

CANADIAN INITIATIVES AIM TO CLOSE PRIVACY LOOPHOLES

The Canadian Privacy Commissioner's Annual Report 1991 - 1992 reveals promising initiatives, particularly regarding federal legislation; the formation of a committee, jointly with the Canadian Standards Authority, to create a model privacy code; genetic testing; and data matching.

Federal legislation

Canadians' privacy interests have been recognized in amendments to two major pieces of federal legislation.

1. **The revised Bank Act** and associated statutes which gives the government authority to make regulations on personal information exchanges in the context of a liberalized regime permitting the cross-ownership of banks, insurance and trust companies. The Privacy Commissioner, Bruce Phillips, appeared before the Senate Banking committee in April and urged the government to make regulations which give individuals rights over the way that data on them is shared and exchanged by different organizations.
2. **The proposed Telecommunications Act**, which includes as a policy objective ... "to respond to the economic and social requirements of users of telecommunications services, including the protection of the privacy of individuals..." The bill also permits the government to ban unsolicited telephone and fax marketing.

Formation of a model privacy code

After publication of the Privacy Commissioner's previous annual report, the Canadian Standards Association (CSA), an organisation whose primary responsibility is to ensure the safety and reliability of products marketed in Canada, contacted the Commissioner's office and proposed the

formation of a committee to develop a model privacy code. This would serve as a minimum national standard for private sector organisations handling personal information. The CSA code's committee (of which the Privacy Commissioner's office is a member) drafted a proposal and has already received indications of interest and funding from AMEX, Readers' Digest, Bell Canada, Equifax and the federal departments of Consumer and Corporate Affairs and Communications.

Genetic Testing

Advances in genetic technology could reveal deep secrets about individuals' physical and psychological being - secrets they may not want others to know, or may not want to know themselves. In the light of this, the office completed its report, *Genetic Testing and Privacy*, the third in a trilogy on biomedical testing, and published it in May 1992. The 111 page report urged government to adopt a much more specific legal protection for genetic information because the federal *Privacy Act* was "simply not up to the job." The report includes a simplified description of genetic testing, gives broad privacy principles for testing, examines how the *Privacy Act* regulates federal government testing and examines the need to regulate the private sector.

Prominent recommendations of the report were:

1. Every person should have a reasonable expectation of genetic privacy;
2. Governments should collect personal genetic information only if specific statutory authority permits;
3. Neither government nor the private sector should compel persons to learn their genetic traits or disorders;
4. Employers should not require genetic testing in employment, whether to identify undesirable genetic traits in employees or applicants, or to identify genetic changes due to workplace exposures; only true voluntary testing would be allowed;

5. Service or benefit providers should not be permitted to use mandatory genetic testing to determine a person's eligibility for services or benefits;
6. Governments should not collect personal genetic information relating to the reproductive process;
7. Governments should not collect personal genetic information relating to ordinary medical care;
8. Governments should restrict forensic DNA analysis in criminal investigations to identifying offenders or exonerating suspects;
9. Governments should not establish personally identifiable genetic databases or banks of genetic materials from the general population for the purpose of crime control.

Data Matching

This year the Commissioner became wary when only one of the 150 federal agencies acknowledged the fact that they began new matches of discrete sets of files. It was known that computer data matching was common in government especially with social programs, law enforcements, intelligence operations and the criminal justice system. The Commissioner began to question whether government staff were able to recognise a data match or whether they were unaware of the policy. The data matching policy restricts linkages between computer data bases that could produce detailed dossiers on individuals. It also requires federal agencies to submit matching proposals to the Commissioner 60 days in advance. In response, the Commissioner would then assess the match against a set of criteria and act as an advocate for the subjects of the files.

The Commissioner urged the Treasury Board to investigate why data matching was not "happening." Also, he added data matching to his list of audit criteria.

Telecommunications

The Commissioner's 1989-1990 report expressed concerns about Bell Canada's new

Call Management Services (CMS) and Caller ID. Since that time, the CRTC has approved Bell Canada's service, and similar ones have become available from most telephone companies. CMS varies from one phone company to another. Some companies allow callers to block the number display for all callers on their lines (or just selected calls) but at a cost. Some charge nothing to block. Others offered encryption which scrambles the number; however, nearly all companies offer a solution for women's shelters.

One recent (CMS) decision came from the Manitoba Public Utilities Board. The board approved Manitoba Telephone system's application for a trial run, providing that all subscribers benefitted from free call blocking. The Board demanded free line blocking for shelters and individual victims of abuse; however, the Board did not approve Call Return - the option which traps the numbers of unanswered incoming calls and displays them later on command. Also the CRTC's made a recent announcement that phone companies under its jurisdiction must offer free per-call blocking.

Social Insurance Number (SIN)

This year a Prince Edward Island couple refused to apply for a SIN for their newborn baby, arguing that requiring the baby to have a SIN offends several provisions of the *Canadian Charter of Rights and Freedoms*. Because SINs were created for unemployment insurance and the Canada Pension Plan, the Commissioner asked Employment and Immigration to identify a direct relationship between assigning SIN's for birth registration and Employment and Immigration Canada (EIC) programs.

The Automated Telephone Answering Service

There was a privacy flaw described in last year's report regarding the EIC's automated telephone inquiry system being tested in Quebec City. The system allowed callers with touch-tone telephones to call into a computer in order to get information about their own

unemployment insurance claims. Callers used their Social Insurance Number and birthdate to identify themselves. The Commissioner was concerned about the lack of security of a SIN-birthdate combination but the problem was resolved when EIC systems designers were able to secure the system.

A New Police Policy

The Canadian Police Information Centre (CPIC) continued to be the target of complaints and inquiries about the collection, use, and disclosure of personal information held in its databases. Accordingly, the CPIC approved and implemented a CPIC Code of Ethics in November 1991.

There was one case during 1991-1992 which suggested that the CPIC database identified individuals as HIV positive. An informal inquiry was undertaken and the Royal Canadian Mounted Police (RCMP), which administers CPIC, explained that individual CPIC files could contain a "C" flag to indicate that the person has a contagious disease. This flag would help police locate individuals with communicable diseases who had escaped from penitentiaries or wandered from hospitals. It would also help police inform those who may have been exposed to disease.

After seeking a legal opinion on identifying HIV/AIDS carriers, the CPIC introduced a

policy to forbid identification of carriers unless they had either threatened to transmit the condition using physical violence or had willingly spread the disease.

Fine-tuning the Act

The *Privacy Act* has been part of the landscape for nine years and has received high marks from Phillips; however, there were some specific amendments that needed consideration:

1. Redefining "personal information" - expanding the Act's definition to include biological samples such as blood, urine and body tissue;
2. Tightening up disclosures - permitting only the head of federal agencies to authorize selected disclosures of personal information without consent; and
3. Broadening the injury test - ensuring that most exemptions could be justified on grounds of causing injury to the individual.

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