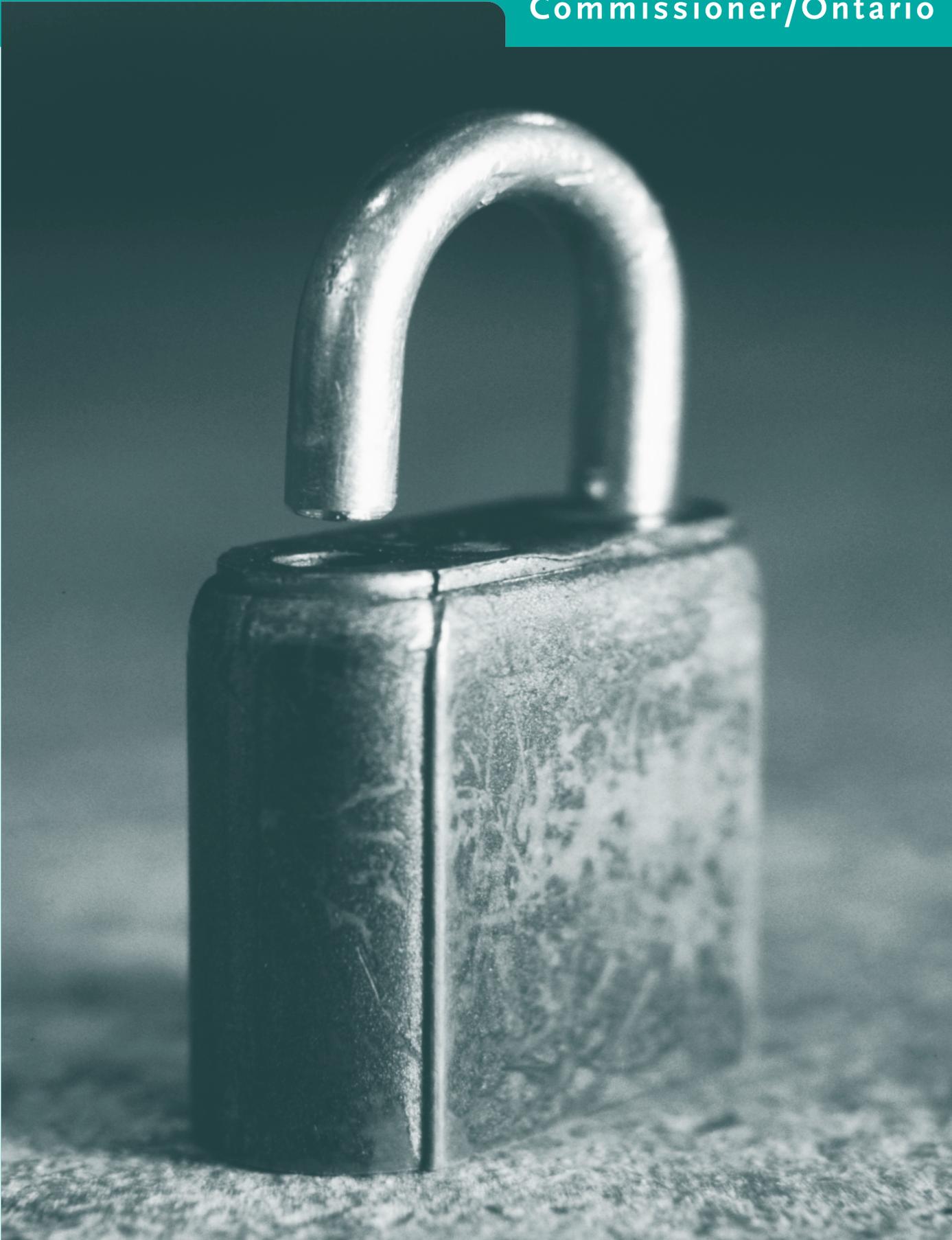




Information and Privacy  
Commissioner/Ontario



# The Purposes of the Acts

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

- a) To provide a right of access to information under the control of government organizations in accordance with the following principles:
  - information should be available to the public;
  - exemptions to the right of access should be limited and specific;
  - decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.
- b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.



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

The Honourable Chris Stockwell,  
Speaker of the Legislative Assembly

I have the honour to present the 1998 annual report of the Information and Privacy  
Commissioner/Ontario to the Legislative Assembly.

This report covers the period from January 1, 1998 to December 31, 1998.

Sincerely yours,

A handwritten signature in dark red ink, appearing to read 'Ann Cavoukian'.

Ann Cavoukian, Ph.D.  
Commissioner



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# Role and Mandate

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an Information and Privacy Commissioner as an officer of the Legislature to provide an independent review of the decisions and practices of government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario. The Commissioner is independent of the government of the day in order to ensure impartiality.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The Information and Privacy Commissioner (IPC) plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; colleges of applied arts and technology; and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to the activities of government, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information – that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect, and disclose personal data. In addition, individuals have a right to see their own personal information and are entitled to have it corrected if necessary.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has five key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government-held information;
- ensuring that government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access and privacy laws and access and privacy issues.

In accordance with the legislation, the Commissioner delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner and selected staff were given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints. Under the authority of the Commissioner, government practices were reviewed, and proposed inter-ministry computer matches commented on.

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# Commissioner's Message

The issues of access and privacy have never been more topical and relevant to people in their daily lives. The falling cost (and increasing power) of computers and telecommunications, privatization of public services, the rapid development of electronic commerce, the accelerating pace of the move from paper to electronic records, and the expansion of online government programs and services have dramatically altered the landscape with which people interact day to day. As the pace of change increases dramatically, so do the risks and opportunities that flow from it. Let me share some observations on the events of 1998, and some thoughts about the future.

## Issues

In response to an increasingly complicated world, the IPC has renewed and expanded its focus on public education and outreach initiatives. In keeping with this effort, this year's annual report highlights five key issues that are of particular interest to the IPC and, I believe, to the public at large. These issues have relevance far beyond the calendar year addressed by this report. Following a discussion of these issues, another new section — *Commissioner's Recommendations* — offers a number of concrete steps that the government could take to address them. The five issues I have chosen to highlight this year are: 1) Privacy Safeguards in the Private Sector, 2) Quality Service for Freedom of Information, 3) How Technology Can Help Protect Privacy, 4) Deference to the IPC and, 5) Access and Privacy Today.

## IPC in the Classroom

As part of an expansion of our outreach program, we launched two major initiatives in the education field in 1998. The IPC approached the Ministry of Education and Training last spring about including information on access and privacy in the civics course being developed as part of the new secondary school curriculum. We continued to provide input throughout the consultation process as curriculum guidelines were drafted. We were successful, and I am delighted to report that

all Ontario students will have the opportunity to study the area of access and privacy as part of the new, mandatory Grade 10 civics course. The new course will be introduced in the 2000-2001 school year.

The second major education initiative is one that has been a special focus of our Tribunal Services Department. *Ask an Expert* is a special speakers program aimed at students in Grades 5 and 10, when the concepts of government and civics are first introduced in the classroom. With help from curriculum specialists and classroom teachers, kits have been developed which will help teachers introduce students to the topics, and a speaker from the Tribunal Services Department will attend to round out the discussions. Our goal is to give students a basic understanding of why open government and personal privacy are important values to both themselves and to society. Having made a presentation to students at Leaside High School in the fall, I experienced first-hand the value of communicating these important messages to young adults. If they can learn about the importance of access and privacy at a young age, today's students will be more likely to ensure that these issues maintain a prominent place on the political agenda of tomorrow.

## Privacy and the Online World

With each passing year, the issue of protecting privacy online gains prominence and increased attention. A simple Web search reveals tens of thousands of refer-

ences to Web sites dealing with access and privacy matters. Newspapers and magazines are full of stories on these issues. Discussions on these topics are no longer constrained to a small, esoteric group, but have become embraced by business professionals, technologists, lawyers, and the general public alike. With the introduction of federal privacy legislation for the private sector (Bill C-54), the Government of Canada is working to expand personal privacy protections to cover commercial activities in the private sector.

Companies around the world are trying to make cyberspace “safe” and secure for electronic commerce. Other firms are devising ways for people to surf online anonymously, or at least control the release of information about themselves via an infomediary (information intermediary). Over the next few years, a range of privacy-enhancing technologies will become widely available. “Cloaking devices” will allow you to conceal your identity behind a pseudonym. Other technologies, such as intelligent software agents, will be used by people seeking to automate many of their routine tasks. These and other emerging technologies also have the potential to facilitate access to personal information, and in so doing, can both threaten and protect your privacy. The IPC will continue to monitor technological developments and comment on the good, the bad, and the ugly.

### Changes at the Commission

Our Tribunal Services Department successfully implemented a number of revisions to its processes in order to streamline operations and enhance the focus on mediation as the preferred method of dispute resolution. We also restructured what were separate policy and compliance departments, combining them into one, with responsibility to conduct research and analysis on current issues, perform compliance audits, and monitor government requests for proposals (RFPs). The Policy and Compliance Department also

works closely with our Communications Department to produce a range of publications, including policy papers and a new series of short reports called, *If you wanted to know...* A number of new outreach programs, co-ordinated by our Communications Department, have also been implemented. In addition, you now have the option of receiving all of our IPC publications electronically.

One of the ways in which the IPC stays on top of new technological developments, be it smart cards, anonymizing technologies, infomediaries, intelligent software agents, biometrics or encryption systems, is through a new program we launched in 1998 where leading technology companies are invited to give presentations and briefing sessions at the IPC. Among the companies that have already participated in this new program are IBM, Intel, KPMG, and Zero Knowledge Systems.

**With each passing year, the issue of protecting privacy online gains prominence and increased attention. A simple Web search reveals tens of thousands of references to Web sites dealing with access and privacy matters.**



### Personal Thanks

I would like to personally thank each and every member of the IPC team – we simply couldn’t do our fine work without your efforts. I would also like to extend my thanks to the Corporate Freedom of Information and Privacy Office at Management Board Secretariat, and information and privacy co-ordinators at all government organizations for their ongoing efforts to uphold the public’s rights to access to government information and protection of personal information.

