

C.2

# Backgrounder

BP-71E

2009-368  
bnp/c.

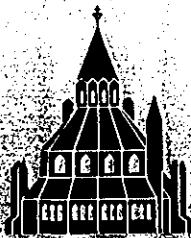
MAR 25 1996

## THE OBLIGATION TO MAKE PUBLIC AND TO PUBLISH ORDERS IN COUNCIL

Jacques Rousseau

LAW AND GOVERNMENT DIVISION

April 1983



Library of  
Parliament  
Bibliothèque  
du Parlement

# Research Branch

Library,  
Dept. of Justice Canada  
900 - 840 Howe Street,  
Vancouver, BC V6Z 2S9



CANADA

LIBRARY OF PARLIAMENT  
BIBLIOTHÈQUE DU PARLEMENT

## THE OBLIGATION TO MAKE PUBLIC AND TO PUBLISH ORDERS IN COUNCIL

## INTRODUCTION

Under the Constitution Act, 1867, the Privy Council and the Governor General constitute the official executive body at the federal level. Collectively, they are designated by the expression "Governor in Council". When the Governor in Council exercises his power, both the Privy Council and the Governor General must have a hand in the decision-making process so that it has force of law under the Canadian Constitution.

Thus, in determining the rules of law applicable as regards the publication of orders, a distinction must be drawn between Cabinet decisions and those made by the Governor General acting in conjunction with the Privy Council. Cabinet decisions may all be kept secret.<sup>(1)</sup> Those of the Governor in Council must be made public if they qualify as statutory instruments,<sup>(2)</sup> barring certain exceptions. This study will focus on decisions of the Governor in Council.

It should be noted that despite this distinction, in practical terms, the Privy Council is represented by federal Cabinet members, namely federal ministers in office at the time a decision is taken. Although the Cabinet in office needs to have the Governor General approve any order it issues, this approval is virtually taken for granted.

---

(1) Access to Information Act, S.C. 1980-81-82-83, c. 111, s. 69(1)(c), which stipulates that this Act does not apply to decisions made by the Privy Council acting alone, by Cabinet and by their respective committees.

(2) Statutory Instruments Act, S.C. 1970-71-72, c. 38, s. 2(1)(d).

Decisions issued by the Governor in Council are called "orders in council". There is no specific French equivalent for this term. For example, in section 2(1)(d) of the Statutory Instruments Act, the word "order" is translated by "décret", "arrêté" and "ordre".\* The word "order" is sometimes translated by "ordonnance". An order in council is, quite simply, proof that the Governor in Council has exercised a right in accordance with the Canadian Constitution and thus that a decision is official and has force of law. All orders in council are recorded in a publication produced by a private firm.<sup>(1)</sup> Thus, when Parliament passes a law saying that the Governor in Council "may make regulations", the regulations in question and any subsequent amendments will be presented in the following manner: first, by means of a standard formula, it will be confirmed that the Governor General and the Privy Council have, by order in council, decided to give force of law to proposed regulations; (2) second, attached as a schedule to the order in council is the text containing the substance of the decision made by the Governor in Council. It is possible to know whether an order must be made public and published by determining whether or not this schedule qualifies as a statutory instrument pursuant to the Statutory Instruments Act. This legislation in fact contains general provisions respecting the publication of decisions issued by federal government authorities. This study will focus on those statutory instruments that must be made public and on those that must be published.

#### PUBLIC STATUTORY INSTRUMENTS

As a general rule, all decisions which qualify as statutory instruments pursuant to the Statutory Instruments Act are made public. The issue is how to recognize a statutory instrument. Some criticism has been directed at the legislation in question, particularly by the Special Joint

---

\* For the purposes of this study, "décret en conseil" will be translated as "order in council".

- (1) See copies of the publication "Orders in Council" contained in Library of Parliament Cat. No. KA/15/G73.
- (2) For example: "His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 27 of the Statutory Instruments Act, is pleased hereby to amend the Statutory Instruments Act made by Order in Council ... in accordance with the schedule hereto."

Committee on Regulations and Other Statutory Instruments, because the definition of a "statutory instrument" contained in the Act is far from being clear.<sup>(1)</sup> Briefly, a statutory instrument can be defined as the exercise by a federal public authority of a decision-making power conferred upon it by an Act of Parliament. Furthermore, the law must specify that this public authority must act "by order" or otherwise for the decision to be a statutory instrument.<sup>(2)</sup> This decision may consist of adopting a regulation, issuing a directive, appointing by decree persons to occupy certain positions within federal government agencies, establishing by decree a tariff of costs or fees for receiving, for example, various services made available to citizens by a federal government agency, etc.

