



July 5, 2006

The Hon. Vic Toews, P.C., M.P.  
Minister of Justice and Attorney General of Canada  
House of Commons  
Ottawa ON K1A 0A6

The Hon. Stockwell Day, P.C., M.P.  
Minister of Public Safety  
House of Commons  
Ottawa ON K1A 0A6

The Hon. Maxime Bernier, P.C., M.P.  
Minister of Industry  
House of Commons  
Ottawa ON K1A 0A6

Dear Ministers,

I write on behalf of the Canadian Bar Association (CBA) concerning a trend by internet service providers (ISPs) to monitor or investigate their customers' communications, similar to proposals in Bill C-74 from the 38<sup>th</sup> session of Parliament, the *Modernization of Investigative Techniques Act* (the Bill). The CBA is a national professional organization representing over 36,000 lawyers, notaries, law students and teachers from every part of Canada. The CBA's mandate includes seeking improvements in the law and the administration of justice, and being the voice of the Canadian legal profession.

The CBA is concerned that ISPs are amending their service agreements with customers to announce that they will "monitor or investigate" how customers use their services, and will "disclose any information necessary to satisfy any laws, regulations or other governmental request from any applicable jurisdiction." This seems to be introducing a corporate or industry content monitoring scheme, without the necessity of prior authorization or oversight. This initiative appears significantly more intrusive than the previous legislative proposal.

In consultations about so-called "lawful access", government officials characterized proposals as simply updating current law enforcement powers to recognize technological realities. The CBA voiced strong concerns about the scope and potential impact of the



various proposals. Our concerns focus on the profound impact on the privacy of individual Canadians, and particularly on the potential to destroy solicitor client privilege by seizing communications between lawyers and clients. Solicitor client privilege is a cornerstone of democracy and the Canadian legal system. It allows individuals to seek legal advice knowing that communications with their counsel will remain private, and protected by law. Solicitor client privilege belongs to the individual seeking legal advice and is for the benefit of the client, not the lawyer.

In our view, all “lawful access” measures must be defined to conform with legal protections and guarantees that safeguard Canadians’ rights and freedoms, and be closely monitored to ensure that conformity. Prior judicial authorization is central, and blanket customer agreements without prior judicial authorization or oversight do not meet that test. A heightened level of care and scrutiny is imperative where the interception or search of such communication may infringe solicitor client privilege.

We urge you to ensure that Canadians’ private information remains appropriately protected, and that any privilege accorded to communications between lawyers and clients remains inviolate. We would appreciate an opportunity to discuss this with you or your officials at greater length.

Yours truly,

*(Original signed by Brian A. Tabor)*

Brian A. Tabor, Q.C.