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Remote Sensing Space Systems Act

2005, c. 45

[Assented to November 25, 2005]

An Act governing the operation of remote sensing space systems

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title 1. This Act may be cited as the *Remote Sensing Space Systems Act*.

INTERPRETATION

Definitions 2. The following definitions apply in this Act.

“controlled activity”
« *activité contrôlée* » “controlled activity”, subject to subsection 8(6), means any of the following activities in the operation of a remote sensing space system:

- (a) formulating or giving a command to a remote sensing satellite of the system;
- (b) receiving raw data from a remote sensing satellite of the system;
- (c) storing, processing or distributing raw data from the system;
- (d) establishing or using
 - (i) cryptography in communications with a remote sensing satellite of the system, or
 - (ii) information assurance measures for the system.

“information assurance”
« *assurance de l'information* » “information assurance” means the protection of information and information systems by ensuring their availability, integrity, authentication, confidentiality and non-repudiation.

“licence”
« *licence* » “licence” means a licence issued under subsection 8(1).

“licensed system”
« *système* » “licensed system” means a remote sensing space system for whose operation a licence has been issued.

« système
agrée »

“licensee”
« titulaire de
licence »

“licensee” means a person who is the holder of a licence.

“Minister”
« ministre »

“Minister”, subject to section 3, means the Minister of Foreign Affairs.

“person”
« personne »

“person” includes a partnership, a government, a government agency and an unincorporated organization.

“prescribed”
Version
anglaise
seulement

“prescribed” means prescribed by the regulations.

“raw data”
« données
brutes »

“raw data” means sensor data from a remote sensing satellite, and any auxiliary data required to produce remote sensing products from the sensor data, that have not been transformed into a remote sensing product.

“remote
sensing
product”
« produit
dérivé »

“remote sensing product” means an image or data produced from raw data in any way that transforms the raw data.

“remote
sensing
satellite”
« satellite de
télédétection »

“remote sensing satellite” means a satellite that is capable of sensing the surface of the Earth through the use of electromagnetic waves.

“remote
sensing space
system”
« système de
télédétection
spatiale »

“remote sensing space system” means

(a) one or more remote sensing satellites and the mission control centre and other facilities used to operate the satellites; and

(b) the facilities used to receive, store, process or distribute raw data from the satellites, even after the satellites themselves are no longer in operation.

“system
participant”
« participant
autorisé »

“system participant” means a person who is designated in a licence condition referred to in paragraph 8(5)(b).

“transform”
« traitement »

“transform”, with respect to raw data, means, having regard to the regulations, to so process them that it is substantially impossible to reconstitute them from the resulting remote sensing product.

DESIGNATION OF MINISTER

Power of
Governor in
Council

3. The Governor in Council may designate a member of the Queen’s Privy Council for Canada to be the Minister for the purposes of this Act.

APPLICATION OF ACT

Binding on
Crown

4. (1) This Act binds Her Majesty in right of Canada or a province.

Order
modifying
application of
Act to certain
systems

(2) The Governor in Council may make an order with respect to a remote sensing space system operated by the Department of National Defence or the Canadian Space Agency providing that this Act and the regulations apply to that system only in the manner and to the extent provided for in the order. The order may adapt any of the provisions of this Act or the regulations for the purposes of that application.

- Exemption by order (3) The Minister may, by order, exempt any person or remote sensing space system — or any class of person, system or data — from the application of any provisions of this Act or the regulations. The exemption order may be limited in scope or made subject to conditions. It may be made only if the Minister is satisfied that
- (a) the exemption is neither injurious to national security, to the defence of Canada, to the safety of Canadian Forces or to Canada's conduct of international relations nor inconsistent with Canada's international obligations;
 - (b) adequate provision will be made for the protection of the environment, public health and the safety of persons and property; and
 - (c) the interests of the provinces are protected.

OPERATION OF REMOTE SENSING SPACE SYSTEMS

REQUIREMENT FOR LICENCE

- System operator requires licence **5.** No person shall operate a remote sensing space system in any manner, directly or indirectly, except under the authority of a licence.
- Activities outside Canada **6.** Section 5 applies also to the following persons with respect to their activities outside Canada:
- (a) Canadian citizens;
 - (b) permanent residents within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*;
 - (c) corporations that are incorporated or continued under the laws of Canada or a province; and
 - (d) members of any prescribed class of persons having a substantial connection to Canada related to remote sensing space systems.

