

Backgrounder: Identity Theft

The term "identity theft" can refer to the preliminary steps of collecting, possessing and trafficking in identity information for the purpose of eventual use in existing crimes such as personation, fraud or misuse of debit card or credit card data. Identity theft in this sense is different from "identity fraud", i.e., the subsequent *actual deceptive use* of the identity information of another person in connection with various crimes. Identity theft takes place in advance of and in preparation for identity fraud.

Identity theft is serious criminal activity that is becoming increasingly lucrative and easily crosses borders. In 2007, more than 10,000 Canadian victims reported losses of more than \$6 million to PhoneBusters, the Canadian anti-fraud call centre. Between January 1, 2008 and October 31, 2008, more than 9000 Canadian victims of identity theft reported losses of more than \$8 million to PhoneBusters. The Canadian Council of Better Business Bureaus has estimated that identity theft may cost Canadian consumers, banks and credit card firms, stores and other businesses more than \$2 billion annually.

Proposed Amendments to the Criminal Code

The actual fraudulent and deceptive uses of other people's identities are already subject to strict criminal prohibitions. The proposed legislation would create three new "core" identity theft offences targeting the early stages of identity-related crime, all subject to 5-year maximum prison sentences:

- **Obtaining and possessing identity information** with the intent to use the information deceptively, dishonestly or fraudulently in the commission of a crime;
- **Trafficking in identity information**, an offence that targets those who transfer or sell information to another person with knowledge of or recklessness as to the possible criminal use of the information; and,
- **Unlawfully possessing or trafficking in government-issued identity documents** that contain information of another person.

Additional amendments include:

- Complementing existing mail offences with two new offences of fraudulently redirecting or causing redirection of a person's mail and possessing a counterfeit Canada Post mail key;
- Creating complementary forgery offences such as trafficking in forged documents, or possessing forged documents with the intent to use them; and
- Clarifying that certain acts in relation to PIN numbers and the possession of skimming devices (used to extract and copy debit card information) are prohibited.

Moreover, a new power would also be added permitting the court to order, as part of a sentence, that an offender be required to pay restitution to a victim of identity theft or identity fraud for costs associated with their efforts to rehabilitate their identity, e.g., the cost of replacement cards,

documents and correcting their credit history. This provision would complement existing provisions which permit restitution to be ordered for actual economic or other property losses.

Exemptions

The legislation includes two exemptions to address potential negative impacts on the undercover work of law enforcement. The exemptions ensure that those who make false documents for covert government operations can do so without fear of prosecution for forgery, and that public officers (i.e., law enforcement personnel) can create and use covert identities in furtherance of their duties.

Useful Tips on Identity Theft for Canadians

Office of the Privacy Commissioner of Canada: http://www.privcom.gc.ca/keyIssues/ki-gc/mc-ki-idt_e.asp

Royal Canadian Mounted Police: http://www.rcmp-grc.gc.ca/scams/identity_theft_e.htm

PhoneBusters: http://www.phonebusters.com/english/recognizeit_identitythe.html

Canada's Office of Consumer Affairs: http://consumer.ic.gc.ca/epic/site/oca-bc.nsf/en/h_ca02226e.html