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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian re-appointed for a second term

Dr. Ann Cavoukian has been re-appointed as Ontario's Information and Privacy Commissioner (IPC). This is the first time an IPC Commissioner has been asked to take on a full second term.

"I am honoured that I was asked to continue on as Commissioner," says Dr. Cavoukian. "We are in the midst of dramatic and profound change in the areas of privacy protection and access to government information. I appreciate the confidence that the legislature has in me to oversee these evolving areas."

Dr. Cavoukian expects that public scrutiny of privacy and access issues will grow increasing more intense over the term of her new five-year re-appointment. "In the last few years, concern over the impact of technology on the management and protection of personal privacy has grown significantly. With technological advances coming virtually on a daily basis, the complexity of the issues is also growing.

"We made great strides over my first term in addressing the risks and issues. More importantly, we worked closely with Ontario citizens, businesses and governments to ensure privacy was a given, not an afterthought. This work must continue on an on-going basis."

In the near term, the Commissioner is committed to helping ensure the smooth transition of Bill 31, the proposed *Ontario Health Information Protection Act*, across

the health care sector in the province. "The implementation of this Act must be seen as a "win-win" situation for both



Commissioner Ann Cavoukian.

patients and health-care practitioners alike," adds the Commissioner. "Privacy cannot win if it comes at the expense of effective health care. It is my goal to work with as many organizations and institutions as possible to build practical responses to the Act that do not disrupt the system."

On the freedom of information (FOI) side, the Commissioner notes while there has been a strong increase in the responsiveness of government organizations in meeting FOI requests over the last five years, much work remains. Creating a culture of openness and transparency within government is one of her key objectives.

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Recent IPC publications

The following publications and submissions, which are available on the IPC Web site, have been issued since the last edition of *IPC Perspectives*:

Fees, Fee Estimates and Fee Waivers for requests under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act Guidelines for Government Institutions. A reference tool to assist government institutions determine what, when and how to claim and calculate fees. October 2003.

Making Municipal Government More Accountable: The Need for an Open Meetings Law in Ontario. A call for legislation to make municipalities more open and transparent. October 2003.

Statement to the House of Commons Standing Committee on Citizenship and Immigration Regarding Privacy Implications of a National Identity Card and Biometric Technology. Commissioner Ann Cavoukian. November 4, 2003.

Privacy and Boards of Directors: What You Don't Know Can Hurt You. Highlights privacy as a business issue. November 2003.

Guidelines for Using Video Surveillance Cameras in Schools. To assist school boards ensure stringent

privacy controls when introducing video surveillance programs. December 2003.

Submission to the Standing Committee on General Government: Bill 31: Health Information Protection Act. Commissioner Cavoukian. January 27, 2004.

Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology. A tool to help the public understand RFIDs, focus attention on privacy and advance privacy principles needed by businesses during the design and use of this technology. February 2004.

Best Practices for Institutions in Mediating Appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act. A joint project of the IPC and the Ministry of the Attorney General. March 2004.

The Advantages of Electronically Processing Freedom of Information Requests: The MNR Experience. Produced by the Ministry of Natural Resources and the IPC. April 2004.

Incorporating Privacy into Marketing and Customer Relationship Management. A joint paper with the Canadian Marketing Association. May 2004.

Upcoming presentations

June 2. Commissioner Ann Cavoukian will give a keynote address on the Security–Privacy Paradox at the Infosecurity Canada Conference – Toronto.

June 8. Director of Policy Brian Beamish will speak on the IPC's role as the oversight body under Bill 31, the proposed *Personal Health Information Act* at an Ontario Hospital Association seminar – Ottawa.

June 9. Commissioner Ann Cavoukian will give a presentation entitled *The Privacy Imperative: Go Beyond Compliance to Competitive Advantage*, at the annual International Association of Business Communicators (IABC) 2004 International Conference – Los Angeles, California.

June 10. Commissioner Ann Cavoukian will speak at the IAPP TRUSTe Symposium *Privacy Futures* – San Francisco, California.

June 17. Commissioner Ann Cavoukian will present a keynote address to the Canadian Institute's *Meeting Your Obligations for Privacy Compliance: How to Comply with Canada's Changing Privacy Regime* conference regarding the proposed *Personal Health Information Protection Act* and the role of her office – Toronto.

