

**CONFERENCE ON PRIVACY AT THE BORDER : EXPECTATIONS OF  
PRIVACY AND SECURITY IN THE WORLD'S LARGEST TRADING  
RELATIONSHIP**

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**Introduction**

Mr. Chairman, on behalf of Mtre Jacques Saint-Laurent, Chair of the Commission d'accès à l'information (the Commission), I would like to thank the Québec Government Office for having submitted my candidacy to The Canada Institute of the Woodrow Wilson International Center for Scholars to participate in this Conference on Privacy at the Border: Expectations of Privacy and Security in the World's Largest Trading Relationship.

Before discussing this topic, let me share with you some information regarding the Commission.

The Commission was constituted in 1982 by the Act respecting access to documents held by public bodies and the protection of personal information (the Access Act). Most public bodies in Québec are subject to the Access Act<sup>1</sup>. Substantial amendments have been made to this Act, which came into force in June 2006. It also applies the Act respecting the protection of personal information in the private sector (the Private Sector Act). A private enterprise in Québec which engages in the collection, retention, use and communication of personal information must comply with this legislation. An individual has a right of access and rectification regarding personal information concerning him.

Any personal information which relates to a natural person and allows this person to be identified is personal information.

The Commission has two divisions: the oversight division and the adjudicative division. It is an administrative tribunal exercising its powers of supervision. It is composed of at least five members, including the Chair. The Chair is responsible for the management and administration of the affairs of the Commission

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<sup>1</sup> R.S.Q., c. A-2.1, (the Access Act).

A member assigned to the Adjudicative division renders decisions alone regarding an application for review or examination of a disagreement after giving the parties the opportunity to submit their observations. An interested person may appeal a decision of the Commission before a judicial court on any question of law or jurisdiction.

Under its jurisdiction, the Commission receives all kind of complaints. A member assigned to the oversight division may issue an Order against a public body or a private enterprise if, following an investigation regarding a complaint filed by a citizen and after giving this public body or this enterprise the opportunity to present their point of view, it appears that the confidentiality of the personal information concerning this citizen has not been respected. Also, an Order may be issued by the Commission, if it considers that this public body or this enterprise has not taken the necessary steps to correct the situation.

The Commission may also conduct an investigation on its own initiative regarding non-compliance with the protection of personal information.

The Commission also may decide on a request by a researcher for authorization to receive communication of personal information contained in files for study, research or statistics purposes, without the consent of the persons concerned, if this information is necessary. A researcher is thus prohibited from collecting personal information which is not necessary for the exercise of his functions.

The Commission is also mandated, in particular, to ensure privacy and the protection of personal information of individuals. Both in the public sector and in the private sector, the principle remains the same: during the collection, retention, use and communication of personal information, a person must take all the security measures necessary to ensure the confidentiality of this information.

For example, in Québec, when a public body wants to release specific personal information concerning taxpayers without their consent to another body or to a foreign government, this public body is obliged to submit to the Commission a proposed agreement, whereby it must specify the purposes for which this information will be released, its nature, the method of transmitting this information, the security measures designed to ensure the protection of this information and the duration of this agreement.

Under certain circumstances, the Commission has insisted that public bodies inform citizens that information identified concerning them may be the object of collection, retention, use and communication.

If a public body wishes to use the same information for other purposes, it must again inform the Commission and the citizen, because this citizen has the fundamental right to know what a public body intends to do with the personal information concerning him, given that the purposes for which it was primarily collected will no longer be the same.

It is also appropriate to mention that the rules for protection of personal information must be adaptable to the technology of information. However, such technology must not lead to a weakening of these rules. Thus, in its final report dated May 2004, the members of the Parliamentary Committee on Culture which was mandate to receive the Commission's complaints, in particular, after the general consultation and public hearings on a document entitled: Reforming access to information: choosing transparency<sup>2</sup> particularly made the following comments regarding the delivery of services to the public:

[TRANSLATION] "The Committee [on Culture] wishes to remind the public that the use of technology must not be detrimental to the principles of protection of personal information and privacy, nor lead to their weakening. Thus, although it finds that the development of the networked State can offer opportunities for innovation and allow more effective and efficient delivery of services, the Commission on Culture recommends great prudence in this field."