# Privacy Safeguards in the Private Sector

Major steps are being taken in a number of countries to create or upgrade privacy safeguards in the private sector. Before we look at Ontario, let's go well beyond our borders.

The European Union's *Directive on the Protection of Individuals with regard to the processing of personal data and on the free movement of such data* came into force on October 25, 1998. The legislation applies to both the public and private sectors. The Directive compels each member country to establish or revise its national data protection legislation so that it is in accord with the Directive. The principal aim is to harmonize national legislation so that fundamental data protection principles are uniformly matched across the European Union (E.U.). This is being done to give effect to the second part of the Directive's objective, namely to ensure that personal data moving from member country to member country is afforded equal data protection. Such harmonization of laws will assist in the creation of a single market for the entire E.U.

In light of the E.U.'s concern for uniformity of approach to data protection, it has sought to apply this same approach to transfers of personal information outside of the E. U., to non-member countries. The Directive has adopted a standard by which to judge whether such transfers are permissible. The third country's privacy or data protection regime must be judged to be "adequate" before such transfers will be allowed under European law.

Information transfers of one kind or another are a daily occurrence in this age of globalization and information technologies. Having a country's privacy regime judged to be 'inadequate' could result in the disruption of flows of personal information, with attendant financial, trade, and economic losses.

Over the past year, a number of non-European Union countries have sought ways to ensure that their privacy regimes will be judged to be adequate. The most controversy surrounds the efforts of the U.S. government and private sector to avoid the introduction of comprehensive legislation for the private sector, and to rely on industry self-regulation as the way to meet the adequacy standard. While the E.U. has not completely ruled out a self-regulatory approach, it has asked that the U.S. proposals be considerably strengthened. It is still too early to tell what the final outcome of negotiations between the U.S. and the European Union will be. Stay tuned.

In Canada, the federal government introduced Bill C-54, *The Personal Information Protection and Electronic Documents Act*, in part as Canada's response to the European Union's Directive. Recognizing the future economic impact of electronic commerce, the government of Canada has sought to ensure that privacy considerations are embedded in the transactions that will be conducted over the World Wide Web. It has been generally recognized that without high levels of trust and privacy, this new way of doing business will not receive the full support of the general public. At the same time, since electronic commerce knows no borders, alignment of Canada's privacy regime with that of the E.U. will ensure that the flow of personal information between Canada and the countries of the European Union will remain intact.

Bill C-54 would protect the privacy of personal information which is collected, used or disclosed in the private sector, to permit business to be conducted with the federal government by electronic means and to clarify how electronic records may be used as evidence.

Upon coming into force, the Act will apply to all federally regulated businesses using or requiring personal information for commercial activities within more than one province. Three years after this date, the Act will apply to all provincially regulated businesses as well, unless the province has already enacted comparable legislation.

### Ontario's Perspective

From Ontario's perspective, defaulting to federal legislation after three years may not be in the best interests of Ontario residents. For more than a decade, Ontarians have learned how to deal with provincial privacy legislation in the public sector, and would undoubtedly find it confusing to deal with separate federal legislation covering the private sector. The Information and Privacy Commissioner/Ontario is encouraging the Ontario Government to adopt its own comparable legislation.

One of the motivating factors for such consideration is the proposed method of handling privacy complaints. The person to whom the public would complain about a contravention of Bill C-54 would be the federal Privacy Commissioner. The federal Commissioner would investigate and file a report with recommendations. The complainant, if unsatisfied, could then, with the assistance of the Commissioner, apply to the Federal court for a hearing. The Court would have power to order the organization to correct its practices and to pay damages. The federal Privacy Commissioner would also have the authority to conduct audits of an organization's practices, if the Commissioner had grounds to believe that the organization was not complying with the legislation.

To split the jurisdiction for the handling of privacy complaints between the Ontario Information and Privacy Commissioner, responsible for the Ontario *public* sector, and the federal Privacy Commissioner, who would be responsible for the provincial *private* sector, would create considerable confusion. At the same time, it would be advantageous if the Ontario Information and Privacy Commissioner developed provincial expertise in dealing with the Ontario private sector. This is particularly important given that Bill C-54 is based on the Canadian Standards Association model privacy code, an industry-accepted code that provides flexibility in implementation. It would be fair to say that the Ontario Information and Privacy Commissioner would likely be more responsive to local circumstances.

**Bill C-54 would protect the privacy of personal information which is collected, used or disclosed in the private sector, to permit business to be conducted with the federal government by electronic means and to clarify how electronic records may be used as evidence.**

Once adopted, Bill C-54 would usher in a new era in privacy protection in Canada. Existing public sector privacy legislation would be paralleled by private sector privacy legislation. Personal information, irrespective of where it was collected, used or disclosed, would be given the same protections. Such protections would go a long way towards assuring the general public that its personal information will be similarly treated whether it resides in the public or private sectors.



# Quality Service for Freedom of Information

Quality customer service in the public sector is a high priority for the Ontario government.

In a moment, we'll look at customer service as it relates to the time it takes for ministries to respond to freedom of information requests, but first, let's look at the government's commitment to quality service.

In the October 27, 1998 edition of the OPS internal newsletter, *Topical*, the government announced two initiatives as part of its "Quality Service" program.

The first involves five ministries running pilot projects to test the assumptions underlying the government's Quality Service Framework. These ministries were asked to examine all aspects of service delivery and assess how they measure up to the cornerstones of quality service – leadership, delivering customer-focussed services, streamlining processes, etc. After the six-month pilot period is completed, Quality Service plans will be developed and implemented for all ministries.

Under the second initiative, all ministries are required to develop plans for implementing Common Service Standards for telephone calls, walk-in business, mail responses, and feedback/complaint resolution. We applaud the government for its work in this area.

Quality Service is also a top priority at the IPC, and we are committed to meeting or exceeding whatever service standards are set for the OPS. In addition, our Tribunal Service Department has adopted the following statement as one of the five corporate values guiding our actions, services, decisions and work relationships: "Striving for excellence in quality of work and delivery of services." We respond promptly to our clients and are committed to timely and efficient file processing standards.

## Performance Measures

We have also developed performance measures for our appeals and privacy complaint programs to ensure that quality service is in fact being provided. Access to information is a time-sensitive issue, and the oft-quoted phrase, "access delayed is access denied," is absolutely true in many cases. Timely responses to access requests and appeals are an important component of any freedom of information scheme. In Ontario, institutions are required by law to respond to requests within 30 days, or to extend this time limit with proper notice to requesters, together with a right of appeal. Requesters are also limited by law to a 30-day period to appeal any access decision to the IPC. In short, one important component of "Quality Service" in the context of an access request is adhering to the response times laid out in the statute.

The Ontario government says that "all correspondence will be answered within 15 working days" in order to meet the Quality Service standard for the handling of mail. We support that. In light of this, surely there can be no dispute that the 30-day statutory response time for an access request must also be met as part of any "Quality Service Framework."



**We are committed to continuously improving our programs in order to deliver Quality Service to our clients, and we look forward to working with the Ontario government to ensure that freedom of information is a key component of the OPS Quality Service Framework.**

## Standard not met

Unfortunately, many provincial ministries and agencies frequently do not meet the 30-day response standard. Over the past three years, less than 50% of access requests to provincial institutions were answered within 30 days. This compares to a figure of more than 80% for municipal institutions. To be clear, not all provincial institutions are delinquent. The Ministry of Labour is a good example. It consistently ranks among the top three ministries in terms of number of requests, yet manages to respond to more than 70% within 30 days. Other high-volume ministries do not do as well, and we will be working with them to try to find out why, and to obtain their commitment to better levels of Quality Service.

There are a number of steps we think the Ontario government can take to ensure Quality Service under the freedom of information scheme. Our suggestions are included in the *Commissioner's Recommendations*.

The IPC is changing and evolving in response to an ever-changing environment. We are committed to continuously improving our programs in order to deliver Quality Service to our clients, and we look forward to working with the Ontario government to ensure that freedom of information is a key component of the OPS Quality Service Framework.

**Access to information is a time-sensitive issue, and the oft-quoted phrase, “access delayed is access denied,” is absolutely true in many cases. Timely responses to access requests and appeals are an important component of any freedom of information scheme.**



# How Technology can protect Privacy

The question always arises: Is technology a plus or minus for privacy? The answer is that it can be both. The way we communicate, the way we do business, the way we conduct all aspects of our lives is increasingly affected by technology. And, at every turn, it seems that new technologies must know more about us in order to work properly. There is no doubt we are firmly planted in the Information Age. What we now need to understand is how we can cope with a new set of rules.

First look at how we communicate. Cellular phones, both digital and analog, are everywhere. The young, the old and everyone in between uses e-mail to “talk” to each other, both down the hall or on the other side of the world. One of the not so pleasant surprises when we first started communicating electronically was that others could “overhear” our conversations. People were warned that an e-mail was as private as a postcard and that an inexpensive scanner could intercept the most private of cell phone conversations. The public’s strong reactions to these invasions of privacy shows why technology developers need to address privacy concerns as they create new tools for our use. Technology developers tend to first think about how to process information. We need them to also think about how to protect it – and many are now beginning to do just that.

Encryption is the primary way to protect communications privacy. Digital PCS (personal communications services) phone systems have greatly improved the privacy of remote phone conversations because of their encryption facilities. In fact, it was interesting to note that encrypted transmission was a feature that was prominently displayed in the promotional materials for the new phone systems which became available in the past year. Encryption is also prominent in e-mail communications. Pretty Good Privacy (PGP) has for some time allowed people to use strong encryption keys to safeguard the text of their e-mails and their e-mail attached files. Increasingly, encryption is being incorporated into standard e-mail systems as the

industry continues to move closer to a standardized communication protocol. Soon the somewhat cumbersome process of encrypting each message and each file will be completely replaced by a seamless process handled by the e-mail system.

Electronic commerce is one of the key areas where both privacy and security concerns must be addressed. Consumers have been cautious about buying over the Web because of these concerns and a number of initiatives have been undertaken to improve consumer confidence.

