



# Legislative Brief - Alert System

Foundational Document

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**NOTE 1:**

This is a draft document provided for discussion purposes, based on a compilation of the applicable law as assembled by Commission Counsel. The Commission welcomes input from Participants as to other laws or sections to be included in this overview.

## **SUBJECT MATTER**

The purpose of this document is to provide the law applicable to the National Public Alerting System (also called “Alert Ready”). Although this system was not used during the mass casualty in April 2020, an understanding of it is requisite to the work of the Commission. This document is intended to assist the Commission with the fulfillment of its mandate by providing factual information about the laws and regulations in place at the time.

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## Legislative Brief – Alert System

### SUMMARY

#### I. Introduction

This document compiles the law applicable to the National Public Alerting System (also called “Alert Ready”), which system was not used during the mass casualty in April 2020. The language from the statutes and regulations in this document is that which was applicable at the time of the mass casualty and the hyperlinks are therefore to the versions in place in April 2020, unless otherwise noted.

#### II. Constitutional Provisions

##### 1. *Canadian Charter of Rights and Freedoms*

<b>Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.</b>	
<b>Key provisions</b>	
s. 7	Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
s. 15	(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
Web link: <a href="https://canlii.ca/t/8q7l">https://canlii.ca/t/8q7l</a>	

**Additional information:** In certain circumstances, a failure to warn potential victims of crime can constitute a violation of those individuals’ *Charter* rights. In a 1998 civil judgment, in *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*, for example, a trial judge found that the Toronto police had deliberately failed to warn women in a particular area that a serial rapist was operating in their midst.<sup>1</sup> The police are statutorily obligated to prevent crime, and, at common law, they owe a duty to protect life and property. The Ontario Court (General Division) found that the police had violated Jane Doe’s right to security of the person under s. 7 of the *Charter* and that the police had exercised their discretion in the investigation in a discriminatory and negligent way, which was contrary to the principle of fundamental justice.<sup>2</sup> The Court also found that the police in that case had violated the victim’s *Charter* s. 15(1) right to equality because their decision not to warn women in the area was based on sexist stereotypes about how the women would

<sup>1</sup> *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*, 39 O.R. (3d) 487. Leave to appeal to the Court of Appeal for Ontario was denied. Available online: <https://canlii.ca/t/1w9kn>.

<sup>2</sup> *Ibid.*

react.<sup>3</sup> Civil damages were awarded in compensation for the harm caused by the *Charter* breaches.

Although not binding on higher courts or in other provinces including Nova Scotia, the *Jane Doe* decision has been cited by appeal courts as indicating that the police in Canada have a common law-based “duty to warn” a narrow and distinct group of potential victims of a specific threat.<sup>4</sup> The Canadian Association of Chiefs of Police acknowledged as much in the “Background” section of a 2021 resolution on prioritizing the National Public Alert System.<sup>5</sup> The Supreme Court of Canada referred to *Jane Doe* in a social host liability case, in the context of a statement that a civil tort law duty of care may include the need to take positive steps, where the defendants exercise a public function that includes implied responsibilities to the public at large (unlike the social host defendants).<sup>6</sup>

### III. Federal Legislation and Regulations

#### 1. Broadcasting Act

<b>Broadcasting Act, S.C. 1991, c. 11</b>	
Key provisions	
s. 2	<p><b>(1)</b> In this Act,</p> <p><b>broadcasting</b> means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;</p> <p>...</p> <p><b>Commission</b> means the Canadian Radio-television and Telecommunications Commission established by the <a href="#">Canadian Radio-television and Telecommunications Commission Act</a>; (<i>Conseil</i>)</p>

<sup>3</sup> *Ibid.*

<sup>4</sup> See e.g. *Wellington v. Ontario*, 2011 ONCA 274, at para. 20. Available online: <https://canlii.ca/t/fkxqx>.

