

“Protecting Privacy for Canadians in the 21st Century”

Resolution of Canada’s Privacy Commissioners and Privacy Enforcement Officials on Bills C-46 and C-47

September 9-10, 2009, St. John’s, Newfoundland and Labrador

CONTEXT

1. The federal government tabled two pieces of legislation in June 2009 aimed at giving Canadian law enforcement, national security agencies and others (hereafter referred to as “authorities”) broader powers to acquire digital evidence to support their investigations.
2. Bill C-46, the *Investigative Powers for the 21st Century Act* (IP21C), would allow authorities to order telecommunications providers to preserve and turn over the details of their subscribers’ communications. Authorities would also have the power to apply for special orders to trace mobile communications devices and, by extension, their owners.
3. Bill C-47, the *Technical Assistance for Law Enforcement in the 21st Century Act* (TALEA), would give authorities access to information about subscribers and their mobile devices, even without a warrant. The bill would also oblige all telecommunications companies to build in a capability allowing authorities to intercept communications on their networks.
4. The provisions of the proposed Acts raise privacy concerns. For instance, without a warrant, authorities could gain access to personal information such as unlisted telephone numbers, and e-mail and IP addresses.
5. Canadians consider much of this personal information to be sensitive and expect it to be kept confidential.
6. Canadians also expect their use of computers and mobile devices to remain private.
7. The legislation as currently drafted is not limited only to investigations of serious criminal offences, but also could be used to target even minor infractions and non-criminal matters.

WHEREAS

1. Privacy is a fundamental human right that enables the freedom of association, thought and expression.
2. Canadian courts have consistently affirmed the importance of these rights.
3. Canada has a legal regime governing the use of surveillance that protects individual rights while also giving authorities access to communications when authorized. This framework has been carefully refined over decades by Parliament and the courts.
4. To date, the federal government has presented no compelling evidence that new powers are needed.

THEREFORE

The Federal, Provincial and Territorial Privacy Commissioners of Canada urge Parliament to ensure that the proposed legislation to create an expanded surveillance regime strikes the right balance between individual privacy and the legitimate needs of the authorities by:

1. Approaching IP21C and TALEA with caution because they alter a carefully constructed and workable framework;
2. Obliging the government to demonstrate that the expanded surveillance powers they contain are essential and that each of the new investigative powers is justified;
3. Exploring the alternative that, should these powers be granted, they be limited to dealing with specific, serious crimes and life-threatening emergencies;
4. Ensuring that any legislative proposals on surveillance:
 - a) Be minimally intrusive;
 - b) Impose limits on the use of new powers and ensure appropriate legal thresholds remain in place for court authorization;
 - c) Require that draft regulations be reviewed publicly before coming into force;
 - d) Include effective oversight;
 - e) Provide for regular public reporting on the use of powers; and
 - f) Include a five-year Parliamentary review.