Production Orders:
Comparison of Former Original Criminal Code Production Order sections Bill C-13 Amendments: ss. 487.011 to 487.3 (after 9 March 2015)

PART XV
SPECIAL PROCEDURE AND POWERS

GENERAL POWERS OF CERTAIN OFFICIALS

Definitions	**487.011** The following definitions apply in this section and in sections 487.012 to ~~487.017~~ <u>487.0199</u>.
<u>"computer data"</u> « <u>données informatiques</u> »	<u>"computer data"</u> has the same meaning as in subsection 342.1(2).
<u>"data"</u> « <u>données</u> »	<u>"data" means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device.</u>
"document" « document »	"document" means <u>a</u> ~~any~~ medium on <u>which data</u> is ~~recorded~~ registered or marked ~~anything that is capable of being read or understood by a person or a computer system or other device~~.
<u>"judge"</u> « <u>juge</u> »	<u>"judge" means a judge of a superior court of criminal jurisdiction or a judge of the Court of Quebec.</u>
<u>"public officer"</u> « <u>fonctionnaire public</u> »	<u>"public officer" means a public officer who is appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament.</u>
<u>"tracking data"</u> « <u>données de localisation</u> »	<u>"tracking data" means data that relates to the location of a transaction, individual or thing.</u>
<u>"transmission data"</u> « <u>données de transmission</u> »	<u>"transmission data" means data that</u> <u>(*a*) relates to the telecommunication functions of dialling, routing, addressing or signalling;</u> <u>(*b*) is transmitted to identify, activate or configure a device, including a computer program as defined in subsection 342.1(2), in order to establish or maintain access to a telecommunication service for the purpose of enabling a communication, or is generated during the creation, transmission or reception of a communication and identifies or purports to identify the type, direction, date, time, duration, size, origin, destination or termination of the communication; and</u> <u>(*c*) does not reveal the substance, meaning or purpose of the communication.</u>

"Preservation demand"

487.012 (1) A peace officer or public officer may make a demand to a person in Form 5.001 requiring them to preserve computer data that is in their possession or control when the demand is made.

Conditions for making demand

(2) The peace officer or public officer may make the demand only if they have reasonable grounds to suspect that

(*a*) an offence has been or will be committed under this or any other Act of Parliament or has been committed under a law of a foreign state;

(*b*) in the case of an offence committed under a law of a foreign state, an investigation is being conducted by a person or authority with responsibility in that state for the investigation of such offences; and

(*c*) the computer data is in the person's possession or control and will assist in the investigation of the offence.

Limitation

(3) A demand may not be made to a person who is under investigation for the offence referred to in paragraph (2)(*a*).

Expiry and revocation of demand

(4) A peace officer or public officer may revoke the demand by notice given to the person at any time. Unless the demand is revoked earlier, the demand expires

(*a*) in the case of an offence that has been or will be committed under this or any other Act of Parliament, 21 days after the day on which it is made; and

(*b*) in the case of an offence committed under a law of a foreign state, 90 days after the day on which it is made.

Conditions in demand

(5) The peace officer or public officer who makes the demand may impose any conditions in the demand that they consider appropriate — including conditions prohibiting the disclosure of its existence or some or all of its contents — and may revoke a condition at any time by notice given to the person.

No further demand

(6) A peace officer or public officer may not make another demand requiring the person to preserve the same computer data in connection with the investigation.

Preservation order — computer data

487.013 (1) On *ex parte* application made by a peace officer or public officer, a justice or judge may order a person to preserve computer data that is in their possession or control when they receive the order.

Conditions for making orders

(2) Before making the order, the justice or judge must be satisfied by information on oath in Form 5.002

(*a*) that there are reasonable grounds to suspect that an offence has been or will be committed under this or any other Act of Parliament or has been committed under a law of a foreign state, that the computer data is in the person's possession or control and that it will assist in the investigation of the offence; and

(*b*) that a peace officer or public officer intends to apply or has applied for a warrant or an order in connection with the investigation to obtain a document that contains the computer data.

Offence against law of foreign state

(3) If an offence has been committed under a law of a foreign state, the justice or judge must also be satisfied that a person or authority with responsibility in that state for the investigation of such offences is conducting the investigation.

