as a result of the interception.	**2**

Table 15: Section 195(2.1)(c)

The number of persons who were not parties to an intercepted private communication but whose commission or alleged commission of an offence became known to a police officer as a result of the interception of a private communication, and against whom proceedings were commenced in respect of the offence that the police officer sought to prevent in intercepting the private communication or in respect of any other offence that was detected as a result of the interception.	**0**

Table 16: Section 195(2.1)(d)

The number of notifications given under section 196.1	**7**

Table 17: Section 195(2.1)(e)

…which requires information relating to the offences in respect of which interceptions were made and any other offences for which proceedings were commenced as a result of an interception, as well as the number of interceptions made with respect to each offence.

Number of interceptions made	Criminal Code provision for offence	Offence
60	279(1)	Kidnapping

Table 18: Section 195(2.1)(f)

Method involved in each interception	Number of interceptions in which this method was involved
Telephone	**0**
Mobile phone	**60**
Telecommunications	**0**
Room Probes	**0**
Body packs	**0**
Other	**0**

Table 19: Section 195(2.1)(g)

The number of persons arrested whose identity became known to a police officer as a result of an interception.	**0**

Table 20: Section 195(2.1)(h)

…which requires information relating to the number of criminal proceedings commenced in which private communications obtained by interception were adduced in evidence and the number of those proceedings that resulted in a conviction.

	Number of criminal proceedings

Evidence adduced	**0**
Conviction	**0**

Table 21: Section 195(2.1)(i)

…which requires information relating to the number of criminal investigations in which information obtained as a result of the interception of a private communication was used even though the private communication was not adduced in evidence in criminal proceedings commenced as a result of the investigations.

	Number of criminal proceedings
Information used but evidence not adduced	**3**

Table 22: Section 195(2.1)(j)

***Aggregate duration** of* **07:44:34**

Session	**Duration**
1	00:00:35
2	00:00:35
3	00:00:32
4	00:00:22
5	00:00:40
6	00:01:45
7	00:01:46
8	00:00:20
9	00:00:10
10	00:00:00
11	00:00:00
12	00:02:24
13	00:02:52
14	00:00:59
15	00:00:59
16	00:00:41

17	00:00:39
18	00:00:37
19	00:00:33
20	00:00:36
21	00:00:32
22	00:00:28
23	00:00:26
24	00:00:22
25	00:00:17
26	00:00:09
27	00:01:37
28	00:02:44
29	00:00:14
30	00:05:15
31	00:14:37
32	00:13:21
33	00:08:26
34	00:07:01
35	00:06:21
36	00:06:19
37	00:06:02
38	00:05:22
39	00:04:56
40	00:04:00
41	00:02:42
42	00:02:16
43	00:01:53
44	00:01:30
45	00:01:23
46	00:01:00
47	00:00:55
48	00:00:53
49	00:00:51
50	00:00:49
51	00:00:40
52	00:00:36
53	00:00:34
54	00:00:27

55	00:00:23
56	00:00:18
57	00:00:15
58	00:00:14
59	05:15:18
60	00:25:53

4. Offences against s. 184 or s. 193 by Officers or Agents of the Crown and Canadian Forces Members

Pursuant to Criminal Code	The number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 184 or 193
s. 195(3)(a)	**0**

VI. Assessment of the Utility of Intercepting Private Communications

Pursuant to s. 195(3)(b) of the *Criminal Code,* the annual report must provide a "general assessment of the importance of the interception of private communications for the investigation, detection, prevention and prosecution of offences in Canada". The interception of private communications is one of the most valuable investigative tools available to law enforcement agencies. This investigative technique is available in only the most serious investigations where detailed statutory criteria have been met.

The interception of private communications pursuant to legal authority can result in the identification of individuals and organizations who present serious risks to public safety, and afford the evidence necessary for an effective prosecution. The technique can also yield significant information that furthers an investigation or exposes additional criminal activity, even if the interceptions are not directly used as evidence in a prosecution. The interception of private communications continues to assist in preventing crime and saving lives.

In 2019, the interception of private communications provided valuable assistance to law enforcement. Continuing a trend from previous years, Table 7 shows that the technique was often employed to investigate allegations of serious criminal offences including murder, personal violence, firearms, and organized criminality. Tables 2 and 3 show that the technique assisted in identifying additional criminality and responsible parties, and that criminal proceedings were commenced accordingly. The interception of private communications also led to the seizure of firearms and drugs, prevented additional firearm-related violence, and yielded valuable information and intelligence about criminal organizations operating in Ontario. In many cases, the technique produced key evidence that is being used in ongoing prosecutions of serious offences in Ontario.

The interception of private communications continues to be a strictly controlled and indispensable tool in the detection, prevention, investigation and prosecution of criminal offences in Ontario.

Ministry of the Attorney General
Crown Law Office – Criminal
Toronto, Ontario