

CACP Key Messages – Lawful Access Legislation **Updated November, 2009**

Definition:

- 'Lawful Access' refers to the lawful interception of private communications by law enforcement and national security agencies.

CACP Goal

- The goal of the Canadian Association of Chiefs of Police is to see government modernize legislation to help police detect and prevent crime and apprehend criminals who seek to exploit electronic communications to the detriment of society.

History:

- The CACP has been advocating for electronic interception laws or what is commonly referred to as the "Lawful Access" initiative.
- In the age of cell-phones, Blackberries and the Internet, police in Canada are operating under laws written when rotary phones were the norm.
- Bills C-46, Investigative Powers for the 21st Century Act and C-47, Technical Assistance for law Enforcement in the 21st Century Act have passed second reading in the House of Commons and has been referred to the Standing Committee on Public Safety and National Security.

Parameters:

- This legislation is NOT about increasing police powers. It is about addressing the current and growing gap between our current laws and the reality of new and emerging technologies.
- There should be no "intercept safe havens" for criminals in Canada. Technology companies should have the technological ability to implement court-ordered lawful access orders.

Modern challenges facing Canadian law enforcement that are driving the need for reform

- Police investigations are increasingly complex, extensive, expensive and time and resource intensive. Court ordered interceptions are a vital investigative tool used in the most serious and complex of investigations.

- Organized criminals, internet predators, cyber-criminals, and terrorists are aware of, and benefit from modern communications technologies which operate free of geographical constraints.
- Changes to lawful access legislation are long overdue. Technology continues to change and evolve at an unprecedented pace (e.g. text messaging, email, other secure communications, wireless communications, private servers, enhanced encryption etc.) Legislation has not kept pace with these changes. This has proven to be a hindrance to law enforcement and national security agencies.

Required Legislative Changes:

- Modernization of Canada's electronic surveillance legislation is critical. Current provisions do not reflect the reality of evolving technology; they are inadequate to allow efficient and effective lawful access to current and emerging data communications services in Canada.
- Current laws related to lawfully authorized access to communications require modernization. Virtually every western democracy, including Australia, New Zealand, and the United Kingdom has adopted such legislation.
- Telecommunications and internet service providers should include interception capability in all new technologies they are releasing.

Customer Name and Address Information (CNA):

- The ability to access basic subscriber information is a critical component of many police and national security investigations. Currently, there is inconsistency and uncertainty in accessing this kind of information. .
- CNA information refers to such basic personal identifiers as the name and address associated with a phone number and the company that is providing service to a given phone number or Internet (IP) address Additional information can only be secured with prior judicial authorization.
- Timely access to basic subscriber information, held by telecommunications and internet services providers, is non-intrusive and is a key 'building block' for successful investigations.

Case law seems to support the proposition that police may access this data without judicial authorization. Most privacy statutes presently permit such disclosure to law enforcement and national security agencies.

- The procedures and requirements for accessing CNA information would benefit from being standardized and consistent across the country. Record-keeping and audit

requirements would provide – indeed improve any existing - procedural and accountability safeguards.

- The CACP supported the *Modernization of Investigative Techniques Act (MITA)* that was tabled in 2005. The well-researched provisions in that Act allowed for access to CNA information without prior judicial authorization under a regime of legislated accountability provisions.
- Canadian law enforcement supports the need to obtain search warrants for lawful interceptions when they are legally required. They are not demanding a widespread “warrantless search regime”.