<sup>5</sup> Canadian Association of Chiefs of Police, “Resolution 2021-06 – Review of the Communications Interoperability Strategy for Canada: Prioritizing the National Public Alerting System” submitted by the Emergency Management Committee. The “background” section of the resolution says, “Most provinces and territories define the duties of a police officer to include but not be limited to, preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention. In addition, as was reinforced in *Jane Doe v. Metropolitan Toronto Police*, the police have a common law duty to warn the public or where known, a target segment of the public.”: [https://www.cacp.ca/resolution.html?asst\\_id=2747](https://www.cacp.ca/resolution.html?asst_id=2747).

<sup>6</sup> *Childs v. Desormeaux*, [2006] 1 S.C.R. 643, 2006 SCC 18, at para. 37. Available online : <https://canlii.ca/t/1n5gp>.

s. 10	(1) The Commission may, in furtherance of its objects, make regulations ... (k) respecting such other matters as it deems necessary for the furtherance of its objects.
Web link: <a href="https://canlii.ca/t/54cq5">https://canlii.ca/t/54cq5</a>	

**2. Broadcasting Distribution Regulations**

<b>Broadcasting Distribution Regulations SOR/97-555, made under the <i>Broadcasting Act</i>, S.C. 1991, c. 11</b>	
<b>Key provisions</b>	
s. 7.2	<p>(1) The following definitions apply in this section.</p> <p><b>issuing authority</b> means any person who is authorized by a Canadian governmental authority — including the federal Department of the Environment, federal and provincial government departments and agencies that are responsible for emergency management and public safety, and municipal authorities — to issue warnings to the public, and to the National Alert Aggregation and Dissemination System, announcing danger to life or property.</p> <p><b>National Alert Aggregation and Dissemination System</b> means the alert message aggregation system established and operated by Pelmorex Communications Inc.</p> <p>(2) Except as otherwise provided under a condition of its licence, a licensee shall implement, by no later than March 31, 2015, a public alerting system that alters without delay a programming service being distributed by the licensee in a licensed area in order to insert any alert that it receives — in a form including both text and audio content — from the National Alert Aggregation and Dissemination System that</p> <ul style="list-style-type: none"> <li>(a) announces an imminent or unfolding danger to life; and</li> <li>(b) is designated by the applicable issuing authority for immediate broadcast or distribution in the licensed area.</li> </ul> <p>(3) The licensee shall insert the alert in all programming services that it is distributing to subscribers whose residence or other premises are located in an area that is targeted by the alert.</p> <p>(4) The licensee shall take all reasonable measures to ensure that the alerts are in conformity with the specifications and recommended practices set out in the document entitled National Public Alerting System Common Look and Feel Guidance, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in</p>

	consultation with the public-private Common Look and Feel Working Group, as that document is amended from time to time.
Web link: <a href="https://canlii.ca/t/533rg">https://canlii.ca/t/533rg</a>	

**Additional information from publicly available sources:** The National Public Alerting System (also known as “Alert Ready”) is a federal, provincial, and territorial system that enables emergency management organizations across Canada to warn the public about imminent or possible dangers such as floods, tornados, hazardous materials, fires, and other disasters.<sup>7</sup> The system is also used for Amber Alerts and other urgent bulletins about child abductions when the child is thought to be in grave danger.<sup>8</sup> The warnings are area-specific (geo-targeted). When an emergency alert is issued, it is broadcast on television and radio and sent to mobile devices that are connected to an LTE (long-term evolution) network.<sup>9</sup>

Emergency alerts are created and sent by authorized emergency management organizations, such as police departments, Environment and Climate Change Canada, and provincial and territorial bodies.<sup>10</sup>

The provisions above were regulatory amendments made in 2014, mandating television and radio broadcasters, cable and satellite companies to distribute National Public Alerting System emergency public alerts.<sup>11</sup> In April 2017, the Canadian Radio-television and Telecommunications Commission (“CRTC”) also mandated wireless service providers to implement the National Public Alerting System on their Long-Term Evolution (LTE) wireless networks by April 2018.<sup>12</sup> The CRTC cited s. 7 of the *Telecommunications Act* (excerpted above) in issuing the order.<sup>13</sup>