Several technologies are being aimed at Web security and privacy problems. The main browser providers, Netscape and Microsoft, have built the “Secure Socket Layer” protocol (SSL) into their products. This allows for secure transfer of sensitive data such as credit card numbers. Developments in the use of digital signatures have also occurred in the past year. The purpose of a digital signature, just like a written signature, is to authenticate the identity of an individual. In the case of a digital signature, a digital code provides this assurance. In Germany, legislation has been passed to legitimize the use of digital signatures, and “trust centres” are being established to certify digital signatures. In Canada, legislation has been introduced federally that will enable digital signatures to be used to do business electronically with federal institutions.

The idea of a digital wallet expands on the digital signature concept. A digital wallet normally resides on a personal computer and holds more than just the digital signature. It also holds other information, such

as shipping information, which is needed to conduct a payment transaction and which can be automatically inputted to a merchant. The protocol “Secure Electronic Transactions” (SET) is one example. Use of SET has not expanded as quickly as anticipated largely because of concerns about: the privacy of transaction-generated information, its use by merchants beyond simply fulfilling the specific transaction, and the security issues of storing sensitive information in the wallet.

One attempt to address these concerns has been the development of a privacy standard by the World Wide Web Consortium through its Platform for Privacy Preferences project (P3P). The IPC is a participant in the project as one of the invited experts asked to contribute non-technical, policy expertise. The specifications developed in this project would give Web users the ability to make informed decisions about the use of their information and maintain their control over its use. It would give Web site operators the ability to make statements about their privacy practices, thus increasing user confidence. The specification is entering the approval stage but is delayed as attempts are being made to patent certain aspects of it.

The concept of a digital wallet is not restricted to personal computers. The cards we all carry in our wallets are advancing towards becoming digital wallets. Technologies are developing rapidly and the challenge is to ensure that privacy is not only preserved, but enhanced. Unlike credit and debit cards, the smart and stored value cards that will come in the future will contain considerable information. If those cards are developed with privacy in mind, our current level of privacy will be enhanced. Stored value cards or capacitive cards can operate as anonymously as cash. And smart cards can have the information on them segregated into different partitioned areas of the card so that appropriate access and security measures can be set for each area. For areas holding the most sensitive information, a biometric technology such as voice recognition, finger scanning, facial recognition, or iris scanning could be used.

One developing technology area which will facilitate the merger of communications and business activities is Intelligent Software Agent Technologies (ISATs). ISATs are software programs that act on your behalf to complete tasks without direct input or supervision. Early versions of these agents, although not particularly intelligent, can now perform routine tasks. Rules or filters for handling e-mails are one example. The “push” agents which scour news sources and send requested information to us is another example.

As the technologies develop, the agents will need a decreasing amount of input as they “learn” their user’s preferences. They will function more like an executive assistant than like software as we know it today. Just as any executive assistant knows an incredible amount of information about his or her boss, and just as discretion in an executive assistant is key, ISATs will store information about us while guarding our privacy jealously.

To help ensure that ISATs maintain our privacy and trust, the IPC has joined once again with the Dutch Data Protection Authority in sponsoring a paper. *Intelligent Software Agents: Turning a Privacy Threat into a Privacy Protector* acknowledges that intelligent software agents have the potential to provide a valuable, much-needed service in the future. However, it emphasizes that by recognizing the threat to privacy this technology could represent, and by building privacy into the initial design, those responsible for creating these agents will maximize their ability to serve us.

The ISATs paper, released in the spring of 1999, is only one example of how the IPC is keeping pace with the latest technological developments. The IPC meets regularly with companies on the leading edges of technology to stay informed and to raise the awareness of these companies regarding access and privacy issues. To that end, a new program was launched wherein the IPC would meet on a monthly basis with leading-edge developers of privacy-enhancing technologies.

# Deference to the IPC

In a 1998 decision involving the Workers' Compensation Board (WCB), the Ontario Court of Appeal sent out an important message about the deferential treatment which it expects lower courts to show when reviewing decisions made by Ontario's Information and Privacy Commissioner dealing with the exemptions from disclosure set out in the provincial and municipal *Freedom of Information and Protection of Privacy Acts*.

In the WCB case, a consultant had sought access to the names and addresses of companies required to pay higher workers' compensation assessments because of poor accident records, along with the actual surcharge amounts in some cases. The Workers' Compensation Board denied access to the records pursuant to section 17(1) of the provincial *Act*. This exemption requires an institution to refuse to grant access to trade secrets and scientific, technical, financial, commercial or labour relations information supplied to it in confidence by a third party where disclosure could reasonably be expected to harm the third party's commercial or competitive interests.

The Commissioner overturned this decision and ordered the WCB to disclose the information on the basis that none of the records qualified under the exemptions. On an application for judicial review brought by the WCB, the Divisional Court found that the Commissioner's decision was "patently unreasonable" on several grounds, and quashed the order.

In a decision released on September 3, 1998, the Ontario Court of Appeal overturned the Divisional Court's decision. The Court of Appeal concluded that, in determining whether records fall within the exemptions, the Commissioner is applying her expertise in balancing the need for access to information and the right to protection of confidentiality. Since the legislature intended that the Commissioner should decide whether the exemptions applied, and that she should perform the role of fact-finding and weighing the contents of submissions, the Commissioner's decisions need not be "correct" in the sense that the Court would

necessarily agree with them, as long as they are not "unreasonable." Judges should therefore accord "considerable deference" to the Commissioner's decisions on whether or not the exemptions are available.

In this particular case, the Court of Appeal concluded that: (1) the Commissioner's interpretation of the third party exemption was consistent with previous orders, previous court decisions and dictionary definitions; (2) that the Commissioner acted reasonably in finding that the requested information was generated by the WCB and would not reveal information supplied in confidence by employers; and (3) that the Commissioner had acted appropriately in requiring the institution and the employers to produce "detailed and convincing" evidence that harm could reasonably be expected to flow from disclosure of the records, which they had failed to do in this case. By substituting its own view of the interpretation and application of the statute and the evidence for the Commissioner's "detailed, reasoned and logical" decision, the Divisional Court applied a wrong "correctness" standard of review when it should have deferred to the Commissioner.

The strong message sent in the WCB case is that the Commissioner's decisions on the application of the exemptions should not be interfered with by the courts unless it can be shown that the Commissioner has acted unreasonably. The Court of Appeal's decision is a welcome one as it settles contradictory court judgments on the standard of review of the Commissioner's decisions and on the quality and cogency of evidence the Commissioner may require in deciding whether or not an institution has properly refused access to a record.

# Access and Privacy Today

New legislation and other steps taken by some government organizations are beginning to erode access and privacy rights in Ontario.

The *Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1988, and the *Municipal Freedom of Information and Protection of Privacy Act*, effective January 1, 1991, established the basic rights of access to government-held information and the obligations imposed on provincial and municipal government organizations for the proper treatment of personal information in their custody and control.

However, since that time, specific exclusionary provisions, the outsourcing and privatization of some government functions, and new legislation overriding aspects of freedom of information and protection of privacy legislation are impacting on access and privacy rights of Ontarians.

## Exclusions

One primary concern of the IPC is legislation or programs that exclude information or records from the scope of the *Acts*. When this happens, access and privacy rights are compromised, and the right of review by an independent body, the IPC, is lost.

One piece of legislation that excludes records from the *Acts* is the *Labour Relations Act, 1995* (Bill 7). Its stated purpose is “to restore balance and stability to labour relations and to promote economic prosperity.” However, very broadly drafted provisions in the new law exclude many employment-related records about public sector employees, including records that do not have any bearing on labour relations. As a result, public sector employees may be precluded from obtaining access to employment-related records about themselves, and from making a privacy complaint if their personal information is improperly used or disclosed. These new provisions have been interpreted in a number of IPC orders, and records excluded from the *Acts*

have been found to include the requester’s personnel file, records relating to the requester’s retirement, records about job competitions, and harassment investigation files, among others.

This approach to information about employees is not in keeping with world-wide trends favouring fair information practices, and in particular, the protection of personal privacy. Examples of this trend include the privacy directive of the European Union, the adoption of Fair Information Practice Codes by many private sector enterprises, the recently adopted information and privacy laws in other Canadian provinces such as Alberta and Manitoba, the extension of privacy protection legislation to the private sector in the Province of Quebec, and the recent introduction of Bill C-54, the *Personal Information and Electronic Documents Act*, by the federal government, extending the application of privacy laws to the privacy sector.

## Fees

Another step that has had an impact on the number of Ontarians using access and privacy legislation was the introduction of an amended fee structure for access requests in 1996.

The government has frequently stressed the importance of user-pay, a principle which has found wide acceptance among members of the public. This approach has been applied to the *Acts* as a result of changes brought about by the *Savings and Restructuring Act, 1996* (Bill 26). A \$5 fee for each access request is now required, including requests for a person’s own personal information, and appeal fees (\$10 or \$25, depending on the type of appeal) have also been imposed. The two hours of free search time was also eliminated as part of this new fee structure.

These new fee provisions have had a dramatic impact on the public's use of the *Acts*. From 1995 (the last year before the new fees were introduced) to 1998, the number of requests declined by 25%. In the same period, appeals declined by 56%.



**The sheer size of the decrease in the number of requests and appeals compels us to question whether the new fees have gone too far, particularly the appeal filing fee.**

The IPC supports the user-pay principle, and observes that some reduction of requests and appeals may result from the elimination of questionable use of the *Acts*. As well, the IPC welcomes the increase in routine disclosure by government organizations of frequently requested information – which has also been a factor in the reduction of requests. However, the removal of certain kinds of information from the scope of the *Acts*, under legislation such as the *Labour Relations Act*, 1995 has had an impact as well. The sheer size of the decrease in the number of requests and appeals compels us to question whether the new fees have gone too far, particularly the appeal filing fee. The right of access to government information is an important accountability mechanism, and it is unfortunate that use of this avenue appears to have declined, at least in part, as a result of the new fee structure.

