

Witness Protection Program Act

1996, c. 15

W-11.2

[Assented to June 20th, 1996]

An Act to provide for the establishment and operation of a program to enable certain persons to receive protection in relation to certain inquiries, investigations or prosecutions

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 *Witness Protection Program Act*.

## INTERPRETATION

Definitions

2. In this Act,

"Commissioner"  
«*commissaire* »

"Commissioner" means the Commissioner of the Force;

"Force"  
«*Gendarmerie* »

"Force" means the Royal Canadian Mounted Police;

"Minister"  
«*ministre* »

"Minister" means the Minister of Public Safety and Emergency Preparedness;

"Program"  
«*programme* »

"Program" means the Witness Protection Program established by section 4;

"protectee"  
«*bénéficiaire* »

"protectee" means a person who is receiving protection under the Program;

"protection"  
«*protection* »

"protection" , in respect of a protectee, may include relocation, accommodation and change of identity as well as counselling and financial support for those or any other purposes in order to ensure the security of the protectee or to facilitate the protectee's re-establishment or becoming self-sufficient;

"protection agreement"  
«*accord de protection* »

"protection agreement" means an agreement referred to in paragraph 6(1)(c) that applies in respect of a protectee;

"witness"  
«*témoin* »

"witness" means

(a) a person who has given or has agreed to give information or evidence, or participates or has agreed to participate in a matter, relating to an inquiry or the investigation or prosecution of an offence and who may require protection because of risk to the security of the person arising in relation to the inquiry, investigation or prosecution, or

(b) a person who, because of their relationship to or association with a person referred to in paragraph (a), may also require protection for the reasons referred to in that paragraph.

1996, c. 15, s. 2; 2005, c. 10, s. 34.

## **PURPOSE OF ACT**

Protection of persons involved in law enforcement matters

**3.** The purpose of this Act is to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance in law enforcement matters in relation to

(a) activities conducted by the Force, other than activities arising pursuant to an arrangement entered into under section 20 of the *Royal Canadian Mounted Police Act*; or

(b) activities conducted by any law enforcement agency or international criminal court or tribunal in respect of which an agreement or arrangement has been entered into under section 14.

1996, c. 15, s. 3; 2000, c. 24, s. 71.

## **WITNESS PROTECTION PROGRAM**

### Establishment

**4.** A program to facilitate the protection of witnesses is hereby established called the Witness Protection Program to be administered by the Commissioner.

### Admission to Program

**5.** Subject to this Act, the Commissioner may determine whether a witness should be admitted to the Program and the type of protection to be provided to any protectee in the Program.

### Admission to Program

**6. (1)** A witness shall not be admitted to the Program unless

(a) a recommendation for the admission has been made by a law enforcement agency or an international criminal court or tribunal;

(b) the Commissioner has been provided by the witness with such information, in accordance with any regulations made for the purpose, concerning the personal history of the witness as will enable the Commissioner to consider the factors referred to in section 7 in respect of the witness; and

(c) an agreement has been entered into by or on behalf of the witness with the Commissioner setting out the obligations of both parties.

### Emergency situations

(2) Notwithstanding subsection (1), the Commissioner may, in a case of emergency, and for not more than ninety days, provide protection to a person who has not entered into a protection agreement.

1996, c. 15, s. 6; 2000, c. 24, s. 72.

### Consideration of factors

**7.** The following factors shall be considered in determining whether a witness should be admitted to the Program:

- (a) the nature of the risk to the security of the witness;
- (b) the danger to the community if the witness is admitted to the Program;
- (c) the nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter;
- (d) the value of the information or evidence given or agreed to be given or of the participation by the witness;
- (e) the likelihood of the witness being able to adjust to the Program, having regard to the witness's maturity, judgment and other personal characteristics and the family relationships of the witness;
- (f) the cost of maintaining the witness in the Program;
- (g) alternate methods of protecting the witness without admitting the witness to the Program; and
- (h) such other factors as the Commissioner deems relevant.

Deemed terms of protection agreement

**8.** A protection agreement is deemed to include an obligation

- (a) on the part of the Commissioner, to take such reasonable steps as are necessary to provide the protection referred to in the agreement to the protectee; and
- (b) on the part of the protectee,
  - (i) to give the information or evidence or participate as required in relation to the inquiry, investigation or prosecution to which the protection provided under the agreement relates,
  - (ii) to meet all financial obligations incurred by the protectee at law that are not by the terms of the agreement payable by the Commissioner,
  - (iii) to meet all legal obligations incurred by the protectee, including any obligations regarding the custody and maintenance of children,
  - (iv) to refrain from activities that constitute an offence against an Act of Parliament or that might compromise the security of the protectee, another protectee or the Program, and
  - (v) to accept and give effect to reasonable requests and directions made by the Commissioner in relation to the protection provided to the protectee and the obligations of the protectee.

### Termination of protection

**9.** (1) The Commissioner may terminate the protection provided to a protectee if the Commissioner has evidence that there has been

(a) a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the Program; or

(b) a deliberate and material contravention of the obligations of the protectee under the protection agreement.

### Notification of proposed termination

(2) The Commissioner shall, before terminating the protection provided to a protectee, take reasonable steps to notify the protectee and allow the protectee to make representations concerning the matter.

### Reasons for certain decisions

#### **10.** Where a decision is taken

(a) to refuse to admit a witness to the Program, the Commissioner shall provide the law enforcement agency or international criminal court or tribunal that recommended the admission or, in the case of a witness recommended by the Force, the witness, with written reasons to enable the agency, court, tribunal or witness to understand the basis for the decision; or

(b) to terminate protection without the consent of a protectee, the Commissioner shall provide the protectee with written reasons to enable the protectee to understand the basis for the decision.

