

## **MEDIA ADVISORY**

December 7, 2011

### **Privacy, civil liberties advocates available for comment on Canada-U.S. perimeter agreement; issue statement of principles**

Ottawa, Montreal and Vancouver – In advance of today’s anticipated Canada-U.S. border deal signing in Washington, D.C., privacy and civil liberties advocates are releasing a 12-point statement of principles (see below) they hope will help guide public and parliamentary debate in the months to come. The joint statement of principles was developed over the past few months and represents basic concerns with the trade off expected behind the anticipated deal. The organizations listed below are available for comment on their statement as well as the content of the anticipated 32-point Perimeter Security and Economic Competitiveness action plan.

“Past efforts to harmonize security measures across the border in an effort to ease the flow of goods and trade have suffered from a large democratic deficit and excessive influence from parties with a direct financial interest in continued or improved access to the U.S. market,” says the statement. “Not one initiative or recommendation in the border action plan should be implemented or substantially negotiated with the United States prior to an extended public and parliamentary debate in Canada.”

The statement is distinct from a core legal principles statement released earlier this week by U.S., Canadian and EU privacy watchdogs.

### **The following organizations have endorsed the statement of principles and are available for comments (contact information included):**

B.C. Civil Liberties Association  
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## **STATEMENT OF PRINCIPLES regarding the proposed Canada-U.S. Perimeter Security and Economic Competitiveness agreement**

**1. A CALL FOR OPEN DEBATE:** Not one initiative or recommendation in the border action plan should be implemented or substantially negotiated with the United States prior to an extended public and parliamentary debate in Canada. Past efforts to harmonize security measures across the border in an effort to ease the flow of goods and trade have suffered from a large democratic deficit and excessive influence from parties with a direct financial interest in continued or improved access to the U.S. market.

2. We reject the argument that our civil liberties must be compromised on the basis that we need to have Canadian goods and services enter the United States with greater ease and certainty. We assert the primacy of human and constitutional rights over economic imperatives. (ELABORATION: Considering the highly integrated nature of many industries working across the Canada-U.S. border, we understand the need for more public investments in border infrastructure, staffing and information technologies in order to reduce shipping costs, border delays and congestion while also providing safe and productive working conditions for workers and travellers. Border traffic flows have been incrementally improved in recent years, and any further changes must not take away from fundamental human and privacy rights in the name of "economic efficiency.")

3. The Privacy Commissioner must be given authorization to review all new agreements with the United States that affect the privacy rights of people living in Canada, to monitor the implementation of the agreements, and to report annually to Parliament with the results of the reviews and monitoring.

4. There are currently no oversight and complaint mechanisms with regards to cross-border information sharing between Canadian and U.S. police and intelligence agencies. Building on the Arar Commission recommendations with respect to oversight, before entering into any information sharing arrangement with the U.S., the

government of Canada should make a public commitment to create a single authority to oversee all federal police and security organizations involved with the transfer of information between Canada and other countries. This authority should be designated not only to receive, investigate and report publicly on any complaints arising from the provision of information to U.S. authorities, but also to review operations and initiate investigations on its own.

5. Canada has both mutual legal and customs assistance treaties with the United States. These treaties should be amended so that they include appropriate provision for the protection of information provided by Canada under Shared Vision agreements. A separate treaty should be negotiated for the transfer of information for national security purposes, i.e.. not for law enforcement. Such a treaty would provide for the protection of information provided by Canada outside of the ambit of the mutual legal and customs assistance treaties.

6. Recognizing the need to collaborate across the border, cross-border policing exercises which result in U.S. police or security officials operating in Canada (and vice versa) should be the exception, not the norm. The framework agreement for the Shiprider program normalizes the deputizing of U.S. police agents on RCMP ships in shared waterways, requiring exceptional reasons for either police force to decline. The mechanism for holding U.S. agents accountable for their actions in Canada is far too vague. Under any cross-border policing agreement, U.S. agents must be subject to Canadian law and accountable to the Canadian courts and judicial system.

7. The Personal Information Protection and Electronic Documents Act (PIPEDA) needs to be modernized and strengthened to account for a technological revolution in how personal information is used and shared with the private sector and government. Under no circumstances should Canada's privacy laws be harmonized or otherwise made compatible with U.S. standards, which are weaker.

8. Canada's constitutional rights and the rights of workers not to face discrimination in the workplace due to race, ethnicity, nationality,

national origin, or dual citizenship must remain paramount and not be subjugated to satisfy U.S. security and information sharing demands. Since the terrorist attacks of September 11, 2001, some immigrants, dual-citizens and workers of colour have faced harassment at the border and discrimination by employers in Canada operating under U.S. laws prohibiting companies from hiring people from 19 proscribed countries.

9. Harmonization of entry-exit systems with the United States will create pressure to align Canadian and U.S. refugee and immigration policy. The U.S. Department of Homeland Security would de facto determine who is allowed into Canada. The federal government already conceded too much when it agreed to U.S. Secure Flight rules by authorizing Canadian carriers to submit large amounts of personal information on travellers who are not heading to the United States but merely flying over it en route to other Canadian or foreign destinations.

10. Individuals alleged to be security threats who have been cleared by a Canadian judicial process, Commission of Inquiry or other process must have their personal information purged from databases in Canada and in the U.S. and have their names removed from watchlists (including U.S. no-fly list).

11. Inherent in the practice of pre-clearance is a system of discrimination and surveillance of workers which is overly invasive with little added security value. We question the use of biometrics, facial-recognition technology and RFID (radio frequency identification) in travel documents, all of which promote a climate of suspicion, fear and undue surveillance instead of lasting security.

12. We call on government of Canada to provide a public accounting of current data-sharing arrangements between the Canada and the United States. Data-sharing arrangements already exist in myriad forms from international agreements to informal arrangements. We recognize that there are legitimate purposes for data-sharing between Canada and the United States in some instances, however there is also a great failure to provide an account of what personal

information of Canadians is currently being disclosed to the United States. For transparency, accountability and to reasonably assess the purported need for increased disclosures, the government of Canada must undertake a comprehensive audit and disclose with specificity:

- (i) what type of personal information is currently being disclosed by Canadian authorities to the United States;
- (ii) what limits, if any, are there on the use of this disclosed information by the United States;
- (iii) what limits, if any, are placed on retention of that information by the United States;
- (iv) what mechanisms of correction or redress exist for Canadians whose disclosed information contains errors.

**WE ENDORSE:**

B.C. Civil Liberties Association

B.C. Freedom of Information and Privacy Association

Canadian Civil Liberties Association

Common Frontiers

Council of Canadians

International Civil Liberties Monitoring Group

Ligue des droits et libertés

Rideau Institute