

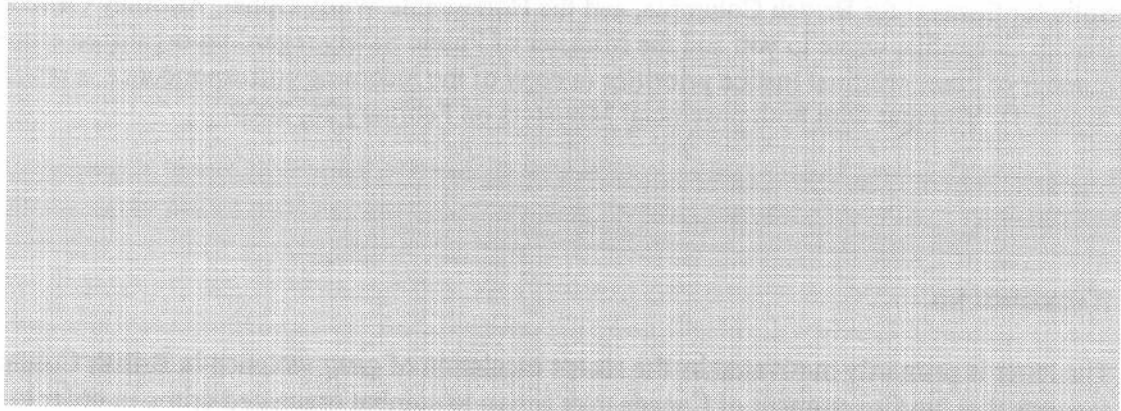


NUMÉRO DE DOSSIER/FILE #: 2009-001834
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected "B"

TITRE/TITLE: Letter from the Minister of Public Safety and Solicitor General for British Columbia and the Attorney General for British Columbia

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

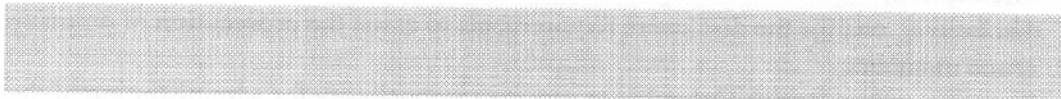
- On February 9, 2009, the Honourable John van Dongen, Minister of Public Safety and Solicitor General for British Columbia, and the Honourable Wally Oppal, Attorney General for British Columbia, wrote to you and the Minister of Public Safety regarding organized crime and a number of other criminal justice priorities.

- 

s.14(a)

- Of note, the Minister of Public Safety will be sending a similar response to the Ministers in the near future. Your officials have coordinated with the Department of Public Safety and PCO in this regard and have ensured that both responses are coherent.

s.21(1)(a)

- 

Signature du ministre demandée pour le/Minister's signature requested by:

As soon as possible.

Soumis par (secteur)/Submitted by (Sector): Policy Sector
 Responsable dans le CSM/Lead in the DMO: Ines Kwan
 Revue dans l'ULM par/Edited in the MLU by: Melanie Mohammed

À remplir par l'ULM / To be completed by MLU

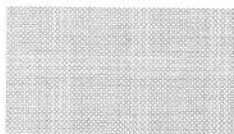
Responsable dans le cabinet du Ministre/Lead in the Minister's Office:




s.19(1)

MO File Copy






Shirley Molloy



Protected "B"
FOR SIGNATURE

2009-001834

MEMORANDUM FOR THE MINISTER

Letter from the Minister of Public Safety and Solicitor General for British Columbia and the Attorney General for British Columbia

ISSUE

On February 9, 2009, the Honourable John van Dongen, Minister of Public Safety and Solicitor General for British Columbia, and the Honourable Wally Oppal, Attorney General for British Columbia, wrote to you and the Minister of Public Safety regarding organized crime and a number of other criminal justice priorities (a copy of the incoming correspondence is attached as Annex 1). You met with both provincial Ministers on February 26, 2009.

s.21(1)(a)

BACKGROUND

The letter is primarily motivated by the recent escalation of gang violence in British Columbia. It requests that the Government of Canada take action to combat organized crime in order to restore civility and re-build public confidence in British Columbia in partnership with the Government of British Columbia. The letter identifies seven additional areas for improvement, including:

