

Remarks of Superintendent Earla-Kim McColl, R.C.M.P.
Officer in Charge
National Child Exploitation Coordination Centre - Ottawa

Thank you for the opportunity to address this committee during this review. In my role as the OIC of the NCECC I consult regularly with the Officers in Charge of units across Canada which investigate internet facilitated child exploitation. It is the role of the national centre to address issues which affect all Canadian Law Enforcement. I maintain a prioritized list of critical issues.

We face a variety of challenges but the # 1 critical and urgent issue is PIPEDA. It is not technology, criminal legislation or resourcing, the # 1 issue is our difficulties with the interpretation of PIPEDA.

As you may know, every complaint we receive, every file represents a child at risk. We don't know until we get to the door whether we are investigating an actual abuser, a distributor or an administrator of a pedophile ring. Without the support and cooperation of ISP's we will never get to that door. It's over and the children being abused will continue to suffer at the hands of their abusers. There is no other means available to us to locate and rescue the children and potentially locate their offenders. Four recent cases which started out as an IP address resulted in the rescue of four children from sexual abuse.

I believe it is important to stress that we are not seeking information which would invoke charter protections. The confusion PIPEDA has caused surrounds information that we routinely obtain daily in the course of our duties, and for which we never ever require a warrant. We are not asking for "new powers" simply clarification where information required does not require a warrant. Where a warrant is required, we must and do obtain one. The courts can and do provide careful oversight on charter protection.

The information we seek from ISP's is similar to that we could get from a phone book, property records, speaking to your neighbours and in fact, is less than that attached to your drivers licence.

I would like to note, for the record that in many cases, in most cases, Internet Service Providers, both large and small, have gone above and beyond to assist law enforcement. They consider child exploitation investigations as a priority and immediately commit resources and time to locating the information required. Unfortunately this is not always the case. On average 35 - 40% of requests are refused on the basis of PIPEDA.

PIPEDA has inadvertently created confusion and uncertainty for corporations. For law enforcement it has created frustration and a time consuming effort to explain "lawful authority" and that "may" is permissive rather than optional. In other words, "may" was written to allow or encourage cooperation however it is being interpreted as though refusing to help is a viable option.

Of those corporations that do cooperate, many lack comfort around their authority to do so.

Accordingly, we respectfully request clarification of Section 7 (3) c.1 to stipulate that when a peace officer, acting in the scope of his/her duties, makes a request that companies are authorized to provide it.

We require revision of Section 9 which currently permits ISP's may choose to notify subscribers of police interest in their accounts. Advising a suspect in an ongoing investigation of police interest undermines our ability to do our job and places children at risk. Suggested wording is "a company shall not disclose any information regarding law enforcement interest without written approval (consent) of the investigator.

A recent case in Ontario highlights this. An ISP had provided the customer name and address to law enforcement. An ongoing investigation determined that a child in the neighbourhood was being sexually abused by someone associated to that address. If the ISP had notified the subscriber of the police interest, the offender would likely have destroyed the evidence and never confessed to the abuse of a neighbour's child. The abuse would be ongoing.

In many cases, the information we seek is no longer available. As cases are complex and global, often our notification of a Canadian link may come months after being captured by an international agency. Requests for information are often thwarted by routine purging of databases in an effort to comply with PIPEDA. It is tragic to know that children live in abusive situations, and the abuse will continue, because of a lack of the availability of crucial information.

We respectfully suggest an amendment so that information be retained for 5 years by all ISP's with the reason or duty specified as "community safety". Customers should be notified that public safety is a valid reason to collect and retain information. This will have a minimal effect on businesses but a huge effect on investigations.

These minor but significant amendments will resolve major impediments for law enforcement and for ISP's but most importantly it will assist the children whose images haunt us and fuel our determination to find them. It will result in an act that allows access to information in a fair and efficient manner.

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