1996, c. 15, s. 10; 2000, c. 24, s. 73.

## **PROTECTION OF IDENTITY**

### Disclosures prohibited

**11.** (1) Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.

### Application

(2) Subsection (1) does not apply

(a) to a protectee or former protectee who discloses information about the protectee or former protectee if the disclosure does not endanger the safety of another protectee or former protectee and does not compromise the integrity of the Program; or

(b) to a person who discloses information that was disclosed to the person by a protectee or former protectee if the disclosure does not endanger the safety of the protectee or former protectee or another protectee or former protectee and does not compromise the integrity of the Program.

#### Exception

(3) Information about the location or a change of identity of a protectee or former protectee may be disclosed by the Commissioner

(a) with the consent of the protectee or former protectee;

(b) if the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure;

(c) if the disclosure is essential in the public interest for purposes such as

(i) the investigation of a serious offence where there is reason to believe that the protectee or former protectee can provide material information or evidence in relation to, or has been involved in the commission of, the offence,

(ii) the prevention of the commission of a serious offence, or

(iii) national security or national defence; or

(d) in criminal proceedings where the disclosure is essential to establish the innocence of a person.

#### Further disclosures prohibited

(4) A disclosure of information made to a person under this section does not authorize the person to disclose the information to anyone else.

#### Notification of proposed disclosure

(5) The Commissioner shall, before disclosing information about a person in the circumstances referred to in paragraph (3)(b), (c) or (d), take reasonable steps to notify the person and allow the person to make representations concerning the matter.

#### Exception

(6) Subsection (5) does not apply if, in the opinion of the Commissioner, the result of notifying the person would impede the investigation of an offence.

#### Factors to be considered

**12.** The following factors shall be considered in determining whether information about a person should be disclosed under section 11:

- (a) the reasons for the disclosure;
- (b) the danger or adverse consequences of the disclosure in relation to the person and the integrity of the Program;
- (c) the likelihood that the information will be used solely for the purpose for which the disclosure is made;
- (d) whether the need for the disclosure can be effectively met by another means; and
- (e) whether there are effective means available to prevent further disclosure of the information.

Use of new identity

**13.** A person whose identity has been changed as a consequence of the protection provided under the Program shall not be liable or otherwise punished for making a claim that the new identity is and has been the person's only identity.

## **AGREEMENTS AND ARRANGEMENTS WITH OTHER JURISDICTIONS**

Commissioner's agreements

**14.** (1) The Commissioner may enter into an agreement

- (a) with a law enforcement agency to enable a witness who is involved in activities of the law enforcement agency to be admitted to the Program;
- (b) with the Attorney General of a province in respect of which an arrangement has been entered into under section 20 of the *Royal Canadian Mounted Police Act* to enable a witness who is involved in activities of the Force in that province to be admitted to the Program; and
- (c) with any provincial authority in order to obtain documents and other information that may be required for the protection of a protectee.

Ministerial arrangements

(2) The Minister may enter into a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the Program, but no such person may be admitted to Canada

pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration nor admitted to the Program without the consent of the Minister.

#### Arrangements

(3) The Minister may enter into an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the Program, but no such person may be admitted to Canada pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration, nor admitted to the Program without the consent of the Minister.

1996, c. 15, s. 14; 2000, c. 24, s. 74.

## GENERAL

#### Commissioner's powers

**15.** The Commissioner's powers under this Act, other than those that may be exercised in the circumstances referred to in paragraphs 11(3)(b) to (d), may be exercised on behalf of the Commissioner by any member of the Force authorized to do so but, where a decision is to be taken

(a) whether to admit a witness to the Program in circumstances other than those described in paragraph (b), the member making the decision shall be an officer of the Force who holds a rank no lower than Chief Superintendent; and

(b) whether to admit a witness to the Program pursuant to an agreement under paragraph 14(1)(a) or an arrangement under subsection 14(2) or (3) or to change the identity of a protectee or terminate the protection provided to a protectee, the member making the decision shall be the Assistant Commissioner who is designated by the Commissioner as being responsible for the Program.

1996, c. 15, s. 15; 2000, c. 24, s. 75(E).

#### Annual report

**16.** (1) The Commissioner shall, not later than June 30 each year, submit a report on the operation of the Program during the preceding fiscal year to the Minister.

#### Tabling

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

#### Policy directions relating to Program

**17.** The Commissioner shall give effect to such directions as the Minister may make concerning matters of general policy related to the administration of the Program.

#### Cooperation of other branches of government

**18.** Subject to confidentiality requirements imposed by any other Act, departments and agencies of the Government of Canada shall, to the extent possible, cooperate with the Commissioner and persons acting on behalf of the Commissioner in the administration of the Program under this Act.

#### Existing agreements

**19.** Every agreement in existence on the day on which this Act comes into force entered into by or on behalf of the Commissioner to provide protection to a person or entered into on behalf of the Government of Canada relating to the protection of persons is, to the extent that it is consistent with this Act, deemed to have been entered into under the relevant provisions of this Act and shall be governed by this Act.

#### Regulations

**20.** The Governor in Council may make regulations for the purpose of giving effect to this Act including, without limiting the generality of the foregoing, regulations

- (a) specifying the types of information to be provided in respect of a witness who is being considered for admission to the Program;
- (b) respecting the terms that must be included in protection agreements or in agreements or arrangements entered into under section 14; and
- (c) governing the procedures to be followed in order to involve a protectee in legal proceedings.

## **OFFENCE**

#### Disclosure offence

**21.** Every person who contravenes subsection 11(1) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding five years, or to both; or
- (b) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years, or to both.

# **RELATED AND CONSEQUENTIAL AMENDMENTS**

**22. and 23.** [Amendments]