- **lawful access:** modernize the laws on wiretaps and other forms of communication interception;
- **disclosure:** change the disclosure requirements to assist the prosecution of organized crime members;
- **firearms:** allow British Columbia to assume responsibility for administration of the firearms program and establish an enforcement unit (as in Ontario and Quebec) with federal support;
- **intimidation of Justice officials:** better protect justice officials from intimidation;
- **remand credit:** reduce remand credit to 1.5:1 and 1:1 where bail conditions are breached resulting in detention;
- **illicit drug production:** strengthen regulatory and enforcement requirements in relation to synthetic drug production; and
- **fingerprinting:** make it easier for police to fingerprint suspects.

CONSIDERATIONS

The following Justice initiatives are responsive to the concerns raised above, and are addressed in the proposed response to the ministers:

Organized crime, intimidation of Justice officials and illicit drug production

The Government has committed to combat organized crime. You tabled a bill (C-14) in the House of Commons in support of this commitment on February 26, 2009. The bill addresses gang murders, drive-by and other reckless shootings, police and other peace officer assault, and fortifying the gang recognizance provisions ("gang peace bonds"). It will also amend the sentencing principles in the *Criminal Code* to provide that deterrence and denunciation are to be given primacy in cases involving offences against the whole class of justice system participants, including peace officers.

s.14(a)

[Redacted]

Organized crime is closely linked to the drug trade, which primarily falls within the purview of the Honourable Leona Aglukkaq, Minister of Health. Jay Hill tabled a bill (C-15) on your behalf in the House of Commons on February 27, 2009, which provides for mandatory minimum penalties targeting the most serious drug offences. This bill re-introduces the amendments in former Bill C-26, *An Act to amend the Controlled Drugs and Substances Act and to make consequential amendments to other Acts*.

Lawful access

The Government's lawful access initiative has been modernizing federal laws, including those in the *Criminal Code*, to address the use of new technologies, including the Internet. This initiative receives ongoing funding and includes the Department of Justice, Industry Canada, and the Department of Public Safety and its portfolio agencies. The Department of Justice has responsibility for *Criminal Code* amendments that would provide law enforcement with the necessary tools to investigate crimes that involve the use of new technologies; Industry Canada and the Department of Public Safety have responsibility for any reforms that would compel service providers to procure and maintain intercept capable equipment.

s.21(1)(a)

s.14(a)

s.14(b)

[Redacted]

