BRIEF TO THE STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS RE: THE *PRIVACY ACT* REVIEW

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CANADIAN RESOURCE CENTRE FOR VICTIMS OF CRIME

100 – 141 Catherine Street

Ottawa, ON

K2P 1C3

www.crcvc.ca

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit advocacy group for victims and survivors of serious, violent crime. We provide direct assistance and support to victims across the country, as well as advocating for more services and rights for crime victims and for increased public safety.

The CRCVC is pleased to take part in the discussion surrounding reform of the *Privacy Act*; a review that we feel is long overdue, given the age of the legislation and the large number of societal changes that have occurred in the last twenty-five years. These changes are not only limited to those created by advancements in technology, but also those that have come about due to changes in the national and international climate.

It is our understanding that the Committee is looking at ten proposed immediate changes to the Act brought forth by the office of the Privacy Commissioner of Canada, and wishes that submissions examine these recommendations and make comments where appropriate. It our intention to do just that, and speak to the recommendations that we feel would impact the victims of crime for whom we work. There are some recommendations that we do not have opposition to, nor feel need to pass comment on, and thus defer to those who are impacted by these recommendations for their comments.

We have reviewed the testimony of the numerous witnesses that have appeared before this Committee in the recent weeks. They have presented a wealth of information that both supports and counters the recommendations submitted by the Privacy Commissioner. It is not our intent to reiterate the detailed analysis that has been provided, but to offer our input as to how the proposed changes impact the lives of the citizens with whom we work, and the operation of our office.

Recommendation ONE: Our office applauds the efforts of the Privacy Commissioner to ensure that the collection of information by government institutions is necessary, and to safeguard against the over-collection of data. We do, however, caution against creating too strict a standard. It is imperative that the committee thoroughly research the ramifications of amending section 4 of the Act, which currently reads:

> No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.

Our primary concern with altering s.4 lies with the impact that a stricter "necessity test" would have on law enforcement. We strongly urge that the Committee ensure that the wording of any amendment does not hamper the ability of law enforcement to carry out their duties. This would include, but not be limited to their ability to obtain search warrants, conduct surveillance and obtain information related to investigations. Investigations are increasingly more time sensitive, especially given the technologies used to commit many crimes. It is our opinion that privacy legislation should recognize that in some cases, there is an immediate need for law enforcement to access information, and ensure that legislation is written so that it assists rather than hampers law enforcement.

Consider the case of child pornography, or worse, a child who is being abused live on a broadcast over the internet. Law enforcement currently faces large hurdles and a total lack of cooperation when attempting to access basic Customer Name and Address information (non-sensitive biographical information about a subscriber) from Canadian Internet Service Providers (ISPs). Police need basic CNA information in the pre-warrant stage of investigations into child sexual exploitation on the Internet. In the early stages of an investigation, the ISP is the only possible source to identify the computer. If reasonable and probable grounds exist, police then have to seek a warrant to further investigate who is responsible for using the computer on the day and time in question and gather evidence. We believe that law enforcement should not be impeded from preventing or stopping child abuse. When a child is being sexually exploited live on internet, law enforcement must be able to act quickly to rescue these children.

Recommendation FOUR: We agree that there is a need for the Office of the Privacy Commissioner to educate the public on the impacts of the *Privacy Act*, the rights that individuals hold, and how individuals, especially children can protect their privacy in their day-to-day interactions with others. We would ask the committee use its influence to express to the Office of the Privacy Commissioner a desire to see her office become an advocate for the many victims of crime in Canada who lose their rights to privacy as a result of the crime committed against them, or worse, in favor of the rights of those that harm them.

This would include, but is not limited to, families affected in young offender cases where the victim's identity is withheld in order to protect the accused's privacy. The *Youth Criminal Justice Act* states, under section 111. (1) that that the identity or a victim or witness may not be published.

Identity of victim or witness not to be published

> **111.** (1) Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

We work directly with families in young offender cases who want nothing more than the identity of their child back. In cases where a young victim does not survive, their identity cannot be published and therefore the victim's story cannot be told. A mother recently told us that she yearns for nothing more than to be able to talk publicly about her son, the amazing boy he was and was going to be. She has already lost his life and until the accused's trial is complete, she suffers incredibly as his identity is lost as well. While the YCJA provides an exception to the rule in cases where the young person is deceased, parents are generally told not to talk publicly about their murdered child while the matter is before the youth court.