APPLICATIONS, LICENCES AND RELATED MATTERS

- Applications regarding licences **7.** An application to the Minister to issue, amend or renew a licence must be made in the prescribed form and manner, be supported by a proposed system disposal plan, proposed guarantee arrangements referred to in paragraph 9(1)(b) and any other prescribed information, documents and undertakings and be accompanied by any prescribed application fee.
- Issuance, amendment or renewal of licences **8.** (1) On application, the Minister may, having regard to national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and any prescribed factors,
- (a) issue a provisional approval of a licence application;
 - (b) issue a licence; or
 - (c) amend or renew a licence.
- Provisional approval binding (2) A provisional approval is binding on the Minister for so long as the material facts on which it was based remain substantially unchanged.
- Reasons for refusal of application (3) The Minister shall, without delay, provide reasons to the applicant for any refusal of an application.
- Conditions of licences (4) Every licence is subject to the conditions referred to in subsections (5) to (7), any prescribed conditions and the following conditions:
- (a) that the licensee keep control of the licensed system;
 - (b) that the licensee not permit any other person to carry on a controlled activity in the operation of the system

except in accordance with the licence;

(c) that raw data and remote sensing products from the system about the territory of any country — but not including data or products that have been enhanced or to which some value has been added — be made available to the government of that country within a reasonable time, on reasonable terms and for so long as the data or products have not been disposed of, but subject to any licence conditions under subsection (6) or (7) applicable to their communication or provision;

(d) that the licensee keep control of raw data and remote sensing products from the system until they are disposed of in accordance with this Act;

(e) that raw data from the system be communicated only to a government referred to in paragraph (c), the licensee, a system participant or a person to whom they may be communicated under subsection (6);

(f) that the licensee encourage a recipient of raw data or a remote sensing product who has entered into an agreement referred to in paragraph (6)(b) or (7)(b) to comply with the agreement; and

(g) that any prescribed fees be paid when due.

Conditions
specified by
Minister

(5) In a licence, the Minister may specify any other condition that the Minister considers appropriate, including any condition

(a) relating to the use of cryptography or information assurance measures; or

(b) designating any person as a system participant and authorizing the licensee to permit that person to carry on any controlled activity in the operation of the licensed system that the Minister specifies.

Conditions
specified by
Minister — raw
data

(6) In a licence, the Minister may authorize the communication of raw data or classes of raw data from the licensed system to any persons or classes of persons other than the licensee or system participants on any conditions that the Minister considers appropriate. The conditions may include requirements that, in specified cases or circumstances, the communication of the raw data

(a) be subject to the Minister's prior approval; or

(b) be done only under a legally enforceable agreement, entered into in good faith, that includes measures respecting their security or their further communication.

The receipt, communication, processing or storage of raw data by such persons is not a controlled activity.

Conditions
specified by
Minister —
remote sensing
products

(7) In a licence, the Minister may restrict the provision of remote sensing products or classes of such products from the licensed system to persons or classes of persons other than the licensee or system participants on any conditions that the Minister considers appropriate. The conditions may include requirements that, in specified cases or circumstances, the provision of the remote sensing products

(a) be subject to the Minister's prior approval; or

(b) be done only under a legally enforceable agreement, entered into in good faith, that includes measures respecting their security or their further provision.

Term

(8) A licence is valid for the period that the Minister considers appropriate and specifies in it.

Non-
transferable

(9) A licence is not transferable without the Minister's consent.

Non-
application of
*Statutory
Instruments
Act*

(10) The *Statutory Instruments Act* does not apply to a licence.

System
disposal plan
and
arrangements

9. (1) The Minister may not issue a licence without having approved

(a) a system disposal plan for the licensed system satisfactory to the Minister that, among other things, provides for the protection of the environment, public health and the safety of persons and property; and

(b) arrangements satisfactory to the Minister relating to the guarantee of the performance of the licensee's obligations under the system disposal plan.