July 29. Assistant Commissioner (Privacy) Ken Anderson will give a keynote address on privacy issues at the Information Management in the Public Sector Conference – Ottawa.



IPC employee wins Ombudsman award

Rookie Intake Analyst Lucy Costa may be new to the job, but since she stepped up to the plate last October, she has clearly demonstrated that she has the right stuff. In February Lucy was notified she won the Ombudsman Ontario Public Service Recognition Award for her work as a Client Services Associate at the Family Responsibility Office (FRO) of the Ministry of Community and Social Services.

She was selected by a committee chaired by Ontario Ombudsman Clare Lewis. When Lucy picked up her award on February 26, she was proudly accompanied by IPC Commissioner Ann Cavoukian and Assistant Commissioner (Access), Tom Mitchinson. “I was really pleased with the reaction I got here from (IPC Registrar) Robert Binstock, Tom and Ann,” she says, “and the support Ann and Tom provided by going with me to the Awards Presentation made me feel honoured.”

When informed about winning for the quality of public service she provides to effectively resolve complaints, she says she was in total shock. First notified by a phone call coming out of the blue, she says she only remembers hearing the word “nominated,” not thinking she had actually won. She didn’t realize she won until she got her congratulatory letter. “I was so thrilled to be recognized. I do try to go above and beyond, and it feels wonderful to be recognized for that.”

When working at FRO, Lucy always tried to put herself in the client’s shoes. “What if I were on the other end of the situation?” she wonders. “I always treated clients the way I would want to be treated myself, and that included providing explanations that I would expect as a client.”

At her former job at FRO (she is currently on a one-year secondment to the IPC) Lucy was a contact for eight Ombudsman representatives for whom she exclusively resolved clients’ complaints. One of the key criteria for the award was the delivery of exceptional responsiveness and

co-operative service during the complaint resolution process – something in which Lucy excels.

At FRO, issues involved “life-altering situations, as clients depended on getting money



Clare Lewis, Ann Cavoukian, Lucy Costa and Tom Mitchinson.

to eat and pay their bills.” The skills Lucy applied in her former position have been transported to her current role as Intake Analyst at the IPC. “I try to show empathy for my clients. I do my best to be thorough and ensure I cover all the issues an individual has and address all of their concerns. This job is so different, but I brought with me a lot of analytical and customer service skills.

I use a forensic analysis approach to break everything down, to do a forensic review of each file.” She sees the most important qualities for doing her job as “providing excellence in customer service, developing good working relationships and being an expert in what you’re doing.”

Her current goal is to educate herself about the whole IPC organization, and where her particular role fits into the big picture. “I always need to see the whole picture so my role can be put in proper context.”

With her positive attitude, high motivation and demonstrated abilities, Lucy is bound to make a big difference at the IPC. In baseball metaphor, she promises to be a real “slugger.”



Mediation success stories

Appellant’s interests addressed although institution’s access decision remains unchanged

The City of Toronto (the City) received a request for access to an Incident Report under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The Incident Report related to a fire at a local grocery store, which was responded to by City of Toronto fire service personnel. As a result of the fire, the requester sustained injuries and retained counsel.

The City granted partial access to the Incident Report and denied access to the remainder pursuant to section 14(1) of the *Act*. In particular, all references to the identification numbers of City employees were severed from the record. The requester’s counsel (now the appellant’s counsel) appealed the denial of access.

In discussions with the mediator, the appellant’s counsel advised that he required the City employees identification numbers should he need to contact them in the future. He explained that in a city the size of Toronto, a person’s name alone might not be sufficient for identification as many people have the same name. Accordingly, he anticipated that he might have difficulty issuing subpoenas or contacting the City employees for litigation purposes.

The City advised the mediator that though some City employees are assigned badge numbers, the severed identification numbers in this instance were internal personnel numbers. Accordingly, the City maintained their position that disclosure of the identification numbers would constitute an unjustified invasion of privacy.

However, in an effort to address the appellant’s counsel’s concerns, the City outlined the proper procedure the appellant’s counsel should follow to contact the City employees named in the record. In that regard, the City provided the name, address and telephone number of the employee who would be responsible for handling such a request.

