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# IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER

## Tribunal Services integrated

THE IPC RECENTLY COMPLETED A COMPREHENSIVE review of our access to information appeals and privacy complaint programs. Our goal was to retain those parts that were working well, while looking for creative ways of improving others.

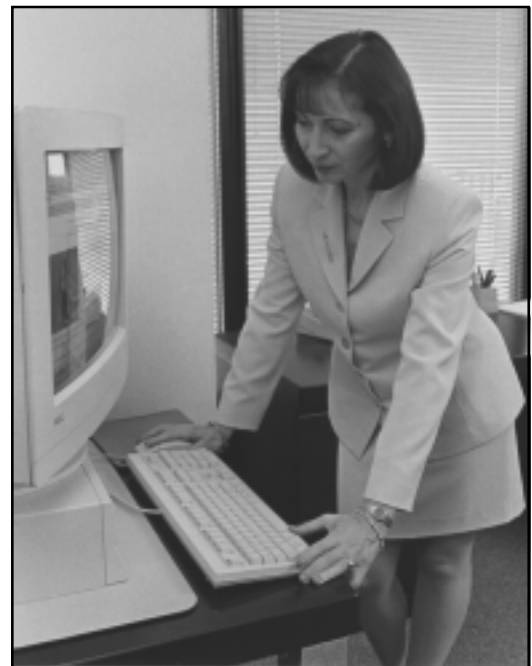
On May 1, we began implementing the first phase of our organizational and process redesign. We recognize that any effective program must be dynamic and flexible, and ours will continue to evolve and change as needed.

Some of the most noteworthy changes are:

- merger of the appeals and privacy complaint departments into one integrated Tribunal Services Department;
- dedicated provincial and municipal teams of Mediators who will handle both appeals and complaints;
- creation of an expanded Registrar function and a new Intake Team that will resolve straightforward cases informally, and “screen” and “stream” others into the most appropriate process;
- clearly defined job responsibilities and new job titles that reflect new job functions: Case Review Analyst, Mediator, Adjudicator;
- simple, understandable and accessible written materials;
- increased flexibility within the adjudication process.

Our new system will enable straightforward cases to be handled in a summary fashion, while at the same time giving more complex cases enough time and resources to encourage settlement. We expect that a greater proportion of cases will be settled through mediation — clearly the preferred method for all tribunals. As envisioned, fewer cases will proceed to formal adjudication, thereby reducing resource pressures for everyone.

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Commissioner Ann Cavoukian checks the redesigned IPC Web site. See page 3.



## Authority set out in the Act

*FROM TIME TO TIME, THE INFORMATION AND PRIVACY Commissioner is asked about her authority to conduct research and offer comment.*

The Information and Privacy Commissioner/Ontario has the express authority under Section 59 of Ontario's *Freedom of Information and Protection of Privacy Act* to engage in or commission research and offer comment on the privacy protection implications of proposed legislation and government programs. The Commissioner also has the authority, after hearing from the head of a government institution, to order the institution to cease collection practices and destroy collections of personal information that contravene the Act.

Government institutions consult with the IPC in the development of new programs and/or proposed legislation. As a program proceeds towards implementation, the Commissioner provides comment and assists the government institution in taking steps to incorporate appropriate privacy protections. The provision of this kind of assistance does not interfere with the Commissioner's adjudicative role, nor with the

exercise of her discretion, as the Commissioner's decisions under the Act are based upon the actual operational circumstances of each case.

The Courts have recognized with approval the important function that prospective guidelines can serve in the administrative and regulatory setting. In *Ainsley Financial Corp. v. Ontario Securities Commission* (1995), 21 O.R. (3d) 104, the Ontario Court of Appeal commented on the authority of regulatory tribunals generally, and securities commissions in particular, to provide prospective statements of policy and principle intended to guide the conduct of those subject to regulation (at pp. 108–109):

The authority of a regulator, like the Commission, to issue non-binding statements or guidelines intended to inform and guide those subject to regulation is well established in Canada. The jurisprudence clearly recognizes that regulators may, as a matter of sound administrative practice, *and without any specific statutory authority for doing so*, issue guidelines and other non-binding instruments. [emphasis added]

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**Tribunal  
Services  
integrated**

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Our experience has shown that mediation is the most effective method of dispute resolution. It provides an opportunity for parties to explain their respective positions and work together to arrive at a resolution. Our staff of Mediators will assist the parties by communicating, clarifying issues, pinpointing areas where agreement can be reached, and negotiating those agreements. Mediation is invariably faster than more formal methods of dispute resolution, less costly, and certainly less adversarial. One of our key goals is to ensure that we make optimum use of mediation opportunities.