There are a few exceptions to the rule of thumb that statutory instruments are public instruments. The Governor in Council may direct that certain statutory instruments be exempt from publication in the interest of international relations, defence, national security or federal-provincial relations.<sup>(3)</sup> Such exemptions have been granted in the case of regulations that bear a security classification and contain information pertaining to, for example, the administration or training of the Canadian Forces, Canada's role in the North Atlantic Treaty Organization or any international agreement, one of the purposes of which is to provide for the defence or security of Canada.<sup>(4)</sup>

- 
- (1) Canada, Standing Joint Committee on Regulations and Other Statutory Instruments, Minutes of Proceedings and Evidence, First Session, 32nd Parliament, Issue No. 7, July 22, 1980, p. 7:29: "The definition of a statutory instrument is obscure...".
  - (2) For example, if an Act stipulates that: "The Governor in Council may by order authorize the acceptance on behalf of Canada of membership in the International Development Association", this authorization becomes a statutory instrument. If, however, the Act simply states that: "The Board may, with the approval of the Governor in Council, enter into agreements", this approval does not constitute a statutory instrument. The same distinction applies to orders in council pursuant to the Royal Prerogative. For this reason, the Emergency Planning Order, Canada Gazette, Part II, Vol. 115, No. 11, p. 1664, is a statutory instrument.
  - (3) Statutory Instruments Act, s. 27(d)(i) and (ii).
  - (4) Statutory Instruments Regulations, C.R.C. 1978, Vol. XVII, c. 1509, s. 22(1), (2) and 15(3); the complete text of s. 22(1) and (2) and of s. 15(3) is contained in the appendix to this background paper; the reader should consult it for a complete list of the exemptions provided for in the regulations.

The Governor in Council may also direct that statutory instruments be exempt from publication if he is satisfied that the publication thereof could result in injustice or undue hardship to any person or body affected thereby or in serious and unwarranted detriment to any such person or body in the matter or conduct of his or its affairs.<sup>(1)</sup> Based on these reasons, pardons or certain fees set or approved by the Governor in Council are exempt from publication.<sup>(2)</sup>

Aside from the exemptions, all decisions constituting statutory instruments are public. However, this does not mean that they will all be published in the official record, namely the Canada Gazette.

#### PUBLISHED STATUTORY INSTRUMENTS

This part of the paper will describe the rules of law applying to publication of statutory instruments, and then explain how the Canada Gazette is organized.

##### A. Rules Respecting the Publication of Statutory Instruments

For obvious reasons, statutory instruments which are not to be made public cannot be published. The Governor in Council is the only one who may direct, by order, the publication of such statutory instruments.<sup>(3)</sup>

---

(1) Statutory Instruments Act, s. 27(d)(iii).

(2) Statutory Instruments Regulations, s. 22(3), as amended by: Can. Gaz. II, 1978, Vol. 112, No. 21, p. 3931, s. 4; Can. Gaz. II, 1980, Vol. 114, No. 14, p. 2519, s. 1. The complete text of s. 22(3) as amended is contained in the appendix to this background paper; the reader may consult it for a complete list of the exemptions provided for in the regulations. Some orders in council relate, for example, to pardons. The March 26, 1983 issue of the publication "Orders in Council" notes that the purpose of orders in council 1983-874 to 1983-897 is to grant or repeal pardons pursuant to the Criminal Records Act (R.S.C. 1970, c. 12, 1st Suppl.). However, the publication indicates "Details unavailable".

(3) Statutory Instruments Act, s. 12; Parliament may always, of course, pass a law at a later stage ordering the publication of a statutory instrument which otherwise would have been exempt from publication.

On the other hand, not all statutory instruments which have been made public will be published. Only those which qualify as regulations will be systematically published.

How, then, can we identify from among all of the statutory instruments those which are regulations? Once again, it should be noted that the Standing Joint Committee on Regulations and Other Statutory Instruments criticized the lack of specific legislative definitions on this point.<sup>(1)</sup> Suffice it to say that a regulation is characterized by one of the following elements:<sup>(2)</sup>

- it is an instrument made in the exercise of legislative power conferred by an Act of Parliament (the expression "legislative power" may be interpreted as meaning the power to enact rules of law which apply to an unspecified number of persons);

or

- an instrument for the contravention of which a penalty, fine or imprisonment is prescribed by an Act of Parliament;

or

- an instrument described as a regulation in an Act of Parliament.