## **Privatization and Alternate Service Delivery**

The transfer of government enterprises to the private sector or to other independent bodies is another way that access and privacy rights can be lost or reduced. For example, under the *Energy Competition Act*, 1998, Ontario Hydro has been divided into five separate corporations. Two of these, the Ontario Electricity Generation Corporation and the Ontario Electric Services Corporation, have not been scheduled as institutions under either of the *Acts*, despite the fact that, in the past, all of Ontario Hydro has been covered. IPC Order P-1190, upheld by the Ontario Court of Appeal, illustrates why continued access to information in Ontario Hydro's possession remains important. Based on a provision of the legislation that permits the IPC to do so where it is in the public interest, the IPC ordered disclosure of records which assessed the safety of several nuclear power plants in Ontario.

The IPC met with representatives of Ontario Hydro and the Ministry of Energy, Science and Technology to discuss our concerns. The government has not agreed to make these new corporations subject to the *Acts*.

The *Safety and Consumer Statutes Administration Act*, 1996, may also reduce access and privacy rights. This law provides for supervisory or inspection functions in a number of areas, including elevators, amusement rides and gasoline handling, by independent non-profit corporations. These particular functions were previously administered directly by the government, and associated records, including inspection reports, were therefore accessible under the provincial *Act*. Now that the administration has been transferred to an independent corporation, this may no longer be the case. The important public safety issues have not changed, so why shouldn't the public continue to have access to these records? Given that these corporations will also be collecting personal information, the

preservation of privacy protection is also critically important. The IPC attempted to secure these rights when the legislation was passed, but without success.

## Protected Rights

Not all the news about the impact of new legislation on access and privacy rights is worrisome, however. The Ministry of Community and Social Services, working closely with the IPC, incorporated extensive privacy safeguards into the *Social Assistance Reform Act* in 1997. Among legislation enacted during 1998, the *Highway 407 Act, 1998*, and the *Legal Aid Services Act, 1998*, are good examples of new laws where steps were taken to protect access or privacy rights. The IPC suggested amendments to the *Highway 407 Act, 1998*, to ensure that the privacy of users of the electronically monitored highway would be protected, and also suggested that the agreement transferring the highway should require the new owner to adhere to the spirit and intent of the provincial *Act*. These suggestions were agreed to and adopted by the government. The bill was amended in committee.

The *Legal Aid Services Act, 1998*, makes fundamental changes to the way that Legal Aid is delivered in Ontario. Formerly administered by the Law Society of Upper Canada, Legal Aid will now be run by a new corporation called Legal Aid Ontario. The IPC commented on several sections that covered the collection of personal information from applicants for Legal Aid, and required lawyers to give client information to Legal Aid Ontario. Our suggestions were aimed at protecting personal privacy as well as solicitor-client privilege. The vast majority of our recommendations were adopted, and, as a result, these important rights were enhanced for all Legal Aid applicants and recipients in Ontario.

## Looking Forward

A number of recommendations by Commissioner Ann Cavoukian are included in the *Commissioner's Recommendations* section, immediately following.

**This approach to information about employees is not in keeping with global trends favouring fair information practices, and in particular, the protection of personal privacy.**

# Commissioner's Recommendations

If you use a debit or credit card, belong to a loyalty program or visit any Web sites, many of the issues reviewed in this annual report will have already touched your life.

Concerns about privacy have risen exponentially as companies are discovering more and more ways to glean competitive advantages from increasingly larger databases of personal information, compiled from day-to-day transactions and communications.

At the same time that information about individuals may be obtained more readily, Ontarians are discovering that their ability to access government records is being curtailed, either directly or as a byproduct of new legislation, the outsourcing of some programs to the private sector, and the level of resources being directed to provide answers to Ontarians.

In response to these issues and concerns, I have outlined some specific recommendations for the government to consider:

## (1) Privacy Legislation

The impending federal privacy legislation (Bill C-54), which will protect privacy and safeguard personal information collected, used or disclosed in the private sector, is a major step forward. But there is a key decision that Ontario must make. When the federal Act comes into force, it will apply to all federally regulated businesses using or requiring personal information for commercial activities within more than one province. Three years after proclamation, the Act will apply to all provincially regulated businesses as well, unless the province has already enacted comparable legislation. While my office has had considerable input into the federal legislation, if Ontario fails to bring in a provincial counterpart, I foresee needless confusion and inefficiency. For example, if Ontario does not act, jurisdiction for handling privacy complaints will be split between the Ontario Information and Privacy Commissioner, responsible for the provincial and municipal *public* sector, and the federal Privacy Commissioner, who would be responsible for the provincial *private* sector. This would create considerable confusion as to who to turn to and which office to use, potentially weakening the impact of this very important legislation.

- I recommend that Ontario introduce privacy legislation covering the private sector, harmonized with Bill C-54.

## (2) Quality Service

Quality Service standards are an important priority of the Ontario government, and include a commitment to respond to general correspondence within 15 working days. However, some Ontario ministries are consistently failing to meet the legislated 30-day response standard on access requests. To help Management Board Secretariat deliver the message that effective administration of Ontario's freedom of information and privacy program is a key government commitment, and that meeting the legislated time frames for this important public program is a must, I recommend:

- Adding a commitment to meeting the 30-day response standard for access requests within the Quality Service framework and including this commitment as part of the performance contracts for Deputy Ministers and other senior government officials;

- Recognizing the critically important role played by Freedom of Information and Privacy Co-ordinators, through appropriate levels of delegated decision-making authority, and appropriate job classification as befits the nature and responsibility of the position;
- Adequate resourcing of Co-ordinator's offices to enable Quality Service for access and privacy to be consistently achieved.

### (3) Fees

The *Savings and Restructuring Act, 1996* (Bill 26) brought in new user fees. While the IPC supports the user-pay principle, the dramatic decrease in the number of requests for information and appeals underscores the need to review the fee structure.

- I recommend that the government review the fee structure and consider lowering the appeal fee to the same level as the request fee (\$5).

### (4) Exclusions

I am very concerned about legislation or programs that exclude information from the scope of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. When this happens, access and privacy rights are compromised, and the right of review by an independent body is lost. One Act in particular has had a very significant impact, namely the *Labour Relations Act, 1995* (Bill 7). As has become abundantly clear through decisions of our agency, the scope of Bill 7 goes far beyond its stated original intent.

- I recommend that the government review the implications of Bill 7, with the intent of narrowing the scope of its impact on the provincial and municipal Acts.

### (5) Closing doors

Access and privacy rights can be lost when government enterprises are transferred to the private sector or to other independent bodies. Ontario Hydro is a prime example. Under the *Energy Competition Act, 1998*, Ontario Hydro has been divided into five separate corporations, and the two largest segments – the Ontario Electricity Generation Corporation and the Ontario Electric Services Corporation – are not covered under either of the Acts. I understand the concerns about creating a level playing field in a competitive energy sector, but Ontarians are losing access and privacy rights to the key segments of the successors to the largest utility in Canada – including the corporation that will be running all of Ontario's nuclear power plants. As Paul Webster astutely noted in a recent article in one of our leading newspapers, "By stating that commercial secrecy outweighs the public's crucial interest in transparency and accountability, the government denies an important public need." I recommend that:

- the government review its decision to leave Hydro's successor corporations outside the scope of the Acts;
- that the government formally implement a process involving ongoing consultation with the IPC on access and privacy matters, prior to finalizing privatization or alternative delivery initiatives.

**Ontarians are discovering that their ability to access government records is being curtailed, either directly or as a byproduct of new legislation, the outsourcing of some programs to the private sector, and the level of resources being directed to provide answers to the public.**



# Requests by the public

Across Ontario, nearly 20,000 requests for information were made under the *Acts* in 1998.

Provincial government organizations received 9,353 requests for information, 70 more than the previous year's 9,283. Municipal government organizations received 10,598 requests in 1998, compared to 11,295 in 1997.

Provincial and municipal government organizations file a yearly report to the IPC on their activities under the *Acts*. These reports include data on the requests received for general records, personal information, and correction of information, as well as the response by these organizations to the requests. By compiling these reports, the IPC gains a useful picture of compliance with the *Acts*.

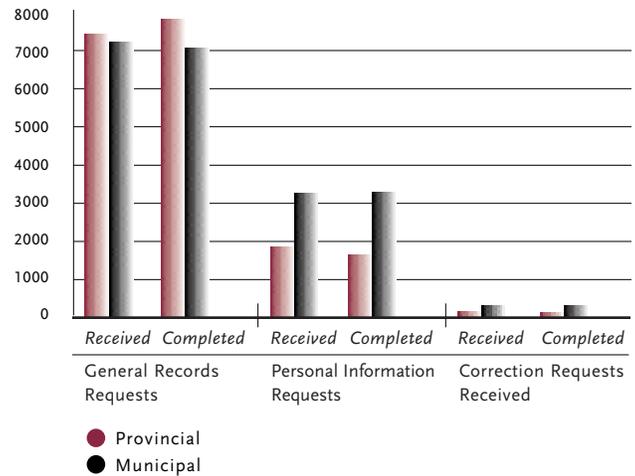
Requests for access to general records in 1998 outnumbered requests for access to personal information by nearly three to one. The proportions differed significantly for provincial and municipal organizations, with general records requests outnumbering personal information requests by slightly under four to one for provincial organizations and by slightly more than two to one for municipal organizations.

The majority of requests received by both the provincial and municipal organizations were completed by year-end. Only slightly more than 12% of requests were carried over to 1999.

Once again, the Ministry of Environment and Energy reported the highest number of requests received under the provincial *Act*, followed by the Ministry of Solicitor General and Correctional Services, the Ministry of Labour and the Ministry of Health. Together, these four Ministries accounted for 76% of all provincial requests.

Police services boards received slightly more than half (51%) of the total requests filed under the municipal *Act*. Municipal corporations (including municipal governments) were next with 37%, followed by public utilities with six per cent and school boards with almost three per cent.

REQUESTS RECEIVED AND COMPLETED - 1998



Overall, 42% of provincial requests were answered within 30 days in 1998. In all, 74% of provincial requests were completed within 60 days, while just over nine per cent took more than 120 days. In 1997, less than six per cent of provincial requests took more than 120 days to complete.

