**Legislative Summary** **LS-473E**

# BILL C-2: AN ACT TO AMEND THE RADIOCOMMUNICATION ACT

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# LEGISLATIVE HISTORY OF BILL C-2

| HOUSE OF COMMONS | | SENATE | |
|---|---|---|---|
| **Bill Stage** | **Date** | **Bill Stage** | **Date** |
| First Reading: | 5 February 2004 | First Reading: | |
| Referred to Committee: | 17 February 2004 | Second Reading: | |
| Committee Report: | | Committee Report: | |
| Report Stage and Second Reading: | | Report Stage: | |
| Third Reading: | | Third Reading: | |

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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# BILL C-2: AN ACT TO AMEND THE RADIOCOMMUNICATION ACT*

## BACKGROUND

Bill C-2, An Act to amend the Radiocommunication Act, was introduced in the House of Commons and given first reading on 5 February 2004. The bill was read a second time and referred to the House of Commons Standing Committee on Industry, Science and Technology on 17 February 2004.(1)

The focus of the *Radiocommunication Act* is upon the allocation of specified radio frequencies, the authorization to possess and operate radio apparatus, and the technical regulation of the radio spectrum. The Act also places restrictions on the reception of and interference with radiocommunication, which includes encrypted broadcast programming signals. Devices used to steal satellite signals can interfere with licensed radiocommunication systems, including emergency public safety services.

This bill amends the *Radiocommunication Act* to address two issues: satellite signal theft (or "piracy," as it is sometimes referred to), and the paid reception of foreign satellite signals that have not been authorized for viewing in Canada.

Bill C-2 seeks to prevent the theft of satellite signals and the reception of unauthorized satellite signals by:

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive royal assent, and come into force.

(1) By a motion adopted on 10 February 2004, the House of Commons provided for the reintroduction in the 3rd session of government bills that had not received royal assent during the previous session and that died on the *Order Paper* when Parliament was prorogued on 12 November 2003. The bills could be reinstated at the same legislative stage that they had reached when the 2nd session was prorogued. Bill C-2 is the reinstated version of Bill C-52, which died on the *Order Paper*.

- introducing better controls on the importation of equipment used to decode these signals, by explicitly prohibiting the importation of decoding equipment used to pick up satellite signals illegally;
- significantly increasing the penalties for these offences to serve as a greater deterrence; and
- enhancing the rights of the Canadian broadcasting industry to recover damages from those who sell illegal equipment and services.

These amendments to the *Radiocommunication Act* stem from the April 2002 Supreme Court of Canada decision in *Bell ExpressVu Limited Partnership* v. *Rex*,(2) confirming that the Act protects both Canadian and foreign signals from unauthorized decoding.

Some aspects of the law prior to that decision were unclear. While there was no doubt that signal theft or piracy was and is illegal, there was less clarity with respect to the paid subscription by Canadians to signals from distributors outside Canada.

A. Satellite Signal Provision in Canada

Two satellite signal providers are currently authorized to provide services to Canadians: Bell ExpressVu; and Star Choice, owned by Shaw Communications. No other North American company is licensed to provide satellite signals to Canadians. Similar services operate in the United States: DirecTV and EchoStar (Dish Network) are licensed by the U.S. Federal Communications Commission (FCC) and are authorized to have their encrypted programming signals viewed in the United States. Under FCC rules, these U.S. signals are not authorized to be viewed outside the United States.

Some Canadians, however, prefer to obtain satellite signals from U.S. suppliers, on the grounds that U.S. services provide a wider choice and greater selection of popular, foreign language and religious programming.

Because the illegality of receiving unauthorized U.S. satellite signals in Canada was not clarified until the April 2002 decision of the Supreme Court of Canada, this practice was referred to as the "grey market," a term that reflected the ambiguity of the law on this issue.

(2) *Bell ExpressVu Limited Partnership* v. *Rex* [2002] 2 S.C.R. 559.