Form

(4) The order is to be in Form 5.003.

Limitation

(5) A person who is under investigation for an offence referred to in paragraph (2)(*a*) may not be made subject to an order.

Expiry of order

(6) Unless the order is revoked earlier, it expires 90 days after the day on which it is made.

~~Production~~General production order

~~487.012~~ ~~(1) a justice or judge may order a person, other than a person under investigation for an offense referred to in paragraph (3)(a),~~**487.014** (1) Subject to sections 487.015 to 487.018, on *ex parte* application made by a peace officer or public office, a justice or judge may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing data that is in their possession or control at that time

~~(a)   To produce documents, or copies of them certified by affidavit to be true copies, or to produce data; or~~

~~(b)   To prepare a document based on documents or data already in existence and produce it~~

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Conditions for ~~issuance of~~ making an order

(~~3~~2) Before making ~~an~~the order, the justice or judge must be satisfied~~, on the basis of an *ex parte* application containing~~ by information on oath in ~~writing.~~Form 5.004 that there are reasonable grounds to believe that

(a) ~~an~~an offense ~~against~~has been or will be committed under this ~~Act~~or any other Act of Parliament ~~has been or is suspected to have been committed;~~; and

(b) ~~the documents~~the document or data is in the person's possession or control and will afford evidence respecting the commission of the offense~~; and~~

Form

(3) The order is to be in Form 5.005

Limitations

(4) A person who is under investigation for the offence referred to in subsection (2) may not be made subject to an order.

Terms and Conditions

~~(4) The order may contain any terms and conditions that the justice or judge considers advisable in the communication between a lawyer and their client or, in the provience of Quebec, between a lawyer or a notary and their client.~~

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Conditions in preservation and production orders

487.019 (1) An order made under any of sections 487.013 to 487.018 may contain any conditions that the justice or judge considers appropriate including, in the case of an order made under section 487.014, conditions to protect a privileged communication between a person who is qualified to give legal advice and their client.

Effect of order

(2) The order has effect throughout Canada and, for greater certainty, no endorsement is needed for the order to be effective in a territorial division that is not the one in which the order is made.

Power to revoke or vary order

(3) On *ex parte* application made by a peace officer or public officer, the justice or judge who made the order — or a judge in the judicial district where the order was made — may, on the basis of an information on oath in Form 5.0081, revoke or vary the order. The peace officer or public officer must give notice of the revocation or variation to the person who is subject to the order as soon as feasible.

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Order prohibiting disclosure | **487.0191** (1) On *ex parte* application made by a peace officer or public officer, a justice or judge may make an order prohibiting a person from disclosing the existence or some or all of the contents of a preservation demand made under section 487.012 or a preservation or production order made under any of sections 487.013 to 487.018 during the period set out in the order.

Conditions for making order | (2) Before making the order, the justice or judge must be satisfied by information on oath in Form 5.009 that there are reasonable grounds to believe that the disclosure during that period would jeopardize the conduct of the investigation of the offence to which the preservation demand or the preservation or production order relates.

Form | (3) The order is to be in Form 5.0091.

Application to revoke or vary order | (4) A peace officer or a public officer or a person, financial institution or entity that is subject to an order made under subsection (1) may apply in writing to the justice or judge who made the order — or to a judge in the judicial district where the order was made — to revoke or vary the order.

Particulars — production orders | ~~487.012(2)~~ **487.0192** (1) ~~The~~ An order made under any of sections 487.014 and 487.016 to 487.018 ~~shall~~ must require ~~the documents or data to be produced within a time, at the place and in the form specified and given~~ a person, financial institution or entity to produce the document ~~(a)~~ to a peace officer ~~named in the order; or (b)~~ public officer named in the order~~, who has been appointed or designated to administer or enforce a federal or provincal law and whose duties include the enforcement of this or any more Act of Parliament~~ within the time, at the place and in the form specified in the order.

Particulars — production order to trace specified communication | (2) An order made under section 487.015 must require a person to produce the document to a peace officer or public officer named in the order as soon as feasible after they are served with the order at the place and in the form specified in the order.

