

August 16, 2007

Honourable Jim Prentice
Minister of Industry
5th Floor, West Tower
C.D. Howe Building
235 Queen Street
Ottawa, Ontario
K1A 0H5

Dear Minister Prentice:

It is my pleasure to congratulate you on your appointment as Minister of Industry. I am sure it will be an exciting new challenge.

As you know, the Office of the Federal Ombudsman for Victims of Crime was established by the Minister of Justice in March 2007 to ensure that the federal government meets its responsibilities regarding victims. It is part of our mandate to identify emerging and systemic issues that impact negatively on victims of crime. We have identified child victims of Internet sexual exploitation as one of our major priorities.

On July 19, 2007, I wrote to your predecessor, the Honourable Maxime Bernier, in relation to the Fourth Report of the Standing Committee on the Access to Information, Privacy and Ethics regarding its review of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. The Committee made many recommendations, one of which we believe is necessary to assist law enforcement in their efforts to identify and rescue child sexual abuse victims whose victimization is being enhanced through the Internet.

Canada is a signatory to several key UN declarations that speak to the need to protect and promote the safety and privacy of victims and children. In 2003, the Government of Canada signed the *Canadian Basic Statement of Principles for Victims of Crime*, which commits the federal government to consider and respect the privacy of victims to the greatest extent possible, to minimize inconvenience to victims and to take appropriate measures to protect victims.

More recently, Canada with other G8 Ministers agreed to accelerate efforts to combat child sexual exploitation. The G-8 Ministers committed, "to ensuring the implementation and effectiveness of our own laws relating to child pornography, and to taking steps to update and improve those laws when necessary and where appropriate."^[1] The Ministers also acknowledged and recognized that the private sector, including Internet Service Providers (ISP), have a role to play in protecting the world's children.

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^[1] G-8 Justice and Home Affairs Ministers, May 24, 2007. www.g8.gc.ca/childpornography-en.asp

In the 2007 Budget, the government committed an additional \$6 million to protect children from sexual exploitation. The Honourable Jim Flaherty, Minister of Finance said, "The funding will ensure that those who commit these heinous offences are brought to justice..."

The Standing Committee made 25 recommendations and of particular interest to us is *Recommendation #12*, which states,

"The Committee recommends that consideration be given to clarifying what is meant by "lawful authority" in section 7(3)(c.1) of PIPEDA and that the opening paragraph of section 7(3) be amended to read as follows: "For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization shall disclose personal information without the knowledge or consent of the individual but only if the disclosure is [...]"

Subsection 7(3)(c) of the legislation sets out provisions where an organization **may** disclose personal information without consent. It refers to a request by a government institution that has the *lawful authority* to obtain the personal information for the purpose of enforcing a law, carrying out an investigation related to the enforcement of the law, or gathering intelligence for purposes of enforcing a law.

Although this provision may have been intended to facilitate the enforcement of criminal law, the committee heard that law enforcement have found it to be a hindrance. Of particular concern is with respect to investigations of suspected Internet facilitated child sexual exploitation.

When investigators contact an ISP as part of an investigation involving child sexual abuse images on the Internet, and ask for the name and address of the client associated with a particular email address, the ISP is not obligated to disclose information. I have heard estimates that requests for this basic information are only complied with about half of the time. While some will argue these estimates are high, I am sure you will agree that even one request that is not complied with is one too many given the nature of the request.

Mr. Clayton Pecknold of the Canadian Association of Chiefs of Police testified before the Committee and explained the challenges the police currently face:

"...we are increasingly seeing some companies interpreting lawful authority to mean that a warrant or court order is required before they comply. This is an interpretation that is not, in our respectful view, consistent with the intent of the drafting of the act. Such an interpretation by companies, while no doubt grounded in a legitimate desire to protect their customers' privacy, is overly restrictive and defeats, in our view, the intent of paragraph 7(3)(c.1). (February 13, 2007)

The Committee agreed that it is not realistic or necessary to expect police to seek a warrant in these situations. By including subsection 7(3)(c.1), Parliament clearly did not intend for law enforcement to need to secure a warrant.

Critics will argue there are privacy implications involved, although it must be made clear that the information the police are seeking at this stage (i.e. name and address) is not invasive. However, the privacy implications for children have yet to be fully explored. In our opinion, there is no greater violation of one's privacy than having images of rape and abuse traded like baseball cards.

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Tink Palmer, an international leading expert on Internet child protection, explains, “the additional trauma for a child who knows that their humiliation has been photographed or filmed, and that people around the world may access and witness it in the immediate present and also long into the future, has serious and complex implications for assisting the child’s recovery and for the way such crimes are investigated.”^[2]

One child sexual abuse victim whose photos were put on the Internet said, “Usually, when a kid is hurt and the abuser goes to prison, the abuse is over. But because XXX put my pictures on the Internet, the abuse is still going on...I am more upset about the pictures on the Internet than I am about what XXX did to me physically.” Another said, “I never escape the fact that pictures of my abuse are out there forever. Everything possible should be done to stop people looking at pictures of child abuse. Each time someone looks at pictures of me, it’s like abusing me again.”

In 2005, OPP Detective Inspector Angie Howe informed the Senate Legal and Constitutional Affairs Committee that the images are getting more violent and the children in the photos are getting younger. She stated it is normal to see babies in many collections that police find. Furthermore, RCMP Supt. Earla-Kim McColl, head of the RCMP National Child Exploitation Coordination Centre (NCECC), says 80 per cent of the images involve some kind of penetration and a significant number, approximately 20 per cent, also involve torture and bondage.

In *R. v. Sharpe*, Supreme Court Justices L’heureux-Dubé, Gonthier and Bastarache said:

“Child pornography also undermines children’s right to life, liberty and security of the person as guaranteed by s.7....We recognize that privacy is an important value underlying the right to be free from unreasonable search and seizure and the right to liberty. However, the privacy of those who possess child pornography is not the only interest at stake in this appeal. The privacy interests of those children who pose for child pornography are engaged by the fact that a permanent record of their sexual exploitation is produced.”^[3]

It is my understanding that your department is preparing a response to the Committee’s report and I feel it is my obligation as the Federal Ombudsman for Victims of Crime to urge you to give serious consideration to Recommendation 12. The current law leaves children vulnerable to further abuse. It is interfering with the ability of law enforcement to potentially identify and rescue these victims. I believe the amendment recommended by the Committee is consistent with the commitments Canada has made nationally and internationally to protect children.

Internet facilitated child sexual exploitation is an international crisis and one in which Canada must take a leadership role. It is a multi-billion dollar industry. There are over a million images of child sexual abuse currently available on the Internet, involving tens of thousands of children. As the G-8 Ministers said, “Child pornography grievously harms all children: it harms the child who is sexually assaulted in the making of the image; the same child is re-victimized every time that image is viewed.”

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^[2] Tink Palmer, “Abusive images: The impact on the child,” in ECPAT Newsletter, Issue 49 1/January/2005.

^[3] *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, paragraph 189.

I look forward to your response and I am willing to personally meet with you to discuss this issue further. Given the importance of this issue to Canadians parents, we will be posting this letter on our website in the near future.

Sincerely,

Steve Sullivan
Federal Ombudsman for Victims of Crime
www.victimsfirst.gc.ca