

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

The Honourable / L'honorable Peter MacKay, P.C., Q.C., M.P. / c.p., c.r., député
Ottawa, Canada K1A 0H8

JUL 17 2014

Ms. Valoree McKay
Executive Director
Canadian Library Association
1150 Morrison Drive, Suite 400
Ottawa ON K2H 8S9

RECEIVED JUL 17 2014

Dear Ms. McKay:

Thank you for your correspondence of June 17, 2014, concerning Bill C-13, the *Protecting Canadians from Online Crime Act*.

The provision of Bill C-13 that you address in your letter is the re-enactment of section 487.014 of the *Criminal Code*, which has existed since 2004. The re-enactment of this provision in Bill C-13 was done for three reasons: to renumber the section and address the new preservation tools; to make clear that police common law powers are also included in the clarifying provision; and to make explicit reference to the protection from liability that already exists.

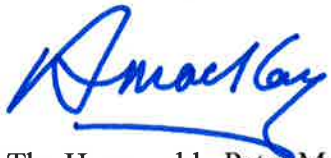
This protection from liability has been repeatedly mischaracterized as granting absolute immunity for persons who volunteer information, even after I have testified to the contrary. As you know, the Government's public statements and testimony are often used to assist a court in interpreting the meaning of legislation. The provision does not grant absolute immunity to persons assisting police. Instead, it states that persons who assist police do not incur liability when they do so in accordance with their own legal duties and obligations. Any person who discloses information when they are not authorized to would not receive this protection.

To underline this point, the Supreme Court of Canada, in its recent decision in *R. v. Spencer*, clarified that even disclosure of basic subscriber information (a name and address), if linked to Internet activities, requires a judicial process or a reasonable law. This is important because the existing and proposed updated immunity provision, as you have characterized it, only provides protection when a person is not otherwise prohibited by law from providing such assistance. Privacy legislation, including the *Personal Information Protection and Electronic Documents Act*, clearly states that a person cannot disclose personal information to police unless the police have demonstrated their lawful authority to receive such information. As the Supreme Court has clarified, any private information collected without a judicial process or reasonable law would be unlawful vis-à-vis the *Canadian Charter of Rights and Freedoms*. Therefore the provider of such information could not avail themselves of the protections provided by this provision.

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Thank you for your interest in this issue. Unfortunately, due to a heavy schedule, I am unable to meet with you at this time.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "P MacKay". The signature is fluid and cursive, with a prominent loop at the end of the last name.

The Honourable Peter MacKay