



<b>Policy Name:</b>	<b>PART VI WARRANT AUTHORIZATIONS</b>		
<b>Policy #:</b>	OP 4.49.3	<b>Last Updated:</b>	2022-07-13
<b>Issued By:</b>	INVESTIGATIVE SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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**RELATED POLICIES**

OP 4.34.8 *Major Case Management*

OP 4.49.4 *Search Warrants and Production Orders*

**1. PURPOSE**

1.1. To provide guidance to Surrey Police Service (SPS) Employees regarding Part VI Authorizations.

**2. SCOPE**

2.1. This policy applies to all Employees.

**3. POLICY**

3.1. When investigating a serious criminal offence, Members may determine an investigational necessity to request for an authorization to intercept private communications. Provisions for the lawful intercept of private communications is found in Part VI of the *Criminal Code*, and therefore are commonly referred to as “Part VI Warrants” or “Part VI Authorizations”.

3.2. These investigations require significant resources involving Members, civilian staff and a financial budget.

3.3. These investigations are handled under Major Case Management, with a Team Commander providing oversight. Assigned affiants should have prior experience with Part VI authorizations or, at minimum, be an experienced affiant.

#### 4. PROCEDURE

- 4.1. After having identified a need to intercept private communications for the purpose of carrying out an investigation, a Member must consult their immediate Supervisor and initiate the completion of an Operational Plan.
- 4.2. The investigating Member must have reasonable grounds to believe that an offence against any other Act of Parliament has been or will be committed and there are reasonable grounds to believe that interception of private communications will provide evidence of the offence.
- 4.3. The investigating Member must submit the Operational Plan to the Member's Inspector for approval and then to the following ranks for approval:
  - i. Superintendent in charge of Investigative Services Bureau; and
  - ii. Deputy Chief Constable (DCC) in charge of Investigative Services Bureau.
- 4.4. Once the DCC, Investigative Services Bureau has approved the Operational Plan, the investigating Member will prepare an affidavit to obtain an authorization pursuant to Part VI of the *Criminal Code*. If necessary, the Member will request guidance the Covert Intercept Coordinator and/or the Legal Application Support Team (LAST).

#### **Emergency Authorizations**

- 4.5. When the urgency of a situation is such that it would be impractical for a Member to obtain an authorization to use electronic surveillance by the above-mentioned procedure, the Member must contact their Supervisor or the Duty Officer and obtain assistance directly from the Covert Intercept Coordinator and LAST.
- 4.6. The Covert Intercept Coordinator will have a current list of Designated Members who may apply for an Emergency Intercept Authorization under s. 188 of the *Criminal Code*.
- 4.7. The Designated Member will verbally describe the events of the emergency to the Designated Agent (Crown Counsel).
- 4.8. The Designated Agent (Crown Counsel), accompanied by the Designated member, will appear before a Judge. The verbal application of the Member will be recorded and sealed.

#### **Immediate Interception – Imminent Harm**

- 4.9. Section 184.4 of the *Criminal Code* authorizes the interception of private communications (no judicial authorization required) in exigent circumstances if:
  - i. a Member believes on reasonable grounds that the urgency of the situation is such that no other authorization could be obtained, with reasonable diligence (insufficient time to make an Application for an Emergency Intercept Authorization under s. 188 of the *Criminal Code*, or a full Part VI Application under s. 185 of the *Criminal Code*); and

- ii. the interception is immediately necessary to prevent an offence that would cause serious harm to any person or to property (e.g., emergency situations such as kidnappings, hostage takings, bomb threats or armed or barricaded persons).

4.10. Prior to intercepting pursuant to s. 184.4 of the *Criminal Code*, the interceptions must be approved by 3 levels of supervision:

- i. the Team Commander or Incident Commander will provide the initial support;
- ii. Designated Peace Officer; and
- iii. Authorizing Authority.

4.11. Members seeking the immediate interception of private communications must:

- i. brief the Team Commander or Incident Commander on the circumstances of the situation; and
- ii. provide assistance in obtaining the notes and reports (sourced documents) in support of the applications for interception.

#### **Responsibility of Team/Incident Commander**

4.12. The Team/Incident Commander must contact a Designated Police Peace Officer to ensure that the legal requirements are met, receive their approval to proceed, and have them supervise the process to begin the interception.

4.13. The Team/Incident Commander must ensure reasonable grounds are documented that articulate:

- i. the urgency of the situation is such that no other authorization could be obtained, with reasonable diligence (insufficient time to make an application under s. 188 or s. 185 of the *Criminal Code*); and
- ii. the interception is immediately necessary to prevent an offence that would cause serious harm to any person or to property.

4.14. The Team/Incident Commander must complete and sign the “Requested by” portion of the Supervisors *Check List for Intercept in Exceptional Circumstances* and receive approval from a Designated Peace Officer prior to proceeding with an interception under s. 184.4 of the *Criminal Code*. If available consult LAST.