Though the appellant did not gain access to the remainder of the record, the appellant’s counsel

advised that he no longer was interested in pursuing the appeal as the additional information provided in the mediation process had addressed his concern.

Providing explanations leads to resolution

The Niagara Regional Police (the Police) received a request for an arrest report from an individual who had been charged with two offences. The Police granted access to the arrest report but denied access to two entries (confidential police codes) citing section 8(1) of the *Act*.

The requester appealed the Police’s decision. It became clear during discussions with the mediator that the key issue for the appellant was not the denial of access to the police codes, but rather to have the reference to one charge in particular removed from the arrest report and/or to have the report destroyed.

The appellant argued that although the Police had charged him, at court he received a conditional discharge on one count and the other count was dropped. The appellant felt that his reputation and work prospects were affected since the charge that had been dropped was still showing on the arrest report.

During mediation, the mediator clarified with the Police the status of the appellant’s records and their record retention schedule. The Police advised that the appellant’s record is scheduled for shredding at the end of the year.

The mediator relayed the record retention information to the appellant, along with additional explanatory information provided by the police. The appellant understood that, in the circumstances of this case, the record retention schedule was not an appealable issue. Finally, in recognition of his real interest, the mediator provided the appellant with information about section 36(2) of the *Act* (the right to request correction) so that he could consider whether it might be applicable to his situation. The appellant was satisfied with the information provided by the Police and the mediator, and considered his appeal resolved.

“Mediation success stories” is a regular column highlighting several of the recent appeals that have been resolved through mediation.



Written explanation satisfies appellant's needs

Centennial College of Applied Arts and Technology (the College) received two requests from the same requester for (1) the details of the contract(s) between Centennial College and [a named foundation] regarding the Centennial College location in India and (2) the details of the operation of its facilities/location in India.

The College issued separate decision letters and denied access to the records responsive to both requests in their entirety pursuant to various subsections of section 18(1) [economic and other interests of Ontario] of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) appealed both decisions and two appeal files were opened.

The mediator contacted the College's Information and Privacy Co-ordinator to discuss the records at issue in these appeals and was advised that the agreement had still not been completed. He explained that the College is not operational in India, that the College is still negotiating the school programs, and that [the named foundation] is presently acting only as an agent to recruit students for the Centennial College campus in Canada. Accordingly, he advised that the College is continuing to rely on the exemptions cited to deny access to the records at issue in both appeals.

The mediator telephoned the appellant to provide him with this additional information. She also provided her opinion that since negotiations between the College and the foundation have not yet been completed, section 18 of the *Act* would most likely apply to exempt the information he is seeking. The appellant indicated he would be willing to settle this appeal if he received a letter from the College explaining that the campus in India is not yet operational and negotiations with [the named foundation] have not been completed.

The College accepted the appellant's proposal and provided him with a letter from its president outlining the status of its negotiations with the [named foundation]. The appellant advised that he was satisfied with the letter he received from the College and his appeals were resolved on that basis.

Having the right parties at the table leads to resolution

The Ministry of Natural Resources (the Ministry) received a request for information relating to its Special Purpose Account (SPA). Specifically, the requester sought access to "a project-by-project breakdown and the corresponding dollar amounts by district of the SPA for the last fiscal year." The Ministry issued an interim decision setting out a fee estimate of \$2,250.00 for 75 hours of search time to prepare a summary responsive to the request. The requester (now the appellant) appealed the Ministry's fee estimate.

During mediation, the appellant advised the mediator that she had previously received part of the information via e-mail from two particular districts. The appellant indicated that she would be satisfied with receiving similar information for the remaining 24 districts, and pointed out that the information should be readily available. The two sample e-mails were then forwarded to the Ministry for review.

In discussions with the Ministry, the mediator was advised that the SPA has the following three main categories of funding: project funding, support dollars and salary allocation. The Ministry noted that the sample e-mails did not contain information regarding the salary allocations and that this information would require a great deal of time to compile. The appellant subsequently confirmed that she does not wish to receive information regarding salary allocations.

During mediation, the manager for the SPA project agreed to speak directly with the appellant regarding ways to retrieve the requested information in the most cost-effective manner. Through further discussions between the mediator, the Ministry's FOI staff, the appellant and the SPA manager it became evident that, rather than having to obtain the information from each district separately, all of the requested information was readily available from a database within the Fish and Wildlife Branch. Based on this, the Ministry revised its fee to be only for photocopying costs of approximately \$7.00. The appellant was satisfied with the revised fee and the appeal was resolved.



