

Ms. Lynda Clairmont  
Associate Assistant Deputy Minister  
Emergency Management & National Security  
**Public Safety Canada**  
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Ottawa ON, K1A 0P8

Thursday, October 4th, 2007

Dear Ms. Clairmont,

Thank you for the invitation to participate in consultations regarding an important security measure, Lawful Access. I have avidly followed the subject both in Canada and internationally for a number of years and am happy to provide some thoughts on current endeavours to implement a Canadian Lawful Access measure.

Lawful Access legislation is a critical security measure. The ability to intercept communications enables law enforcement agencies to gain valuable insight and evidence with which to build cases around suspected criminals. Many countries have opted to update existing or implement new measures as a result of the widespread use of emerging communication technologies. Canada is one of a few countries that has not enacted separate regulations around Lawful Access (LA). The chief reason why such important legislation has to date not been enacted stems from a failure to build consensus among key stakeholders as to what shape such LA legislation and, ultimately, regulations should take.

Central to this absence of consensus has been a lack of disclosure of statistics around past and current uses of wiretapping and release of Customer Name and Address (CNA) information as investigative tools. In fact, little to no statistical data covering any aspect of LA, as it is currently used, that can support the need to implement a new bill or enhance existing provisions has been publicly provided. This lack of disclosure not only renders draft LA measures baseless, but also causes much distrust among key stakeholders outside of the law enforcement realm.

Collecting and analysing data around the current use of LA provides a solid understanding for how a new security measure should be created. Such statistics indicate how useful the measure has been to date, which in turn can quantify exactly what sort of resources should be allocated to enhancing provisions and what those enhancements should be. For example, statistics might indicate that due to emerging communications technologies the costs associated with enhancing

interception capabilities on some internet-based services is far greater than the benefits to society of such enhancements. As a result, resources may be better allocated to developing innovative policing methods that answer the changing realities of modern investigations. Conversely, statistics may indicate that the measure is exceptionally useful and provide a clear picture of how best to move forward based on legitimate evidence acceptable to all key stakeholders.

Without statistics around the current use of LA as a basis for provision enhancements any attempts to push through a new measure will certainly be met with widespread disapproval. It is conceivable that basing a security measure, such as LA, on the requests of law enforcement in the absence of supporting data can negatively impact the image of respect held by police among the Canadian public. This is especially true at a time when one of our federal law enforcement agencies is increasingly scrutinised as a result of corruption allegations

While no one doubts the need of law enforcement in Canada, it must be remembered that even those entrusted to uphold the law require oversight. The human factor must be taken into account. It should not be inconceivable that there remains the potential for abuse of a tool such as wiretapping. Such abuse might include corrupt police officers abetting criminal organizations or a frustrated investigator abusing poorly regulated privileges to gather information on a suspect where official channels have failed. Providing statistics around the current use of LA in Canada would assist in quelling such concerns held by privacy advocates. Furthermore the provision of statistics would help engage privacy advocates in creating a measure that benefits society.

From a security perspective, introducing a security measure without supporting data risks the stability of the entire governing system. As the stability of our society depends upon the symbiosis between civil society and law enforcement, any actions that jeopardise the necessary respect for and co-operation with Canadian police among the general public have the potential to negatively impact the wider system in the long run. Despite a seeming readiness among Canadians to forgo certain civil liberties in the name of security, measures enacted without foundation risk eroding such faith in leadership, particularly when those measures strengthen the *perception* of enhanced security as opposed to actually *making* Canada more secure. Indeed, Canadians have proven to have a surprisingly low threshold for tolerating security measures that fail to protect the best interests of citizens (consider, for example, the incident in Grand Manan, New Brunswick during the summer of 2006.) Using a scientific approach in implementing new LA legislation will ensure that the respect currently enjoyed by law enforcement in Canada is continued well into the future.

Statistics on the current use of LA also provide much needed insight as to what the technical scope of enhancements to existing provisions should be. The costs of implementing new



technology to comply with LA legislation can be considerable. Supporting data can assist in developing regulations and parameters for enhancing LA provisions thus providing a well-defined scope and targets which industry can then meet. In the absence of supporting data and analysis, any plans to enhance existing LA provisions will be carried out blindly. After all, it is impossible to determine scope without first understanding what reasonable and efficient technical enhancements are actually needed. Without a clear, well-founded plan as to how LA enhancements will be carried out, it should be anticipated that industry would view attempts to pass a measure unfavourably.

Considering these different angles, I strongly recommend that basic information regarding the current use of LA be immediately collected and analysed before any further attempts at implementing a measure be carried out. At a minimum, the following information should be collected over an appropriate period (perhaps six (6) months or as long as required in a given sector), while at the same time preparing a basic framework for the new measure as incoming data indicates scope:

- The number of times wiretapping or requests for CNA information are being made, broken down by requesting organization as well as type of request;
- Whether the request for a warrant or CNA information was refused and why;
- The nature of the crime or circumstance why such requests are being made;
- Type of communication technology to be intercepted and whether or not the surveillance attempt was successful; &
- Direct correlation as to the usefulness of the request with closing the investigation as well as prosecution of the target.

To ensure the integrity of the data collected, both law enforcement agencies as well as counterparts inside of CSPs should be mandated to collect the above information. The data retention process could be as simple as completing and submitting an official form, thus enabling an almost immediate implementation of the reporting mechanism.

A small committee of individuals, each representing a respective key stakeholder, should be set up at arm's length to analyse the data and put forth findings and recommendations for moving forward. Such a reporting process should continue on a permanent basis to ensure accountability of measures such as LA.



With a proper approach it is possible to enact a measure efficiently that protects civil liberties as well as facilitates law enforcement without over burdening industry. Such a balance, however, can only occur if the measure is based on supporting statistics and all perspectives are considered equally in the drafting of such a bill. I believe that the above recommendations will assist the government in achieving the necessary balance while also enacting an effective long-term measure.

Should you have any questions regarding the thoughts presented in this letter or need clarification, please do not hesitate in contacting me.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul", with a long horizontal flourish extending to the right.

Executive Director

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