Municipal government organizations responded to 84% of requests within 30 days in 1998, twice as many – on a percentage basis – as their provincial counterparts. Municipal government organizations have topped the 80% mark for requests responded to within 30 days every year since the *Municipal Freedom of Information and Protection of Privacy Act* came into effect on Jan. 1, 1991. Overall, 96% of municipal requests in 1998 were answered within 60 days, while less than one per cent took more than 120 days to complete.

As to outcomes, 30% of provincial requests completed in 1998 led to the release of all information sought. Another 18.4% were disclosed in part. For municipal requests, 48.5% of requests led to full disclosure and another 30.6% were disclosed in part. Overall, no information was released in one in four cases.

Under the exemption provisions of the *Acts*, government organizations can, and in some cases must, refuse to disclose requested information. In past years, both provincial and municipal organizations cited personal privacy and personal information exemptions most frequently. This pattern did not change in 1998.

Under the legislation, individuals have the right to request correction of their personal information held by government. In 1998, provincial organizations received four requests for corrections and refused one. Municipal organizations received 377 correction requests and refused six. When a correction is refused, the requester may attach a statement of disagreement to the record, outlining why he or she believes the information is incorrect. This year, one provincial and four municipal statements of disagreement were filed.

In addition to application fees, the legislation permits government organizations to charge additional fees under certain conditions. Where the expected charge is over \$25, a fee estimate must be provided before work begins. Government organizations have the discretion to waive payment where it seems fair and equitable to do so after weighing several specific factors.

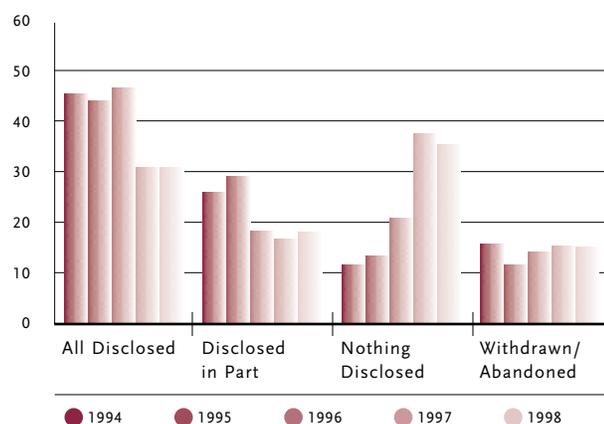
For 1998, provincial institutions reported collecting \$44,420 in application fees and \$274,461 in additional fees. Municipal institutions reported receiving \$55,737 in application fees and \$69,710 in additional fees.

Provincial organizations most often cited search time as the reason for collecting fees. Search time costs were mentioned in 51% of cases where fees were collected, followed by reproduction costs in 25% and shipping costs in 11%. Municipal organizations cited reproduction costs in 70.9% of cases, search time in 19.1% and preparation in 5.9%.

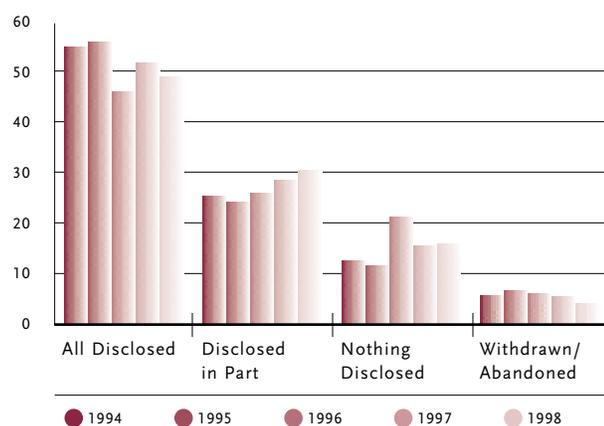
Across Ontario, nearly 20,000 requests for information were made under the *Acts* in 1998.



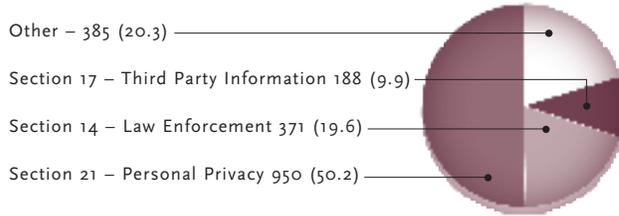
**OUTCOME OF PROVINCIAL REQUESTS - 1998**  
(%)



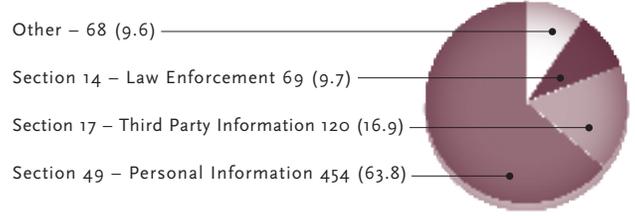
**OUTCOME OF MUNICIPAL REQUESTS - 1998**  
(%)



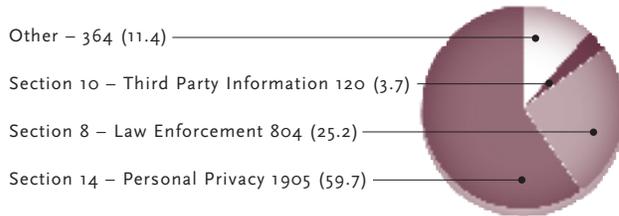
**PROVINCIAL EXEMPTIONS USED  
GENERAL RECORDS – 1998**



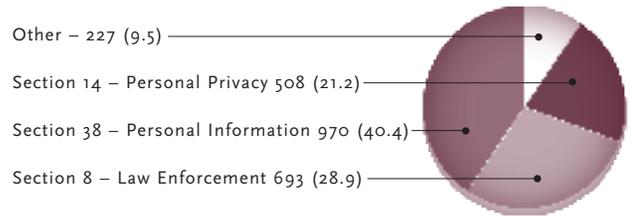
**PROVINCIAL EXEMPTIONS USED  
PERSONAL INFORMATION – 1998**



**MUNICIPAL EXEMPTIONS USED  
GENERAL RECORDS – 1998**



**MUNICIPAL EXEMPTIONS USED  
PERSONAL INFORMATION – 1998**



**CASES IN WHICH FEES WERE ESTIMATED – 1998**

|                                  | Provincial |      | Municipal |      |
|----------------------------------|------------|------|-----------|------|
| Collected in Full                | 92.2%      | 4818 | 42.6%     | 1135 |
| Waived in Part                   | 1.4%       | 72   | 16.1%     | 428  |
| Waived in Full                   | 6.4%       | 337  | 41.3%     | 1100 |
| Total Application Fees Collected | \$44,420   |      | \$55,737  |      |
| Total Additional Fees Collected  | \$274,461  |      | \$69,710  |      |
| Total Fees Waived                | \$5,184    |      | \$17,743  |      |

# Appeals by the public

The right to appeal to an independent body – the IPC – is one of the foundations of access and privacy legislation in Ontario.

Anyone who has made a request under the legislation to a provincial or municipal government organization and who is not satisfied with the response can appeal the decision to the IPC. Appeals can be filed concerning a refusal to provide access to general records or personal information, a refusal to correct personal information, the amount of fees charged, or other procedural aspects relating to a request.

When an appeal is received, the IPC first attempts to settle the appeal informally. If all the issues in an appeal are not resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order, which could include ordering the government organization to release all or part of the information sought.

## Enhancing the Process

During 1998, the IPC's Tribunal Services Department focused on the implementation of the first phase of a comprehensive program of process changes and continuous improvement. The program resulted from a comprehensive review of the Tribunal's two program areas – access to information appeals and privacy complaint investigations. The review was initiated in the latter part of 1997.

On May 1, 1998, the department implemented a number of changes that emerged from this review, among them:

- creation of an expanded Registrar function and new intake function to screen files and stream cases to the most effective and appropriate process, based on past experience;

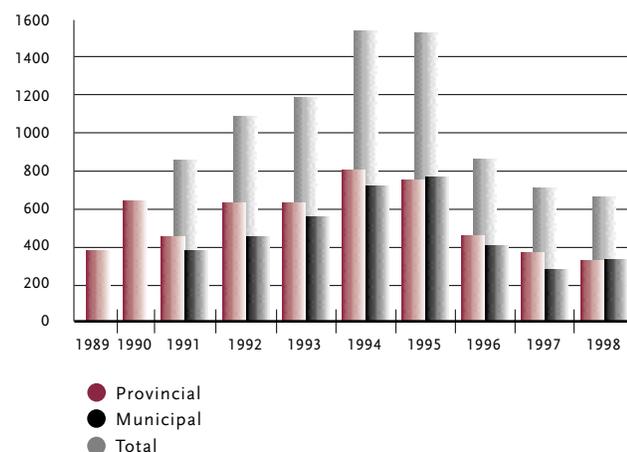
- a renewed commitment to mediation as the preferred method of resolving appeals and complaints;
- dedicated provincial and municipal mediation teams, to enable the IPC to develop higher levels of internal knowledge and expertise; and
- an Institutional Relations Program for both provincial and municipal clients, recognizing that we can serve our clients more effectively if we can better understand them and tailor our relationship accordingly.

In 1999, we are focusing on the implementation of the second phase of changes, which relate to the inquiry stage of the appeal process. In particular, we will be implementing a new method by which representations are submitted to the IPC and are shared by the parties in the inquiry process.

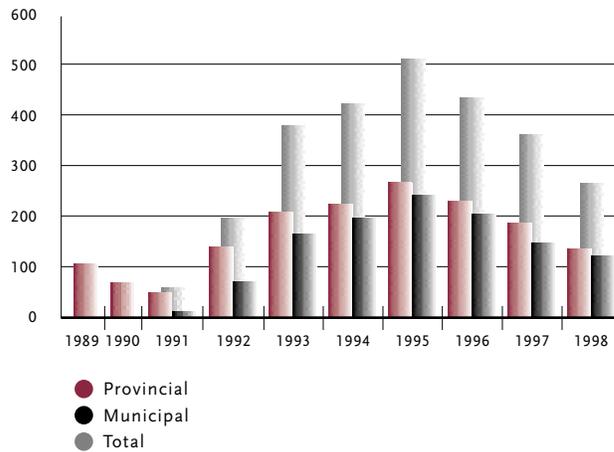
## Statistical Trends

In all, 669 appeals were made to the IPC in 1998, down six per cent from the previous year. There were 334 appeals lodged under the provincial *Act* and 335 appeals filed under the municipal *Act*. In all previous years, except 1995, the number of provincial appeals exceeded the number of municipal appeals.