- Obligations regarding plan and arrangements (2) A licensee and, in the case of a licence that has terminated, the former licensee, shall
- (a) ensure that the following things are disposed of in accordance with the system disposal plan approved by the Minister:
- (i) every system satellite,
- (ii) the things used in connection with the cryptography and information assurance measures of the system,
- (iii) any raw data and remote sensing products from the system that are under the control of the licensee or former licensee, and
- (iv) anything else prescribed; and
- (b) put into effect the guarantee arrangements approved by the Minister under paragraph (1)(b) and keep them in effect until the system disposal plan has been carried out.
- Amendment of system disposal plan or arrangements (3) The Minister may, if the Minister is satisfied that it is desirable to do so, having regard to national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and the protection of the environment, public health and the safety of persons and property and any prescribed factors,
- (a) on application, amend a system disposal plan or the guarantee arrangements approved by the Minister under paragraph (1)(b); or
- (b) on the Minister's own initiative, on first giving notice to the licensee or former licensee that provides a reasonable opportunity to make representations, amend a system disposal plan.

AMENDMENT, SUSPENSION AND CANCELLATION OF LICENCES

- Amendment of conditions on Minister's initiative **10.** (1) The Minister may on the Minister's own initiative, if the Minister is satisfied that the amendment is desirable, having regard to national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and any prescribed factors, amend a licence with respect to any condition contemplated by any of subsections 8(5) to (7).
- Amendment — s. 8(5) (2) If the amendment concerns a condition contemplated by subsection 8(5), the Minister must first give to the licensee notice of the proposed amendment and a reasonable opportunity to make representations regarding it.
- Amendment — s. 8(6) or (7) (3) An amendment concerning a condition contemplated by subsection 8(6) or (7) may be effective immediately on notice to the licensee, but the Minister shall give to the licensee an opportunity — during a period of 15 days after the notice or any longer period that the Minister specifies — to make representations regarding it.
- Suspension of licence **11.** (1) The Minister may suspend a licence in whole or in part for a period of up to 90 days if the Minister is satisfied that the continued operation of a licensed system is likely to be
- (a) injurious to national security, the defence of Canada, the safety of Canadian Forces or Canada's conduct of international relations; or
- (b) inconsistent with Canada's international obligations.
- The suspension may be effective immediately on notice to the person, but the Minister shall, in the notice, set out the reasons for the suspension and give to the person an opportunity — during a period of 15 days after the notice or any longer period that the Minister specifies — to make representations regarding it.
- Extension of suspension (2) If the licence is suspended for less than 90 days, the Minister may extend the suspension for any further period or periods to a maximum total of 90 days if the Minister is satisfied that there continues to be a reason for the suspension under subsection (1).
- Further automatic extension of suspension (3) If the Minister gives notice of a proposed cancellation before the suspension expires, the suspension continues, unless the Minister earlier ends it, until the end of the period for making representations regarding the proposed cancellation.

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| Cancellation of licence | <p>12. The Minister may cancel a licence if it is suspended and a reason for the suspension continues to exist or if, at any time, the Minister is otherwise satisfied, having regard to national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and any prescribed factors, that the licence ought to be cancelled. But the Minister shall first give to the licensee notice of the reasons for the proposed cancellation and an opportunity — during a period of 45 days after the notice or any longer period that the Minister specifies — to make representations regarding it.</p> |
| Measures ordered on suspension or termination of licence | <p>13. (1) The Minister may make an order requiring a person whose licence is suspended or cancelled or has expired to take any measures related to the operation of the remote sensing space system that the Minister considers advisable, having regard to</p> <p>(a) national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations and Canada's international obligations; and</p> <p>(b) the system disposal plan, including its provisions for the protection of the environment, public health and the safety of persons and property.</p> <p>The order may be effective immediately on notice to the person, but the Minister shall give to the person an opportunity — during a period of 15 days after the notice or any longer period that the Minister specifies — to make representations regarding it.</p> |
| Non-application of <i>Statutory Instruments Act</i> | <p>(2) The <i>Statutory Instruments Act</i> does not apply to an order made under this section.</p> |

