

**BILL C-25: AN ACT GOVERNING THE OPERATION OF
REMOTE SENSING SPACE SYSTEMS**

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LEGISLATIVE HISTORY OF BILL C-25

HOUSE OF COMMONS

| Bill Stage | Date |
|------------|------|
|------------|------|

First Reading: 23 November 2004
Second Reading: 7 December 2004
Committee Report: 6 April 2005
Report Stage: 14 June 2005
Third Reading:

SENATE

| Bill Stage | Date |
|------------|------|
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First Reading:
Second Reading:
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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-25: AN ACT GOVERNING THE OPERATION OF
REMOTE SENSING SPACE SYSTEMS*

BACKGROUND

On 23 November 2004, Bill C-25, An Act governing the operation of remote sensing space systems, was introduced in the House of Commons by the Honourable Pierre Pettigrew, Minister of Foreign Affairs, and received first reading that same day. The bill was given second reading and referred to the Standing Committee on Foreign Affairs and International Trade on 7 December 2004. The bill is jointly sponsored by the Minister of Foreign Affairs, the Minister of Public Safety and Emergency Preparedness, the Minister of National Defence and the Minister of Industry.

The proposed legislation is intended to regulate the operation of Canadian remote sensing space satellites. According to a press release issued by the Department of Foreign Affairs and International Trade on 23 November 2004, “the legislation is aimed at protecting Canada’s national security, national defence and foreign policy interests, while supporting our continued leadership in the provision of satellite remote sensing data and services to government and private clients.”⁽¹⁾ The bill establishes a licensing regime for remote sensing space systems and provides for restrictions on the distribution of data gathered by these systems. Additionally, the bill gives special powers to the Government of Canada to order priority access or the interruption of service when it is deemed necessary to protect national security, defence or international relations interests and to observe international obligations.

Bill C-25 observes the provisions of the Agreement Concerning Operation of Commercial Remote Sensing Satellite Systems that was signed by Canada and the United States

* 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) Department of Foreign Affairs and International Trade, “Canada Tables Legislation Regulating Remote Sensing Space Systems,” News Release, 23 November 2004, http://webapps.dfaic-maeci.gc.ca/MinPub/Publication.asp?Language=E&publication_id=381804.

in 2000.⁽²⁾ The Agreement was prompted by the movement of remote sensing satellite systems from public to private ownership in both countries. It made particular reference to RADARSAT-2, a Canadian synthetic aperture radar satellite system⁽³⁾ that will be launched in 2005 or 2006 and will be owned and operated by private interests.⁽⁴⁾

DESCRIPTION AND ANALYSIS

The proposed Act will be known by the short title of the Remote Sensing Space Systems Act (clause 1). Bill C-25 contains 47 clauses. This document provides a summary of the bill's key provisions.

A. Definitions (Clause 2)

Definitions of terms used in the bill are provided in clause 2. The key terms include:

- “controlled activity,” subject to clause 8(6), which 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”;
- “Minister,” subject to clause 3, which refers to the Minister of Foreign Affairs;
- “person,” which includes a partnership, a government, a government agency and an unincorporated organization;

(2) “Canada and United States Sign Agreement Concerning Operation of Commercial Remote Sensing Satellite Systems,” News Release, 16 June 2000, http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?publication_id=377855&Language=E.

(3) Synthetic aperture radar (SAR) is an advanced radar scanner that beams microwave energy at the earth and captures its returned reflection. RADARSAT-2 will be the most advanced SAR satellite in the world, with the ability to image to both the right and the left with a resolution of up to three metres and to access an area of 800 km on either side.

(4) MacDonald, Dettwiler and Associates Ltd. (MDA) is RADARSAT-2's prime contractor and, in partnership with the Canadian Space Agency, is developing, building, integrating and launching the satellite. When RADARSAT-2 becomes operational, MDA will own and operate the satellite and the ground segment.

- “remote sensing satellite,” which is defined as “a satellite that is capable of sensing the surface of the Earth through the use of electromagnetic waves”; and
- “remote sensing space system,” which is defined as “(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.”

B. Designation of Minister (Clause 3)

Clause 3 of the bill states that Cabinet may designate a Privy Councillor to be the Minister for the purposes of the proposed Act (also see the definition of “Minister” under clause 2).

C. Application of Act (Clause 4)

Clause 4 sets out the circumstances under which persons or remote sensing space systems may be exempted from any provisions of the proposed Act or its regulations.