In case of doubt, the Deputy Minister of Justice determines whether or not the instrument is a regulation.<sup>(3)</sup>

The Governor in Council may decide that a regulation, although made public, will not be published. He may decide so for two reasons: firstly, because in certain cases, the number of regulations contained in a given class makes it impossible to have them registered by the Clerk of the Privy Council, an essential initial step to their being published; secondly, because he is satisfied that a regulation or class of regulation is likely to affect only a limited number of persons and that reasonable steps will be taken to inform those persons of the contents of

---

(1) Canada, Standing Joint Committee on Regulations and Other Statutory Instruments, Minutes of Proceedings and Evidence, First Session, 32nd Parliament, Issue No. 2, July 22, 1980, p. 7:29: "... your Committee is at a complete loss to understand what prompted the definitions of "statutory instrument" and "regulation", the distinctions between them [sic]...".

(2) Statutory Instruments Act, s. 2(1)(b).

(3) Ibid., s. 4.

these regulations.<sup>(1)</sup> A comprehensive list is provided of exemptions granted for one or the other of these reasons.<sup>(2)</sup>

Statutory instruments which are not regulations may be published in exceptional circumstances. The Governor in Council or the Clerk of the Privy Council<sup>(3)</sup> may direct that such instruments be published. Sometimes, Parliament requires, in a particular Act, that a decision be published.<sup>(4)</sup>

#### B. Organization of the Canada Gazette<sup>(5)</sup>

Those statutory instruments of a class which the Governor in Council has ordered published are contained in Part I of the Canada Gazette. Certain statutory instruments, such as proclamations, must be published in Part II of the Canada Gazette. Part II also contains all regulations. Lastly, Part III contains all laws of interest to the public which have been passed by Parliament.

#### CONCLUSION

Summing up, it should be remembered that a distinction must be made between Cabinet decisions and those made by the Governor in Council; only the latter have force of law. Of decisions made by the Governor in Council, only those which qualify as statutory instruments are subject to the terms and provisions of the Statutory Instruments Act. This

---

(1) Ibid., s. 27(c)(i) and (ii).

(2) Exemptions provided for the first reason: see Statutory Instruments, s. 15(1), as amended by Can. Gaz. II, 1979, Vol. 113, No. 3, p. 491, s. 2; Can. Gaz. II, 1980, Vol. 114, No. 23, p. 3623, s. 2; exemptions granted for the second reason: see ibid., s. 15(2), as amended by Can. Gaz. II, 1981, Vol. 115, No. 18, p. 2699, s. 2. Section 15(1) and (2) as amended, is contained in the appendix to this paper.

(3) Statutory Instruments Act, s. 12; Statutory Instruments Regulations, s. 14.

(4) See, for example: An Act to amend the National Harbours Board Act, S.C. 1980-81-82-83, c. 121, s. 18: "3(2) - Every order made pursuant to this section shall be published in the Canada Gazette."

(5) Statutory Instruments Regulations, s. 9 to 13; s. 11(1) was amended by: Can. Gaz. II, 1978, Vol. 112, No. 21, p. 3931, s. 1; these sections are contained in the appendix to this paper.

legislation, along with the Statutory Instruments Regulations, exempts certain types of instruments from publication. Finally, of those instruments which are made public, only regulations are published systematically in the Canada Gazette, aside from a few exceptions. Other classes of statutory instruments are published only in exceptional circumstances.

The current legislative policy pertaining to the obligation to publish orders in council can be summarized as follows: only those orders which are defined in an Act as being "regulations" or those for which the contravention would result in a penalty, fine or imprisonment are clearly required to be published. As for the other classes of instruments, it is up to the Deputy Minister of Justice to determine, when any doubt prevails, whether or not the decision is a regulation. It can also come down to a question of advisability, with the Clerk of the Privy Council deciding, since the order is in the interest of the public, whether or not it should be published.



Règlement sur les textes réglementaires (1) : extraits

9. The *Canada Gazette* shall be published in three parts, namely, Part I, Part II and Part III.

10. The typography, style and format of Part I, Part II and Part III of the *Canada Gazette* shall be substantially similar to the typography, style and format of the public general Acts of the Parliament of Canada.

"11. (1) Subject to subsection (3) and section 13, every statutory instrument, other than a regulation, and every other document that is required or authorized to be published in the *Canada Gazette* by or under the authority of the Act or any other Act of Parliament shall be published in Part I of the *Canada Gazette*."

