



ISSUE PAPER: IDENTITY THEFT LEGISLATION

Last Reviewed: August 13, 2009

SUMMARY:

Bill S-4, *An act to Amend the Criminal Code (Identity theft and related misconduct)* was introduced in the Senate on March 31 2009. The bill will create several new *Criminal Code* offences specifically targeting those aspects of identity theft that are not already covered by existing provisions. Essentially, Bill S-4 will focus on the preparatory stages of identity theft by making it an offence to obtain, possess, transfer or sell the identity documents of another person. The bill contains essentially the same provisions as the former Bill C-27, which died on the Order Paper with the dissolution of Parliament in late 2008.

CURRENT STATUS:

August 2009: Bill S-4 was progressing fairly quickly through the legislative process prior to the summer recess of Parliament. It had been passed by Senate and progressed through 2nd Reading in the House of Commons prior to the summer recess of Parliament.

DESCRIPTION OF ISSUE:

Identity theft is considered a rapidly growing problem by law enforcement officials. The Canadian Council of Better Business Bureaus estimates that identity theft costs Canadian consumers, banks and credit card companies, stores and other businesses more than \$2 billion annually.

Currently, the Criminal Code does not contain a specific identity theft offence. Although the Code does criminalize most fraudulent uses of personal information it does not address the unauthorized collection, possession, and trafficking of personal information for the purposes of future criminal activity. In the past, parliamentary committees such as the standing Committee on Finance and individual Members of Parliament have called for amendments to the Code to rectify the problem.

In November 2007, the Conservative government responded by introducing Bill C-27, *An Act to amend the Criminal Code (identity theft and related misconduct)*. Bill C-27 had full party support prior to Parliament being prorogued in late 2008. In March 2009, the identity theft legislation was introduced in the Senate as Bill S-4 which is substantially similar to the former Bill C-27. The

proposed legislation creates several new Criminal Code offences specifically targeting those aspects of identity theft that are not already covered by existing provisions. The legislation focuses on the preparatory stages of identity theft by making it an offence to obtain, possess, transfer or sell the identity documents of another person.

Three new "core" offences have been created which are all subject to 5-year maximum sentences:

1. obtaining and possessing identity information with the intent to use the information deceptively, dishonestly or fraudulently in the commission of a crime;
2. trafficking in identity information, an offence that targets those who transfer or sell information to another person with knowledge of or recklessness as to the possible criminal use of the information;
3. unlawfully possessing or trafficking in government-issued identity documents that contain information of another person.

Additional proposed Criminal Code amendments in Bill S-4 include:

- creating a new offence of fraudulently redirecting or causing redirection of a person's mail;
- creating a new offence of possessing a counterfeit Canada Post mail key;
- creating complementary forgery offences such as trafficking in forged documents, or possessing forged documents with the intent to use them;
- renaming the offence of personation to "identity fraud";
- clarifying the meaning of "personating a person"; and
- adding the offence of possession of instruments for copying credit card information, in addition to the existing offence of possessing instruments for forging credit cards.

Also within the legislation is an additional new power to permit a court to order that an offender pay restitution to a victim of identity theft or identity fraud where the victim has incurred expenses related to rehabilitating their identity (e.g. the cost of replacement identity cards and/or correcting their credit history).

On June 17, 2009 the Bill received second reading in the House of Commons and was subsequently sent to the House of Commons Standing Committee on Justice and Human Rights for review. It is anticipated that review of the Bill will continue when Parliament resumes in September 2009.

SIGNIFICANCE FOR CREDIT UNIONS:

Identity theft has been an issue of long standing concern in the Canadian financial services sector. The Canadian Bankers Association has estimated that in 2006 the cost of credit card fraud was approximately \$300 million while the cost of debit card fraud in the same year was approximately \$100 million.

These figures are, at best, approximations of the true financial cost of identity theft since an accurate accounting would require an assessment of the expenditures associated with responding to incidents of suspected or real identity theft. For example, at a typical financial institution such an accounting could include:

- staff time spent cancelling cards;
- staff time dedicated to dealing with customers/members who report unauthorized debit card transactions on their accounts;
- staff time reporting these transactions to a fraud alert system;
- staff time spent obtaining "statutory declarations" from members who have had skimming losses'

- staff time spent providing information on skimming losses to a fraud alert system;
- staff time assisting law enforcement investigations;
- staff time spent preparing Master Bond Claim submissions (a credit union specific issue);
- staff time responding to and assisting members who have received and/or responded to “phishing” attempts;
- staff time spent investigating account openings that utilized or are suspected to have utilized stolen identity information; and
- staff time spent seeking to recover losses incurred through identity theft.

Victims may also lose trust in the institutions through which they were defrauded and this can damage the considerable investment toward the establishment and maintenance of a business brand or image. Furthermore, after a major incident of fraud a corporation often must allocate further resources to brand management. In view of the significant impact of identity theft on credit unions, Canadian Central encourages any government initiative aimed at reducing the occurrence of identity theft incidents in Canada.

CANADIAN CENTRAL POSITION AND OBJECTIVES:

Canadian Central supported the legislative proposals found in Bill C-27 but recommended in their March 2008 submission to the Standing Committee on Justice and Human Rights the following amendments to strengthen the Bill:

- That the section providing for the prosecution of offences relating to the possession, transfer, selling or offering for sale of identity documents be amended to alleviate the burden of proof imposed on the Crown.
- That the definition of “identity document” be amended to encompass all types of documents that may be used to facilitate identity theft.
- That the phrase “personal identification number” be defined in the legislation.
- That the section pertaining to restitution better define the perpetrator’s responsibility to retribute and in particular, whether financial institutions that bear the costs associated with identity theft will have access to restitution.

Bill S-4 includes amendments that address a couple of the suggested changes above. In particular, the definition of “identity document” has been broadened and the phrase “personal identification number” has been with the term - “personal authentication information” which has been defined to include “personal information number”.

CUCC will continue to monitor the progress of this proposed legislation when Parliament resumes in the Fall.

CONTACTS:

Canadian Central Committee overseeing issue: Legislative Affairs Committee

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Related Documents:

Government produced information regarding identity theft:

Bill S-4 –

http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=S-4_3&File=24

Legislative Summary of Bill S-4:

<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=5778&Session=22&List=ls>

Additional information on identity theft can be found on the following site:

<http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=15&Type=0&Scope=l&query=5333&List=ot>

Government response to the fourth report of the Standing Committee on Access to Information, Privacy and Ethics on the Statutory Review of PIPEDA:

[http://www.ic.gc.ca/epic/site/ic1.nsf/vwapj/ETHI-e.pdf/\\$file/ETHI-e.pdf](http://www.ic.gc.ca/epic/site/ic1.nsf/vwapj/ETHI-e.pdf/$file/ETHI-e.pdf)

Canadian Central submission: http://www.cucentral.ca/Letter_IDTheft_3june08