APPEALS RECEIVED – 1989-1998



## ORDERS ISSUED – 1989-1998



Provincial appeals were down nine per cent from 1997. Eighty-four per cent of provincial appeals involved ministries rather than agencies. This proportion is similar to that of previous years.

Municipal appeals were down two per cent in 1998. The largest proportion of appeals – 44% – concerned the police, followed by municipal corporations and then boards of education. This is the first year in which the number of appeals involving the police exceeded the number of appeals involving municipal corporations.

About one-third of all appeals involved a request for personal information, while about 27% concerned a request for general records. About 31% involved a request for both general records and personal information. As was the case in previous years, there were few appeals in other categories such as fee estimates and objections by third parties to the disclosure of information.

## Appeals Closed

The IPC closed 640 appeals during 1998 – a decrease of 14% from 1997. As was the case in previous years, slightly more than half (333) of those resolved in 1998 concerned provincial government organizations. Forty-eight per cent (307) of the appeals closed concerned municipal institutions. Municipal appeals closed were down 16%, while provincial appeals closed were down 13% in comparison to 1997 levels.

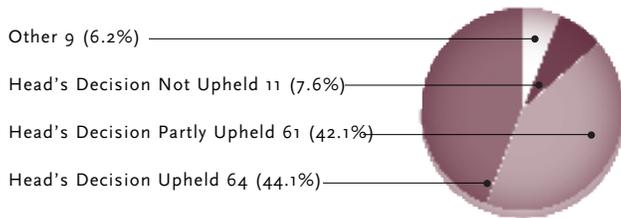
Consistent with our renewed emphasis on mediation, the majority of appeals – 58% – were closed without the issuance of a formal order. Of the appeals closed by means other than an order, 70% were successfully mediated, 25% were withdrawn and three per cent were abandoned. An additional two per cent of appeals were dismissed without an inquiry.

Forty-two per cent of the cases closed in 1998 were resolved by issuing an order. The number of appeals closed by order was down 31%, and the relative proportion of appeals closed by order was down nine per cent from 1997. In 1998, 44% of provincial and 39% of municipal appeals were closed by order.

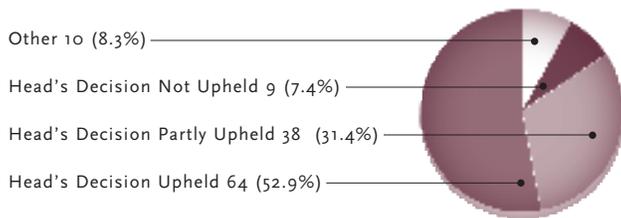
The IPC issued 260 orders during 1998 – a 28% decrease from the previous year. (The number of orders is less than the number of appeals closed by order, since an order may deal with more than one appeal.) Of these 1998 orders, 53% concerned provincial government organizations.

In appeals resolved by order, the decision of the head of the government organization involved was more likely to be fully upheld than partly upheld or not upheld. The decision of the head was fully upheld in about 48% of orders – down from 1997 when 58% of orders fully upheld the decision of the head.

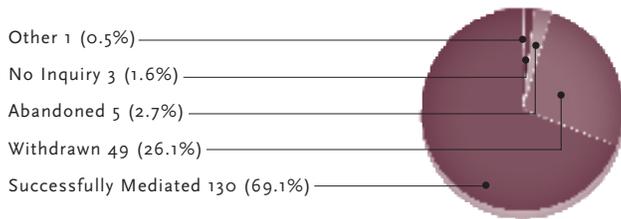
**OUTCOME OF APPEALS CLOSED BY ORDER  
PROVINCIAL – 1998**



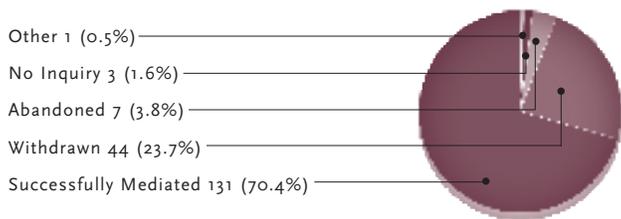
**OUTCOME OF APPEALS CLOSED BY ORDER  
MUNICIPAL – 1998**



**OUTCOME OF APPEALS CLOSED OTHER THAN BY ORDER  
PROVINCIAL – 1998**



**OUTCOME OF APPEALS CLOSED OTHER THAN BY ORDER  
MUNICIPAL – 1998**



**Reconsiderations**

While the decisions made by the IPC after an inquiry are final and not subject to appeal, under certain limited circumstances, the IPC may reconsider a decision. During 1997, the IPC received 37 requests to reconsider decisions. Thirty-six reconsideration requests were dealt with during the year. This number includes four requests that were received in 1997.

Of the 36 cases that were completed in 1998, 26 of the requests were declined on the basis that insufficient grounds for the reconsideration had been raised. Of the 10 reconsideration requests that met the criteria for reconsideration, three resulted in no change to the original order, one resulted in the original order being changed in part, five resulted in changes to the original order, and one was dismissed after reconsideration. Five of the requests for reconsideration received in 1998 were still pending or on hold at the end of the year.

**IPC APPEALS APPLICATION FEES COLLECTED – 1998**

|                      |         |
|----------------------|---------|
| General Record       | \$7,204 |
| Personal Information | \$1,824 |

# Judicial Reviews

A diverse cross-section of Ontario residents utilize the rights provided under freedom of information legislation – including the right to appeal to the IPC a decision by a government organization to reject a specific access request.

In contrast, judicial review applications – seeking leave to have IPC orders reviewed – are more likely to be brought by provincial or municipal organizations rather than by members of the public.

Seven of the nine judicial files which were closed in 1998 had been opened by government institutions disputing an IPC order through the courts.

Of these nine cases, seven of the applications were abandoned, with the result that the IPC's orders stand. In the remaining two cases, IPC orders were upheld by the courts. The government records at the heart of the nine judicial review files that were closed in 1998 cover a wide range of subjects. The records include a microfilm listing of registered trade names; a Ministry inspection report concerning a Canadian private school in France; law enforcement records; records relating to a land claim; documents pertaining to a workers' compensation recipient, and records connected to the investigation of a sexual harassment complaint made by an employee against her employer.



**Of these nine cases, seven of the applications were abandoned, with the result that the IPC's orders stand. In the remaining two cases, IPC orders were upheld by the courts.**

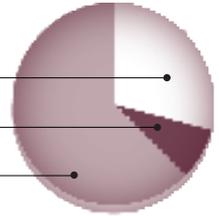
## OUTSTANDING JUDICIAL REVIEWS AS OF DECEMBER 31, 1998: 24

Launched by:

Requesters 7

Affected parties 2

Institutions 15



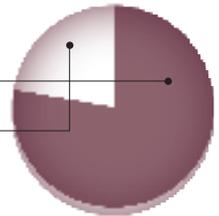
New applications received in 1998: 15

## JUDICIAL REVIEWS CLOSED IN 1998: 9

Of these:

Abandoned (IPC order stands): 7

IPC order upheld: 2\*



\* Orders upheld: M-845; P-373

As is the case with the nine files which were closed last year, a review of the 15 new judicial review applications initiated in 1998 quickly reveal that provincial and municipal institutions rather than individual requesters are more likely to dispute the IPC's orders in the courts. Ten of the 15 new applicants for judicial review were government institutions.

As with the nine files which were closed, the documents that became the subject of new judicial review proceedings cover a diverse range of information held by a wide variety of government institutions. Most of the records in these 15 cases fall into two general categories. The first is employment-related documents and includes performance appraisals and documents pertaining to job competitions. The second is law enforcement investigations and includes information in regard to allegations of police misconduct; the contents of a public complaint file; and documents gathered by the police in the course of criminal investigations.

The judicial review process is part of the checks and balances under freedom of information legislation. Decisions made in the appeals process are final and not subject to appeal. However, in certain limited circumstances, the courts may review how a decision was made and determine whether it was within the IPC's jurisdiction.

A tribunal's "jurisdiction" is the set of powers given to it by the Legislature together with certain principles of fair procedure developed by the courts. To be within a tribunal's jurisdiction, a decision must be one that the tribunal has legal authority to make and the decision must be made using procedures that treat all parties fairly.

In reviewing a tribunal's decisions, a court will consider whether a tribunal is acting within its powers, in accordance with the law, and with fairness, reasonableness, and impartiality.

A court that receives an application for judicial review may:

- order the tribunal to take an action that the law requires it to take;
- order the tribunal not to do something that is prohibited by law;
- strike down an order that was not arrived at properly; or
- declare the conduct of the tribunal to be contrary to the law.

# Privacy Investigations

To help protect personal privacy, the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* establish rules for the collection, retention, use, disclosure, security, and disposal of personal information held by government organizations.

Anyone who believes that a provincial or municipal government organization has failed to comply with one of the *Acts* – and that his or her privacy has been compromised as a result – may complain to the Information and Privacy Commissioner. The IPC investigates the complaint, attempts to mediate a solution, and, depending on the findings of the investigation, may make formal recommendations to the organization to amend its practices.

To help ensure adherence to the legislation, the IPC also conducts compliance reviews of selected organizations' information management practices. In addition, the IPC comments on the privacy aspects of any computer-matching proposals made by government organizations.

## New System in Place

The way the IPC receives and processes privacy complaints underwent a change in 1998 as part of a comprehensive series of process changes within the Tribunal Services Department aimed at providing an even more responsive and efficient service. On May 1, 1998, a new Intake Unit was created. When privacy complaints are received by telephone, in writing or in person, they are directed to a Case Review Analyst. Efforts are made to resolve the matter informally at the Intake stage. If a more detailed investigation is required, it is handled on a more formal basis through either the municipal or provincial mediation teams.

