



April 16, 2015

*“Dedicated to Justice” • «Au service de la justice»*

The Honourable Peter Gordon MacKay  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

Dear Minister,

I am writing to you on behalf of front line police officers in Canada who recently expressed to us their frustration in resolving cases of long-term missing people due to their limited access to judicial warrants of any kind in these cases. In some cases, missing persons are later discovered, when their body is recovered by police, to be victims of homicide. It is frustrating to the investigators that a missing person without a body recovered has no search authority at all, until it becomes a homicide case.

Recent changes in law and court decisions, have not addressed the issue of missing persons' investigations and actually set new requirements for production orders which make it almost impossible to get authorization for all manner of searches even where police agencies suspect a criminal offence has taken place. There is a legitimate reason investigators need to be able to get authorizations not just for phone records, but for all manner of searches including searching a missing person's residence with a warrant, searching an electronic device belonging to the missing person or someone else who may lead to finding the missing person, ordering health agencies to provide records of hospitalizations of missing persons, etc. None of these options are currently available in law.

With the technological advances in mobile and smart phone capability, the vast array of information that can be stored within such a device will aid a non-criminal police investigation. If a missing person leaves their phone behind, police cannot access the device itself unless it is an emergency situation. It is important to note that not all missing persons are reported right away, so police need to be able to legally search the phone for data such as text message conversations, GPS signals, social media information, and search histories at any time during an investigation, sometimes months after a person went missing. Police are trying to gain clues into their possible whereabouts, or the location of their abductor. Additionally, no legislation allows for these kinds of searches to take place regarding cold cases. This is particularly important given the recent media attention surrounding missing and murdered Aboriginal women across Canada.

Investigators have also expressed concern about their inability to search a person's room, home and/or belongings also due to their inability to obtain a judicial warrant in such cases. Currently for this type of a search to take place, one must prove that an offence has occurred before applying for a warrant. This can be challenging in situations when the missing person's body has not been located or without overwhelming evidence that a person was killed.

While it is important to protect an individual's privacy, in the case of a missing person, we feel that their safety should supersede privacy. Having the ability to obtain warrants and production orders will aid investigators and ultimately the public, especially in missing person cold cases, abduction, and teen runaway cases. We can count on the police to diligently exhaust other means



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of locating a person before resorting to an application for a warrant. Officers usually can rely on consent for routine searching of property yet in missing persons' investigations, the person that could be asked for consent is obviously not able to do so, but might if given the chance. If the case does not proceed criminally, the police would then destroy the mobile phone records that they obtained during the investigation, as is done in other situations.

Most organizations expect that police can easily obtain a warrant in every case that is under investigation. Not being familiar with the current state of the law, these businesses or agencies rely on their limited legal knowledge and deny police access in the interest of privacy. They expect police to have access to a lawful means of conducting the search, but unfortunately, this public perception is not reality.

We hope you will consider updating the *Criminal Code* in this area in order to aid investigators to obtain search warrants in missing persons' cases. Doing so will benefit the families of the missing, who are highly traumatized, anxious, and left living with the unknown. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Illingworth', with a long horizontal stroke extending to the right.

Heidi Illingworth  
Executive Director