4.15. Upon receiving the approval from a Designated Peace Officer to intercept pursuant to section 184.4 of the *Criminal Code*, the Team/Incident Commander must contact the Superintendent Investigative Services Bureau or Deputy Chief Constable Investigative Services Bureau to brief them of the circumstances and obtain their approval authorization to intercept.

4.16. The Team/Incident Commander must:

- i. take the necessary steps to obtain judicial authority as soon as practicable. Therefore, immediate steps must be taken to obtain judicial authorization pursuant to s. 188 *Criminal Code* by a Designated Police Peace Officer. An Authorization granted under s. 188 *Criminal Code* is valid for up to 36 hours;

- ii. note any delays in obtaining a s. 188 *Criminal Code* application (e.g., emergency situation required full attention of the team, availability of a judge, availability of a Designated Peace Officer);
- iii. contact a designated Crown Agent regarding the s. 188 *Criminal Code* application;
- iv. ensure that an Affiant starts preparing a full Part VI application made pursuant to s. 185 *Criminal Code*;
- v. ensure that investigators have provided copies of their notes and reports and are available to the Designated Peace Officer and Affiant upon their request; and
- vi. ensure that written notice, pursuant to s. 196.1 *Criminal Code*, is given within ninety (90) days after the interception has occurred, or obtain a deferral of notification.

#### **Responsibility of Approval Authority (Designated Peace Officer)**

4.17. The Designated Peace Officer must:

- i. ensure there are reasonable grounds to believe that the urgency of the situation is such that no other authorization could be obtained, with reasonable diligence (insufficient time to make a s. 188 or s. 185 *Criminal Code* application), and that the interception is immediately necessary to prevent an offence that would cause serious harm to any person or to property;
- ii. supervise, guide and assist in the s. 184.4 *Criminal Code* interception process and obtain an authorization pursuant to s. 188 *Criminal Code*; and
- iii. ensure the completion of the s. 184.4 *Criminal Code* Checklist and articulation document for exceptional circumstances.

#### **Responsibility of Authorizing Authority**

4.18. The Authorizing Authority is responsible for providing the authorization to intercept in exceptional circumstances, having regard to the circumstances and the recommendation of the Designated Peace Officer indicating that s. 184.4 *Criminal Code* requirements have been met.

4.19. The Authorizing Authority must:

- i. ensure that the s. 184.4 *Criminal Code* checklist and articulation is complete and has been reviewed by the Designated Peace Officer recommending Interception in Exceptional Circumstances; and
- ii. notify the Designated Peace Officer to ensure applications under s. 188 (Authorization to Intercept in Emergency) and s. 185 (Interception of Private Communication) of the *Criminal Code* are being advanced.

#### **Authorization to Intercept in Emergency**

4.20. An application for an Emergency Intercept Authorization can be made by a Designated Peace Officer if a judge is satisfied that the urgency of the situation requires that interception of private communications commence before an authorization could, with reasonable diligence, be obtained under s. 186 *Criminal Code* for a period of up to thirty-six (36) hours.

4.21. This application is made verbally to a Supreme Court Judge and all provisions of s. 186 *Criminal Code* apply. If an application is being made pursuant s. 188 *Criminal Code*, a designated Crown Agent is required to make a s. 188 *Criminal Code* application.

4.22. Once the decision has been made to use s. 188 *Criminal Code*, an Affiant must start preparing a full Part VI Application made pursuant to s. 185 *Criminal Code*.

#### **Designated Peace Officers**

4.23. Members may be Designated Peace Officers by:

- i. the federal Minister of Public Safety and Emergency Preparedness, pursuant to s. 188(1)(a) *Criminal Code* by position; and
- ii. the Attorney General of British Columbia, pursuant to s. 188(1)(b) *Criminal Code* has designated Commissioned Officers by name, rather than by position.

4.24. Prior to becoming a Designated Peace Officer, all Designated Peace Officers must have completed the Emergency Wiretap Workshop or the online Designated Wiretap Officer Training and have sufficient training and experience that establishes an advanced understanding of Part VI of the *Criminal Code*.

#### **Part VI Authorizations – s. 185 and s. 186 *Criminal Code***

4.25. An application for an Authorization under s. 185 *Criminal Code* may only be made in respect to an offence which is specifically listed in s. 183 *Criminal Code*.

4.26. The application must be made by a designated Crown Counsel (Designated Agent) to a Judge of the British Columbia Supreme Court.

4.27. Members must consult Crown Counsel early once a decision is made to proceed with an application under s. 185 *Criminal Code*.

#### **Interception to Prevent Bodily Harm**

4.28. Section 184.1 *Criminal Code* permits the interception of communication by consent if there is a risk of bodily harm to a police undercover operator or police agent, to prevent bodily harm to the operator or agent.