### 3. Radio Regulations, 1986

<b>Radio Regulations, 1986 SOR/86-982, made under the <i>Broadcasting Act</i>, S.C. 1991, c. 11</b>	
<b>Key provisions</b>	
s. 16	(1) The following definitions apply in this section.  <b>issuing authority</b> means any person who is authorized by a Canadian governmental authority — including the federal Department of the Environment, federal and provincial government departments and agencies that are responsible for emergency management and public safety, and municipal authorities — to issue warnings to the public, and to the National Alert Aggregation and Dissemination System, announcing danger to life or property.

<sup>7</sup> <https://crtc.gc.ca/eng/television/services/alert.htm>

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> <https://www.publicsafety.gc.ca/cnt/mrgnc-mngmnt/mrgnc-prprdncs/ntnl-pblc-lrtng-sstm-chr-en.aspx>

<sup>12</sup> “Telecom Regulatory Policy CRTC 2017-91” <https://crtc.gc.ca/eng/archive/2017/2017-91.htm>

<sup>13</sup> *Ibid* at para 10 of the CRTC’s “Telecom Regulatory Policy CRTC 2017-91”.

	<p><b>National Alert Aggregation and Dissemination System</b> means the alert message aggregation system established and operated by Pelmorex Communications Inc.</p> <p>(2) Except as otherwise provided under a condition of its licence, a licensee shall implement on all stations that it is licensed to operate, by no later than March 31, 2015, a public alerting system that broadcasts without delay, on a given station, any audio alert that it receives from the National Alert Aggregation and Dissemination System that</p> <p style="padding-left: 40px;">(a) announces an imminent or unfolding danger to life; and (b) is designated by the applicable issuing authority for immediate broadcast in all or part of the area within the station’s A.M. 5 mV/m contour, F.M. 0.5 mV/m contour or digital service area, as the case may be.</p> <p>(3) Despite subsection (2) and subject to any condition of licence, the deadline for implementing the public alerting system in the case of a campus station, community station or native station is March 31, 2016.</p> <p>(4) The licensee shall implement the public alerting system for each of its transmitters.</p> <p>(5) The licensee shall broadcast the alert on transmitters that serve the area that is targeted by the alert.</p> <p>(6) The licensee shall take all reasonable measures to ensure that the alerts that it broadcasts are in conformity with the specifications and recommended practices set out in the document entitled National Public Alerting System Common Look and Feel Guidance, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in consultation with the public-private Common Look and Feel Working Group, as that document is amended from time to time.</p> <p>Web link: <a href="https://canlii.ca/t/52k5q">https://canlii.ca/t/52k5q</a></p>
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**4. Television Broadcasting Regulations, 1987**

<b>Television Broadcasting Regulations, 1987 SOR/87-49, made under the <i>Broadcasting Act</i>, S.C. 1991, c. 11</b>	
<b>Key provisions</b>	
s. 18	<p>(1) The following definitions apply in this section.</p> <p style="padding-left: 40px;"><b>community station</b> means a station that is licensed as a community station.</p>