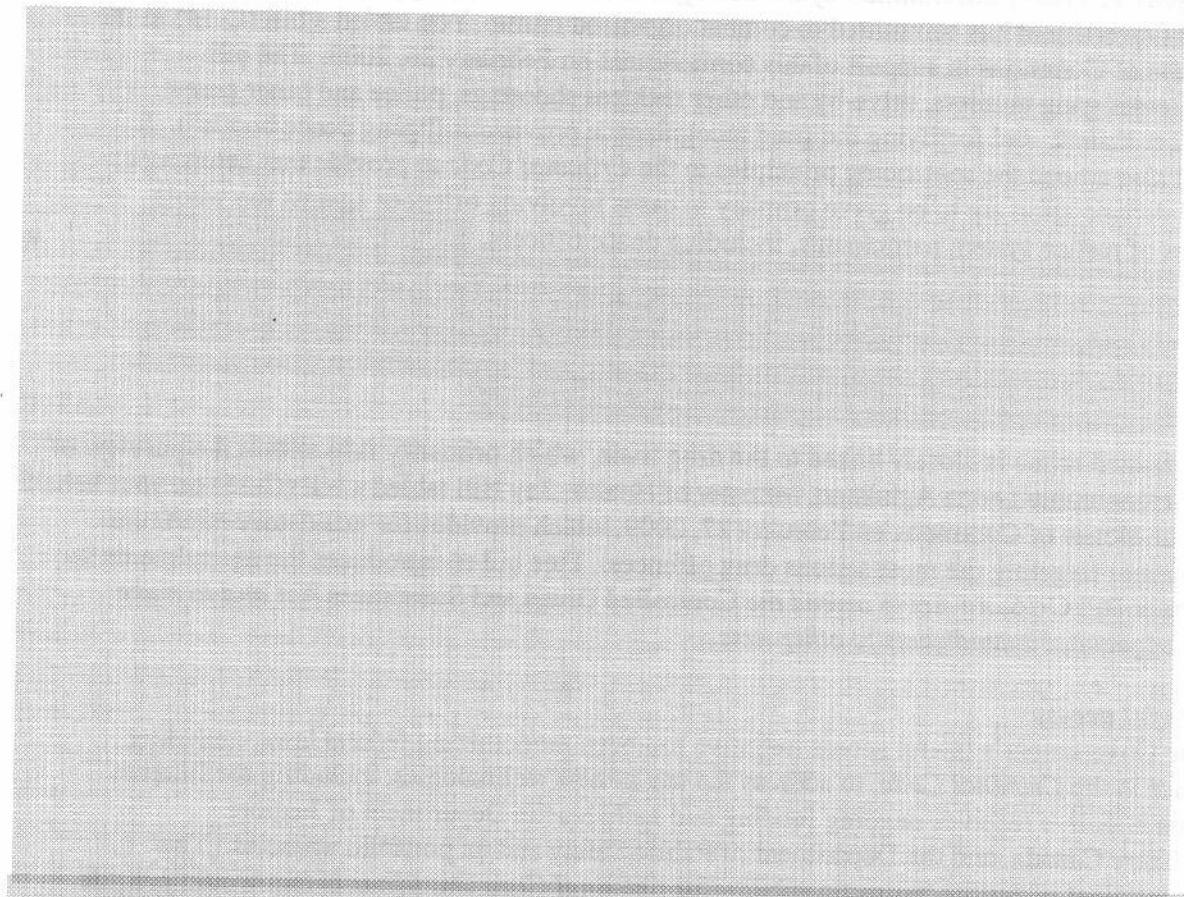
Disclosure

[Redacted]

s.14(a)

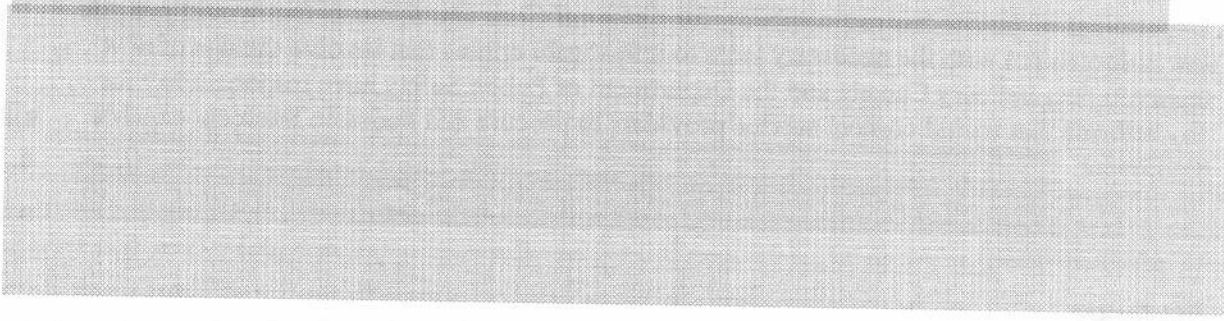
Firearms

The firearms provisions in Bill C-2, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, were proclaimed into force on May 1, 2008. These reforms increased minimum penalties for 12 serious firearms offences, created two new offences and introduced new bail reverse onus situations.



