



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

February 27, 2002

HAND DELIVERED

The Honourable Norman Sterling
Minister
Ministry of Consumer and Business Services
Eaton Tower
250 Yonge Street, 35th Floor
Toronto, Ontario
M5B 2N5

Dear Minister Sterling:

RE: Consultation Draft of the *Privacy of Personal Information Act, 2002*

I am pleased to provide you with my response to your Ministry's consultation draft of the *Privacy of Personal Information Act, 2002*. Our submission, along with this letter, will be posted to our Web site in order to permit public access.

I am very pleased to see that privacy legislation remains a top priority for this government, and want to commend you for releasing a consultation draft of the *Privacy of Personal Information Act, 2002*. I believe it is critical that the government consult with key stakeholders and the public on this important piece of legislation.

I support your efforts to develop and implement Ontario-specific privacy legislation. I have always believed Ontario should have its own legislative scheme, and am particularly pleased with the broad scope of the proposed legislation. The combining of general rules with health-specific rules for privacy protection does indeed make for a complex piece of legislation. Nonetheless, I strongly support the government in its desire to create a single comprehensive piece of privacy legislation. It is essential that both the health sector and the broader private sector are covered by privacy legislation.

I also fully support the goal of building Ontario's privacy regime on the foundation of the 10 principles of the Canadian Standards Association's *Model Code for the Protection of Personal Information*. This will help to harmonize privacy legislation across Canada.

.../2



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

Our submission follows the order of the questions posed in the consultation draft. However, I have taken this opportunity to highlight my concerns about other sections as well. While supportive of the overall objective, I believe this draft legislation needs to be improved and strengthened in a number of critical areas in order to strike the right balance between protecting individual privacy rights and the reasonable needs of organizations in Ontario. Therefore, our submission is devoted to outlining what we think are necessary changes to the draft legislation. Our comments follow four major themes:

- **Drafting Issues:** In our view, much of the complexity of the legislation is caused by problems with the drafting – difficult and ambiguous language, inconsistencies, redundancies and duplication. Perhaps the most critical issue is the need to clarify the application of express and implied consent.

As we note in our submission, this is not a trivial matter. In fact, I do not believe we can overstate the importance of your Ministry addressing these fundamental drafting problems. If individuals and organizations cannot readily understand their rights and responsibilities, the purpose of the legislation is not well-served.

- **Enhancing Consent:** I believe that the privacy protections afforded by this legislation may be effective only with the recognition of, and respect for, individuals' entitlement to provide or withhold their consent, and to be informed of how their personal information is collected, used and disclosed. Without these essential components, privacy is not possible.

While recognizing that certain situations may necessitate the collection, use or disclosure of personal information without the individual's consent, I am concerned that the exemptions to consent in the draft legislation are too broad. In our submission, we have highlighted those exemptions which we think are unreasonable and, therefore, should be removed or narrowed. We have also indicated where notice should be required, for those circumstances when consent is not appropriate or possible. This enables the individual to make informed decisions and to take action, if necessary.

- **Strengthening Oversight:** I believe it is appropriate for the Information and Privacy Commissioner to be designated the oversight body for the proposed *Privacy of Personal Information Act, 2002*. By this, you are recognizing my office's experience and expertise in this area, and minimizing the potential for confusion. Having one oversight body for all privacy legislation in Ontario provides the public and organizations with a single point of contact.

Generally, I support the scope of the powers provided for in the draft legislation, and have included a few recommendations in our submission on how to streamline the oversight and complaint process in order to make it simpler and easier for all parties involved.

However, I remain very concerned by the fact that the Commissioner cannot require an individual to give testimony. When an oversight body does not have clear authority to compel testimony as part of the evidence-gathering process, it cannot adequately assess the extent to which organizations are complying with their responsibilities. In turn, the public cannot be confident that organizations are being held accountable for their information-management practices.

- **Reducing the Scope of the Regulations:** It is my belief that, overall, the regulation provisions in the draft legislation are too broad. A number of these provisions could result in an erosion of the fundamental rights and responsibilities set out in the draft legislation and, therefore, we recommend eliminating them. In addition, there is a need for transparency and public accountability when creating exceptions to privacy protections in the legislation. To address our concerns, we recommend the addition of provisions making the entire regulation-making process much more open.

Finally, I would like to say how pleased I am with the working relationship that has developed between my office and your Ministry on this initiative. In particular, I want to acknowledge the efforts of Barry Goodwin, Policy Branch Director; Victoria Vidal-Ribas, Legal Services Director; and all of their staff who have met and worked with staff from my office over many months. I greatly appreciate the opportunity to discuss issues and provide input as the draft legislation is being developed.

Overall, I think the consultation draft of the *Privacy of Personal Information Act, 2002* is an important step forward toward enacting privacy legislation for the broader private and health sectors. My office is pleased to discuss our submission and any other issues that may arise as your Ministry proceeds with this initiative. I look forward to continued discussions between our offices as the legislation moves forward.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ann Cavoukian', written in a cursive style.

Ann Cavoukian, Ph.D.
Commissioner

Enclosure