INTERRUPTIONS OF SERVICE

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| Minister's order | <p>14. (1) The Minister may make an order requiring a licensee to interrupt or restrict, for the period specified in the order, any operation, including the provision of any service, of the licensed system if the Minister believes on reasonable grounds that the continuation of that operation would be injurious to Canada's conduct of international relations or inconsistent with Canada's international obligations.</p> |
| Order of Minister of National Defence | <p>(2) The Minister of National Defence may make an order requiring a licensee to interrupt or restrict, for the period specified in the order, any operation, including the provision of any service, of the licensed system if the Minister of National Defence believes on reasonable grounds that the continuation of that operation would be injurious to the defence of Canada or the safety of Canadian Forces.</p> |
| Non-application of <i>Statutory Instruments Act</i> | <p>(3) The <i>Statutory Instruments Act</i> does not apply to an order made under this section.</p> |
| Non-disclosure direction | <p>(4) If the minister making an order under subsection (1) or (2) is satisfied that the substance of the order ought not to be disclosed for the same reasons as those on which the order is founded, that minister may include in the order a direction that no person shall disclose its substance to any other person except as required by law or as necessary to give it effect.</p> |
| Notice and opportunity to make representations | <p>(5) An order made under this section may take effect immediately on notice to the licensee, but the minister making the order shall give to the licensee an opportunity — during a period of 15 days after the notice or any longer period that the minister specifies — to make representations regarding it.</p> |

PRIORITY ACCESS

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| Minister's order for priority access | <p>15. (1) The Minister may make an order requiring a licensee to provide to Her Majesty in right of Canada any service through the licensed system that the Minister believes on reasonable grounds is desirable for the conduct of international relations or the performance of Canada's international obligations.</p> |
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| Order of Minister of National Defence | (2) The Minister of National Defence may make an order requiring a licensee to provide to Her Majesty in right of Canada any service through the licensed system that that minister believes on reasonable grounds is desirable for the defence of Canada or the safety of Canadian Forces. |
| Order of Minister of Public Safety and Emergency Preparedness | (3) The Minister of Public Safety and Emergency Preparedness may make an order requiring a licensee to provide any service through the licensed system <ul style="list-style-type: none"> (a) to the Royal Canadian Mounted Police that that minister believes on reasonable grounds is desirable for the fulfilment of its members' responsibilities under subsection 6(1) of the <i>Security Offences Act</i>; (b) to the Canadian Security Intelligence Service that that minister believes on reasonable grounds is desirable for the fulfilment of its duties and functions under the <i>Canadian Security Intelligence Service Act</i>; or (c) to Her Majesty in right of Canada that that minister believes on reasonable grounds is desirable for critical infrastructure protection or emergency preparedness. |
| Details of orders | (4) An order made under this section must specify the period during which the service is to be provided and may specify how and with what priority it is to be provided. |
| Non-application of <i>Statutory Instruments Act</i> | (5) The <i>Statutory Instruments Act</i> does not apply to an order made under this section. |
| Non-disclosure direction | (6) If the minister making an order is satisfied that the substance of the order ought not to be disclosed for the same reasons as those on which the order is founded, that minister may include in the order a direction that no person shall disclose its substance to any other person except as required by law or as necessary to give it effect. |
| Notice and opportunity to make representations | (7) An order made under this section may take effect immediately on notice to the licensee, but the minister making the order shall give to the licensee an opportunity — during a period of 15 days after the notice or any longer period that the minister specifies — to make representations regarding it. |

2005, c. 45, ss. 15, 46.

TRANSFER OF REMOTE SENSING SATELLITES

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| Prohibition on transfer of control | 16. (1) No licensee or former licensee shall permit a command to a remote sensing satellite of the remote sensing space system for which the licence was issued to be given from outside Canada or by any other person unless the licensee or former licensee <ul style="list-style-type: none"> (a) can override the command from Canada; or (b) has obtained the approval of the Minister. |
| Factors for approval | (2) In deciding whether to give an approval, the Minister shall have regard to national security, the defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and any prescribed factors. |