B. The Black Market–Grey Market Distinction

1. Satellite Signal Theft – the "Black Market"

A black market satellite system is one in which satellite programming services and signals are stolen by various means designed to circumvent the proper operation of the authorization system. Typically, someone obtains an illegal copy of a legitimate access card or code from either an individual or a dealer acting illegally. This illegal card or code then allows a user with reception equipment to receive satellite television signals without paying for them. The signals that are stolen or "pirated" may be either unauthorized U.S. signals or authorized Canadian signals. In the case of pirated signals, the broadcaster has not authorized their delivery to that particular user and is not being properly compensated for the service. This practice is therefore a form of theft, and black market satellite systems and pirated signals are undeniably illegal.

2. Reception of Unauthorized Satellite Signals – the "Grey Market"

Grey market satellite systems, on the other hand, are those in which programming services are obtained from a service provider that is not licensed to provide those services within the particular jurisdiction. For example, a provider may be licensed to provide signals within the United States but not in Canada.

In this instance, Canadian customers pay in full for the services they receive from U.S. satellite signal providers. However, some subterfuge is involved, such as the provision of a false U.S. postal-box mailing address, to make it appear as though the person receiving the signals is a resident in the territory for which the service provider is legitimately licensed.

Prior to the April 2002 Supreme Court of Canada decision in *Bell ExpressVu* v. *Rex*, the legality of grey market systems was open to question due to conflicting lower court decisions on the proper interpretation of the prohibition against receiving unauthorized signals found in section 9(1)(*c*) of the *Radiocommunication Act*. As a result of that Supreme Court decision, however, there is no question now that grey market systems are illegal under the *Radiocommunication Act.*

Bill C-2's proposed amendments to the *Radiocommunication Act* seek to give effect to this decision by confirming that the Act protects both Canadian and foreign signals from unauthorized decoding. It further provides for greater enforcement of the Act and enhanced penalties for breaches of the Act.

It should be noted that the Act and these amendments do not distinguish between satellite signals that have been stolen and those that are purchased from distributors outside Canada.

## DESCRIPTION AND ANALYSIS

Clause 1 amends section 2 of the *Radiocommunication Act* by introducing and defining the new term "import certificate." This is part of the overall scheme of the Act to better control the importation into Canada of radio apparatus or other devices designed to be used to decode an encrypted subscription programming signal or encrypted network feed. Clause 2 requires that such decoding equipment be imported in accordance with an import certificate.

### A. Changes to the Powers of the Minister

Clause 3 amends the Minister's powers in section 5 of the Act. It grants the Minister the power to issue import certificates for the importation of decoding equipment.

It also states that an import certificate *may not* be issued unless the Minister is satisfied that the decoding equipment will not be used in contravention of sections 9 and 10 of the Act. This means that the equipment cannot be sold, or used, with the intent to receive unauthorized signals. This provision attempts to ensure that the equipment will not be used either to steal satellite signals or to receive signals that are not authorized for view in Canada.

Factors the Minister shall take into consideration in deciding whether to issue an import certificate include:

- whether the person is a licensed Canadian satellite service provider, or the agent of such a provider;
- whether the person has been granted a ministerial exemption from the requirement for an import certificate; and
- whether the Minister is satisfied that the equipment in question will subsequently be exported, and thus not remain in Canada.

The Minister's power to grant an exemption to the requirement for an import certificate is set out in Clause 4. This exemption may be granted to any class of persons or class of equipment, and is subject to any conditions set out in the exemption order.

B. Changes to the Powers of Inspectors

Clause 5 amends the powers of inspectors set out in section 8 of the Act. This clause enhances the powers of inspectors to enforce the Act:

- it permits inspectors to *inspect* as well as enter "any place in which the inspector believes on reasonable grounds there is any radio apparatus, interference-causing equipment or radio-sensitive equipment, *any other thing related to such* apparatus or equipment, or any record, book of account or other document or data relevant to the enforcement of this Act";

- it further permits inspectors to "examine any radio apparatus, interference-causing equipment or radio-sensitive equipment *found there, as well as any other* thing related to such apparatus or equipment"; and to

- "*examine any record, book of account or other document or* data that the inspector believes on reasonable grounds contains information that is relevant to the enforcement of this Act and make copies of any of them"; and to

- "*open or cause to be opened any package or container that the inspector believes on reasonable grounds contains*" the equipment referred to above [emphasis added to indicate new wording].