Cabinet, by issuing an order, may define the manner and extent to which the proposed Act and its regulations apply to remote sensing space systems operated by the Department of National Defence or the Canadian Space Agency. The Minister, under certain conditions, may issue an order that exempts any person or remote sensing space system (or any class of person, system or data) from the application of any of the proposed Act’s provisions or regulations.

D. Operation of Remote Sensing Space Systems (Clauses 5–16)

This section of the bill establishes a licensing system for the operation of remote sensing satellite systems. It sets out who requires a licence; how and by whom licences are issued, approved, amended, renewed, suspended or cancelled; and under what conditions a licensee may be required to interrupt service or provide priority access to the Government of Canada.

1. Requirement for Licence (Clauses 5 and 6)

Clause 5 stipulates that only persons holding a licence may operate a remote sensing space system. With respect to their activities outside Canada, clause 6 specifies that this requirement also applies to Canadian citizens, permanent residents, Canadian corporations, and members of any prescribed class of persons having a substantial connection to Canada with respect to remote sensing space systems.

2. Applications, Licences and Related Matters (Clauses 7–9)

Under clause 8, the Minister may, with regard to issues of national security, defence, international relations, Canada's international obligations and any prescribed factors, provisionally approve a licence, issue a licence, or amend or renew a licence.

Clauses 8(4) to 8(7) of the bill list the conditions to which each licence is subject. These conditions may include authorization, by the Minister, of the communication of raw data to persons other than the licensee or system participants, or restrictions on the provision of remote sensing products from the licensed system to persons other than the licensee or system participants.

Clause 9 stipulates that a licence may not be issued unless a system disposal plan has been approved by the Minister. In accordance with the system disposal plan, a licensee or a former licensee is obliged to ensure disposal of:

- every system satellite;
- items related to the cryptography and information assurance measures of the system;
- any data and remote sensing products from the system that are under the control of the licensee or former licensee; and
- anything else prescribed.

The Minister may, with regard to a number of factors, amend (on application or on his or her own initiative) a system disposal plan.

3. Amendments, Suspension and Cancellation of Licences (Clauses 10–13)

Clause 10 allows the Minister, on his or her own initiative and with regard to a number of factors including national security, defence, international relations and Canada's international obligations, to amend a licence with respect to any licensing condition detailed in clause 8. Clause 11 permits the Minister to suspend a licence for a period of up to 90 days if the Minister is convinced that the operation of a licensed system is likely to be harmful to national security, defence or the conduct of international relations; or is likely to be inconsistent with Canada's international obligations. Under clause 12, the Minister may (having regard to the same factors considered in clause 10) cancel a licence.

Clause 13 specifies that upon suspension, cancellation or expiration of a licence, the Minister may order the licensee (or former licensee) to take any measures related to the remote sensing system that the Minister considers advisable as concerns (a) national security, defence, the conduct of international relations and Canada's international obligations; and (b) the system disposal plan.

4. Interruptions of Service (Clause 14)

Under clause 14, the Minister may order a licensee to restrict or interrupt any operation for a specified period if the Minister believes that continuation of that operation would harm Canada's international relations or be inconsistent with Canada's international obligations. The Minister of National Defence may order a licensee to restrict or interrupt any operation for a specified period if that minister believes that continuation of the operation would harm national defence interests. The minister in question may include a direction in the order that prohibits disclosure of details of the order if the minister is satisfied that such disclosure could harm the national interests listed in clause 14.

5. Priority Access (Clause 15)

Clause 15 permits the Minister to order a licensee to provide any remote sensing service to the Government of Canada that the Minister believes is desirable for the conduct of international relations or the performance of Canada's international obligations.

The Minister of Defence may order a licensee to provide any service to the Government of Canada that that minister believes is necessary for national defence interests.

The Solicitor General of Canada may order a licensee to provide any service (a) to the Royal Canadian Mounted Police (RCMP) that the Solicitor General believes is desirable for the fulfilment of the RCMP's responsibilities under subsection 6(1) of the *Security Offences Act*; (b) to the Canadian Security Intelligence Service (CSIS) that the Solicitor General believes is desirable for the fulfilment of its responsibilities under the *Canadian Security Intelligence Service Act*; or (c) to the Government of Canada that the Solicitor General believes is desirable for critical infrastructure protection or emergency preparedness.

The minister in question may include a direction in the order that prohibits, for the same reasons that the order was issued, disclosure of details of the order.

