

Canada's Federal Private Sector DP Law Now in Force

Report by Eugene Oscapella

CANADA'S PERSONAL INFORMATION Protection and Electronic Documents Act entered into force on January 1st 2001. The Act introduces fair information practices in the processing of personal information in the federally regulated private sector.

The Act will eventually extend to provincially regulated private sector activities as well, unless provinces enact substantially similar legislation. The Act is the second piece of legislation extending data protection to the private sector in Canada, the first being the *Act Respecting the Protection of Personal Information in the Private Sector*, enacted in the province of Quebec in 1993 (PL&B Dec '93 p.6).

Organisations covered by the Act must obtain an individual's consent when they collect, use or disclose the individual's personal information. The individual has a right to access personal information held by an organisation and to challenge its accuracy, if need be. Personal information can be used only for the purposes for which it was collected. If an organisation contemplates new uses, it must obtain consent again. Individuals should also be assured that specific safeguards will protect their information, including measures such as locked cabinets, computer passwords or encryption.

THE FIRST STAGE – FEDERALLY REGULATED

The Act comes into effect in three stages. As of January 1st 2001 the Act applies to personal information (except personal health information) that is collected, used or disclosed in the course of commercial activities by federal works, undertakings and businesses. This includes, but is not limited to, federally regulated organisations

such as banks, telecommunications and transportation companies.

“Commercial activity” is defined as “any particular transaction, act, or conduct, or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fund-raising lists”.

As of January 1st 2000 the Act also applies to personal data that these organisations collect, use or disclose about their employees.

In addition, as of January 1st the Act applies to disclosures of personal information for profit across provincial or national borders by organisations such as credit reporting agencies or organisations that lease, sell or exchange mailing lists or other personal information.

THE SECOND STAGE – HEALTH INFORMATION

As of January 1st 2002 the Act extends to personal health information for the organisations and activities covered in the first stage. Personal health information is defined as information about an individual's mental or physical health, including information concerning health services provided, and information about tests and examinations.

THE THIRD STAGE – UNREGULATED COMMERCIAL ACTIVITY

Finally, by January 1st 2004 the Act will extend to the collection, use or

disclosure of personal information in the course of any commercial activity within a province. However, the federal government may exempt organisations and/or activities in provinces that have adopted substantially similar privacy legislation. The Act will also apply to all personal information in all inter-provincial and international transactions by all organisations subject to the Act during their commercial activities.

Quebec is the only province that currently has legislation dealing with personal information in the private sector. The federal government has stated that this legislation meets the “substantially similar” test, and that organisations and activities subject to the Quebec legislation will be exempted from the federal act for intra-provincial matters.

Other provinces and territories are considering private sector legislation (see proposed Ontario legislation p.4) that would meet the substantially similar test of the federal Act.

ROLE OF THE PRIVACY COMMISSIONER OF CANADA

The Act makes the Privacy Commissioner responsible for ensuring compliance with the Act and for promoting its purposes. The Commissioner has five main ways of ensuring that organisations subject to the Act adhere to its principles:

1. investigating complaints

2. mediating and conciliating complaints
3. auditing personal information management practices
4. publicly reporting abuses and
5. seeking remedies in court.

The Privacy Commissioner has no powers of enforcement. As an ombudsman, the Commissioner seeks to take a cooperative and conciliatory approach to investigations whenever possible.

He encourages the resolution of complaints through negotiation and persuasion. Alternative dispute resolution methods such as mediation and conciliation may be used to settle matters at any stage of the investigation process. Although the Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence, these means are likely to be used only if voluntary cooperation is not forthcoming.



*For further information about the Personal Information Protection and Electronic Documents Act, visit the website of the Privacy Commissioner of Canada:
http://www.privcom.gc.ca/english/02_06_06_e.htm.
 See also PL&B July 00 pp. 3-5.*

Ontario Considers Private Sector Data Protection Legislation

Ontario, Canada's most populous province, may soon see the introduction of provincial private sector data protection legislation.

Ontario's Ministry of Consumer and Commercial Relations is proposing to develop an Ontario Privacy Act, which – if passed – would enhance an individual's ability to control whether and how information about them is collected, used and disclosed. In July 2000 the Ministry released a consultation paper on the proposed law, and invited responses by mid-September.

In her response, Ontario's Access to Information and Privacy Commissioner, Dr. Ann Cavoukian, applauded the Government's public commitment to the timely introduction of privacy legislation. She called the consultation paper "an important first step in ensuring that existing privacy protections are extended beyond the public sector and that the province is in a position to meet the challenges of the new digital economy."

Dr. Cavoukian commended the general approach suggested in the consultation paper. The paper would see legislation

providing rules for comprehensive and seamless privacy protection for all individuals, organisations and activities in the province that are not currently covered by provincial public sector or federal privacy legislation. She supported basing the policies of the legislation on the Canadian Standards Association Model Code for the Protection of Personal Information (CSA Code). The CSA Code also forms the backbone of the federal Personal Information Protection and Electronic Documents Act, appearing as a schedule to that Act.

The consultation paper can be found at http://www.ccr.gov.on.ca/mccr/english/2766_b1a.htm, and details about the response of Dr. Cavoukian can be found at <http://www.ipc.on.ca/english/pubpres/reports/ccrlet00.htm>