(2) Every regulation, other than a regulation that is exempt from publication, shall be published in Part II of the *Canada Gazette*.

(3) The following classes of statutory instruments or other documents shall be published in Part II of the *Canada Gazette*:

- (a) orders made by the Governor in Council under the *Public Service Rearrangement and Transfer of Duties Act*;
- (b) orders made by the Governor in Council whereby any member of the Queen's Privy Council for Canada is designated to act as Minister for the purposes of any Act of Parliament;
- (c) proclamations; and
- (d) orders made under section 17 of the *Financial Administration Act* that are of continuing effect or apply to more than one person or body.

"(e) rules governing the practice and procedure in proceedings before a judicial body that is established under an enactment of a province that are required to be published in the *Canada Gazette* by an Act of Parliament."

12. The public Acts of each session of the Parliament of Canada shall be published in Part III of the *Canada Gazette*.

13. Part I of the *Canada Gazette* shall be published at least once every 7 days and Part II thereof shall be published on at least the second and fourth Wednesday of each month.

9. La *Gazette du Canada* doit d'être publiée en trois parties, à savoir la Partie I, la Partie II et la Partie III.

10. La typographie, le style et le format des Parties I, II et III de la *Gazette du Canada* doivent être sensiblement les mêmes que la typographie, le style et le format employés pour les lois d'intérêt public et général du Parlement du Canada.

"11. (1) Sous réserve du paragraphe (3) et de l'article 13, tout texte réglementaire, sauf un règlement, et tout autre document dont la publication dans la *Gazette du Canada* est requise ou autorisée en vertu de la Loi ou de toute autre loi du Parlement, doivent être publiés dans la Partie I de la *Gazette du Canada*."

(2) Tout règlement, sauf un règlement soustrait à la publication, doit être publié dans la Partie II de la *Gazette du Canada*.

(3) Les textes réglementaires ou autres documents des catégories mentionnées ci-après doivent être publiés dans la Partie II de la *Gazette du Canada*:

- a) décrets pris par le gouverneur en conseil en vertu de la *Loi sur les remaniements et transferts dans la Fonction publique*;
- b) décrets pris par le gouverneur en conseil pour désigner un membre du Conseil privé de la Reine à titre de ministre chargé d'appliquer une loi du Parlement;
- c) proclamations; et
- d) décrets pris en vertu de l'article 17 de la *Loi sur l'administration financière*, qui ont un effet permanent ou qui visent plusieurs personnes ou organismes.

"e) règles de pratique et de procédure d'un organisme judiciaire établi en vertu d'une loi provinciale, lorsqu'une loi du Parlement exige leur publication dans la *Gazette du Canada*."

12. Les lois d'intérêt public de chaque session du Parlement du Canada doivent être publiées dans la Partie III de la *Gazette du Canada*.

13. La Partie I de la *Gazette du Canada* doit paraître au moins une fois tous les 7 jours et la Partie II, au moins les deuxième et quatrième mercredis du mois.

(1) A jour au 23 mars 1983: Gaz. Can., II, 1983, vol. 117, no. 6

15. (1) The following classes of regulations, being classes that are exempt from registration, are hereby exempt from publication:

(a) regulations made under the authority of section 12 of the *National Defence Act* other than regulations described in subsection (3) of this section;

(b) rules known as standing orders, made by the Commissioner of the Royal Canadian Mounted Police under the authority of subsection 21(2) of the *Royal Canadian Mounted Police Act*;

(c) "instructions to the trade" issued by the Canadian Wheat Board under the authority of the *Canadian Wheat Board Act*;

(d) regulations issued or made by the Canadian Grain Commission under the *Canada Grain Act* that

(i) are directed to a single person or body, or

(ii) apply to licensees for a period of time terminating not later than the end of the crop year with respect to which they were made;

(e) directions made by safety officers under section 94 or 96 of the *Canada Labour Code*;

"(f) orders and regulations issued or made by

(i) the Canadian Transport Commission established by the *National Transportation Act*, or

(ii) the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act* in relation to telegraphs or telephones

that are directed to a single person or body; and"

(g) by-laws, rules and regulations made under section 230 of the *Railway Act*, other than by-laws, rules and regulations respecting

(i) the smoking of tobacco, expectorating, and the commission of any nuisance in or upon trains, stations or other premises occupied by a railway company, or

(ii) the travelling upon or using of a railway by members of the public.