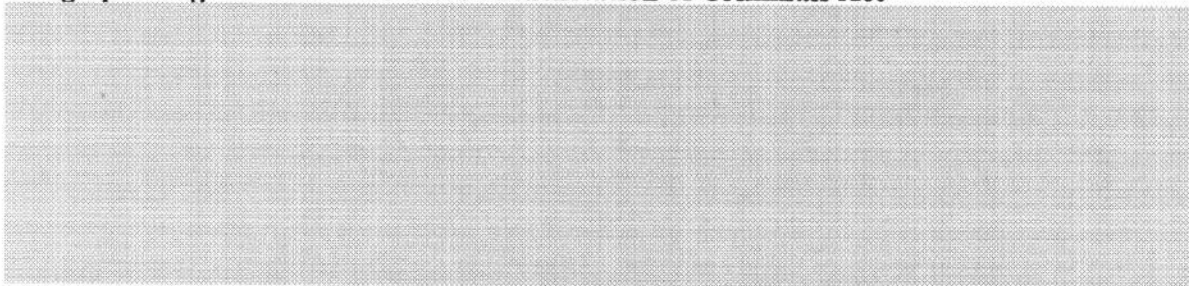
s.14(a)

s.21(1)(a)



Fingerprinting: amendments to the Identification of Criminals Act

s.14(a)

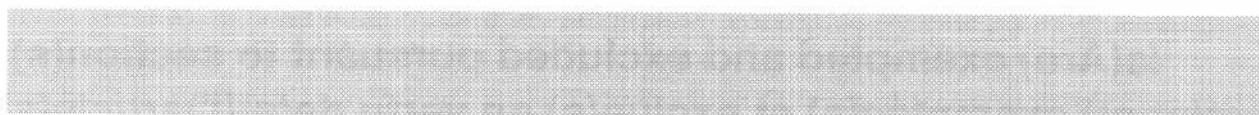


In addition, on February 25, 2009, Minister van Dongen wrote to you to share a copy and an overview of the *Report on the Illegal Movement of Firearms in British Columbia*. In the proposed reply, you acknowledge receipt of his letter and note that you will respond separately.

Of note, the Minister of Public Safety will be sending a similar response to the Ministers in the near future. Your officials have coordinated with the Department of Public Safety and PCO in this regard and have ensured that both responses are coherent.

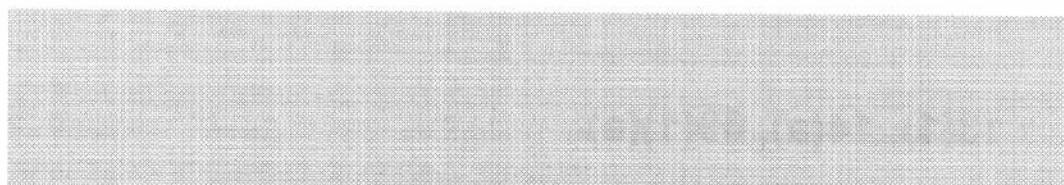
RECOMMENDATION

s.21(1)(a)



ANNEXES [2]

Annex 1:
Annex 2:



s.13(1)
s.14

PREPARED BY
Criminal Law Policy Section
(613) 952-1987
February 19, 2009

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Page(s) 000006 to\à 000098

**Is(Are) exempted and excluded pursuant to section(s)
est(sont) exemptée(s) et exclue(s) en vertu de(s)(l')article(s)**

13(1), 14(a), 69(1)(e)

**of the Access to Information Act
de la Loi sur l'accès à l'information**



NUMÉRO DE DOSSIER/FILE #: PROTECTED "B"
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: 2009-012335

TITRE/TITLE: Meeting with Privacy Commissioner Jennifer Stoddart, September 30, 2009

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- You are scheduled to meet with Privacy Commissioner Jennifer Stoddart on Wednesday, September 30, 2009. This note provides requested information and talking points for the meeting.
- At your meeting, Ms. Stoddard is expected to raise the issue of *Privacy Act* reform and the Government Response to the Tenth Report of the ETHI Committee, to be tabled on October 9, 2009.
- The Privacy Commissioner was scheduled to appear before the ETHI Committee on October 1, 2009, as the first witness for the Committee's study on the privacy implications of camera surveillance.
- The Privacy Commissioner is expected to voice concerns about the increased use of video surveillance by government departments and to renew her calls for reforms to the *Privacy Act*.
- The Privacy Commissioner is also expected to voice concerns about Bill C-46, the Investigative Powers for the 21st Century Act.
- Talking points for your meeting are attached as Annex 2.