4.29. The intercepted private communications are inadmissible except in proceedings in which actual, attempted or threatened bodily harm is alleged.

4.30. If these conversations are recorded and the intercepted private communications do not provide evidence of actual, attempted or threatened bodily harm, recordings and police officer's notes of the intercepted private communication must be destroyed as soon as is practicable.

4.31. If at any point prior to obtaining judicial authorization the above grounds can no longer be met, interception must cease immediately. The focus of this section is on the prevention of serious harm, not to provide an ability for the police to gather evidence. This is an ongoing obligation, not one that only needs to be satisfied at the time the application is made before the Authorizing Officer.

### **One Party Consent Authorization**

4.32. Applications made under s. 184.2 and 184.3 *Criminal Code* to intercept private communications are used when there is a consenting police officer and/or police agent. In these cases, Members must ensure the consenting persons complete form OP-44931 *Consent to the Interception of Private Communications*.

4.33. Applications for Judicial Authorizations can be made before either a Provincial Court Judge or Judge of the British Columbia Supreme Court and are valid for up to sixty (60) days.

### **Notifications and Notification Deferrals**

4.34. Under s. 196 *Criminal Code*, the persons subject of an Authorization granted pursuant to an application made under s. 185 or s. 188 *Criminal Code* must be notified in writing within ninety (90) days following the expiration of the intercept dates except when an application for an extension is made or an extension is granted by a Judge.

4.35. Under s. 196.1 *Criminal Code*, a notice in writing of the interception must be given to any person who was the subject of the interception pursuant to s. 184.4 *Criminal Code*.

### **Other Authorizations and Warrants**

4.36. If required, the Covert Intercept Coordinator and LAST will assist Members with the following:

- i. renewal authorizations under s. 186(7) *Criminal Code*;
- ii. authorizations over sixty (60) days (organized crime investigations) under s. 186.1 *Criminal Code*;
- iii. interception of private communications, without an authorization, to prevent bodily harm under s. 184.1 *Criminal Code*;
- iv. authorizations for the interception of private communications with the consent of either the originator of the communication or the person intended to receive the communication under s. 184.2 *Criminal Code*;
- v. interceptions of private communications, without an authorization, in exceptional circumstances under s. 184.4 *Criminal Code*;
- vi. inter-provincial applications of authorizations to intercept private communications under s. 188.1 *Criminal Code*;
- vii. assistance orders under s. 487.02 *Criminal Code*; and
- viii. general warrants - Issuance of an authorization or warrant for television or video observation s. 487.01 *Criminal Code*.

## APPENDIX A: DEFINITIONS

“Authorizing Officer” means a senior SPS Officer who is responsible for providing the authorization to intercept in exceptional circumstances, having regard to the circumstances and the recommendation of the Designated Officer indicating that section 184.4 of the *Criminal Code* requirements have been met. The Authorizing Officer must be at the rank of Inspector or higher, not acting in the rank, and must be assigned to one of the Investigative Services Bureau positions.

“Covert Intercept Coordinator” means an SPS Employee who works closely with SPS Members and other departmental agencies to coordinate the covert intercept of communications. This also includes liaising with telecommunication companies for hookups (Transmission data recorder warrants / Tracking Warrants) and the serving of Production Orders to limit the contact scope for external agencies.

“DCC” means Deputy Chief Constable.

“Designated Agent” means a person (usually legal counsel employed by the Department of Justice Canada or retained by the Attorney General of Canada) designated by the Minister of Public Safety to apply for authorizations to intercept private communications.

“Designated Officer” means a police officer specially designated in writing to make an application for an emergency authorization to intercept private communications pursuant to s. 188 and s. 487.01(4) of the *Criminal Code*. Designated Officers for provincial prosecutions are designated by name, by the Attorney General of British Columbia. Designated Officers for federal prosecutions are designated by position, by the Minister of Public Safety and Emergency Preparedness. In order to be a Designated Officer for the purpose of using s. 184.4 of the *Criminal Code*, the Member must have completed the appropriate training, be designated by one of the above Ministers for the purpose of s. 188 applications, and must be supported by the Deputy Chief Constable or Superintendent Investigative Services Bureau.

“Electro-magnetic, acoustic, mechanical or other device” means any device or apparatus that is used or is capable of being used to intercept a private communication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing.

“Employee” means a Member or Civilian Employee appointed by the Surrey Police Board.

“Intercept” means, at minimum includes to listen to, record or acquire a communication or acquire the substance, meaning or purport thereof.

“LAST” means the Legal Application Support Team which consists of SPS Members of the Investigational Support Bureau who specialize in judicial authorizations and legal knowledge for recent case law involving legal applications.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“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.

“SPS” means Surrey Police Service.



**APPENDIX B: REFERENCES**

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