The creation of our new Tribunal Services Department is a key component of the IPC's commitment to making a positive contribution to access and privacy rights in Ontario. Although we will never compromise our independent

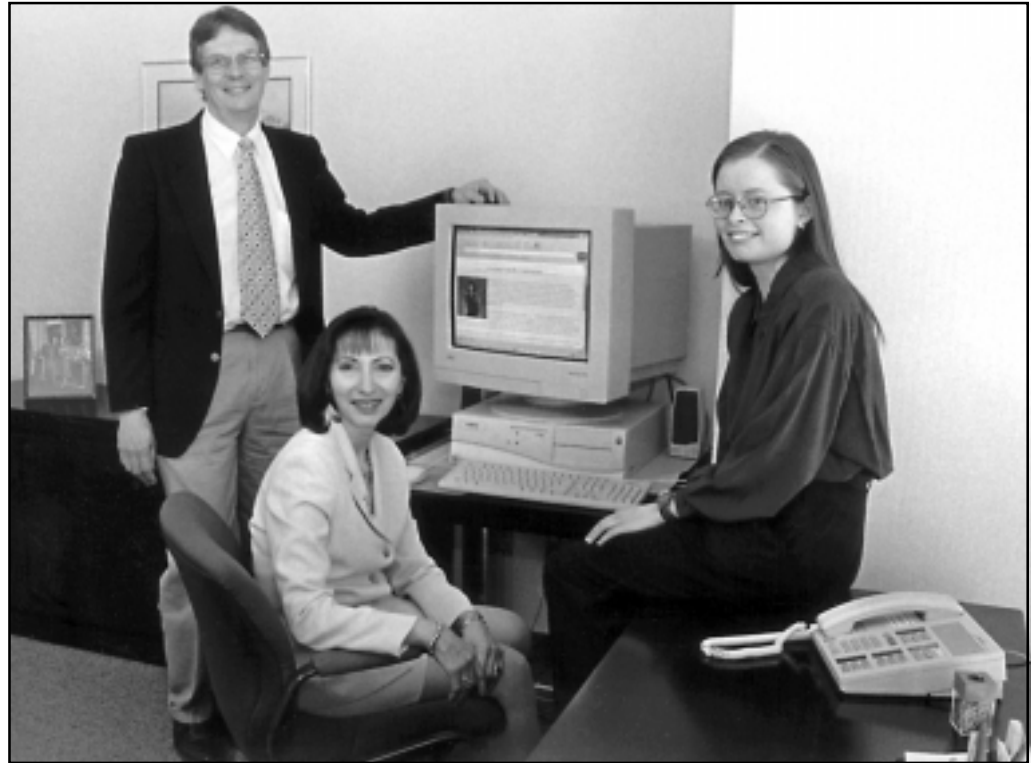
oversight responsibilities, we are committed to working constructively with our appellants, privacy complainants, and government clients to ensure that our processes are responsive to the public's needs and expectations.

As Commissioner Ann Cavoukian emphasized in a recent letter, "Our commitment is to provide excellent service to the public, striking the proper balance between quality, timeliness, fairness, flexibility and client responsiveness."

"We have a big challenge in front of us, but we at the IPC are approaching this new era of our operations with enthusiasm and dedication," said the Commissioner just prior to the May 1 implementation of the first phase. "We look forward to working with others in the upcoming months as we take these next important steps in the evolution of access and privacy rights in Ontario."



The IPC has redesigned its Web site to make it easier for visitors to find things. From left, Webmaster David Duncan, Commissioner Ann Cavoukian, and Web site designer Jennifer Kayahara discuss the changes.



## Frames and search engine added to IPC's Web site to assist you

THE INFORMATION AND PRIVACY COMMISSION has added new tools to its Web site to make it easier for users to find the information they are looking for.

