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FEB 27 2012

Senator John D. Wallace
Chair
Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Dear Senator Wallace:

I am writing in relation to the undertakings my Office made while appearing before the members of the Standing Committee on Justice and Human Rights on some of the privacy implications stemming from Bill C-10, the *Safe Streets and Communities Act* on February 8th, 2012. At the conclusion of that session, the committee requested additional information on two points: lowering the age in the *Youth Criminal Justice Act* under which individuals are covered by a publication ban and any correspondence or studies we have exchanged with Correctional Services Canada on their Electronic Monitoring Pilot Program.

First, please find enclosed my Office's correspondence with Correctional Services Canada (CSC) regarding their Privacy Impact Assessment for the Electronic Monitoring Pilot Program. We also include a copy of the self-assessment report on the program conducted by CSC, which is referenced in the correspondence. This is a public document and we have also notified the department that we are providing these for reference in your study.

Second, we would take this opportunity to reiterate our view regarding the effect of changes to the *Youth Criminal Justice Act* found in the amendments of Bill C-10 and their potential to significantly broaden the scope of cases involving youth crime that may lose the protection of a publication ban.

Presently, the *Youth Criminal Justice Act* defines the term "presumptive offence" in two ways. The first is where a young person who is at least fourteen years old has committed, or alleged to have committed one of four enumerated offences (murder, attempted murder, manslaughter, or aggravated sexual assault). The second is with regards to a serious violent offence committed by a young person who is at least fourteen years old in certain circumstances involving a third serious violent offence. A "serious violent offence" concerns offences which cause or attempt to cause serious bodily harm.

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- 2 -

Under section 110(1), there is a general automatic publication ban on the name and other identifying information of a young person. Under the current provisions, there is an exception to this publication ban with regards to presumptive offences. In these cases, the youth justice court has the discretion to order a publication ban, upon application by the young person or the Attorney General, if the court considers it appropriate in the circumstances. Under these current provisions, a young person under fourteen years old will not face the lifting of a publication ban.

Pursuant to clause 167 of Bill C-10, the definition of "presumptive offence" would be repealed and the definition of "serious violent offence" would be modified as follows:

"serious violent offence" means an offence under one of the following provisions of the Criminal Code:

- (a) Section 231 or 235 (first degree murder or second degree murder);
- (b) Section 239 (attempt to commit murder);
- (c) Section 232, 234 or 236 (manslaughter); or
- (d) Section 273 (aggravated sexual assault).

Thus the proposed definition would contain the same list of offences that exists in the current paragraph (a) of the definition of "presumptive offence", but would not contain the requirement that the young person has attained the age of fourteen years.

The Bill also proposes to add new definitions for "serious offence" and the broader term "violent offence", which would also have no minimum age requirements. "Serious offence" would be defined as an indictable offence for which the maximum punishment is imprisonment for five years or more. A "violent offence" would be defined as:

- (a) an offence committed by a young person that includes as an element the causing of bodily harm;
- (b) an attempt or a threat to commit an offence referred to in paragraph (a); or
- (c) an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.



- 3 -

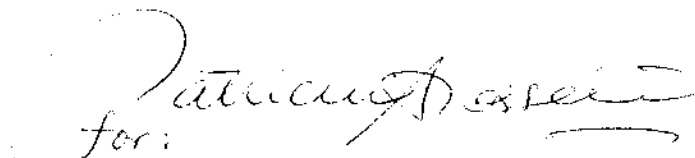
The proposed new definition of "violent offence" appears to include a far greater number of offences than the four offences currently enumerated in the definition of "presumptive offences".

The current exceptions from the general publication ban for presumptive offences would be amended by clauses 185 and 189 of Bill C-10 so that a youth justice court would have the discretion to order a lifting of the ban for a young person convicted of a "violent offence" if appropriate in the circumstances. Thus, young persons aged 12 or 13 (and all young persons convicted of "violent offences" that had not been included in the definition of "presumptive offences") could lose the protection of a publication ban under Bill C-10.

As noted in our opening statement, the Chief Justice Beverly McLachlin gave a speech on January 31, 2012 before students at Carleton University on courts and media. In that address, she noted that "publication bans play an essential role in trials of young offenders, sexual offences and some family matters." Privacy also plays an important role in protecting victims and witnesses, from being transformed "from quiet citizens to dinner-table topics overnight." This is particularly true if the facts of the case are sensational, given the globalized media environment.

I hope you find this additional information helpful as you further consider the Act before you and hear from other witnesses and experts.

Sincerely,


for:
Jennifer Stoddart
Privacy Commissioner of Canada

Attach. (3)

c.c.: Hon. Vic Toews, P.C., Q.C., M.P.
Hon. Robert Nicholson, P.C., Q.C., M.P.
Shaila Anwar, Clerk