INSPECTION

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| Designation of inspectors | 17. (1) The Minister may designate as inspectors for the purposes of this Act persons or classes of persons that the Minister considers qualified. |
| Certificate | (2) Every inspector is to be provided with a certificate attesting to their designation, and shall, at the request of any person appearing to be in charge of any place entered by the inspector, present the certificate to the person. |
| Powers of inspectors | 18. (1) Inspectors may, in carrying out their duties and functions, |

inspectors

- (a) subject to subsection (2), enter and inspect, at any reasonable time, any place owned by or under the control of a licensee, a system participant or any other person who the inspector reasonably believes may be carrying on a controlled activity in the operation of a remote sensing space system, and in which the inspector believes on reasonable grounds there is any document, information or thing relevant to the administration or enforcement of this Act;
- (b) examine any document, information or thing at the place or remove it for examination or copying;
- (c) inspect any equipment at the place related to the operation of a remote sensing space system and perform tests of it;
- (d) use or cause to be used any data processing system at the place to examine any data contained in or available to the system;
- (e) reproduce any record from those data or cause it to be reproduced from them in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
- (f) use or cause to be used any copying equipment or means of communication located at the place.

Warrant
required to
enter dwelling-
place

(2) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (3).

Authority to
issue warrant

(3) On *ex parte* application, a justice, as defined in section 2 of the *Criminal Code*, may issue a warrant authorizing an inspector named in the warrant to enter a dwelling-place, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that

- (a) the dwelling-place is a place described in paragraph (1)(a);
- (b) entry to the dwelling-place is necessary for any purpose relating to the administration or enforcement of this Act; and
- (c) entry has been refused, there are reasonable grounds for believing that entry will be refused or consent to entry cannot be obtained from the occupant.

Use of force

(4) An inspector executing a warrant issued under subsection (3) shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Assistance to
inspector

(5) The owner or other person in charge of a place entered by an inspector under this section shall give the inspector all reasonable assistance in the power of that person and furnish the inspector with any information that the inspector reasonably requires.

Obstruction
and false
information

- (6) No person shall, with respect to an inspector engaged in carrying out their duties and functions,
- (a) wilfully obstruct or hinder the inspector; or
 - (b) knowingly make or provide to the inspector any false or misleading statement or information.

REQUESTS FOR INFORMATION

Notice for
disclosure of
information

19. (1) The Minister may send a notice to any person who the Minister believes on reasonable grounds has any information or document relevant to the administration or enforcement of this Act, requesting the person to provide that information or document, within any reasonable period that the Minister specifies, to the Minister or any person whom the Minister designates.

Application for
court order

(2) If a person objects to providing or fails to provide the Minister or a designated person, as the case may be, with any requested information or document within the specified period, the Minister may apply to a judge of a superior court of a province or of the Federal Court for an order requiring the person to provide it.

Notice of
hearing

(3) The Minister shall give the person at least seven days notice of the hearing of the application.

Order (4) On hearing the application, the judge may order the person to provide the information or documents if the judge concludes that providing them is necessary for any purpose relating to the administration or enforcement of this Act and that the public interest in having the information or documents provided outweighs in importance any other interest, including privacy interest, of the person.

REGULATIONS

Regulations **20.** (1) On the recommendation of the Minister, the Governor in Council may make regulations

- (a) prescribing a process or series of processes that is or is not to be considered to transform raw data;
- (b) prescribing classes of persons for the purpose of paragraph 6(d);
- (c) respecting the issuance, amendment and renewal of licences, including
 - (i) prescribing the manner and form of making applications,
 - (ii) respecting information, documents or undertakings — including the system disposal plan and arrangements referred to in subsection 9(1) — to be provided in support of applications,
 - (iii) prescribing fees for applications or the manner of calculating them,
 - (iv) respecting security assessments of proposed or actual licensees or system participants, and
 - (v) prescribing conditions of licences;
- (d) requiring notice of any change — of which the licensee has knowledge — in any information that has been provided in connection with an application;
- (e) respecting the suspension or cancellation of licences;
- (f) respecting the operation of licensed systems;
- (g) requiring periodic or special reports concerning licensed systems;
- (g.1) respecting the archiving of raw data, including the public access to the archived data;
- (h) respecting the keeping of records;
- (i) prescribing fees, including periodic fees, for a licence, or the manner of calculating those fees, and when they are to be paid;
- (j) respecting the determination of amounts that may be paid under subsection 22(2);
- (k) for carrying out sections 23 and 25, including
 - (i) designating any provision of this Act or of any regulation, order or direction made under this Act or any requirement of such a provision or any condition or class of conditions of a licence or provision or class of provisions of a system disposal plan as a provision, requirement or condition whose contravention may be proceeded with as a violation,
 - (ii) prescribing the maximum administrative monetary penalty for a particular violation, which maximum may not exceed \$5,000, in the case of an individual, and \$25,000, in any other case,
 - (iii) prescribing criteria to be taken into account in determining the amount of a proposed penalty,
 - (iv) respecting compliance agreements, and
 - (v) respecting appeals;
- (l) respecting the giving or service of notices under this Act;
- (m) respecting the making of representations under this Act;
- (n) prescribing anything that is to be prescribed under this Act; and
- (o) generally, for carrying out the purposes and provisions of this Act.

