REPLY SUBMISSIONS OF THE BCGEU

The government states that “the only state action involved in an outsourcing situation is the act of entering into a contract.” This is entirely disingenuous. In order to implement the contract, the government will be disclosing highly personal information to the contractor. This is the state action which we say is subject to *Charter* scrutiny. The effect of this action, we assert, is to render this information significantly less secure from searches which do not meet the Canadian standard of reasonableness, contrary to s. 8 of the *Charter* .

The government submission itself makes this clear when it states that “actions of a foreign government are not covered by the *Canadian Charter of Rights and Freedoms*.” This is exactly our point. As long as the personal information of Canadians is held by the BC government, it will not be subject to disclosure other than in accordance with Canadian law, including the *Charter*. This means that any search or seizure of the information must be reasonable under Canadian standards. However, if it is outsourced to a company in circumstances where the information may be disclosed pursuant to an order under the USA PATRIOT Act, it will subject to disclosure orders which do not meet this standard. The act of the government in disclosing the information therefore renders this information less secure from these unreasonable searches.

We do not rely on a “freestanding right to privacy” nor are we asking the Commissioner to make a *Charter* ruling in the absence of a specific factual situation. We are simply noting that the Commissioner must take into account the *Charter* and *Charter* values when assessing government activities and in interpreting the legislation.

With respect to the specifics of the outsourcing proposals, the government suggests that it would be “unfair” for you to rely on BCGEU submissions without providing the government a further opportunity to respond to those matters with which they “take issue”. Similarly, the government suggests that it would be “pleased to provide more fulsome submissions on the *Charter*”. The BCGEU has expended considerable effort to make its submissions comprehensive because of the importance which it accords to this matter. The government has now had two opportunities to provide you with the information it considers relevant, including an opportunity to reply to the specific assertions in our submissions. Not only would it be perfectly fair for you to rely on our submissions in these circumstances, but it would be patently unfair for the government to insist on additional opportunities to provide further reply depending on the nature of your findings.

With respect to the question of jurisdiction, as set out in our original submissions, a Canadian company may be vulnerable to a USA PATRIOT Act order in numerous ways. It may that the US courts will assert direct jurisdiction over the Canadian company or an employee in Canada or it may be that a U.S. court's jurisdiction over a U.S. affiliate leads to disclosure of information held by the Canadian subsidiary.

Finally, the scope of the term "tangible things" appears to be quite broad. At a hearing convened by the House Judiciary Committee on June 5, 2003, Attorney General Ashcroft stated that Section 215 could be used to obtain computer files and genetic information. (A partial transcript of the hearing is available on pages 6-7 as reported: www.aclu.org/Files/OpenFile.cfm?id=13098.)

The fact that there is no requirement to create a tangible thing is of little relevance. The FBI can demand information simply by demanding that a corporation turn over the hard drive (or CD, or floppy disk, or paper file, or server) on which the information is stored.