	<p><b>issuing authority</b> means any person who is authorized by a Canadian governmental authority — including the federal Department of the Environment, federal and provincial government departments and agencies that are responsible for emergency management and public safety, and municipal authorities — to issue warnings to the public, and to the National Alert Aggregation and Dissemination System, announcing danger to life or property.</p> <p><b>National Alert Aggregation and Dissemination System</b> means the alert message aggregation system established and operated by Pelmorex Communications Inc.</p> <p><b>native station</b> means a station that is licensed as a native station.</p> <p>(2) Except as otherwise provided under a condition of its licence, a licensee shall implement on all stations that it is licensed to operate, by no later than March 31, 2015, a public alerting system that broadcasts without delay, on a given station, any alert that it receives, in a form including both text and audio content, from the National Alert Aggregation and Dissemination System that</p> <ul style="list-style-type: none"> <li>(a) announces an imminent or unfolding danger to life; and</li> <li>(b) is designated by the applicable issuing authority for immediate broadcast in all or part of the area within the station's Grade B official contour or noise-limited bounding official contour, as the case may be.</li> </ul> <p>(3) Despite subsection (2) and subject to any condition of licence, the deadline for implementing the public alerting system in the case of a community station or native station is March 31, 2016.</p> <p>(4) The licensee shall implement the public alerting system for each of its transmitters.</p> <p>(5) The licensee shall broadcast the alert on transmitters that serve the area that is targeted by the alert.</p> <p>(6) The licensee shall take all reasonable measures to ensure that the alerts that it broadcasts are in conformity with the specifications and recommended practices set out in the document entitled National Public Alerting System Common Look and Feel Guidance, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in consultation with the public-private Common Look and Feel Working Group, as that document is amended from time to time.</p> <p>Web link: <a href="https://canlii.ca/t/53q04">https://canlii.ca/t/53q04</a></p>
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**5. Royal Canadian Mounted Police Act**

<b>Royal Canadian Mounted Police Act, RSC 1985, c R-10</b>	
<b>Key Provisions</b>	
s. 2	<p>(1) In this Act,</p> <p>...</p> <p><b>member</b> means any person who has been appointed under section 5 or subsection 6(3) or (4) or 7(1) and who is employed with the Force; (<i>membre</i>)</p> <p>...</p> <p><b>officer</b> means a member appointed under section 5 or subsection 6(3) or (4); (<i>officier</i>)</p> <p>...</p>
s. 18	<p>It is the duty of members who are peace officers, subject to the orders of the Commissioner,</p> <p>(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;</p> <p>...</p>
<p>Web link: <a href="https://canlii.ca/t/54310">https://canlii.ca/t/54310</a></p>	

**6. Telecommunications Act**

<b>Telecommunications Act, S.C. 1993, c. 38</b>	
<b>Key provisions</b>	
s. 7	<p>It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives</p> <p>(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;</p> <p>(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;</p> <p>(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;</p> <p>(d) to promote the ownership and control of Canadian carriers by Canadians;</p>

	<p>(e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;</p> <p>(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;</p> <p>(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;</p> <p>(h) to respond to the economic and social requirements of users of telecommunications services; and</p> <p>(i) to contribute to the protection of the privacy of persons.</p>
<p>Web link: <a href="https://canlii.ca/t/5430n">https://canlii.ca/t/5430n</a></p>	

#### IV. Nova Scotia Legislation

##### 1. Police Act

<b>Police Act, SNS 2004, c 31</b>	
<b>Key provisions</b>	
s. 2	<p>In this Act,</p> <p>...</p> <p>(h) “Minister” means the Minister of Justice;</p> <p>(i) “municipality” means a municipality as defined in the <i>Municipal Government Act</i>;</p> <p>...</p>
s. 31(1)	<p>The Provincial Police shall provide policing services including</p> <p>(a) crime prevention;</p> <p>(b) law enforcement;</p> <p>(c) assistance to victims of crime;</p> <p>(d) emergency and enhanced services; and</p> <p>(e) public order maintenance.</p>
s. 35	<p>(1) Every municipality is responsible for the policing of and maintenance of law and order in the municipality and for providing and maintaining an adequate, efficient and effective police department at its expense in accordance with its needs.</p> <p>(2) In providing an adequate, efficient and effective police department for the purpose of subsection (1), a municipality is responsible for providing all the necessary infrastructure and administration.</p> <p>(3) For the purpose of subsection (1), the service provided by a police department shall include</p> <p>(a) crime prevention;</p> <p>(b) law enforcement;</p> <p>(c) assistance to victims of crime;</p> <p>(d) emergency and enhanced services; and</p>