Regulations may vary (2) Regulations made under subsection (1) may vary according to any criterion or combination of criteria or by class of remote sensing space system operator or activity

Incorporation by reference (3) For greater certainty, a regulation made under subsection (1) incorporating by reference any classifications, standards, procedures, specifications or rules may incorporate them as they are amended from time to time.

DELEGATION

- Minister **21. (1) The Minister**
- (a) may not delegate the exercise of the Minister's powers under subsection 4(3) or 14(1);
 - (b) may delegate only to his or her deputy minister the exercise of the Minister's powers under subsection 15(1); and
 - (c) may delegate to any officer or class of officers — or, with the consent of the Minister of National Defence, a member or class of members of the Canadian Forces — the exercise of any other powers of the Minister under this Act.
- Minister of National Defence **(2) The Minister of National Defence**
- (a) may not delegate the exercise of that minister's powers under subsection 14(2); and
 - (b) may delegate only to his or her deputy minister or the Chief of the Defence Staff the exercise of that minister's powers under subsection 15(2).
- Minister of Public Safety and Emergency Preparedness **(3) The Minister of Public Safety and Emergency Preparedness may delegate only to**
- (a) the Commissioner of the Royal Canadian Mounted Police the exercise of that minister's powers under paragraph 15(3)(a);
 - (b) the Director of the Canadian Security Intelligence Service the exercise of that minister's powers under paragraph 15(3)(b); and
 - (c) the Deputy Minister of Public Safety and Emergency Preparedness the exercise of that minister's powers under paragraph 15(3)(c).
- 2005, c. 45, ss. 21, 46.

NO LIABILITY

- No right to compensation **22. (1) No person is entitled to financial compensation from Her Majesty in right of Canada for any financial losses resulting from any of the following actions taken in good faith: the amendment of a system disposal plan or arrangements under subsection 9(3); the amendment of a licence under section 10; the suspension of a licence under section 11; the cancellation of a licence under section 12; or, the making of an order under section 13, 14 or 15.**
- Authority to make payment **(2) A minister may pay a licensee an amount determined in accordance with the regulations for the service provided as a result of an order made by that minister under section 15.**

ADMINISTRATIVE MONETARY PENALTIES

VIOLATIONS

- Violations **23. Every person who contravenes a provision, requirement or condition designated under subparagraph 20(1)(k)(i) commits a violation and is liable to an administrative monetary penalty not exceeding the maximum prescribed or, if no maximum has been prescribed, to a penalty not exceeding \$5,000, in the case of an individual, and \$25,000, in any other case.**

ENFORCEMENT OFFICERS

- Designation of enforcement officers **24.** (1) The Minister may designate as enforcement officers for the purposes of this Act persons or classes of persons that the Minister considers qualified.
- Certification of designated persons (2) Enforcement officers are to receive a certificate attesting to their designation and shall, on demand, present the certificate to any person from whom they request information in the course of their duties or functions.
- Status of inspector (3) Every enforcement officer is, in carrying out their duties and functions, an inspector.

NOTICES OF VIOLATION

- Issuance and service **25.** (1) If an enforcement officer believes on reasonable grounds that a person has committed a violation, the officer may issue, and shall cause to be served on the person, a notice of violation.
- Contents of notice (2) The Minister may establish the form and content of notices of violation, but each notice of violation must
- (a) name the person believed to have committed a violation;
 - (b) identify the violation;
 - (c) set out the penalty that the enforcement officer proposes to impose;
 - (d) inform the person that they may, within 30 days after the notice is served or within any longer period specified in the notice, either pay the penalty set out in the notice or make representations to the officer with respect to the alleged violation or proposed penalty — including any representations about entering into a compliance agreement — and set out the manner for doing so; and
 - (e) inform the person that, if they do not pay the penalty or make representations in accordance with the notice, they will be considered to have committed the violation and the officer may impose a penalty in respect of it.
- Criteria for penalty (3) The amount of a proposed penalty is, in each case, to be determined taking into account the following matters:
- (a) the degree of intention or negligence on the part of the person who committed the violation;
 - (b) the harm done by the violation;
 - (c) the person's history of prior violations or convictions under this Act during the five-year period immediately before the violation;
 - (d) any prescribed criteria; and
 - (e) any other relevant matter.