In many cases, what previously was handled as a formal privacy complaint is now resolved informally at the Intake stage.

## More Calls

As well as investigating privacy complaints, the IPC also responds to more general privacy questions or concerns received by telephone or in person. In 1998, 615 oral queries about privacy were received, an increase of 103 from 1997.

## Probing Complaints

The IPC launched 104 privacy investigations in 1998. Ninety-six investigations were completed during the year.

Seventy-three per cent of the complaints resolved in 1998 involved the disclosure of personal information, while 16% related to the collection of personal information. An additional five per cent of the complaints involved general privacy issues.

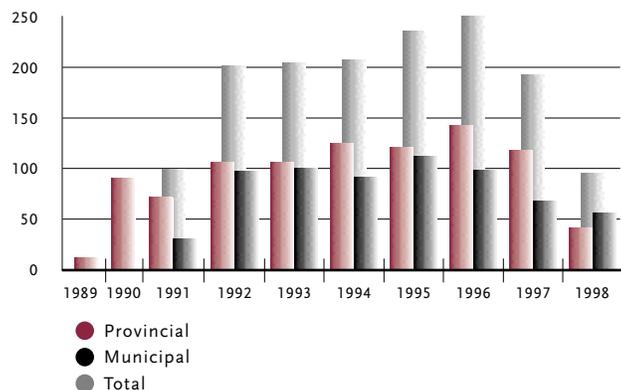
Of the 96 complaints resolved in 1998, 19% involved a breach of the *Acts*. Of the 188 cases resolved in 1997, only 10.7% involved a breach of the *Acts*.

As was the case in previous years, the general public was the principle user of the complaints system. Of the cases completed in 1998, 88% were complaints filed by the general public. Five per cent were filed by employees of institutions.

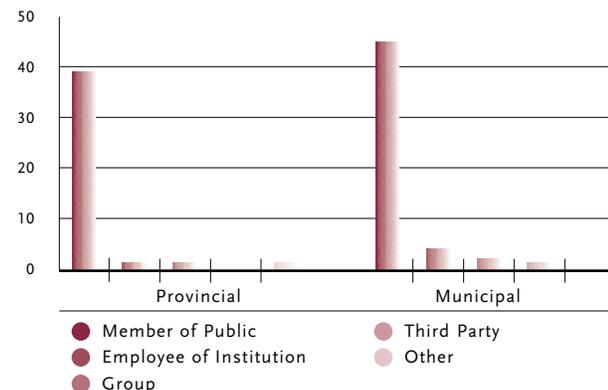
In looking into complaints, the IPC continues to emphasize informal resolution. About 61% of the complaints resolved in 1998 were settled informally. An additional 33% were withdrawn or abandoned.

Five formal investigation reports were issued in 1998, resulting in seven recommendations to government organizations. In addition, the IPC followed up on recommendations that had been made in previous years and found that all had been implemented to the IPC's satisfaction.

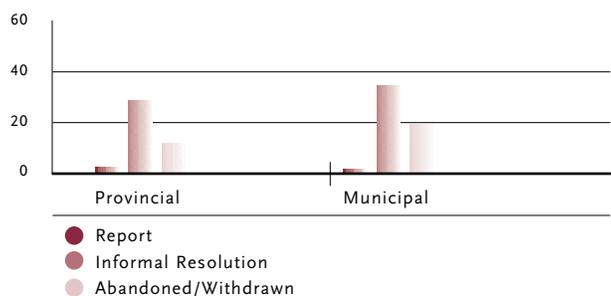
**NUMBER OF PRIVACY INVESTIGATIONS COMPLETED  
1989-1998**



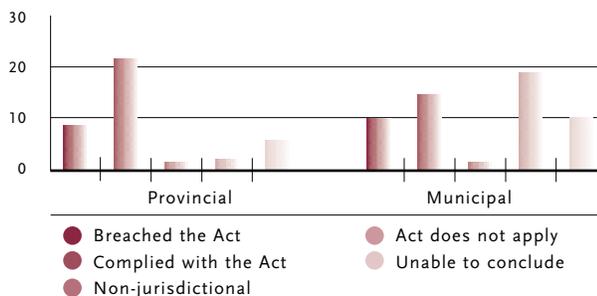
**TYPES OF COMPLAINANTS INVOLVED IN  
PRIVACY INVESTIGATIONS**



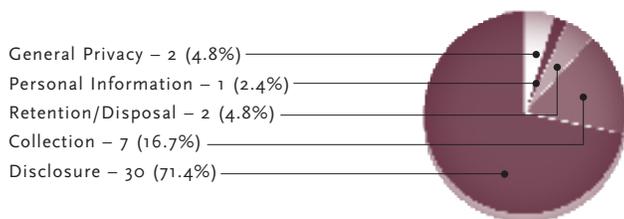
**PRIVACY INVESTIGATIONS COMPLETED  
BY TYPE OF RESOLUTION**



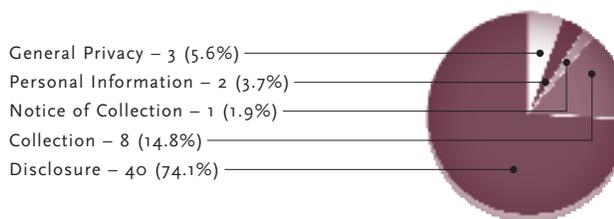
**PRIVACY INVESTIGATIONS COMPLETED  
BY OUTCOME - 1998**



**PRIVACY INVESTIGATIONS COMPLETED BY ISSUE  
PROVINCIAL - 1998**



**PRIVACY INVESTIGATIONS COMPLETED BY ISSUE  
MUNICIPAL - 1998**



**SUMMARY OF PRIVACY INVESTIGATIONS - 1998**

|                 | 1997 Privacy Complaints |             | 1997 Total | 1998 Privacy Complaints |             | 1998 Total |
|-----------------|-------------------------|-------------|------------|-------------------------|-------------|------------|
|                 | (Provincial)            | (Municipal) |            | (Provincial)            | (Municipal) |            |
| Carried Forward | 26                      | 10          | 36         | 8                       | 10          | 18         |
| Initiated       | 104                     | 66          | 170        | 46                      | 58          | 104        |
| Completed       | 122                     | 66          | 188        | 42                      | 54          | 96         |
| In Process      | 8                       | 10          | 18         | 12                      | 14          | 26         |

# Information about the IPC

## Outreach program

The IPC has a vibrant outreach program to help meet its mandate to educate the public about Ontario's access and privacy laws and increase the public's awareness of access and privacy issues.

The four key components of the outreach program include:

- the public speaking program;
- the media relations program;
- the publications program (print and electronic);
- the IPC's Web site.

### Public Speaking

Commissioner Ann Cavoukian is a much sought-after speaker, with requests coming from across Canada, the United States, and internationally. She made numerous presentations in 1998, including speaking to senior executives at four of Canada's five largest banks on privacy issues. Other presentations included speeches to:

- major technological conferences;
- various groups at the University of Toronto and the University of Waterloo;
- Privacy and American Business's annual *Managing the Privacy Revolution* conference in Washington, D.C.;
- Management Board's annual *Freedom of Information and Protection of Privacy* conference;
- an extensive list of other diverse organizations.

### OTHER ASPECTS OF THE IPC'S GROWING PUBLIC SPEAKING PROGRAM INCLUDE:

- a school speakers program, under which members of the Tribunal Services Department make presentations to high school and elementary classes. The program, *Ask an Expert*, is aimed at Grades 5 and 10. These two grades were carefully chosen because this is when the concepts of government and civics are introduced in the classroom. We feel it is important that children begin to learn about the values of open government and privacy protection in the context of other related and relevant studies;
- a journalism students program, under which the IPC's media relations officer speaks to college and university journalism classes;
- a university technology speakers program, where senior IPC staff speak to technology classes at Ontario universities;
- a general public speaking program, under which staff members from various departments speak to groups or organizations that have ranged from CNIB executive assistants to school board staff.

## Media Relations

Media stories are one of the ways that Ontario residents learn about access and privacy issues. The IPC has both a pro-active and reactive media relations program. The Commissioner is the official spokesperson for the IPC and accepts as many media requests for interviews as her schedule allows. The IPC also actively approaches the media for coverage when major IPC policy papers are released.

During 1998, the Commissioner gave 68 media interviews – to national print, TV and radio reporters, Ontario media, and international media.

## IPC Publications

The IPC released 12 publications in 1998 while updating and re-releasing 29 core *Practices*. The publications included the first two in a new series – *If you wanted to know...* – which focuses on recent issues of significant public interest. (See the following page for more information.)

## IPC Web site

This site is another cornerstone of the outreach program as it makes all IPC publications, copies of the legislation the IPC operates under, and common questions and answers, readily available to anyone who has access to the Web. (Others can call the IPC's Communications Department and ask for copies to be mailed or e-mailed.) For more information on what you can find on the IPC's Web site and for research tips, see the following pages.

# Information about the IPC

## Publications/Web site

One of the key avenues the IPC uses to help fulfill its legislative mandate to increase public awareness of access and privacy issues is its publishing program. Each year, the IPC publishes a number of policy papers and specialty publications.

### Papers published in 1998 included:

- *Data Mining: Staking a Claim on Your Privacy*. The report looks at a growing practice that businesses are using to cull more information about clients or potential clients from giant data bases. Without proper safeguards, data mining can jeopardize informational privacy. The report lists choices that consumers and businesses may want to consider in order to enhance personal privacy.
- *Privacy: The Key to Electronic Commerce*. The report provides a timely overview of privacy issues in the context of the much-hyped electronic commerce, and offers some possible solutions.
- *The Internet: A Guide for Ontario Government Organizations*. This report, produced in collaboration with Management Board Secretariat, provides provincial and municipal Freedom of Information and Privacy Co-ordinators with an overview of why the Internet will be an essential component of any access and privacy program.
- *407 Express Toll Route: How You Can Travel this Road Anonymously*. A collaborative effort between the IPC and the Ontario Transportation Capital Corporation, it outlines the “anonymous account billing system” that was developed to address privacy concerns regarding an electronic surveillance system being used for billing purposes.
- *A Guide to Ontario Legislation covering the release of Students’ Personal Information*. Presented in a question and answer format, the report reviews

the rights of students and their parents to obtain students’ personal information from schools and how the *Municipal Freedom of Information and Protection of Privacy Act* and the *Education Act* apply.