"(h) orders and directions made by the designated officer pursuant to section 21 of the *Northern Pipeline Act*."

"(i) orders issued or made by the Energy Supplies Allocation Board under the *Energy Supplies Emergency Act, 1979* that are directed to a single person or body."

15. (1) Sont soustraits à la publication les catégories de règlements ci-après qui sont des catégories soustraites à l'enregistrement:

a) règlements établis en vertu de l'article 12 de la *Loi sur la défense nationale* sauf les règlements mentionnés au paragraphe (3) du présent article;

b) règles, appelées ordres permanents, établies par le commissaire de la Gendarmerie royale du Canada, en vertu du paragraphe 21(2) de la *Loi sur la Gendarmerie royale du Canada*;

c) «instructions aux commerçants» publiées par la Commission canadienne du blé, en vertu de la *Loi sur la Commission canadienne du blé*;

d) règlements établis par la Commission canadienne des grains, en vertu de la *Loi sur les grains du Canada*, et qui

(i) s'adressent à une seule personne ou à un seul organisme, ou

(ii) s'appliquent aux titulaires de permis durant une période se terminant au plus tard à la fin de la campagne agricole à l'égard de laquelle les textes réglementaires ont été établis;

e) directives établies par les agents de sécurité en vertu de l'article 94 ou 96 du *Code canadien du travail*;

«f) ordonnances et règlements émanant

(i) de la Commission canadienne des transports instituée par la *Loi nationale sur les transports*, ou

(ii) du Conseil de la radiodiffusion et des télécommunications canadiennes institué par la *Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes* et relatifs au télégraphe ou au téléphone;

lorsqu'ils s'adressent à une seule personne ou à un seul organisme; et»

g) les statuts administratifs, règles et règlements établis en vertu de l'article 230 de la *Loi sur les chemins de fer*, sauf les statuts administratifs, règles et règlements concernant

(i) l'usage du tabac, l'expectoration et le fait de commettre quelque malpropreté dans ou sur les trains, gares, stations ou autres bâtiments occupés par une compagnie de chemin de fer, et

(ii) le mode de circulation sur le chemin de fer ainsi que son usage par le public.

«h) ordres et autorisations donnés par le fonctionnaire désigné conformément à l'article 21 de la *Loi sur le pipeline du Nord*»

«i) ordonnances établies ou rendues par l'Office de répartition des approvisionnements d'énergie en vertu de la *Loi d'urgence de 1979 sur les approvisionnements d'énergie* et s'adressant à une seule personne ou à un seul organisme.»

(2) The following regulations and classes of regulations, being regulations or classes of regulations that the Governor in Council is satisfied affect or are likely to affect only a limited number of persons and with respect to which the Governor in Council is satisfied that reasonable steps have been or will be taken for the purpose of bringing their purport to the notice of those persons affected or likely to be affected by them, are hereby exempt from publication:

"(a) any order made or notice given by a person engaged or employed in the administration or enforcement of the *Fisheries Act* whereby any close time or fishing quota that has been fixed by regulations made under that Act is varied;"

(b) Revoked

(c) Revoked

(d) orders or directions made by the Minister of Transport or the Deputy Minister of Transport with respect to the matters referred to in paragraph 6(1)(f) of the *Aeronautics Act*;

(e) by-laws made by the council of a band under section 81 or 83 of the *Indian Act*;

(f) notices issued by the Minister of Labour pursuant to subsection 106(1) of the *Canada Labour Code*;

(g) the *Regulations for the Transportation of Dangerous Commodities by Rail* made by the Canadian Transport Commission under section 296 of the *Railway Act*; and

(h) regulations made by the Canadian Transport Commission under paragraph 14(1)(c) of the *Aeronautics Act* or under paragraph 42(e) of the *National Transportation Act*.