DETERMINATION OF RESPONSIBILITY AND PENALTY

Payment of Penalty

- Payment **26.** If the person pays the penalty proposed in the notice of violation, the person is considered to have committed the violation and proceedings in respect of it are ended.

Making Representations

- Making of representations either **27.** (1) If the person alleged to have committed a violation makes representations, the enforcement officer shall
- (a) enter into a compliance agreement with the person on behalf of the Minister; or
 - (b) decide on a balance of probabilities whether the person committed the violation and, if so, impose the

(b) decide on a balance of probabilities whether the person committed the violation and, if so, impose the penalty proposed, a lesser penalty or no penalty, taking into account the matters mentioned in subsection 25(3).

The enforcement officer shall cause notice of any decision made under paragraph (b) to be issued and served on the person together with notice of the person's right of appeal under subsection 29(1).

Compliance agreements

(2) In the course of the making of representations, an enforcement officer may, on behalf of the Minister, enter into a compliance agreement with the person alleged to have committed a violation on any terms that the officer considers satisfactory. The terms

(a) must provide for payment by the person to the Receiver General of a specified amount not greater than the penalty proposed in the notice of violation if the person does not comply with the agreement; and

(b) may provide for the giving of reasonable security, in a form and an amount that the officer considers satisfactory, for the person's performance of the agreement.

Agreement ends proceedings

(3) Entry into a compliance agreement ends the violation proceedings and precludes any further violation or offence proceedings in relation to the act or omission in question.

If agreement not complied with

(4) The Minister may issue and serve a notice of default on a person who has entered into a compliance agreement but has not complied with it. On service of the notice, the person is liable to pay without delay the amount provided for in the agreement, failing which, the Minister may realize or enforce any security for the person's performance of the agreement.

Responsibility

Failure to act

28. A person who neither pays the penalty nor makes representations in accordance with the notice of violation is considered to have committed the violation, and the enforcement officer shall impose the penalty proposed and notify the person of it.

APPEAL TO MINISTER

Right of appeal

29. (1) A person served with notice of a decision made under paragraph 27(1)(b) may, within 30 days after the notice is served, or within any longer period that the Minister allows, appeal the decision to the Minister.

Powers of Minister

(2) On an appeal, the Minister may confirm, set aside or vary the decision of the enforcement officer.

RULES ABOUT VIOLATIONS

Vicarious liability — acts of employees, agents and mandataries

30. A person is liable for a violation that is committed by the person's employee acting in the course of the employment or the person's agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against.

Due diligence

31. Due diligence is a defence in a proceeding in relation to a violation.

Continuing violation

32. A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

Limitation period

33. Any proceedings in respect of a violation may be instituted at any time within, but not later than, two years after the time when the subject-matter of the proceedings arose.

Violation or offence

34. (1) If it is possible to proceed with any act or omission as a violation and it is also possible to proceed with it as an offence, proceeding in one manner precludes proceeding in the other.

Violations not

(2) For greater certainty, a violation is not an offence and, accordingly, section 126 of the *Criminal Code* does

offences (2) For greater certainty, a violation is not an offence and, accordingly, section 120 of the *Criminal Code* does not apply in respect of one.

Admissibility of documents **35.** In the absence of evidence to the contrary, a document that appears to be a notice issued under subsection 25(1) or 27(1) or (4) or given under section 28 or a certificate issued under subsection 37(1) is presumed to be authentic and is proof of its contents in any proceeding in respect of a violation or a prosecution for an offence.