Among other releases, the IPC updated and re-released its 29 core Practices, which cover a wide range of access and privacy topics, including *Routine Disclosure/Active Dissemination (RD/AD) of Government Information* and *Video Surveillance: The Privacy Implications*.

Other 1998 publications included the IPC’s 1997 annual report, two editions of the IPC newsletter, *Perspectives*, and two editions of the *Subject Index*.

As well, the IPC released the first two publications in a new series, *If you wanted to know...*, which examines topical issues, many of them related to the Internet. These included:

- *How to fight Spam*, which looks at the growing problem of unsolicited e-mail and explains how you can reduce the flow.
- *What to do about Cookies*, which explains what a “cookie” is and how Web users can reduce the electronic tracks they leave behind on the Internet.

### Readily available

All of these 1998 reports and many earlier IPC papers are available on the IPC Web site ([www.ipc.on.ca](http://www.ipc.on.ca)). Or, you can call the Communications Department at 416-326-3333 or 1-800-387-0073 and ask to have the reports you are interested in mailed or e-mailed to you.

Among the many other IPC reports available are: *Identity Theft: Who's Using Your Name?* (1997); *A Model Access and Privacy Agreement* (1997), which includes a template designed for insertion into contracts drawn up when a government function is transferred to the private sector; and *Privacy-Enhancing Technologies: The Path to Anonymity* (1995).

If you would like to receive IPC publications on a regular basis via e-mail, just ask to be placed on our electronic mailing list by sending an e-mail to [publicat@ipc.on.ca](mailto:publicat@ipc.on.ca) with your name, address, phone number, and the e-mail address to which you want the publications sent.

## Web site

Readers interested in discovering more about access to information or privacy issues are invited to visit the IPC's award-winning World Wide Web site at [www.ipc.on.ca](http://www.ipc.on.ca). The site has been widely recognized for being a valuable resource, has won a NetGuide Gold Site Award, and twice been chosen as the Ethic Connection's Site of the Week.

The Web site has been designed to help you – whether you need help with an access or privacy problem, want to learn more about these issues, or just want to learn more about the IPC.

The site is organized into a number of major sections. The first, **What's New!**, lists recent additions, including the latest IPC orders and investigation reports, policy papers, news releases, and speeches. The next section, **Our Role**, describes who we are and what we do. It outlines our statutory mandate and provides links to the municipal and provincial *Freedom of Information and Protection of Privacy Acts* (also found in the **Ontario's Access & Privacy Acts** section along with accompanying plain language guides). Other information includes Annual Reports, three-mini-sections on Frequently Asked Questions (on access to information, making an appeal, and protecting your

privacy), and information about the Commissioner. A key element is the *IPC Code of Procedures*, which includes *Practices*, background documents, and forms.

A major section of the site is dedicated to **Orders, Investigations and Judicial Reviews**. Individual documents can be located using Subject and Section Indices or by using the search engine.

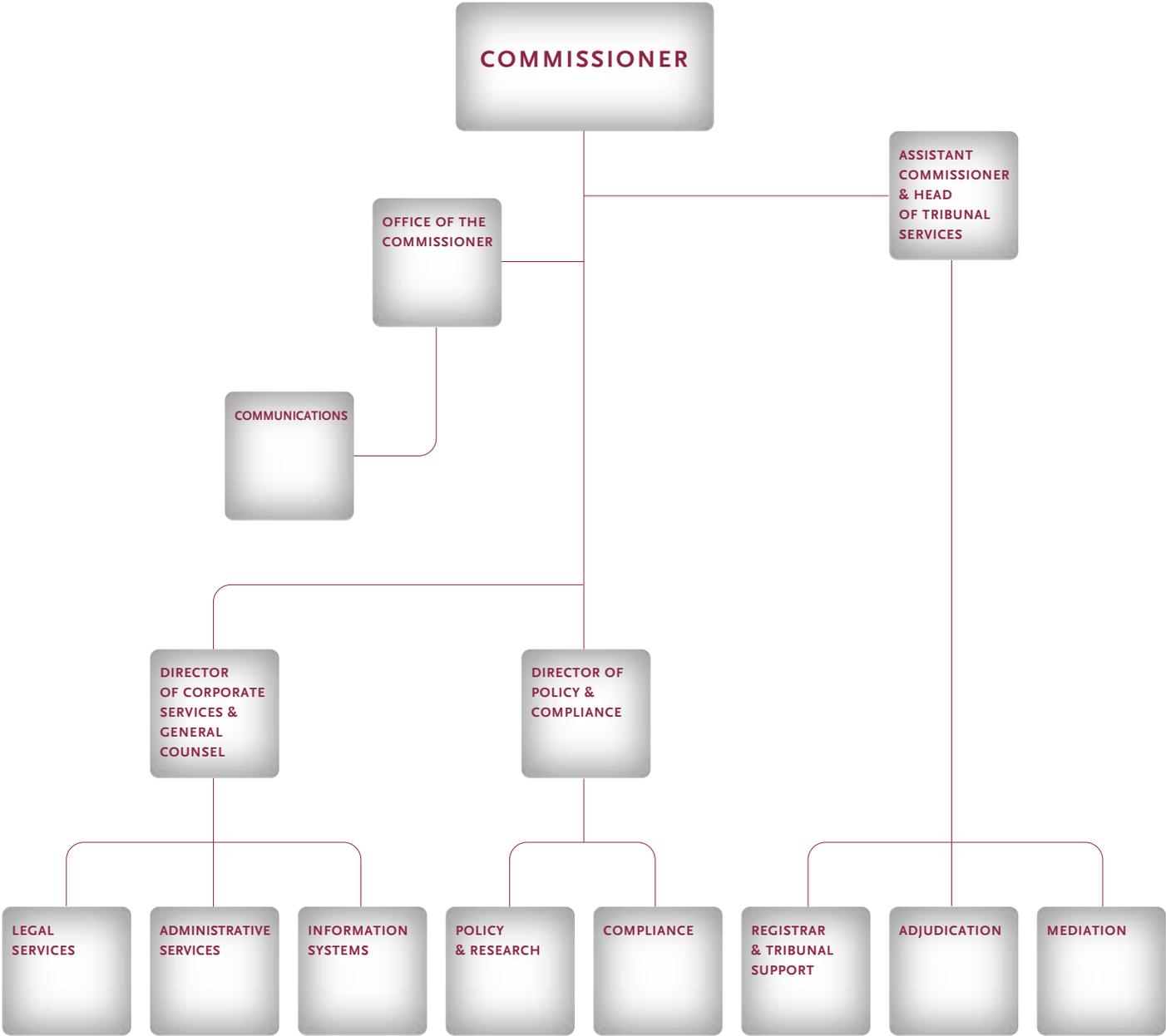
One of the most popular sections of the IPC Web site is **Access & Privacy Matters**. From this section, visitors can read or download policy papers, special *Practices* (many of which were issued with policy papers), *Perspectives* (a semi-annual newsletter), *If you wanted to know...* (a new series focussing on topical issues), and a list of Areas of Interest indicating the issues that are tracked by the IPC. Visitors may also want to check out **Other Sites of Interest**, which offers links to other sites dedicated to privacy and access to information,

**How to Reach Us** provides mail, phone, and fax information.

To help people find their way around the site, there are a number of useful options. Visitors can currently choose between using the framed version of the site (which maintains a constant navigation menu on the left-hand side of the screen) or a non-framed version. There is also a French-language version. Additionally, **Quick Links** lists commonly used pages within the IPC Web site. The section **Where to Find Things** is an overview map of the IPC site while **Search** will help you locate specific words or phrases anywhere in the site.

Every attempt is made to make the Web site easy to use. The design and content of the IPC Web site are continually reviewed, with plans to revise the site in 1999. If you have suggestions regarding the site layout or resources available online, please send them to [bspence@ipc.on.ca](mailto:bspence@ipc.on.ca). Your comments are appreciated.

# Organizational chart



# Financial statement

|                                  | 1998-99<br>ESTIMATES | 1997-98<br>ACTUAL  | 1997-98<br>ESTIMATES |
|----------------------------------|----------------------|--------------------|----------------------|
| Salaries & Wages                 | \$4,532,100          | \$3,607,678        | \$4,732,100          |
| Employee Benefits                | \$861,100            | \$828,957          | \$923,800            |
| Transportation and Communication | \$141,400            | \$90,785           | \$141,400            |
| Services                         | \$823,800            | \$559,100          | \$668,800            |
| Supplies and equipment           | \$151,800            | \$262,577          | \$106,800            |
| <b>Total Expenditures</b>        | <b>\$6,510,200</b>   | <b>\$5,349,097</b> | <b>\$6,572,900</b>   |

**Note:** The IPC's fiscal year begins April 1 and ends March 31. The financial administration of the IPC is audited on an annual basis by the Provincial Auditor.

## Appendix 1

As required by the *Public Sector Salary Disclosure Act, 1996*, the following chart shows which IPC employees received more than \$100,000 in salary and benefits during 1998

| NAME             | POSITION  | SALARY PAID  | TAXABLE BENEFITS |
|------------------|---|--------------|------------------|
| Cavoukian, Ann   | Commissioner  | \$127,924.96 | \$368.64         |
| Mitchinson, Tom  | Assistant Commissioner                              | \$124,447.03 | \$345.00         |
| Anderson, Ken    | Director of Corporate Services<br>& General Counsel | \$120,357.80 | \$344.16         |
| Challis, William | Legal Counsel                                       | \$108,032.96 | \$308.56         |
| Giuffrida, David | Legal Counsel                                       | \$101,525.33 | \$290.52         |



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