

## Preventing Identity Theft

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Every year, thousands of Canadians fall victims to identity theft. Identity theft - essentially the use of someone else's personal information to commit fraud - has emerged in recent years as a very serious problem for law enforcement agencies, the business community and for consumers. Identity theft is not only about credit cards, bank accounts & ATM cards; this represents approximately 28% of all ID thefts. Other documents that are often forged and misused are: driver's licenses, medical files, social insurance cards and passports. Identity theft remains one of the fastest growing crimes in North America. Identity theft (or identity fraud) includes criminal activity in which a person wrongfully obtains and subsequently uses someone else's personal information to commit a forgery or a fraud for financial gain. For our purposes, an individual's personal information includes the person's name, address, telephone number, birth date, family information, social insurance number and financial account information including personal identification numbers (PINs).

### How big is the problem?

It is difficult to pinpoint the number of victims, because not everyone reports the crime, and those who do often contact different organizations. As well, crimes such as credit card fraud often get lumped into the same category.

PhoneBusters, a police task force set up to tackle telemarketing fraud in Canada, received calls from some 7,800 identity theft victims reporting losses to themselves and to businesses totaling more than \$16 million in 2006. However, PhoneBusters estimates those numbers represent only a small percentage – perhaps 5 per cent – of the actual figure.

Nine per cent of Canadians – or 2.7 million people – have fallen victim to identity theft at some point in their lives, according to the findings of a 2003 Ipsos Reid survey.

In the U.S., the FBI estimates identity theft costs American businesses and consumers \$50 billion a year and affects some 10 million victims annually.

Mortgage fraud has also recently come to light as a major problem. It is estimated by the Canadian Institute of Mortgage Brokers and Lenders that mortgage fraud has jumped 400 per cent between 1999 and 2001, accounting for \$300 million in that year. That represents approximately 0.5 per cent and 2.5 per cent of all residential mortgage loans in 2001.

Canadians should expect more secure personal identification documents such as photographs on certain government issued cards (e.g., SIN card).

### Modernizing the Criminal Code

In spite of these high costs, the Canadian approach to dealing with identity theft in the criminal law has been piecemeal.

James Rajotte, MP (Edmonton Leduc) introduced a Private Member's Bill (*C-299 An Act to Amend the Criminal Code – identification information obtained by fraud or false pretense*) in 2006 aimed addressing one type of identity theft – pretexting, or the practice of posing as someone else to obtain their personal information. This Bill received unanimous support from the House of Commons. In addition, Nina Grewal, MP (Fleetwood-Port Kells) introduced Bill C-271 (*An Act to Amend the Criminal Code – personal identity theft*) in 2006. This Bill would make it an offence for a person to be in possession of, or to transfer, without lawful excuse, any information or document that can be used to identify another person.

As identity theft does not have a statutory definition under Canada's Criminal Code, this criminal activity can only be addressed through other criminal offences such as those dealing with

personation, forgery and fraud. This means that while some fraudulent activities can be pursued by law enforcement agencies, other activities, which enable identity theft, cannot be fully addressed. Meanwhile, other jurisdictions, notably the United States, have recently moved to criminalize identity theft and effectively address this criminal activity.

Identity theft could be more effectively addressed in Canada by modernizing the Criminal Code to incorporate a definition of personal information into the Code, and to prohibit the possession of such information without lawful excuse. Further, the following issue has emerged as an area that should also be addressed within the Code:

- The possession of multiple pieces of identification for a number of individuals without lawful excuse should be made a criminal offence.

### **Prevention and Mitigation of Identity Theft through Corporate Practices**

It should be noted that identity theft has become a multi-dimensional problem that needs to be addressed from a number of perspectives, not just the criminal law. A holistic approach to the problem should be adopted. In particular, in addition to deterring identity theft by more aggressive prosecution and punishment, prevention is a key part of the overall solution. Identity theft can be prevented by keeping sensitive data out of the hands of thieves in the first place. This can be accomplished through better data security and access controls from organizations holding this data. Increased education for businesses and proper data collection and handling practices will play an important role in a comprehensive approach to the problem of identity theft.

Additionally, businesses should truncate credit card numbers and expiration dates on purchase slips. While many businesses already do engage in truncating credit card numbers, it is not mandatory.

The Office of the Privacy Commissioner has been advocating for this to be standard practice among all retailers and vendors. A case of identity theft can be devastating to both an individual and a small business. For victims of identity theft, the Government should investigate the possibility of an "Identity Theft Passport" that could be easily obtained and used to properly verify someone's identity and that that person is a legitimate victim. This would alleviate the situation of identity theft victims having to spend countless hours and significant amounts of money to validate their true identity. It would be particularly useful in the event that innocent victims may be falsely arrested and held in custody due to outstanding warrants issued against the actual perpetrators using the stolen identity documents.

### **Recommendations**

That the federal government:

1. Make the following amendments to the Criminal Code:
  - a) Clearly defining 'identity theft'.
  - b) Defining 'personal information' for the purposes of specifying offences for identity theft in the Criminal Code.
  - c) Creating a criminal offense for unlawful possession of individuals' personal information.
  - d) Creating a criminal offense for possession of multiple pieces of identification for a number of individuals without lawful excuse.
2. Adopt a more holistic approach to the problem of identity theft by assisting both business and individuals in protecting their personal information.
3. Increase education for businesses to ensure proper data collection and handling practices.

4. Ensure that businesses truncate credit card numbers and expiration dates on purchase slips.
5. Investigate the creation of a government issued "Identity Theft Passport" to quickly and easily verify a victim's identity.