Summaries

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

Order PO-2225 Appeal PA-020089-1 Ontario Rental Housing Tribunal

The Ontario Rental Housing Tribunal (the Tribunal) is established under the *Tenant Protection Act, 1997* (the TPA) and has exclusive jurisdiction to determine applications under the TPA. During its application proceedings, the Tribunal may require parties to pay money on account of fees, fines or costs. If an applicant owes money to the Tribunal, it may refuse to hear or discontinue their application. In order to identify individuals or corporations who owe money, the Tribunal generates two reports: The Accounts Receivable Report and the Outstanding Debt List.

The Tribunal received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information in the Accounts Receivable Reports and Outstanding Debt Lists. Specifically, the requester asked for the names and contact information of all applicants who owed money to the Tribunal, as well as the amounts owing.

The Tribunal relied on section 21, the invasion of personal privacy exemption, to deny access to the records.

During mediation, the information sought was narrowed so that the only information remaining at issue in adjudication was that related to non-corporate landlords. The key issue that the adjudicator addressed in the order was whether information about non-corporate landlords, specifically their names and the fact that they have outstanding financial obligations to the Tribunal, constitutes personal information as defined by the *Act*.

Previous orders have established a distinction between personal information and information that may relate to an individual in a business context. These orders have found that if the information is about an individual acting in a business capacity it does not fall within the scope of personal information.

In making his finding, the adjudicator posed two questions. First he asked: In what context do the names of the individuals appear? The adjudicator stated that when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena having made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate.

The adjudicator went on to explain that income and expenses incurred by a landlord are accounted for under the *Income Tax Act* and the time, effort and resources invested by an individual in this context fall within the scope of profit-motivated business activity. While he acknowledged that in some cases a landlord’s business is no more sophisticated than an individual homeowner renting out residential space, he found that, fundamentally, both a homeowner and a large corporate owner of a number of apartment buildings can be said to be operating in the same “business arena,” albeit on a different scale.

Second, the adjudicator asked: Is there something about the information at issue, even if it appears in a business context that, if disclosed, would reveal something personal about the individual? The adjudicator stated that disclosing the information would reveal that the individual: 1) is a landlord; 2) has been required by the Tribunal to pay money in respect of a fine, fee or costs; 3) has not paid the full amount owing to the Tribunal; and, 4) may be precluded from proceeding with an application under the TPA. The adjudicator found that there was nothing present in that information that would allow it to “cross over” from the business realm to the personal information realm.

Accordingly, the adjudicator concluded that the information about non-corporate landlords at issue in this appeal is “about” those individuals in a business rather than personal capacity and does not qualify as personal information as that term is defined by the *Act*.



Orders MO-1705 and MO-1706 Appeals MA-010348-2 and MA-020152-2 York Region and Peel District School Boards

The York Region District School Board (the York Board) and the Peel District School Board (the Peel Board) received requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the same appellant requesting information about cold beverage vending agreements entered into by the boards with soft drink companies.

In the York Board case, the record at issue was the successful company's proposal in response to the Board's request for proposal. The Board accepted the company's proposal but there was not, initially, a written agreement between the company and the Board.

The adjudicator found that the terms of the proposal formed the terms of an oral agreement between the company and the Board. In the Peel Board case, the records at issue were a proposal and a written agreement between the successful company and the Board.

These two orders address the interpretation of sections 10(1) (third party information) and 11(c) and (d) (economic interests of the institution). In both cases, the adjudicator found that these sections did not apply and ordered the release of the records in their entirety. The decisions are significant for a few reasons.

First, the adjudicator examines the "supplied" element of the three-part test under section 10(1) in the context of the negotiation of contractual terms. In both cases, he reinforces the IPC's stance that contractual terms that are proposed by a third party and agreed to cannot be considered to have been supplied.

