

THE CASE AGAINST CANADA'S PRIVACY ACT COVERING FEDERALLY REGULATED COMPANIES

The main difference between Canadian and European data protection legislation is that the Canadian Privacy Act covers only the federal government while European laws cover both the public and private sectors. Governments of countries currently considering legislation, such as Japan, New Zealand and Hong Kong, are evaluating both models. A further issue is whether data protection legislation should extend to some or all state owned enterprises, and whether it should be extended to the 25,000 state regulated organizations, like banks.

This question is relevant only where a data protection law is restricted to government agencies. Where a law covers both public and private sectors, then it extends automatically to state regulated organizations also.

The argument in favour of extending a data protection law to state-regulated organizations is that by doing so, a government shows that it supports the principles of data protection to all organizations over which it has direct supervision. If a policy is correct, like non-discrimination against minorities, then it should be implemented in every organization where the state has control or influence. The argument against is based on a belief that self-regulation should be given a chance to work first and, second, it would require more staff and financial resources than would be available.

John Grace, the Privacy Commissioner, in his annual report published in the summer, explains why he is against extending the Privacy Act to the federally regulated sector:

"A broadening of the Privacy's Act universe beyond government would, of course, be justified by demonstrable and endemic abuses of privacy....The possibilities of violation are enormous and such nervousness is entirely prudent. Yet, while the dangers are real, the heavy hand of regulation should only be imposed if the private sector does not voluntarily take steps to address them." In particular, he calls upon companies to scrupulously adhere to the data protection principles in the OECD Guidelines.

"Banks and their credit card associates, for example, have recognized that a high standard of privacy protection is simply basic good business. Thus, along with other businesses, they are developing, albeit slowly, their own codes of fair information practice. Privacy codes have also been adopted by the cable television, direct marketing and information processing industries."

"In another business sector, at the initiative of the Canadian Radio-Television and Telecommunications Commission, privacy protection provisions have been written into new telephone company regulations. The CRTC's action provides a model for other regulators....."

"The general principles enunciated in broadly-applied legislation may not well serve diverse groups. For example, it is highly doubtful that the Privacy Act..can be an effective code of fair information practice at the same time for, not only video stores, but the direct mail industry, credit bureaux and cable television."