The key changes include the addition of a link bar and a search engine, the option of using a "frames" version of the site (see below), a new home page that includes a personal welcoming message from Commissioner Cavoukian, and a new section dealing with "reconsiderations." Reconsiderations refer to past IPC decisions that have been revisited for a particular reason.

One of the first changes users will notice upon loading the new IPC home page is the option to choose one of three versions: frames, no frames or French. By selecting the frames version (which most Internet browsers today can support), the

user will have a constant menu available that can be used to navigate the IPC site more efficiently. The link bar or button bar appears on the left side of all pages. You can quickly move to another section of the site simply by hitting the appropriate button.

The search engine will make it much easier to find specific files, such as a particular IPC order. You just enter the order number and the search engine will find it for you. Or, if you want to see what papers the IPC has produced on a particular topic, just enter the key words or phrases and the search engine will quickly list all files that match those words or phrases.

We hope all of you who use the IPC Web site discover that finding specific information is much easier now. We welcome your feedback.

The IPC Web site address is: [www.ipc.on.ca](http://www.ipc.on.ca).



## Your e-mail may not be private

ELECTRONIC MAIL, OR E-MAIL, MAY BE A PAPERLESS form of communication — but it can leave records all along its path. Even more than with most other mediums, privacy is not something you can take for granted with e-mail messages. People who are fully aware of the lack of privacy most e-mail systems offer can treat their messages accordingly. Here are a number of points to consider:

***A message does not disappear when it is sent.***

Some individuals treat e-mail as a screen-to-screen transmission of information. In fact, after a message is delivered, it may be printed or saved, copies may be given to third parties and the sender will have little — if any — control over how the information is subsequently retained, accessed, used or disclosed by the recipient. And, even in the sender's own system, deleting the message from one's personal files does not necessarily delete all copies of it.

***Electronic files can be readily transferred.***

Once an e-mail message is received, it can easily be forwarded electronically to any number of individuals without the consent or knowledge of the originator.

***Copies of messages are not necessarily duplicates of the original.***

Once a message is received, the recipient may alter the message before forwarding it to others.

With some e-mail systems, recipients of forwarded messages may have no indication as to whether or not the original message was changed in any way.

***Features of e-mail technology.***

You need to be aware of how your system works. For example, when you hit the *Reply* key, does the system automatically just send your response to the originator of the message or does it send your response to everyone who was copied on the original message?

***Not all e-mail systems automatically encrypt files and messages.***

While some e-mail systems encrypt messages and files automatically, many do not. It is important to note that even though you are linked to an e-mail system that provides encryption, some others are not — and when a message leaves one system, it will be decrypted.

***Use of e-mail off-site may result in the creation of records that the organization has little control over.***

Individuals using e-mail at home may make printed copies of e-mail messages and store them in unprotected personal archives. It is also possible for individuals working at one location to send information to be printed at another location. This gives the organization little, if any, control over the material.

Authority set  
out in the Act

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The Court of Appeal went on to recognize that, so long as they do not “contradict” the statute, “pre-empt the exercise of the regulator’s discretion,” or “impose mandatory requirements enforceable by sanction,” such guidelines or statements can be effective “tool[s] available to the regulator so that it can exercise its statutory authority and fulfil its regulatory mandate in a fairer, more open and efficient manner.” (See also *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at p. 596.)

“Unlike the Ontario Securities Commission in the *Ainsley Financial* case, the Information and Privacy Commissioner’s authority to offer comment on proposed government programs or legislation is expressly set out in the Act,” said Commissioner Ann Cavoukian. “This distinction makes it even more clear that the IPC’s role in offering comment and assistance in relation to this program is entirely appropriate and consistent with principles of administrative efficiency and fairness under the Act.”



# Summaries

*“Summaries” is a regular column highlighting significant orders and privacy investigations.*

## **Order M-1083**

The Halton Board of Education received a request for access to information respecting the ages of all full-time probationary teachers who were first-time hires by the Board since 1991. The Board provided the appellant with a fee estimate of \$225 to search for and prepare the information.

The appellant provided a copy of a response he received from a different Board of Education — releasing precisely the same information he had requested from the Halton Board — where the only fee charged was the standard \$5 application fee. The appellant also indicated that the same information was requested from a third Board of Education and was disclosed for a fee of \$22.50.