We are also concerned about the victim who is identified in the media before the police are able to notify family members of the crime (potentially putting surviving victims, police, neighbours, and the investigation in danger). This happens regularly in domestic homicide cases across the country. The police have not yet publicly released the names of the victims, but the media will report who the victims are based on what neighbours tell them or provide a street address of where the incident occurred. Protection of privacy is equally relevant for victims of internet sexual exploitation, especially children. They face unique privacy challenges that, in addition to the torture and abuse they suffered, which adds an additional level of abuse. The Office of the Privacy Commissioner could, for example, address this harm as part of a public education initiative, and seek ways to limit the continued harm that occurs when images of children being abused remain in the public domain.

Recommendation SIX: In her testimony, Commissioner Stoddart spoke of a general need to speed up the process relating to the access to information requests that are made concerning information that is governed by the Privacy Act. We concur that this should be a priority of her office. Our office makes such requests on behalf of crime victims on a regular basis, and is

continually amazed at the length of time that it takes to have the information released. For example, we are currently awaiting the release of information on a request that was originally made in November, 2006. We have received a partial package of information, and are awaiting the decision on an appeal of the release. At last check the appeal, which was initiated in May, 2007, was still the eighth file awaiting work on the investigator's agenda. At the time of our last inquiry (May 2008), we were instructed to follow up in six to eight weeks. While this case does potentially illustrate an extreme situation, it must be acknowledged that it is unacceptable that a citizen should have to wait a minimum of eighteen months to access his/her information!

We would caution against giving the Commissioner the discretion to arbitrarily decide that complaints are frivolous, redundant, or serve little or no useful purpose, and to provide no further recourse for the citizen making the claim to pursue their request. We do understand that there are many claims that may seem to fall into the categories intended by the recommendation, but caution the committee against endorsing a process that does not allow for transparency and procedural due process.

Recommendation SEVEN: This recommendation would expand the definition of personal information to include information that does not exist in recorded form, for example biological samples. We endorse this recommendation, as it not only provides protection of personal data that was not previously covered by the *Act*; it would also require government and its agencies to therefore provide this information to individual requestors. Our office was recently denied information pertaining to a decision made by a federal agency on the basis that the discussions surrounding the decisions were verbal and there for not recorded or subject to an access to information request. This refusal has created a perception that there was no transparency in the decision-making process, it denied a victim access to their personal information, and perpetuated their suffering. Had this amendment been in place at the time of the request, the agency in question would have been required to provide the reasons for the decision reached, despite the fact that they had not been formally recorded.

Recommendation NINE: Given the fact that this review is occurring twenty-five years after this legislation was enacted, we applaud the call for a mandatory review. It will not only harmonize the *Privacy Act* with *PIPEDA*, it will allow for this legislation to continue adapting to

the changes and challenges that society provides, and to ensure that the legislation continues to address the needs of Canadians.

Recommendation TEN: The CRCVC understands that there is a need for governmental agencies to share personal information with their international counterparts, and endorses a more formalized approach to facilitating this process. We do caution that the committee must recommend that written agreements be a minimum requirement for such exchanges, but that they not only limit the instances in which information can be shared, but that also provide safeguards for the information once it has been shared. It is not sufficient to insist on criteria for sharing the information; the legislation must require proof of a standard of care for the information once it is released.

In closing, the CRCVC would like to remind committee members of the **Canadian Basic Statement of Principles of Justice for Victims of Crime**. The principles are intended to promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures:

2. The privacy of victims should be considered and respected to the greatest extent possible.

We recognize the need for legislation that pertains to the public sector and separate legislation that applies to the private sector. The recommendations presented by the Office of the Privacy Commissioner do, for the most part, offer a compromise between harmonizing those pieces of legislation where applicable, and also maintaining distinction where necessary. There are some areas where clarification and/or strengthening are necessary. The CRCVC trusts that the comments offered above will assist the Committee in achieving its mandate.

Thank you.