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USA PATRIOT ACT – THE WAR ON YOUR PRIVACY

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IMPACT ON CANADIANS

Patriot Act orders might be used by U.S. authorities to secretly gain access to Canadian-origin personal information in the control of U.S. organizations or their Canadian subsidiaries.

U.S. law also prohibits those served with *Patriot Act* orders from disclosing that fact to the target individual.

Canadian organizations which plan to transfer personal information to U.S. organizations or their Canadian subsidiaries for outsourcing or other purposes should carefully consider their obligations under Canadian privacy laws before so doing.

The Privacy Commissioner of B.C. has issued a report with 16 recommendations designed to protect B.C.-origin personal information from being surreptitiously accessed by U.S. authorities using the *Patriot Act*.

On October 25, 2001, President Bush signed into law the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (the “*Patriot Act*” or the “*PA*”) which grants the U.S. Government, as well as federal and state law enforcement officials, enhanced powers to conduct surveillance of individuals, including the right to surreptitiously obtain personal information relating to individuals. The expanded surveillance powers granted under the *PA*, coupled with a reduced level of judicial scrutiny over the use of such powers, has raised privacy concerns.

For example, Section 213 of the *PA* authorizes federal agents to conduct “sneak and peek searches,” or covert searches of a person’s home or office without notifying the person of the execution of the search warrant until after the search is completed.

Section 215, one of the most controversial sections of the *PA*, allows the FBI to obtain an order in private from a judge requiring any person or entity to produce:

“any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.”

Section 215 is noteworthy in that it: (a) expands the FBI’s powers to spy on individuals without the traditional level of judicial oversight; (b) does not require the FBI to show probable cause or reasonable grounds to believe that the target individual is engaged in criminal activity; (c) authorizes the FBI to investigate a U.S. citizen based in part upon the exercise of First Amendment rights (free speech) and to investigate a non-U.S. citizen based solely upon the exercise of their right of free speech; and (d) prohibits those served with Section 215 orders from disclosing that fact to the target individual.