



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

News Release

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## Ontario Court of Appeal Strikes Down Oshawa City By-Law Requiring Used-Goods Stores to Collect Personal Information

Yesterday, the Ontario Court of Appeal struck down a City of Oshawa by-law requiring used-goods retailers to collect extensive and sensitive personal information from all customers seeking to sell their goods.

Commissioner Cavoukian considers the Court's decision to be a victory for the privacy rights of Ontarians while allowing public institutions to collect personal information as long as it is truly necessary.

The effect of the by-law was to facilitate the collection and electronic recording of detailed, identifying information about persons including their photograph and details of three pieces of identification as well as the time of their visit to the store and the nature of the goods offered for sale. This information was then to be transmitted and stored in a police database and available for use and transmission by the police without any restriction or judicial oversight.

The Court was particularly concerned about the following:

“The wholesale transmission to the police of a significant amount of personal information about individuals;”

The transmission was to occur without any grounds to suspect “that the goods that were sold to the second-hand dealer were stolen;”

There was “no limit as to its [personal information] use by the police or by those [with] whom the police may share the information.”

The Court agreed with Commissioner Cavoukian that in the absence of express statutory authority, municipalities must not collect personal information unless they can satisfy a strict “necessity test:”

In order to meet the necessity condition, the institution must show that each item or class of personal information that is to be collected is necessary to properly administer the lawfully authorized activity. Consequently, where the personal information would merely be helpful to the activity, it is not “necessary” within the meaning of the *Act*. Similarly, where the purpose can be accomplished another way, the institution is obliged to choose the other route.



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Commissioner Cavoukian intervened on the appeal as friend of the Court but took no position on the specific question to be decided by the Court. Instead, the Commissioner provided the Court her expertise on privacy legislation, case law and jurisprudence on privacy issues, and her interpretation of the necessity test.

Having endorsed the Commissioner's approach to interpreting the necessity test, the Ontario Court of Appeal ruled that:

The city has not demonstrated that the impugned provisions of the new by-law that mandate the collection and electronic transmission to police of detailed personal information about vendors of second-hand goods, is necessary for an effective consumer protection regime to license second-hand dealers.

Noting that section 46(a) of *MFIPPA* allows the Commissioner to "offer comment on the privacy protection implications of proposed programs of institutions," the Court said that, "There is much merit ... for a city to make use of this provision to have any proposed new by-law vetted through a detailed examination of each provision and the necessity for it by the Commissioner at first instance, rather than by a court. The Commissioner has both the expertise and the experience in addressing these types of issues and can do so in a more efficient and cost-effective manner than a court."

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