

November 19, 2010

VIA EMAIL

The Honourable Shawn Murphy, P.C., M.P., Q.C.

Chair, House of Commons Standing Committee on

Access to Information, Privacy and Ethics

Sixth Floor, 131 Queen Street

House of Commons

Ottawa, ON, K1A 0A6

Email: Murphy.S@parl.gc.ca

Dear Mr. Murphy,

Re: Bill C-29, An Act to amend the Personal Information Protection and Electronic Documents Act

We the undersigned are organizations who represent civil society concerns in legislative and legal debates in Canada.

We write you with respect to Bill C-29, currently before the House of Commons and projected to appear before the Standing Committee on Access to Information, Privacy and Ethics in the near future.

We write to express our grave concerns at suggestions that this Bill is to pass through your Committee with minimal debate. While some of its provisions emerge from a consultation process that concluded in 2007, others do not. None of the provisions, as drafted, have been debated in Committee. It is our view that the positive aspects of this Bill need improvement and that, moreover, the Bill has potential to seriously erode privacy and civil liberties of Canadians. The issues it raises are nuanced and complex. It demands detailed examination.

Bill C-29 proposes a number of positive improvements to the statute, including the addition of long awaited data breach notification requirements as well as a general and welcome strengthening of consent obligations. However it does not do enough with respect to updating Canada's privacy protection as it fails to ensure compliance with either the new data breach notification requirements or the existing provisions in the Act.

In addition, the Bill includes several amendments to PIPEDA that pave the way to an expansion in the investigative roles played by private organizations in Canada. Such investigative roles have traditionally been reserved for public state agents operating under safeguards such as the *Canadian Charter of Rights and Freedoms*. Our concerns are heightened by the ever-expanding amount of personal information held by private organizations covered by PIPEDA in an interconnected and digital world.

In brief, the following proposed provisions are demonstrative of the civil society concerns we feel are raised by this Bill:

- **Sub-Clause 6(6) – ‘policing services’:** Which expands the types of state investigative activities private organizations may facilitate to include ‘policing services’, a term left undefined.
- **Sub-Clause 6(12) – ‘lawful authority’:** Which provides a vague definition for what a state agent must produce before an organization may disclose to it the personal information of its customers and immunizes the organization from any obligation to validate that authority.
- **Clause 8 – ‘nondisclosure’:** Which places barriers on an organization’s ability to inform its customers that their personal information has been disclosed to a state agent.
- **Sub-Clause 6(9) – ‘investigative bodies’:** Which expands the number and character of private entities an organization may disclose information to for investigative purposes beyond the current list of ‘investigative bodies’ (prescribed by regulations) to include any organization carrying out a civil, contractual or criminal investigation.

Under these provisions, organizations now have little guidance on what state agents may request the personal information of their customers, little guidance on what constitutes valid authority for such a request, and immunization from any obligation to clarify these standards before handing over customer information. In addition, organizations are given carte blanche to disclose information wherever another organization claims it is necessary to investigate a breach of an agreement or a civil wrong. While all these disclosure exceptions are permissive, not mandatory, past permissive amendments to PIPEDA have been taken as legitimization of such disclosures and have impacted on the application of *Charter* rights and general expectations of privacy.

In addition, C-29’s attempts to improve privacy protections for Canadians do not go far enough. We are particularly concerned with the breach notification requirements, which include low and subjective standards for disclosure and a general lack of incentives for compliance. These concerns deserve serious consideration in and of themselves.

In sum, it is our view that Bill C-29 raises serious and nuanced issues that merit detailed debate in Committee. We ask that you take account of our concerns and give the Bill its due consideration.

Signed by the following organizations:

British Columbia Civil Liberties Association (BCCLA)
British Columbia Freedom of Information and Privacy Association (BCFIPA)
Canadian Civil Liberties Association (CCLA)
Public Interest Advocacy Centre (PIAC)
Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)

cc: **Bill Siksay** **Patricia Davidson**
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Standing Committee on Access to Information, Privacy and Ethics