In other words, the new technology should not be used to allow, for example the [Québec] Government to impose greater centralization of personal information.

Moreover, as I mentioned at the beginning of my presentation, the Commission was constituted in 1982 when the Access Act came into force. I would like to quote an excerpt from a report (the Paré's report), which served as reference for the drafting of this Act over 25 years ago. This excerpt concerns the severe standards and precautions required when personal information is transferred between public bodies:

[TRANSLATION] "It is appropriate to establish severe standards for the transfer of personal data between public bodies. The main concern is the possibility of putting together all the data collected on a person by these transfers. Information technology easily allows location and combination of data. In general, the law will have to prohibit transfers of personal data between files. All exceptions must be stipulated in legislation, and thus be debated in the National Assembly. This debate will allow the public to know the current practices regarding transfers and

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<sup>2</sup> Final Report, May 2004, p. 17.

parliamentarians to judge their relevance and necessity.”  
(p. 18)

These comments are more important, particularly when it is considered that today, through technology, it is easy to collect, use and retain an unlimited amount of information. For example, one can consider the possibility of consolidating several personal information files to create just one.

Within the context of substantial amendments that were to be made to the Access Act, the Commission submitted a document to the Parliamentary Committee on Culture, in which the following is indicated:

[TRANSLATION] “One of the legislative foundations of the protection of personal information, in Québec or elsewhere, is the necessity to maintain a tight separation between personal information files held by multiple entities and components of the administrative system to avoid centralization of information. [...]” (p.19)

Given centralization of this information and the fact that several personal data files may end up in the same place, there are strong possibilities that these data will be used for purposes other than those for which they were collected.

It would be for example that a use of these data by the government to provide better services to the public at lower costs. In this regard, the Supreme Court of Canada specifies that budgetary considerations and government administrative convenience are not sufficient to justify a breach of a fundamental right, such as the right to privacy.<sup>3</sup>

In a world in which technology increasingly facilitates the circulation of information, it is more essential that the relationship of trust between the citizen and the Québec Government be protected. Without this protection, the citizen could be reluctant to release personal information concerning him, even at the risk of depriving himself of a financial benefit or services.

### **Privacy at the Border**

As I mentioned previously and throughout my presentation, I have tried to express the Commission’s point of view within its jurisdiction, particularly regarding protection of personal information.

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<sup>3</sup> Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1977] 3 R.C.S., paras. 281-285; Figueroa v. Canada (Attorney General), [2003] 1 S.C.R. 912, para. 65.

Nonetheless, since June 2006, a new legislation provision indicates:

70.1 Before releasing personal information outside Québec or entrusting a person or a body outside Québec with the task of holding, using or releasing such information on its behalf, a public body must ensure that the information receives protection equivalent to that afforded under this Act.

If the public body considers that the information referred to in the first paragraph will not receive protection equivalent to that afforded under this Act, it must refuse to release the information or refuse to entrust a person or a body outside Québec with the task of holding, using or releasing it on its behalf.

In other words, proper precautions or guarantees must be taken and respected even before a public body releases personal information outside the province of Québec or entrusting a person or a body outside Québec with the task of holding, using or releasing personal information concerning individuals.

Protection of personal information and respect for privacy of an individual go hand in hand. I can explain that for many years, the Commission has approved agreements reached between public bodies and public bodies located outside of Quebec, such as in Ontario, in Alberta or the New York's State.

The amendments that I just referred to earlier push further for the preservation of privacy and the necessity of maintaining the confidentiality of personal information concerning citizens in the province of Quebec.

Thank you for your attention.