	(e) public order maintenance. 2004, c. 31, s.35.
s. 36	<p>(1) The obligation of a municipality to provide policing services pursuant to Section 35 may be discharged by</p> <p>(a) the establishment of a municipal police department pursuant to this Act;</p> <p>(b) entering into an agreement with the Province, the Government of Canada or another municipality for the use or employment of an established police department or any portion of an established police department;</p> <p>(c) entering into an agreement with another municipality pursuant to Section 84 or 85; or</p> <p>(d) any other means approved by the Minister.</p> <p>(2) An agreement entered into pursuant to subsection (1) may contain such terms and conditions, including financial arrangements, as may be agreed upon and the municipality and the Minister have authority to enter into, perform and carry out the agreement.</p> <p>(3) Any amounts received by the Province pursuant to an agreement authorized by subsection (2) shall be paid into the Consolidated Fund of the Province.</p> <p>(4) Any amount owed to the Province pursuant to an agreement authorized by subsection (2), where not collected by other means, may be recovered by court action, with costs, as a debt due to the Province and may be deducted from any grant payable to the municipality out of Provincial funds.</p> <p>(5) A municipality may not abolish a municipal police department without the approval of the Minister.</p> <p>(6) A municipality shall provide the Minister with immediate notice of a decision to change the manner in which it provides policing services pursuant to subsection (1) and the decision shall not be implemented without the approval of the Minister.</p> <p>(7) The Minister may refuse to approve the change in policing services if the Minister is satisfied that the alternate method of service delivery is not sufficient to maintain an adequate and effective level of policing. 2004, c.31, s.36.</p>
Web link: <a href="https://canlii.ca/t/52lb3">https://canlii.ca/t/52lb3</a>	

**Additional information:** Like many other provinces, one of the legislated roles of the police in Nova Scotia is crime prevention.

**2. Emergency Management Act**

<b>Emergency Management Act, SNS 1990, c 8</b>	
<b>Key provisions</b>	
s. 2	<p>In this Act,</p> <p>...</p> <p>(aa) "Department" means the Department of Municipal Affairs;</p> <p>(b) "emergency" means a present or imminent event in respect of which the Minister or a municipality, as the case may be, believes prompt co-ordination of action or regulation of persons or property must be</p>

	<p>undertaken to protect property or the health, safety or welfare of people in the Province;</p> <p>...</p> <p>(j) "state of emergency" means a state of emergency declared by the Minister or renewed by the Minister pursuant to this Act;</p> <p>(k) "state of local emergency" means a state of local emergency declared by a municipality or renewed by it pursuant to this Act.</p>
s. 10A	<p>Every municipality shall, immediately upon becoming aware of it, inform the Department of any real or anticipated event or emergency that could impact the health, safety or welfare of Nova Scotians, their property or the environment.</p>
s. 12	<p>(1) The Minister, after consulting, if it is practical to do so, with a majority of the members of a committee established pursuant to Section 5 or a quorum of the Executive Council and, if the Minister is satisfied that an emergency exists or may exist, may declare a state of emergency in respect of all or any district, subdistrict or area of the Province.</p> <p>(2) A municipal council may, when satisfied that an emergency exists or may exist in all or any area of that municipality, declare a state of local emergency in respect of that municipality or area thereof.</p> <p>(3) If a municipal council is unable to act promptly, the mayor or warden may exercise the authority of the municipal council contained in subsection (2) after consulting, if it is practical to do so, with a majority of the members of the council's committee to advise on the development of emergency management plans.</p> <p>(4) A declaration pursuant to this Section shall identify the nature of the emergency and the area in which it exists.</p>
s. 13	<p>When a state of emergency or a state of local emergency has been declared or terminated pursuant to this Act, the Minister or the municipality, as the case may be, shall immediately cause the details of the declaration or termination to be communicated or published by such means as the Minister or the municipality, respectively, considers the most likely to make the contents of the declaration or termination known to the people of the area affected.</p>
<p>Web link: <a href="https://canlii.ca/t/52kqm">https://canlii.ca/t/52kqm</a>.</p>	