6. Transfer of Remote Sensing Satellites (Clause 16)

Clause 16 stipulates that no commands to a remote sensing satellite of a licensed remote sensing system can be issued from outside Canada or by any other person than the licensee (or former licensee) unless the latter (a) can override the command from Canada; or (b) has obtained the approval of the Minister.

E. Inspection (Clauses 17 and 18)

Clauses 17 and 18 allow for the designation of inspectors and set out their powers under the proposed Act.

1. Designation of Inspectors (Clause 17)

Under clause 17, the Minister may designate persons, or classes of persons, to act as inspectors for the purposes of the proposed Act. Every inspector will receive a certificate attesting to his or her designation, which must be presented, upon request, to any person appearing to be responsible for any place entered by the inspector.

2. Powers of Inspectors (Clause 18)

Clause 18 gives inspectors certain powers, including the authority to:

- inspect any place in which the inspector believes a controlled activity in the operation of a remote sensing space system is occurring, and where the inspector believes that any information or item relevant to the administration or enforcement of the proposed Act is located;
- examine any document, information or thing at the place and remove it for examination or copying; and
- inspect and perform tests on any equipment at the place that is related to the operation of a remote sensing space system.

An inspector may enter a dwelling-place only with the consent of the occupant or with a warrant. A warrant authorizing a named inspector to enter a dwelling-place may be issued by a judge if he or she is satisfied that, among other things, entry to the dwelling is necessary in order to administer or enforce the proposed Act.

An inspector is prohibited from using force in executing a warrant unless the use of force is authorized in the warrant and the inspector is accompanied by a peace officer. The person responsible for a place entered by an inspector must assist the inspector in carrying out his or her duties and provide the inspector with any information reasonably required. No person shall wilfully obstruct the work of an inspector or knowingly provide false information to the inspector.

F. Requests for Information (Clause 19)

Under clause 19, the Minister may send a notice asking any person whom the Minister believes has any information relevant to the administration or enforcement of the proposed Act to provide that information to the Minister or any person designated by the Minister. If the person fails to provide the information within the period specified in the notice, the Minister may apply to a judge of a provincial superior court or the Federal Court for an order requiring the person to provide it. The judge may order the person to surrender the information if he or she deems that it is necessary for the administration or enforcement of the proposed Act, and that the public interest in having the information outweighs any interests of the person.

G. Regulations (Clause 20)

Clause 20 permits Cabinet, on the recommendation of the Minister, to make regulations related to the proposed Act. The regulations may pertain to a number of different areas, including the:

- issuance, amendment and renewal of licences (including fees, security assessments of proposed or actual licensees or system participants, and conditions of licences);
- suspension or cancellation of licences;
- operation of licensed systems;
- definition of what constitutes a violation under the proposed Act; and
- prescription of administrative monetary penalties for violations of the proposed Act (the maximum penalty may not exceed \$5,000, in the case of an individual, and \$25,000, in any other case).

H. Delegation (Clause 21)

Clause 21 limits the extent to which the Minister of Foreign Affairs, the Minister of National Defence and the Solicitor General of Canada may delegate the exercise of their powers under the proposed Act.

The Minister:

- with respect to the issuance of (i) an order to exempt persons, systems or data from the provisions of the proposed Act (under clause 4), or (ii) an order to interrupt or restrict service (under clause 14), may not delegate the exercise of his or her powers;
- with respect to the issuance of an order for priority access (under clause 15), may delegate the exercise of the Minister's powers only to his or her deputy minister; and
- may delegate the exercise of any other powers granted to the Minister under the proposed Act to any officer or class of officers (or, with the consent of the Minister of Defence, to any member of the Canadian Forces).

The Minister of National Defence:

- with respect to the issuance of an order to interrupt or restrict service (under clause 14), may not delegate the exercise of his or her powers; and
- with respect to the issuance of an order for priority access (under clause 15), may delegate the exercise of the minister's powers only to his or her deputy minister or the Chief of the Defence Staff.

The Solicitor General of Canada may delegate the exercise of his or her powers only to:

- the Commissioner of the RCMP, with respect to the issuance of an order for priority access to the RCMP (under clause 15);
- the Director of CSIS, with respect to the issuance of an order for priority access to CSIS (under clause 15); and
- the Deputy Solicitor General of Canada, with respect to the issuance of an order for priority access to the Government of Canada (under clause 15).

I. No Liability (Clause 22)

Under clause 22, no person is entitled to financial compensation from the Government 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 clause 9);
- the amendment, suspension or cancellation of a licence (under clauses 10 to 12); or
- the making of an order that requires (i) certain measures upon suspension or termination of a licence; (ii) the interruption of service; or (iii) priority access (under clauses 13 to 15).