Form of production | (3) For greater certainty, an order under any of sections 487.014 to 487.018 may specify that a document may be produced on or through an electro-magnetic medium.

Non-application | ~~487.012(6)~~ (4) For greater certainty, sections 489.1 and 490 do not apply~~, with any modifications that the circumstances require, in respect of~~ to a ~~documents or data~~ document that is produced under ~~this~~ an order under any of sections 487.014 to 487.018.

Probative force of copies | ~~487.012(7)~~ (5) Every copy of a document produced under ~~this~~ section 487.014~~, on proof by affidavit that it is a true copy,~~ is admissible in evidence in proceedings under this or any other Act of Parliament ~~on proof by affidavit that it is a true copy~~ and has the same probative force as the

original document would have if it ~~had been~~ were proved in the ordinary way.

(6) A document that is prepared for the purpose of production is considered to be original for the purposes of the *Canada Evidence Act*.

Application for ~~Exemption~~review of production order

487.~~015~~0193 (1) ~~A person named in~~Before they are required by an order made under any of section 487.~~012 and a~~014 to 487.018 to produce a document, a person, financial institution~~, person~~ or entity ~~named in an order made under section 487.013~~ may~~, before the order expires,~~ apply in writing to the justice or judge who ~~issued~~made the order~~,~~ – or to a judge ~~of~~in the ~~same territorial division as the judge or justice who issued~~judicial district where the order~~, for an exemption from the requirement to produce any document, data~~ was made – to revoke or ~~information referred to in~~vary the order.

Notice required

(2) ~~A~~The person, ~~financial~~ institution or entity may ~~only~~ make ~~an~~the application ~~under subsection (1)~~only if they give notice of their intention to do so to ~~the~~a peace officer or public officer named in the order~~,~~ within 30 days after ~~it~~the day on which the order is made.

~~Order suspended~~No obligation to produce

(3) The ~~execution of a production order~~person, institution or entity is ~~suspended in respect of any document, data or information referred~~not required to ~~in~~prepare or produce the ~~application for exemption~~document until a final decision is made ~~in~~with respect ~~of~~to the application.

~~Exemption~~

Revocation or variation of order

(4) The justice or judge may ~~grant~~revoke or vary the ~~exemption~~order if satisfied that

~~(c) the document, data or information would disclose information that is privileged or otherwise protected from disclosure by law;~~

(~~b~~*a*) ~~it~~it is unreasonable in the circumstance to require the applicant to prepare or produce the document~~, data or information~~; or

(b) ~~It is unreasonable to require the applicant to produce~~production of the document~~, data~~ or would disclose information~~; or~~ that is privileged or otherwise protected from disclosure

(c) ~~the document, data or information is not in the possession or control of the applicant.~~

Destruction of preserved computer data and documents — preservation demand

487.0194 (1) A person to whom a preservation demand is made under section 487.012 shall destroy the computer data that would not be retained in the ordinary course of business and any

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document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the demand expires or is revoked, unless they are subject to an order made under any of sections 487.013 to 487.017 with respect to the computer data.

Destruction of preserved computer data and documents — preservation order

(2) A person who is subject to a preservation order made under section 487.013 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the order expires or is revoked, unless they are subject to a new preservation order or to a production order made under any of sections 487.014 to 487.017 with respect to the computer data.

Destruction of preserved computer data and documents — production order

(3) A person who is subject to a production order made under any of sections 487.014 to 487.017 with respect to computer data that they preserved under a preservation demand or order made under section 487.012 or 487.013 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the earlier of

(*a*) the day on which the production order is revoked, and

(*b*) the day on which a document that contains the computer data is produced under the production order.

Destruction of preserved computer data and documents — warrant

(4) Despite subsections (1) to (3), a person who preserved computer data under a preservation demand or order made under section 487.012 or 487.013 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section when a document that contains the computer data is obtained under a warrant.

For greater certainty

487.0195 (1) For greater certainty, no preservation demand, preservation order or production order is necessary for a peace officer or public officer to ask a person to voluntarily preserve data that the person is not prohibited by law from preserving or to voluntarily provide a document to the officer that the person is not prohibited by law from disclosing.

