

## CANADA'S NEW PRIVACY INITIATIVES TO STRENGTHEN INDIVIDUALS' RIGHTS

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*Canada has a much higher profile for its approach to privacy than the USA (PL&B October '90 p.11 and July '91 p.19). Canada has a comprehensive federal public sector law and a federal Privacy Commissioner to give advice on its implementation. Ontario and Québec have public sector provincial laws and Privacy Commissioners also. Other provinces are due to follow. Canada has been represented at the Annual Conferences of Data Protection Commissioners and even acted as host in 1980 (Ottawa) and in 1987 (Québec), while the USA had a government representative present for the first time this year. Professor David Flaherty of the University of Western Ontario surveys recent developments in Canada to strengthen individuals' privacy rights.*

### The Canadian model

The Canadian model of data protection features primarily advisory rather than regulatory power in the hands of the data protection authorities. Only the public sector is subject to such regulation. No registration schemes for personal information systems are in place as in the UK, French, and Swedish models. However, manual data is covered by Canadian federal and provincial legislation (which only exists for Ontario and Quebec). The presence of data protection authorities does ensure systemic data protection efforts.

### New Commissioners

The main events of the last year in Canadian data protection featured major personnel changes; a very important area because of the need for leadership to make privacy protection effective. After a long political controversy in the House of Commons and the Senate, journalist Bruce Phillips was named the Privacy Commissioner of Canada early in 1991. He had been the press attaché for Prime

Minister Brian Mulroney in the 1988 election. The opposition in Parliament believed that it was inappropriate for someone so close to the Prime Minister to be appointed an independent officer of Parliament.

Late in 1990 Paul André Comeau, also a former journalist, was appointed the new Président of the Québec Commission d'Accès à l'Information, which is the supervisory authority for access to government information and data protection. In the spring of 1991 the Ontario legislature approved the appointment of Tom Wright, a lawyer and the former Assistant Information Commissioner, as the second Information and Privacy Commissioner/Ontario. The search featured a three-person committee of the legislature screening and interviewing candidates.

### Ontario Health Card Act

An unfortunate development in Ontario privacy protection featured the rise and fall of the Honourable Evelyn Gigantes as Ontario Minister of Health. In the spring of 1990 the Ontario Health Ministry introduced new Ontario Health Cards for health insurance purposes. These were cradle-to-grave unique personal identification numbers. Privacy advocates were concerned that the government did not introduce any restrictions on the use of such numbers for non-health related purposes. After the New Democratic Party came to power in the summer of 1991, the Ministry of Health, under the new leadership of Gigantes, introduced and passed an Ontario Health Card Act, which prohibits use of the health numbers for non health-related purposes.

Early in 1991, in an ironic twist, Gigantes resigned as Minister after she inadvertently revealed the name of an individual Ontario resident, who had cost the provincial health insurance scheme considerable sums of money for drug treatment in health clinics in the United States. CBC-TV had run the story without revealing the name. For this breach of confidentiality, the Minister chose to resign.

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### **British Columbia Bill**

The current government of the province of British Columbia has just proposed an Access to Information and Protection of Privacy Act for the province. Since an election must be held this fall, it seems unlikely that much progress will be made on the bill in 1991.

### **EC draft directive as catalyst**

There has been only minimal discussion in Canada of the European Community's Draft Directive on Data Protection, even though privacy advocates tend to regard it as a useful weapon to encourage at least self-regulation by the private sector. Some minor progress is occurring with the development of privacy codes by the Canadian Bankers Association and a major telephone company. The Quebec civil code has also been amended to grant strong privacy rights to residents of that province. But data protection in the Canadian private sector is woefully inadequate by British standards.

### **Privacy issues**

Privacy items in the Canadian media in the last twelve months have included smart cards, grocery debit cards, the interception of cellular

phone calls, call screening (caller-ID) devices on telephones, compulsory drug testing, random drug testing, direct marketing, genetic screening and junk mail.

### **A constitutional right of privacy**

The Supreme Court of Canada is gradually developing a constitutional right of privacy (against the government only) under the Canadian Charter of Rights and Freedoms of 1982. This offers Canadians another weapon for the articulation of claims to personal privacy.

### **Self-regulation inadequate**

Privacy advocates now believe that federal privacy legislation should be at least extended to the federally-regulated private sector, since self-regulation has achieved so few results in the last decade.

**This report by Professor David H. Flaherty, University of Western Ontario, Canada is an edited version of his presentation at July's *Privacy Laws & Business 4th Annual Conference* in Cambridge. Professor Flaherty is the author of *Protecting Privacy in Surveillance Societies* (PL&B no.12 p.29).**