



UNCLASSIFIED
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THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
LAWFUL ACCESS

ISSUE:

The Canadian Association of Chiefs of Police (CACP) may wish to discuss Lawful Access legislation.

BACKGROUND:

Lawful Access refers to the lawful interception of telecommunications, and the search and seizure of digital evidence and electronic data. The legislative authorities to conduct these activities, which are found in Part VI and Part XV of the *Criminal Code*, need to be updated in order to remain relevant and responsive to a modern telecommunications environment and law enforcement's investigative needs. As well, in the absence of legislation compelling Telecommunications Service Providers (TSPs) to develop and maintain intercept-capable networks, the police and the Canadian Security Intelligence Service (CSIS) are often facing investigative delays and gaps, as well as high costs associated with the development of case-by-case technical solutions for court authorized interceptions.

To address these challenges, the Government reintroduced three Lawful Access-related Bills in 2010. Specifically, the Minister of Justice introduced former Bill C-50 (*Improving Access to Investigative Tools for Serious Crimes Act*), which contained, among other provisions, *Criminal Code* amendments to maintain the constitutionality of allowing wiretap without warrants in exceptional circumstances, and former Bill C-51 (*Investigative Powers for the 21st Century Act*), which would have amended the *Criminal Code* to better address cybercrime and crimes committed using new technologies.

The Minister of Public Safety introduced former Bill C-52 (*Investigating and Preventing Criminal Electronic Communications Act*), which would have required TSPs to build and maintain intercept-capable networks, and would have required them to, upon request, provide basic subscriber information (e.g. name, address, telephone number, e-mail address, Internet Protocol address, and prescribed cellular telephone identifiers) to any police officer in emergencies and to designated police, CSIS and Competition Bureau officials for the conduct of their investigative duties. The Bills died on the Order Paper when Parliament was dissolved.

The CACP supported former Bill C-52 when it was introduced and might be critical of the fact that Lawful Access legislation has not yet come into force. The Association might also raise the issue of fees charged by most TSPs for assistance (referred to as "operational fees"). Specifically, operational fees consist of payment to TSPs for assisting with the implementation of an intercept ("hook-up") and for providing basic subscriber information ("look-up"). While former Bill C-52 stipulated that TSPs were entitled to receive compensation for providing basic subscriber information and specialized telecommunications support for interception, the amount of compensation has not been determined.

CURRENT STATUS:

The Conservative Party of Canada's recent election platform included a commitment to pass crime related legislation, including "bills that give law enforcement and national security agencies up-to-date tools to fight crime in today's high-tech telecommunications environment." In preparation for the potential reintroduction of Lawful Access legislation, Public Safety Canada (PS) is leading the development of regulations that would accompany the Act. The issue of operational fees is being addressed through this work, on which stakeholders from outside the federal government have not yet been consulted.

In the past, the CACP has stated that authorities should not have to pay TSPs for complying with court orders. Nevertheless, most police services, as well as CSIS, have been paying operational fees for many years. In 2009, while maintaining that "an arbitrary, non-negotiable fee with respect to the execution of a court order brings the administration of justice into disrepute," the CACP proposed to PS officials the following three options to address this issue:

- The Government could provide tax credits to TSPs;
- TSPs could establish a public safety tariff that would appear on customer invoices; or,
- The Government could provide a federal funding pool from which the costs incurred by TSPs could be recovered.

These options were considered in the past and were rejected by central agencies, PS officials and TSPs for many reasons, including a reduction in revenue for the Government, security concerns resulting from the sharing of intercept-related information with the Canada Revenue Agency, and intergovernmental and jurisdictional issues.

CONSIDERATIONS:

RECOMMENDED POSITION:

It is recommended that you mention that the Government is committed to providing the police and CSIS with the tools they need to fulfill their respective mandates to ensure public safety.

It is also recommended that you mention that PS is working to develop a fee schedule that, should former Bill C-52 be reintroduced and receive Royal Assent, would be fair for all parties.



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Talking Points for the Minister's Meeting with CACP

Lawful Access

- This Government is committed to providing the police and the Canadian Security Intelligence Service with the tools they need to do their job.
- As such, in 2010, the Government introduced three Lawful Access-related Bills. Two of these Bills included *Criminal Code* amendments, and the other would have required telecommunications service providers to install and maintain intercept-capable networks.
- While these Bills unfortunately died on the Order Paper with the Federal election, the Conservative Party of Canada's recent election platform included a commitment to pass crime related legislation. This would include bills that give law enforcement and national security agencies up-to-date tools to fight crime in today's high-tech telecommunications environment.
- Until full implementation of the legislation, we are continuing to work with Industry Canada to ensure that

law enforcement and security agencies continue to have interception capabilities through the licensing regime under the *Radiocommunication Act*.

- We continue to appreciate your support as we work towards achieving this goal.

If asked about Operational Fees:

- Public Safety Canada is working with the RCMP and CSIS to develop a fee schedule that, should former Bill C-52 be reintroduced and receive Royal Assent, would be fair for all parties involved.