A minister may pay a licensee an amount (determined in accordance with the regulations) for a service provided through priority access.

J. Administrative Monetary Penalties (Clauses 23–37)

This section of the bill sets out monetary penalties for violations of the proposed Act, and deals with the designation of officers to enforce the proposed legislation. It details what the content of notices of violation should be and how they are to be served. It also establishes how responsibility and monetary penalties for violations are determined, and how decisions with respect to alleged violations or penalties can be appealed.

1. Violations (Clause 23)

Under clause 23, every person who commits a violation (as defined in the regulations) of the proposed Act or its regulations is liable to a monetary penalty not exceeding the maximum prescribed by regulation, or, if no maximum has been set, to a penalty not exceeding \$5,000 for individuals or \$25,000 in other cases.

2. Enforcement Officers (Clause 24)

Under clause 24, the Minister may designate persons, or classes of persons, to act as enforcement officers for the purposes of the proposed Act. Officers will receive a certificate attesting to their designation, which must be presented, upon demand, to any person from whom they request information in the course of executing their duties.

3. Notices of Violation (Clause 25)

An enforcement officer, under clause 25, may issue and serve a notice of violation on any person that the officer believes has committed a violation. The content of notices is decided by the Minister, but each notice must contain certain information, including the proposed penalty, and an indication that the person may either pay the proposed penalty or make representations to the officer with respect to the alleged violation or proposed penalty, including any representations about entering into a compliance agreement (see clause 27).

The criteria that are to be taken into account when determining the amount of a proposed penalty include: the degree of intention or negligence on the part of the person who committed the violation; the harm done by the violation; and the person's history of prior breaches of the proposed Act during the five-year period immediately before the violation.

4. Determination and Payment of Penalty (Clauses 26 and 27)

Clause 26 specifies that if a person pays the proposed penalty, the person will be considered to have committed the violation and proceedings with respect to it will end.

Under clause 27, if the person alleged to have committed a violation makes representations, the enforcement officer shall either:

- enter into a compliance agreement with the person on behalf of the Minister; or
- decide whether the person committed the violation, and, if so, impose the penalty proposed in the notice of violation, or a lesser penalty, or no penalty, after taking into account the criteria mentioned in clause 25.

An officer, on behalf of the Minister, may enter into a compliance agreement with the person alleged to have committed a violation on any terms that the officer considers satisfactory. The terms:

- must specify that if the person does not comply with the agreement, the person must pay to the Receiver General a specified amount not greater than the penalty proposed in the notice of violation; and
- may provide for the giving of reasonable security,⁽⁵⁾ in a form and an amount that the officer considers satisfactory, for the person's performance of the agreement.

(5) "Security" means collateral given or pledged to guarantee the fulfilment of an obligation, especially the assurance that a creditor will be repaid (usually with interest) any money or credit extended to a debtor (*Black's Law Dictionary*, 7th ed., ed. Brian A. Garner, West Group, 1999, p. 1358).

Entry into a compliance agreement ends the violation proceedings and precludes any further proceedings related to the act in question.

If a person who has entered into a compliance agreement does not comply with it, the Minister may issue and serve a notice of default on the person. The person must pay, without delay, the amount specified in the agreement. If the person fails to pay, the Minister may exact any security for the person's performance of the agreement.

5. Determination of Responsibility (Clause 28)

Under clause 28, if a person neither pays the penalty nor makes representations regarding the alleged violation, he or she is considered to have committed the violation, and the enforcement officer shall impose the proposed penalty and notify the person of this decision.

6. Appeal to Minister (Clause 29)

Under clause 29, a person served with a notice of decision related to whether a violation was committed and the payment of a penalty (under clause 27) may appeal the decision to the Minister. The Minister may confirm, set aside or alter the decision of the enforcement officer.

7. Rules About Violations (Clauses 30–35)

Clauses 30 to 35 establish rules about violations under the proposed Act, including the following:

- 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 (clause 30);
- due diligence may be cited as a defence in any violation proceedings (clause 31);
- violation proceedings may be instituted not later than two years after the time when the alleged violation occurred (clause 33); and
- certain acts or omissions can be classified as either a violation or an offence, but not as both. Under the proposed Act, a violation is not an offence, and section 126 of the *Criminal Code* therefore does not apply in respect of one (clause 34).