Second, in his examination of the "harms" test, the adjudicator placed a lot of weight on the U.S. approach to similar cold beverage vending arrangements and a recent decision of the Information and Privacy Commissioner for British Columbia (Order 01-20). The adjudicator found no evidence that prospective bidders were deterred from sharing information in their proposals or that they had been prejudiced in any way as a result of sharing this information with competitors. In both appeals, the adjudicator found that the two companies and the Boards did not present detailed and convincing evidence of harms under section 10(1). He applied the same basic reasoning in his analysis of section 11.

Third, in the Peel Board case, the Board raised an issue regarding the standard of review of an institution's decision. The Board argued that the IPC was required to show deference to the Board's decision to apply the section 10 and 11 exemptions and that the adjudicator should reverse the Board's decision only if it is "unreasonable." The adjudicator dismissed the Board's argument and indicated that the appropriate standard of review is "correctness" and that the IPC is not required to show deference to the Board's decision.

IPC on the move

After spending the first 17 years of its existence located at 80 Bloor Street West, the IPC will pack up and move to a new home this June. "Our lease expires this summer," notes IPC Commissioner, Ann Cavoukian. "So last fall, we began exploring our options both at our current location and at other sites. We discovered there was a great deal of competition from landlords for our business and we were able to secure a far better deal at the new location."

The move is scheduled to take place over the weekend of June 5. Janet Geisberger, who is managing the move, advises the office will be open for business as usual on June 7.

As of June 7, the IPC's new address will be:

2 Bloor Street East
Suite 1400
Toronto, Ontario
M4W 1A8

Telephone numbers will not change. The IPC has changed the format for its e-mail addresses. The format is full first name followed by a dot then full last name @ipc.on.ca. For example, Janet's e-mail is now janet.geisberger@ipc.on.ca. The IPC's mail server will continue to accept the old format for a short transition period.



Much needed health privacy law to protect sensitive personal information

The introduction of the proposed *Health Information Protection Act* by the provincial government will play a critical role in helping keep the health information of Ontarians from the eyes of people who have no need to see it, says Commissioner Ann Cavoukian.

“I applaud the new government for quickly introducing health information privacy legislation. No personal information is more sensitive and in need of greater protection than health information. This bill will provide a comprehensive set of privacy protections, specifically for the health sector in Ontario.”

There have been a number of high profile health privacy breaches in recent years. The Commissioner hopes this legislation will ensure that all organizations dealing with personal health records will institute strong policies and procedures to protect privacy. “Given the sensitivity of this information, unauthorized access can be devastating – especially to someone already dealing with a major health issue. It is critical that there are specific limitations on how this information is handled.”

While protecting privacy, the bill will also ensure that personal health information will continue to be readily available to a patient’s health care team. It is the Commissioner’s hope that the implementation of consistent privacy rules across

the health sector will encourage greater public trust, and help to pave the way for much needed integration in the delivery of health care and the adoption of new technologies, such as electronic health records.

The Commissioner addressed the legislative committee reviewing the proposed Act earlier this year and emphasized the need to get moving. “Members of the public, health-care providers and other stakeholders have been waiting for the introduction of this legislation since Justice Horace Krever’s *Report of the Royal Commission on the Confidentiality of Health Information* in 1980 – 24 years ago,” she stated.

Following the committee meetings, a number of changes have been made to the legislation. This includes dropping the requirement for the Commissioner to acquire a warrant to conduct full investigations into privacy complaints. “No other jurisdiction in Canada – or any other Commissioner – is subject to this kind requirement,” notes the Commissioner. “It was in the best interests of Ontarians’ privacy that this clause was removed.”

The bill received Second Reading at Queen’s Park on April 8, 2004. It is scheduled to be considered by the Standing Committee on General Government prior to Third Reading. The new law is set to come into effect on November 1, 2004.

Cavoukian
re-appointed
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“As we have seen across all levels of government, the public holds dear its freedom of information rights. Ontario citizens won’t tolerate a government that lacks integrity and transparency in its operations. I urge the Ontario government to send a clear signal to the citizens of this province that it is committed to the FOI process. I will seek a real

culture shift to greater openness in the way our governments operate.”

Dr. Cavoukian was first appointed Commissioner in 1997 following a lengthy and exhaustive competition. She is the third person to hold the post since Ontario enacted a freedom of information and protection of privacy law in 1987.

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If you have any comments regarding this newsletter, wish to advise of a change of address, or be added to the mailing list, contact:

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