Clause 5 also empowers inspectors to examine and reproduce any data contained in a computer or copying equipment found at the place.

C. Changes to the Penalties

Clause 6(1) and (2) amends the various penalty provisions found in the Act.

The penalty set out in subsection 10(1) of the Act is amended:

- for individuals, the maximum penalty is raised from a fine of no more than $5,000 or imprisonment for one year or both, to a fine of no more than $25,000 or imprisonment for one year or both;

- in the case of corporations, the maximum fine is raised from $25,000 to $200,000.

The penalty for offences under subsection 8(5) or (6) of the Act, as set out in section 10(2), is amended:

- the maximum penalty for breaches of these subsections of the Act is raised from $5,000 to $10,000.

The penalty for offences under paragraph 9(1)(*c*) or (*d*) of the Act, as set out in section 10(2.1), is amended:

- for individuals, the maximum penalty is raised from a fine of no more than $10,000 or six months' imprisonment or both, to a fine of no more than $25,000 or imprisonment for one year or both;

- in the case of corporations, the maximum fine is raised from $25,000 to $200,000.

The penalty for offences under paragraph 9(1)(*e*) of the Act, as set out in section 10(2.2), is amended:

- for individuals, the maximum penalty is raised from a fine of no more than $25,000 or one year's imprisonment or both, to a fine of no more than $50,000 or imprisonment for two years or both;

- in the case of corporations, the maximum fine is raised from $200,000 to $500,000.

Clause 8 amends the Act by providing that persons convicted of an offence under the Act are jointly and severally, or solidarily, liable for all the costs related to the seizure, detention, forfeiture or disposition of anything in excess of the net proceeds, if any, of disposition.

Section 16(1) of the Act is amended by clause 9. It provides that a "shipping document," as defined in clause 9, is admissible as evidence in any proceeding under the Act. It further states that, in the absence of evidence to the contrary, a shipping document is proof of the fact that the apparatus came into Canada, or that a person as shipper or consigner brought it into Canada, or that it was sent or shipped to a particular destination or person.

A shipping document includes the original or a copy of the bill of lading, customs form, commercial invoice, or other similar document.

### D. Changes to Civil Remedies

Clause 10 amends section 18(2) of the Act. This section addresses a rights holder's right to take civil action against a person who acts contrary to section 9(1)(*c*), (*d*) or (*e*) or section 10(1)(*b*) of the Act. The rights holder in most cases will be a satellite signal provider licensed to provide satellite signals and/or programming in Canada.

This clause introduces two significant amendments with regard to damages.

1. Limitation of Damages Against Individuals

First, an amendment limits the maximum amount of a monetary award against an individual to $1,000 in certain circumstances. Specifically, these are where:

- the individual did not retransmit to the public an unauthorized decoded encrypted signal, contrary to section 9(1)(*e*);
- the individual's conduct was not contrary to section 10(1)(*b*) other than merely because he or she installed, operated or possessed equipment that was used for the purpose of contravening section 9 – that is, for the purpose of receiving unauthorized satellite signals; and
- the individual's conduct was not engaged in for commercial gain.

This particular amendment appears designed to assure individuals who merely receive unauthorized signals that they are not the main target of this bill. Rather, the legislation seeks to introduce harsher punishment for individuals and businesses that obtain and sell decoding devices and equipment for commercial gain.

Thus, while it is illegal to receive unauthorized satellite signals in Canada, those who are convicted of doing so will face a lighter penalty than those who supply the equipment (provided the conditions for the limitation of damages are met).