8. Recovery of Penalties and Amounts (Clauses 36 and 37)

Clause 36 indicates that a penalty or security imposed under the proposed Act constitutes a debt to the Government of Canada and may be recovered in a court of competent jurisdiction. There is a five-year time limit to initiate proceedings to recover a debt after it became payable.

The Minister, under clause 37, may issue a certificate confirming the amount of any debt owed. Registration of this certificate in a court of competent jurisdiction has the same effect as a judgment of that court for a debt of the amount specified in the certificate plus any registration costs.

K. Offences (Clauses 38–45)

Clauses 38 to 45 set out which contraventions under the proposed Act constitute an offence, the penalties for committing those offences, and rules regarding offences.

1. Contraventions That Constitute an Offence (Clause 38)

Clause 38 stipulates which contraventions of the proposed Act constitute an offence:

- operating a remote sensing space system without a licence (see clause 5);
- not taking measures ordered on suspension or termination of a licence (see clause 13);
- ignoring an order to interrupt or restrict service (see clause 14);
- ignoring an order for priority access (see clause 15);
- allowing, without approval from the Minister, commands to a remote sensing satellite of a licensed remote sensing system to be issued (i) from outside Canada (unless the command can be overridden from Canada) or (ii) by any other person than the licensee (or former licensee) (see clause 16);
- not providing assistance to an inspector when he or she enters a place (see clause 18); and
- obstructing the work of an inspector or knowingly providing false information to an inspector (see clause 18).

An individual is liable on summary conviction to a fine (not exceeding \$25,000 or \$50,000, depending on which offence is committed) or imprisonment or both. In other cases, fines only (not exceeding \$125,000 or \$250,000, depending on which offence is committed) are imposed.

2. Rules About Offences (Clauses 39–45)

Clauses 39 to 45 establish rules about offences under the proposed Act, including the following:

- for persons who are alleged to have operated a remote sensing space system without a licence from outside Canada, and who are required under clause 6 to have a licence, offence proceedings may commence in a Canadian territorial division. The person may be tried and punished in the same manner as if the offence had been committed in that territorial division (clause 39);
- if a corporation commits an offence under the proposed Act, any officer, director, or agent of the corporation who participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, regardless of whether the corporation has been prosecuted (clause 40);
- due diligence may be cited as a defence in a prosecution (clause 42);
- proceedings in respect of an offence punishable by summary conviction may be instituted not later than two years after the time when the alleged offence occurred (clause 44);
- if a court of competent jurisdiction is satisfied, upon application by the Minister, that a person is operating a remote sensing space system without a licence, the court may grant an injunction ordering the person to cease or refrain from any activity related to that contravention, or ordering the person to take any action that a licensee could be required to take under the proposed Act (clause 45).

L. Coordinating Amendment (Clause 46)

Clause 46 stipulates that if Bill C-6 (Department of Public Safety and Emergency Preparedness Act) receives Royal Assent, then the expression “Solicitor General of Canada” in certain provisions of Bill C-25 will be replaced by the expression “Minister of Public Safety and Emergency Preparedness”; and references to the “Deputy Solicitor General of Canada” in Bill C-25 will be replaced by the expression “Deputy Minister of Public Safety and Emergency Preparedness.”

M. Coming Into Force (Clause 47)

Clause 47 indicates that the proposed Act (with the exception of clause 46) comes into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

Bill C-25 has received little attention in the media. An editorial about the bill published in the Sun Media's group of newspapers⁽⁶⁾ focused on RADARSAT-2 and the government's ability to gain priority access to remote sensing space systems under the proposed legislation. The column suggested that under the proposed Act, RADARSAT-2's capabilities could be exploited at any time by the federal government to support the ballistic missile defence program that has been proposed for the United States by the Bush administration.

Concerns about a potential link between the bill and the proposed ballistic missile defence program were also raised in the House of Commons during second reading debate in December 2004. During that debate, a number of additional concerns about the proposed legislation were brought up by members of the opposition, including:

- the lack of compensation for system operators for financial losses resulting from ministerial orders to interrupt or restrict service;
- the fact that a single minister has the power to make decisions regarding the necessity for priority access or interruption of service;
- whether the proposed legislation respects provincial jurisdiction;
- whether the proposed legislation will hinder commercial development of remote sensing space systems;
- the costs of implementing and operating a licensing regime; and
- whether the proposed Act will lead to the invasion of privacy of individuals (concerns related to the collection and use of personal data from remote sensing space systems).

(6) Greg Weston, "I spy, with my eye in the sky ... Greg Weston says a deal with the States on missile defence is good as done," *Ottawa Sun*, 5 December 2004.