(3) The following regulations and classes of regulations, being regulations and classes of regulations that, in the interest of international relations, national defence or security, the Governor in Council is satisfied should not be published, are hereby exempt from publication:

(a) regulations that bear a security classification and contain information in respect of

(i) the location or movement of military or civilian personnel of the Department of National Defence,

(ii) the administration or training of the Canadian Forces,

(iii) tactical or strategic operations or operational plans of the Canadian Forces,

(iv) the function of any unit or other element of the Canadian Forces, or

(v) materiel as defined in the *National Defence Act* including any article or object being designed, developed or produced with the intention that it will become materiel;

(b) regulations that bear a national or international security classification and relate to Canada's role in the North Atlantic Treaty Organization or to any international agreement, one of the purposes of which is to provide for the defence or security of Canada;

(2) Les règlements et catégories de règlements ci-après qui, de l'avis du gouverneur en conseil, sont des règlements et des catégories de règlement qui ne concernent ou ne peuvent concerner qu'un nombre restreint de personnes et à l'égard desquels le gouverneur en conseil est convaincu que les mesures voulues ont été prises pour en faire connaître la portée aux personnes que ces règlements concernent ou peuvent concerner, sont soustraits à la publication:

a) ordonnances qui sont rendues et avis qui sont donnés par une personne affectée ou employée à l'exécution ou à l'application de la *Loi sur les pêcheries* et qui modifient une période de fermeture ou un contingent de pêche fixés dans un règlement établi en vertu de cette loi;

b) Abrogé

c) Abrogé

d) ordonnances et directives du ministre ou du sous-ministre des transports, portant sur les questions qui sont l'objet de l'alinéa 6(1)f) de la *Loi sur l'aéronautique*;

e) les statuts administratifs établis par un conseil de bande en vertu de l'article 81 ou 83 de la *Loi sur le Indiens*;

f) les avis envoyés par le ministre du Travail en vertu du paragraphe 106(1) du *Code canadien du travail*;

g) le *Règlement sur le transport des marchandises dangereuses par chemin de fer*, établi par la Commission canadienne des transports en vertu de l'article 296 de la *Loi sur les chemins de fer*; et

h) les règlements établis par la Commission canadienne des transports en vertu de l'alinéa 14(1)c) de la *Loi sur l'aéronautique* ou en vertu de l'alinéa 42e) de la *Loi nationale sur les transports*.

(3) Sont soustraits à la publication les règlements et catégories de règlements ci-après, vu que le gouverneur en conseil est convaincu que ces règlements et catégories de règlements ne doivent pas, dans l'intérêt des relations internationales ou de la défense ou de la sécurité nationale, être publiés:

a) les règlements classés comme secrets pour des raisons de sécurité et contenant des renseignements sur

(i) le lieu où se trouvent des membres du personnel militaire ou civil du ministère de la Défense ou leur déplacement,

(ii) l'administration ou l'entraînement des Forces canadiennes,

(iii) les opérations tactiques ou stratégiques ou les plans opérationnels des Forces canadiennes,

(iv) la fonction d'une unité ou d'un autre élément des Forces canadiennes, ou

(v) le matériel tel qu'il est défini dans la *Loi sur la défense nationale*, y compris tout article ou objet conçu, mis au point ou produit dans le but de le compter comme matériel;

b) les règlements classés comme secrets pour des raisons de sécurité nationale ou internationale et qui se rapportent au rôle du Canada dans l'Organisation du traité de l'Atlantique Nord ou à tout autre accord international dont l'un des buts est d'assurer la défense ou la sécurité du Canada;

(c) regulations relating to the operation and maintenance of materiel as defined in the *National Defence Act* that contain information provided by the government of a country other than Canada, or by a person having a proprietary interest therein, on the understanding that such information would not be disclosed except to the extent authorized by that government or person; and

(d) regulations made by the Governor in Council that apply to specific permits or leases issued or granted under the *Canada Oil and Gas Land Regulations* in areas off the coast of Canada declared by the Governor in Council to be areas concerning which negotiations with another country may be necessary or are in progress for the purpose of delimiting jurisdiction.

22. (1) The inspection of and the obtaining of copies of regulations and classes of regulations that have been exempted from publication pursuant to subsection 15(3) are hereby precluded.

(2) The inspection of and the obtaining of copies of the following statutory instruments and classes of statutory instruments, being statutory instruments or classes of statutory instruments the inspection of which and the obtaining of copies of which the Governor in Council is satisfied should be precluded in the interest of international relations or national defence or security, are hereby precluded:

(a) statutory instruments, other than regulations, that bear a security classification and contain information in respect of

(i) the location or movement of military or civilian personnel of the Department of National Defence,

(ii) the administration or training of the Canadian Forces,

(iii) tactical or strategic operations or operational plans of the Canadian Forces,

(iv) the function of any unit or other element of the Canadian Forces, or

(v) materiel as defined in the *National Defence Act* including any article or object being designed, developed or produced with the intention that it will become materiel;

(b) statutory instruments, other than regulations, that bear a national or international security classification and relate to Canada's role in the North Atlantic Treaty Organization or to any international agreement, one of the purposes of which is to provide for the defence or security of Canada;