No civil or criminal liability

(2) A person who preserves data or provides a document in those circumstances does not incur any criminal or civil liability for doing so.

Self-incrimination

487.0196 No one is excused from complying with an order made under any of sections 487.014

to 487.018 on the ground that the document that they are required to produce may tend to incriminate them or subject them to a proceeding or penalty. However, no document that an individual is required to prepare may be used or received in evidence against them in a criminal proceeding that is subsequently instituted against them, other than a prosecution for an offence under section 132, 136 or 137.

Offence — preservation demand	**487.0197** A person who contravenes a preservation demand made under section 487.012 without lawful excuse is guilty of an offence punishable on summary conviction and is liable to a fine of not more than $5,000.

Offence – preservation or production order	487.~~017~~0198 A person, financial institution~~, person~~ or entity ~~who does not comply with a production~~ that contravenes an order made under ~~section 487.012 or~~any of sections 487.013 to 487.018 without lawful excuse is guilty of an offence ~~and liable~~punishable on summary conviction and is liable to a fine of not ~~exceeding~~more than $250,000 or to imprisonment for a term not ~~exceeding~~more than six months~~,~~ or to both.

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Offence — destruction of preserved data	**487.0199** A person who contravenes section 487.0194 without lawful excuse is guilty of an offence punishable on summary conviction.

Assistance order	487.02 ~~Where~~If an authorization is given under section 184.2, 184.3, 186 or 188~~,~~ or a warrant is issued under this Act ~~or an order is made under subsection 492.2(2),~~. the judge or justice who gives the authorization~~,~~ or issues the warrant ~~or makes the order~~ may order ~~any~~a person to provide assistance, ~~where~~if the person's assistance may reasonably be considered to be required to give effect to the authorization~~,~~ or warrant ~~or order~~.

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OTHER PROVISIONS RESPECTING SEARCH WARRANTS, PRESERVATION ORDERS AND PRODUCTION ORDERS

~~ORDER DENYING ACCESS TO INFORMATION USED TO OBTAIN A WARRANT OR PRODUCTION ORDER~~

Order denying access to information ~~used to obtain a warrant or production order~~	487.3 (1) ~~A judge or justice may, on~~On application made at the time ~~of issuing~~an application is made for a warrant under this or any other Act of Parliament ~~or a production~~. an order under ~~section 487.012 or~~any of sections 487.013~~,~~ to 487.018 or ~~of granting~~ an authorization ~~to enter a~~

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~~dwelling-house~~ under section 529 or ~~an authorization under section~~ 529.4, or at ~~any~~a later time ~~thereafter,~~, a justice, a judge of a superior court of criminal jurisdiction or a judge of the Court of Quebec may make an order prohibiting access to, and the disclosure of, any information relating to the warrant, ~~production~~ order or authorization on the ground that

(*a*) the ends of justice would be subverted by the disclosure for one of the reasons referred to in subsection (2) or the information might be used for an improper purpose; and

(*b*) the ~~ground~~reason referred to in paragraph (*a*) outweighs in importance the access to the information.

(2) For the purposes of paragraph (1)(*a*), an order may be made under subsection (1) on the ground that the ends of justice would be subverted by the disclosure

(*a*) if disclosure of the information would

(i) compromise the identity of a confidential informant,

(ii) compromise the nature and extent of an ongoing investigation,

(iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used, or

(iv) prejudice the interests of an innocent person; and

(*b*) for any other sufficient reason.

(3) Where an order is made under subsection (1), all documents relating to the application shall, subject to any terms and conditions that the justice or judge considers desirable in the circumstances, including, without limiting the generality of the foregoing, any term or condition concerning the duration of the prohibition, partial disclosure of a document, deletion of any information or the occurrence of a condition, be placed in a packet and sealed by the justice or judge immediately on determination of the application, and that packet shall be kept in the custody of the court in a place to which the public has no access or in any other place that the justice or judge may authorize and shall not be dealt with except in accordance with the terms and conditions specified in the order or as varied under subsection (4).

(4) An application to terminate the order or vary any of its terms and conditions may be made to the justice or judge who made the order or a judge of the court before which any proceedings arising out of the investigation in relation to which the warrant or production order was obtained may be held.