Soumis par (secteur)/Submitted by (Sector): Public Law Sector

Responsable dans l'équipe du SM/Lead in the DM-Team: Donna Miller

Revue dans l'ULM par/Edited in the MLU by: Stephen Slessor

À remplir par l'ULM / To be completed by MLU

Responsable dans le cabinet du Ministre/Lead in the Minister's Office: _____

s.19(1)

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Shirley Molloy

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FOR INFORMATION

2009-012335

MEMORANDUM FOR THE MINISTER

Meeting with Privacy Commissioner Jennifer Stoddart, September 30, 2009

ISSUE

You are scheduled to meet with Privacy Commissioner Jennifer Stoddart on September 30, 2009. This note provides requested information and talking points for the meeting.

BACKGROUND

The Commissioner may wish to discuss: 1) the Government Response to the Tenth Report of the Standing Committee on Access to Information, Privacy and Ethics (ETHI) on *Privacy Act* reform; 2) her upcoming appearance before ETHI on the privacy implications of camera surveillance; and 3) lawful access (Bill C-46).

CONSIDERATIONS

1. *ETHI's study of Privacy Act reform*

In June 2006, the Commissioner tabled with ETHI a comprehensive paper on reform of the *Privacy Act*. ETHI initiated a review of the *Privacy Act* in April 2008. When the Commissioner appeared before ETHI in 2008, she tabled ten recommendations for quick and immediate reform of the *Privacy Act* as an addendum to her comprehensive reform paper. At her appearance before ETHI on May 11, 2009, the Commissioner added two new recommendations to her original ten, for a total of twelve "quick fixes."

The Commissioner's reform proposals include the following:

- strengthening the *Privacy Act* by enshrining in legislation standards and elements of Treasury Board Secretariat policies;
- providing the Commissioner with a clear public education mandate;
- strengthening the annual reporting requirements of government departments and agencies under the *Privacy Act* by requiring these institutions to report to Parliament on a broader spectrum of privacy-related activities;
- providing a stronger framework to limit the collection and use of personal information;
- aligning the *Privacy Act* more closely with the principles set out in the *Personal Information Protection and Electronic Documents Act* (PIPEDA), such as eliminating the restriction that the *Privacy Act* applies only to recorded information;

- strengthening the provisions governing the disclosure of personal information by the Canadian government to foreign states; and
- legislating the requirement to apply proper security safeguards for personal information.

On June 12, 2009, ETHI released its Tenth Report, with recommendations for *Privacy Act* reform. ETHI accepted six of the Commissioner's twelve recommendations, some of which are described above, and recommended that the Minister of Justice engage the Commissioner in discussion on a number of quick fixes that ETHI did not endorse in its Tenth Report.

By letter dated July 7, 2009, the Commissioner requested a meeting with officials shortly after the release of the report to initiate discussions, but a meeting in advance of the Government's Response was considered premature. The Response will be tabled by October 9, 2009.

2. The Privacy Commissioner's appearance before ETHI

On October 1, 2009, ETHI will commence its study entitled "Privacy Implications of Camera Surveillance." The Commissioner was scheduled to appear as ETHI's first witness. Since her appointment in 2003, the Commissioner has expressed concern about the increase in video surveillance activities in both the public and private sectors, and has developed guidelines to define and circumscribe the use of this medium. In March 2006, the Commissioner issued Guidelines for the Use of Video Surveillance of Public Places by Police and Law Enforcement Authorities. In March 2008, the Commissioner issued Guidelines for Overt Video Surveillance in the Private Sector.

It is expected that the Commissioner will repeat her calls for reforms to the *Privacy Act* and, in particular, for the "quick fix" to extend the definition of "personal information" to include unrecorded personal information. This amendment might extend the authority of the Commissioner to challenge governmental surveillance operations that do not record personal information but that might result in decisions made by a government institution that could relate to or affect a particular individual.