(c) certificates of citizenship granted or issued by the Secretary of State of Canada under the *Canadian Citizenship Act*;

(d) warrants issued under section 7 of the *Official Secrets Act* and orders issued under subsection 11(2) of that Act;

(e) statutory instruments, other than regulations, the disclosure of which would reveal the location or movement of any

c) les règlements qui ont rapport au fonctionnement et à l'entretien du matériel défini dans la *Loi sur la défense nationale* et qui renferment des renseignements fournis par le gouvernement d'un autre pays que le Canada ou par une personne ayant un droit de propriété sur ce matériel à la condition que lesdits renseignements ne seront pas divulgués, si ce n'est dans la mesure où l'autorise ce gouvernement ou cette personne; et

d) les règlements établis par le gouverneur en conseil et visant certains permis ou baux délivrés ou accordés en vertu du *Règlement sur les terres pétrolières et gazières du Canada* à l'égard de zones qui sont situées au large de la côte du Canada et que le gouverneur en conseil a déclarées zones au sujet desquelles des négociations avec un autre État

sont en cours ou peuvent s'avérer nécessaires pour délimiter la juridiction.

22. (1) Sont interdits l'examen et l'obtention de copies des règlements et catégories de règlements qui ont été soustraits à la publication en vertu du paragraphe 15(3).

(2) Sont interdits l'examen et l'obtention de copies des textes réglementaires et catégories de textes réglementaires ci-après, vu que le gouverneur en conseil est convaincu que l'examen et l'obtention de copies de ces textes réglementaires et catégories de textes réglementaires doivent être interdits dans l'intérêt des relations internationales ou de la défense ou de la sécurité nationale:

a) les textes réglementaires, sauf les règlements, classés comme secrets pour des raisons de sécurité et contenant des renseignements sur

(i) le lieu où se trouvent des membres du personnel militaire ou civil du ministère de la Défense nationale ou leur déplacement,

(ii) l'administration ou l'entraînement des Forces canadiennes,

(iii) les opérations tactiques ou stratégiques ou les plans opérationnels des Forces canadiennes,

(iv) la fonction d'une unité ou d'un autre élément des Forces canadiennes, ou

(v) le matériel tel qu'il est défini dans la *Loi sur la défense nationale*, y compris tout article ou objet conçu, mis au point ou produit dans le but de le compter comme matériel;

b) les textes réglementaires, sauf les règlements, classés comme secrets pour des raisons de sécurité nationale ou internationale et qui se rapportent au rôle du Canada dans l'Organisation du traité de l'Atlantique Nord ou à tout autre accord international dont l'un des buts est d'assurer la défense ou la sécurité du Canada;

c) les certificats de citoyenneté accordés ou délivrés par le secrétaire d'État du Canada en vertu de la *Loi sur la citoyenneté canadienne*;

d) les mandats décernés en vertu de l'article 7 de la *Loi sur les secrets officiels* et les ordres donnés en vertu du paragraphe 11(2) de cette loi;

explosive or the location of any manufacturer of explosives; and

(f) licences, permits and other documents issued to any person by the Minister of Transport under the *Aeronautics Act* whereby that person is authorized to act as pilot-in-command, co-pilot, flight navigator or flight engineer of an aircraft.

(3) The inspection of and the obtaining of copies of the following statutory instruments and classes of statutory instruments, being statutory instruments or classes of statutory instruments in respect of which the Governor in Council is satisfied that the inspection or the making of copies thereof as provided for by the Act would, if it were not precluded by these Regulations, result or be likely to result in injustice or undue hardship to any person or body affected thereby or in serious and unwarranted detriment to any such person or body in the matter or conduct of his or its affairs, are hereby precluded:

“(a) deportation orders, departure notices, exclusion orders, rejection orders, detention orders and warrants for arrest issued or made under the *Immigration Act, 1976* or under the authority of any immigration laws that were in force in Canada prior to the coming into force of that Act;”

“(b) parole certificates and mandatory supervision certificates issued under section 12 of the *Parole Act* and warrants issued under subsection 10(2), 16(1) or (2) or section 18 of that Act;”

(c) warrants made or issued under the *Penitentiary Act* whereby a person who has been sentenced or committed to a penitentiary is committed or transferred to any penitentiary in Canada;

(d) pardons granted by the Governor in Council under subsection 4(5) of the *Criminal Records Act* and any statutory instrument relating thereto;

