

Constitutional Law – Practice Question and Answer

Session: Basic Concepts

Topic: Paramountcy

Recommended time: 1 hour 45 minutes

Score: 100 Marks

Author: Manuel Akinshola

QUESTION

The Custody, Supervision and Rehabilitation Services (CSRS) is the division responsible for the implementation and operation of adult offender services under the Saskatchewan Ministry of Corrections, Policing and Public Safety. Pursuant to its regulatory powers under the Correction Act, the CSRS last fall released the Adult Custody Policies (Policy), which established a telephone system known as the Adult Correctional Service Telephone System (ACSTS) for all the provincial correctional centres. Under the ACSTS, all telephone calls made by inmates would automatically be recorded and stored, and may be retrieved upon an order of a provincial judge. The relevant portion of the Policy reads thus:

- iii. From the commencement date hereof, the Adult Correctional Service Telephone System (ACSTS) shall come into use and shall automatically record all telephone conversations of inmates in the correctional centres, except for calls made to legal counsels who have registered their telephone numbers in favour of a particular inmate.
- iv. Pursuant to such recordings, an authorized officer of the service may restrict, intercept, or monitor the telephone conversations of inmates in accordance with this Policy for the purpose of preventing the unlawful use of such telephone services.
- v. Such restriction and monitoring of inmates' conversations as stipulated in clause (iv) above shall only take place if there is reasonable ground to believe that the inmate is:
 - a. involved in unlawful, criminal or illegal activities,
 - b. using the telephone services to intimidate, harass or threaten victims, witnesses, staff, other inmates or other persons,
 - c. using the telephone services to formulate, plan, collude or conspire with others towards the commission of a crime or illegal act, or

- d. using the telephone services for any activity that may jeopardise the safety, security or operations of the correctional centres.
- vi. All such recorded conversations shall be automatically saved in the ACSTS servers for a period not exceeding 45 days, and shall be released only upon a production order of a provincial judge.
- vii. Where an inmate communication is restricted, an authorized officer shall, not later than twenty-four (24) hours from the time of restriction, inform the inmate in writing of the reasons for such restrictions.

Riley is serving an 18-month sentence at the Pine Grove Correctional Centre. She retained a lawyer to file a constitutional challenge against the Policy on grounds that the Policy creating the ACSTS creates an operational conflict with the Criminal Code, a federal legislation. According to her, the Parliament, in its exclusive legislative authority over criminal law, has enacted Part VI of the Criminal Code which expressly prohibits the invasion of privacy particularly through the interception of private communications without first obtaining authorization. However, the Policy in its effect seeks to allow that which the Criminal Code prohibits. In so doing, the Policy trenches on the exclusive federal authority to enact legislation in relation to criminal law, and compliance with the Policy would result in a breach of Part VI of the federal Criminal Code. In that wise, she argued, the Policy was inoperative.

The Saskatchewan Attorney General, in response to the Application, contended that there was no operational conflict as the Policy was enacted merely for the purpose of management and security of provincial institutions, not for issues underlying criminal law or criminal procedure or to create criminal responsibilities. The ACSTS was established principally to provide protection from inmates who use the telephone service to threaten or harass victims or witnesses, staff of the correctional centres and other inmates, as well as those inmates who would use the phone to perpetuate crime from within the correctional centres. She submitted that the Policy is not a criminal statute but rather regulatory or administrative in nature, designed only to govern the day-to-day operations of provincial correctional centres.

The Application has been referred to you as a judge. Two constitutional questions have been agreed upon by both sides, viz:

1. Is the Policy valid? **(40 Marks)**
2. Assuming the Policy is valid, is it nonetheless constitutionally inoperative? **(60 Marks)**

Provide a draft of your ruling.