RECOVERY OF PENALTIES AND AMOUNTS

Debts to Her Majesty **36.** (1) A penalty imposed under this Act and an amount referred to in subsection 27(4) each constitute a debt due to Her Majesty in right of Canada and may be recovered in the Federal Court or any other court of competent jurisdiction.

Time limit (2) No proceedings to recover such a debt may be commenced later than seven years after the debt became payable.

Proceeds payable to Receiver General (3) Each such debt is payable to the Receiver General.

Certificate **37.** (1) The Minister may issue a certificate certifying the unpaid amount of any debt referred to in subsection 36(1).

Registration in Federal Court (2) Registration in the Federal Court or in any other court of competent jurisdiction of a certificate issued under subsection (1) has the same effect as a judgment of that Court for a debt of the amount specified in the certificate and all related registration costs.

OFFENCES

Contravention — section 5, 13 or 14 or subsection 16(1) **38.** (1) Every person who contravenes section 5 or subsection 16(1) or an order made under section 13 or 14 is guilty of an offence and liable on summary conviction
(a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 18 months, or to both; and
(b) in any other case, to a fine not exceeding \$250,000.

Contravention — section 15 or subsection 18(5) or (6) (2) Every person who contravenes subsection 18(5) or (6) or an order made under section 15 is guilty of an offence and liable on summary conviction
(a) in the case of an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months, or to both; and
(b) in any other case, to a fine not exceeding \$125,000.

Jurisdiction — contravention outside Canada **39.** (1) If a person is alleged to have committed an act or omission that is a contravention of section 5 because of the application of section 6, proceedings in relation to that contravention may, whether or not the person is in Canada, be commenced in any territorial division in Canada, and the person may be tried and punished in respect of that offence in the same manner as if it had been committed in that territorial division.

Appearance of accused at trial (2) The provisions of the *Criminal Code*, including their exceptions, relating to requirements that an accused appear at and be present during proceedings apply in respect of proceedings commenced in a territorial division under subsection (1).

Offence dealt with outside Canada (3) If a person is alleged to have committed an act or omission referred to in subsection (1) and the person has been dealt with outside Canada for the contravention in a manner that, if the person had been dealt with in Canada for the contravention in that manner, would allow the person to plead *autrefois acquit*, *autrefois convict* or *res judicata*, the person is deemed to have been so dealt with in Canada.

person, the person is deemed to have been so dealt with in Canada.

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| Liability of officers, directors, agents or mandataries | 40. If a corporation commits an offence under this Act, any officer, director, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted. |
| Offences by employees, agents or mandataries | 41. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee, an agent or a mandatary of the accused, whether or not the employee, agent or mandatary is identified or has been prosecuted for the offence. |
| Due diligence | 42. (1) Due diligence is a defence in a prosecution for an offence under this Act. |
| Section 126 of <i>Criminal Code</i> | (2) No person shall be prosecuted under section 126 of the <i>Criminal Code</i> for a contravention of subsection 9(2). |
| Continuing offence | 43. A contravention of this Act that is committed or continued on more than one day constitutes a separate offence for each day on which it is committed or continued. |
| Limitation period | 44. Any proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within, but not later than, two years after the time when the subject-matter of the proceedings arose. |
| Injunctions | 45. If a court of competent jurisdiction — including the Federal Court — is satisfied, on application by the Minister, that a contravention of section 5 is being or is likely to be committed, the court may grant an injunction, subject to any conditions that the court considers appropriate, ordering any person to cease or refrain from any activity related to that contravention, or ordering the person to take any measure that a licensee could, under this Act, be required to take. |

REVIEW AND REPORT

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| Independent review | 45.1 (1) The Minister shall cause an independent review of the provisions and operation of this Act to be conducted from time to time in order to assess, in particular, its impact on technological development and on the implementation of international agreements and treaties. |
| Report by Minister | (2) The Minister shall cause the report on a review conducted under subsection (1) to be laid before each House of Parliament within five years after the coming into force of this Act, and within every five-year period after the tabling of a report under this subsection. |

COORDINATING AMENDMENT

46. [Amendments]

COMING INTO FORCE

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| Order in council | *47. This Act, other than section 46, comes into force on a day to be fixed by order of the Governor in Council. * [Note: Section 46 in force on assent November 25, 2005; Act, other than section 46, in force April 5, 2007, see SI/2007-47.] |
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