(e) statutory instruments by which the salary or other remuneration of any person is fixed or approved by the Governor in Council except to the extent to which they provide for the fixing or approval thereof within a specified range;

(f) Revoked

(g) Revoked

(h) interim prohibitory orders made under section 7 of the *Post Office Act* if those orders have not been declared final;

(i) warrants and permits granted under subsection 22(1) of the *Customs Act* and permits or certificates given under section 104 of that Act;

(j) statutory instruments issued, made or established in the course of an inquiry under the *Combines Investigation Act* or an investigation ordered under section 114 of the *Canada Corporations Act*;

(k) directions issued or made by the Governor in Council following a recommendation made by the Employment Support Board under subsection 15(1) of the *Employment Support Act*; and

e) les textes réglementaires, sauf les règlements, dont l'examen divulguerait le lieu où se trouvent des explosifs ou leur déplacement ou le lieu où se trouve une usine de fabrication d'explosifs; et

f) les licences, permis et autres documents délivrés par le ministre des Transports, en vertu de la *Loi sur l'aéronautique*, à une personne qui est autorisée à exercer les fonctions de pilote commandant de bord, de copilote, de navigateur ou de mécanicien navigant.

(3) Sont interdits l'examen et l'obtention de copies des textes réglementaires et catégories de textes réglementaires ci-après, vu que le gouverneur en conseil est convaincu que l'examen et la production de copies de ces textes réglementaires et catégories de textes réglementaires, tels qu'ils sont prévus par la Loi, causeraient ou pourraient causer, s'ils n'étaient pas interdits, à toute personne ou tout organisme concernés, une injustice ou un tort déraisonnable ou un préjudice grave et injustifié dans ses affaires ou dans la conduite de ses affaires:

“(a) les ordonnances d'expulsion, les avis d'interdiction de séjour, les ordonnances d'exclusion, les ordonnances de refoulement, les mandats d'arrestation et de détention émis en vertu de la *Loi sur l'immigration de 1976* ou des lois d'immigration en vigueur au Canada avant l'entrée en vigueur de cette dernière;”

“(b) les certificats de libération conditionnelle et de surveillance obligatoire délivrés en vertu de l'article 12 de la *Loi sur la libération conditionnelle de détenus* et les mandats décernés en vertu des paragraphes 10(2) et 16(1) ou (2) ou de l'article 18 de cette loi;”

(c) les mandats décernés ou les ordres donnés en vertu de la *Loi sur les pénitenciers* et par lesquels une personne qui a été condamnée au pénitencier ou incarcérée dans un pénitencier est incarcérée ou transférée dans un pénitencier au Canada;

(d) les pardons accordés par le gouverneur en conseil en vertu du paragraphe 4(5) de la *Loi sur le casier judiciaire* et tout texte réglementaire qui s'y rapporte;

(e) un texte réglementaire par lequel le traitement d'une personne ou sa rémunération sous quelque autre forme sont fixés ou approuvés par le gouverneur en conseil, sauf dans la mesure où ce texte réglementaire prévoit une échelle précise devant servir à fixer ou à approuver le traitement ou la rémunération;

(f) Abrogé

(g) Abrogé

(h) les ordres prohibitifs provisoires donnés en vertu de l'article 7 de la *Loi sur les postes* si ces ordres n'ont pas été déclarés définitifs;

(i) les laissez-passer et permis accordés en vertu du paragraphe 22(1) de la *Loi sur les douanes* et les permis ou certificats délivrés en vertu de l'article 104 de cette loi;

(j) les textes réglementaires publiés, édictés ou établis au cours d'une enquête menée en vertu de la *Loi relative aux enquêtes sur les coalitions*, ou un examen ordonné en vertu de l'article 114 de la *Loi sur les corporations canadiennes*.

(f) by-laws, rules and regulations issued or made under paragraph 230(f), (g) or (h) of the *Railway Act*, except to the extent that any such by-laws, rules or regulations apply to members of the public travelling upon or using a railway.

k) les directives qui émanent du gouverneur en conseil à la suite d'une proposition faite par la Commission de soutien de l'emploi en vertu du paragraphe 15(1) de la *Loi de soutien de l'emploi*; et

l) les statuts, règles et règlements publiés ou établis en vertu de l'alinéa 230(f), g) ou h) de la *Loi sur les chemins de fer*, sauf pour ce qui concerne, dans ces statuts, règles et règlements, les usagers des chemins de fer, voyageurs ou autres.