2. Statutory Damages

Second, an amendment provides for the recovery of statutory damages in those cases where damages are not limited as set out in section 18(2). This amendment acknowledges that rights holders may have difficultly in proving a causal link between the illegal act and the extent of the actual damages or losses suffered. Proposed section 18(2.1) thus provides that those who have the right to sue to recover damages may opt to seek statutory damages of up to $100,000 instead of having to prove actual damages.

Factors the court shall take into consideration in awarding statutory damages include:

- the defendant's good or bad faith;
- the monetary benefits obtained by the defendant as a result of the defendant's wrongful conduct; and
- the need to deter others from engaging in similar conduct.

Clauses 10(2) and 11 reflect wording changes to subsections 18(5) and 19(4) of the French version of the Act to better harmonize the French and English texts.

E. Coming into Force

Clause 12 states that the provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

## COMMENTARY

Media attention on Bill C-2 focuses primarily on the debate between the provision of Canadian content and consumers' desire to pay for and receive satellite signals of their choice.

As a condition of their broadcasting licence, Canadian broadcasters, including Canadian satellite signal providers, are obliged to contribute a percentage of their gross annual revenues to an eligible funding program. These funds are used to encourage the creation, financing and broadcasting of high-quality Canadian television productions.

A survey completed in April 2002 estimated that between 500,000 and 750,000 satellite systems in Canada receive unauthorized U.S. satellite signals.(3) The Canadian broadcasting industry asserts that this represents an annual loss of $400 million to the industry that could be used to create Canadian programming and to expand distribution capacity and access to foreign language services.(4) The broadcasting industry is understandably very supportive of this bill.

Defenders of the use of unauthorized signals assert that they are obliged to seek and pay for satellite signals from outside sources in order to gain access to foreign content, and particularly foreign language content, that the two Canadian satellite providers do not carry. A newspaper article quotes two users of unauthorized signals:

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(3) The Strategic Council, *A Report to the Canadian Cable Television Association: Unauthorized Satellite Use in Southwestern Ontario*, April 2002, http://www.ccta.ca/english/news-information/black-market/pdf/report.pdf.

(4) H. Boyd, "Satellite-TV law will strengthen Canadian broadcasting," Letters, *Ottawa Citizen*, 23 February 2004, p. A11. Mr. Boyd is Senior Vice-President, Industry Affairs, at the Canadian Cable Television Association.

> "There is only three hours of Mexican programming per week on Canadian TV."
>
> "They'll pay whatever it costs because they have no other choice. The Canadian television doesn't have what they need. … I buy the Dish Network because there are channels from Mexico. I don't care about HBO. Canada is losing a business opportunity because all these people really want these channels."(5)

Philippe Tousignant, media and parliamentary relations manager for the Canadian Radio-television and Telecommunications Commission (CRTC), has stated, "We are not oblivious to the fact that we need to take content from international sources. This has to be balanced with the fact that we have to give priority to Canadian services. It's a compromise. You have some stuff that is produced here, and limited access to international programming."(6)

In June 2003, the House of Commons Standing Committee on Canadian Heritage released a study of the state of the Canadian broadcasting system. After examining the satellite market in Canada, the Committee recommended "that the CRTC permit Canadian broadcasting distribution undertakings to offer a wider range of international programming, while being respectful of Canadian content regulations."(7)

This study further noted that "it is the Committee's view that with a greater range of international programming choices, most citizens who have opted out of Canada's broadcasting system would be repatriated. In parallel, the revenues of Canada's cable and satellite service providers would increase, as would their required contributions to the Canadian Television Fund, and, by extension, the total sum of available funds for the creation of new Canadian television programming."(8)

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(5) M. Citrome, "Allophones feeling the heat in crackdown on U.S. dishes: Buying illegal satellite equipment to pick up news from home is treated as criminal," *Montreal Gazette*, 12 December 2003, p. B1.

(6) *Ibid*.

(7) House of Commons Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, Second Report, 2nd session, 37th Parliament, June 2003, p. 522 (Recommendation 16.1); available on the Internet at http://www.parl.gc.ca/InfoComDoc/37/2/HERI/Studies/Reports/herirp02-e.htm.

(8) *Ibid*.