The IPC found that the search charges described in the *Act* are available with respect to manual search activities required to locate a record. The IPC concluded that the Board’s use of the phrase “run reports from Personnel system” and the suggestion that Information Technology staff may assist in processing the request meant that the Board maintains the responsive information in some kind of electronic format. As this type of electronic search is not manual, it does not fall within section 6.3 of the Regulation. Accordingly, the Board was not entitled to charge the appellant a search fee for the time spent on this activity under section 45(1)(a).

However, the IPC found that time spent by a person running reports from the personnel system would fall within the meaning of “preparing the record for disclosure” under section 45(1)(b) and, therefore, the rate of \$7.50 per 15 minutes established under section 6.4 of the Regulation may be charged. It was noted, however, that the Board was only entitled to charge for the amount of time spent by any person on activities required to generate the reports. No charge

could be assessed for computer time, printing the information or for the use of any other material or equipment involved in the process of generating the record.

## **Order P-1532**

In this order, the IPC found that a journal maintained by a senior employee of an institution was not under the custody and control of the institution. The journal contained both personal and work-related entries.

The requester sought access to records relating to a specific waste disposal site, including notes, journal entries and records of conversations documented by three named Ministry employees. The Ministry granted access to the notes of two of the named employees and stated that no records existed for the third employee. The Ministry made representations on the issue of the reasonableness of its search for records responsive to the request. As part of its submissions, the Ministry included a memorandum of explanation from the third employee. The employee stated that he maintained a daily journal at home in which he recorded daytime work-related as well as personal activities. The Ministry and the employee were asked to make representations on the issue of the Ministry’s custody and control of the journal.

In making the determination, the IPC inquiry officer considered the factors listed in *Order 120*. In that order, then-Commissioner Sydney B. Linden commented that “it is necessary to consider all aspects of the creation, maintenance and use of the particular record.”

The inquiry officer examined the primary objective underlying the “creation, maintenance and use” of the record and concluded that it was for the purpose of recording the employee’s personal history and thus was not under the custody or control of the institution.





# Anonymity on the 407

AN ELECTRONIC TRANSPONDER SYSTEM THAT enables drivers to use the 407 Express Toll Route anonymously has been developed through four years of collaboration between the IPC and the Ontario Transportation Capital Corporation (OTCC). Implemented in January 1998, this system allows drivers to use the electronic toll highway — which relies on electronic surveillance for billing — without having to surrender any of their privacy.

A transponder is a small electronic device, about the size of a garage door opener, which attaches to the interior of the front windshield, behind the rear-view mirror. When the vehicle passes under an overhead electronic sensor on a 407 on-ramp, the sensor reads the electronic signal the transponder emits and logs the car onto the system. When leaving the highway, the transponder is read by another overhead electronic sensor. The distance travelled and time of day (it is more expensive to use the express toll route during rush hour) determines the highway toll.

Prepayment and cash deposits are the tools that make this system work anonymously since personal information only needs to be collected for billing purposes. Individuals can set up an anonymous account where no personal information needs to be provided to the OTCC — not even one's name. A security deposit is given for the transponder (required for all accounts) and a prepayment is made, from which usage charges may be deducted. All toll charges incurred and prepayments made are referenced through this account number, resulting in total anonymity for the driver.

Also, in March of this year, the Compliance Department of the IPC visited the OTCC Operations Centre and reviewed the rear-plate recognition system (used for billing vehicles that do not carry transponders). Based on our review and our discussions with staff, the IPC does not have any privacy or security concerns with the way that the OTCC collects, uses, or stores the personal information it collects from the MTO Vehicle Database to support the billing system as it relates to the rear-plate recognition system.

## Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

**Q.** *I would like to have an unlisted telephone number, but have been told that it could cost up to \$5 more per month. Is this true?*

**A.** In the past, monthly rates for unlisted telephone numbers in Canada ranged from \$1.55 to \$5.75. This fee sometimes included free per call blocking upon request, or automatic free per call blocking. In a recent decision, the CRTC

found that because of increasing privacy concerns, it would be appropriate for telephone companies to provide the unlisted number service at a rate that does not exceed \$2 per month for residential subscribers. For more information on this issue, please refer to Telecom Decision CRTC 98-109 — Rates for Unlisted Number Service and Related Issues.

### IPC PERSPECTIVES

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