3. The Government's Lawful Access initiatives

Bill C-46, the proposed Investigative Powers for the 21st Century Act (Justice), and Bill C-47, the proposed Technical Assistance for Law Enforcement in the 21st Century Act (Public Safety), were both introduced on June 18, 2009. When first introduced, concerns were raised in the press about warrantless searches of the Internet or the interception of private communications without court authorization. These concerns were echoed in the federal and provincial privacy commissioners' Resolution of September 10, 2009. Yet such concerns are misguided with respect to Bill C-46 because many safeguards have been included to minimize the impact on privacy. Most importantly, a court order, authorization, or warrant is still required for law enforcement or national security officials to obtain **any** information with respect to an investigation under the provisions of this Bill. In addition, Bill C-46 makes no changes to the existing requirements for court

authorizations with respect to the interception of private communications, whether they are made over the Internet, or using a telephone. Bill C-47, which introduced an administrative scheme for obtaining subscriber information, has also been criticized by federal and provincial privacy commissioners, as well as in the media, as recently as in a September 28, 2009, article in *The Globe and Mail* (see Annex 1 on Lawful Access).

CONCLUSION

The attached talking points (Annex 2) may be helpful for your meeting with the Privacy Commissioner.

ANNEXES [2]

- Annex 1: Lawful Access
- Annex 2: Talking Points

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September 28, 2009

ANNEX 1: Lawful Access

ISSUE

Considerations with respect to lawful access for your meeting with the Privacy Commissioner on September 30, 2009.

BACKGROUND

Bills C-46 and C-47 were introduced on June 18, 2009. Bill C-46, the proposed Investigative Powers for the 21st Century Act, proposes amendments to the *Criminal Code*, the *Mutual Legal Assistance in Criminal Matters Act*, and the *Competition Act* to permit law enforcement to respond to the ever-evolving technological environment while respecting the human rights of persons in Canada, including their right to a reasonable expectation of privacy.

The bill also updates and creates new procedural powers to allow law enforcement to better investigate crimes in a new telecommunications environment. For example, while the *Criminal Code* currently allows police to obtain telephone numbers dialed to and from a telephone, this bill would replace the existing concept of dialed numbers with an analogous, but more modern concept of "transmission data," which would encompass data from the telephone and the Internet. This data, which does not include the content of a private communication, would only be obtained pursuant to a legal authorization (e.g., a warrant or a production order) when there are reasonable grounds to suspect criminal activity. Bill C-46 also proposes the creation of a "preservation order" that would require a telecommunications service provider to not delete data related to a specific communication or subscriber for a limited time, when a judge or justice suspects that the data will assist in an investigation. Data preservation would ensure that volatile information vital to an investigation is not deleted before the police are in a position to access it.

Given the global reach of cybercrime, the bill also proposes to amend the *Mutual Legal Assistance in Criminal Matters Act* to widen the scope of assistance that Canada could provide to its treaty partners in fighting serious crimes, which include computer and computer-related crime. International cooperation is necessary in many criminal investigations. If passed, this bill will allow Canada to ratify the Council of Europe's *Convention on Cybercrime* and the *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*. This important treaty would provide international assistance mechanisms to help with the investigation and prosecution of crimes.

Bill C-47, the proposed Technical Assistance for Law Enforcement in the 21st Century Act, introduced by the Honourable Peter Van Loan, Minister of Public Safety, will require certain telecommunications networks to have interception capabilities in order to assist law enforcement in combating crime, including organized crime, terrorism, and drug trafficking. Existing legal requirements for intercepting private communications will continue to apply under the new legislation. Bill C-47 will also give certain members of law enforcement agencies the ability to request basic subscriber information, such as name, address, phone number, cellular phone number, and Internet Protocol (IP) address when it is needed for a duty or function of a police

service, the Canadian Security Intelligence Service under the *Canadian Security Intelligence Service Act* or the Commissioner of Competition under the *Competition Act*.

CONSIDERATIONS

On September 10, 2009, at their biannual national meeting, Canada's privacy commissioners and ombudspersons released a resolution entitled "Protecting Privacy for Canadians in the 21st Century." The resolution urged caution with respect to bills C-46 and C-47 which were characterized as creating "an expanded surveillance regime that would have serious repercussions for privacy rights." This release misrepresented the legislation tabled in June.

Regarding Bill C-46, the resolution cited the preservation order provisions and the tracking warrant provisions, specifically with respect to tracing mobile communications devices. Neither the resolution nor the press release noted that (1) preservation demands only prevent the deletion of information with regard to a specific investigation; (2) preservation demands must be followed by an order granted by a judge; and (3) there is no disclosure pursuant to a preservation demand—disclosure of any personal information would be pursuant to a judicially authorized production order.

With respect to tracking warrants, Bill C-46 actually strengthens the privacy protections of the existing tracking warrant provision by introducing a two-track model, both of which require judicial authorization. The current provision in the *Criminal Code* is at the "reasonable grounds to suspect" threshold. The proposed legislation introduces a higher threshold at the "reasonable grounds to believe" threshold (i.e., equivalent to a search warrant), precisely to cover instances where a device such as a cell phone is being used to track a person—the very concern raised in the privacy commissioners' resolution.

With respect to Bill C-47, the privacy commissioners noted that the bill focused on interception infrastructure capability but criticized the bills provisions which provide access to subscriber information without a judicial authorization. The provisions to access subscriber information involve a stringent regime of administrative safeguards. Subscriber information has a relatively low expectation of privacy. Concerns over obtaining an IP address, for example, failed to acknowledge that the designated law enforcement or national security officers must provide the Internet service provider with specific identifiers, such as the corresponding email address and date and time. Such requirements, such as showing one piece of the information puzzle to obtain the matching piece, were designed to impose limitations and constraints on indiscriminate use.

CONCLUSION

The provisions in Bill C-46 have been misinterpreted by the press and by the privacy commissioners. Bill C-46 was designed with important privacy safeguards built into these investigative powers to make sure that an appropriate balance is struck between providing for the safety and security of all Canadians, and ensuring that their privacy rights and liberties are respected.

The access to subscriber information in Bill C-47, introduced by Minister Van Loan, includes an administrative regime of safeguards. Subscriber information, such as the names associated with telephone numbers or email addresses, attracts a lower expectation of privacy than would necessitate a judicial authorization. Nonetheless, the subscriber information provisions continue to attract criticism in the press and from federal and provincial privacy commissioners who lobby for some judicial model.

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September 28, 2009

Protected B
2009-012335

Talking Points
Meeting with Privacy Commissioner Jennifer Stoddard
September 30, 2009

- **The Government is committed to protecting the privacy of Canadians.**
- **Canada has established a strong legislative and administrative framework, which includes the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Personal Information Protection and Electronic Documents Act*, as well as various government policies and directives.**

ETHI's Tenth Report on Privacy Act reform

- **My officials studied the Tenth Report of the Standing Committee on Access to Information, Privacy and Ethics (ETHI), which was released in June, and the Government Response will be tabled by October 9.**
- **I appreciate your efforts and the efforts of the ETHI Committee to consider reform of the *Privacy Act* in a manageable way.**
- **I also told the ETHI Committee that there are important differences between the personal information-handling practices of federal government departments and agencies and the private sector. Government departments are governed not only by the *Privacy Act* but also by the *Canadian Charter of Rights and Freedoms* and other enabling statutes and accountability requirements, unlike the private sector.**

Lawful access

- **The existing tracking warrant, which was noted with some concern in the Privacy Commissioners' September 10 resolution, has been updated to provide for both a production order for tracking data and a warrant for the real-time collection of tracking data. The updates would create a two-warrant system, which would better recognize the different expectation of privacy that persons have in relation to their personal location and that of their vehicles, transactions or other things. This new additional warrant introduces a higher judicial threshold than is currently required for tracking warrants and was designed precisely to address the kinds of privacy concerns noted by the privacy commissioners.**
- **It is crucial to understand that any disclosure of information under Bill C-46 would be pursuant to a judicial authorization – that protection is not being changed.**
- **We need to ensure that pursuant to a judge's order, investigators can obtain the kind of information they need but no more. We must ensure that any intrusion into privacy only goes as far as is necessary. These new measures guarantee privacy with precision, and strike the appropriate balance between law enforcement needs and privacy protections.**

RESPONSIVE

- ***One of the privacy concerns raised during consultations and in the September resolution related to the lack of sufficient justification for modifying investigative powers at all. One of the difficulties in providing additional information to the public to assist in explaining why these changes are needed is that articulating the investigative gaps publicly would permit criminals to further exploit them.***

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September 28, 2009