



December 15, 2006

David Chatters
Chair, Standing Committee on Access to Information, Privacy and Ethics
Room 618, Sixth Floor, Wellington Building
180 Wellington Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Chatters:

Re: Statutory Review of Part I of the *Personal Information Protection and Electronic Documents Act*, the Protection of Personal Information in the Private Sector

I am writing you on behalf of the Association of Canadian Archivists (ACA) to comment on Part I of the *Personal Information Protection and Electronic Documents Act* (PIPEDA), the Protection of Personal Information in the Private Sector.

Established in 1975, the Association of Canadian Archivists is a national not-for-profit organization representing over 600 English-speaking archivists in Canada. With headquarters in Ottawa, the ACA's mandate is to provide the archival profession leadership and to facilitate an understanding and appreciation of Canada's archival heritage. Archivists have significant experience in balancing the competing public policy requirements regarding the disclosure of records. We believe that privacy legislation should balance the individual's right to privacy and society's need for knowledge. Individuals should have control over the collection, use, and disclosure of their personal information. However, archivists also understand that records are essential for efficient public administration and for ensuring such administration is accountable to auditors, to Parliament, to Canadians, and to future generations. Thus, we recognize that privacy legislation cannot be absolute because it would remove records containing personal information from accountability. Accountability to Canadians must not be superseded by perceived privacy concerns. With this perspective, the ACA believes that it, therefore, has a valuable perspective on the review of Part I of the *Personal Information Protection and Electronic Documents Act* and hopes that its comments will help improve an important piece of legislation.

The ACA sees many positive features in Part I of PIPEDA. These include: the goal of protecting personal information contained in electronic commercial transactions; the exclusion from PIPEDA of all federal institutions subject to the *Privacy Act*; the passage-of-time principle for absolute disclosure of personal information; and the recognition of archival preservation as a consistent purpose.

However, we are concerned that certain aspects of the section concerning the Protection of Personal Information in the Private Sector have had a negative impact on archives and their

users. Specifically, the ACA asks that Part 1 of the *Personal Information Protection and Electronic Documents Act* be amended to include the following:

1. Definition of “personal information”:

The *Personal Information Protection and Electronic Documents Act* adopts a very broad definition of personal information. Section 2. (1) defines personal information as “information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee or organisation.” It is our belief that the fundamental purpose of the PIPEDA was to focus protection on the transfer of personal information between large databases across national jurisdictions for the purposes of electronic commerce. Yet, as a result of the broad definition of personal information, the scope of PIPEDA’s legislation is far greater. PIPEDA applies to all personal information found in records routinely generated in the course of an organization’s daily operations. This includes scattered incidental personal information found in minute books, correspondence, memoranda, photographs, films, etc. The ACA believes this broad definition creates an expensive and bureaucratic structure for archivists to administer. We suggest that the definition of personal information be restricted to only personal information organized in a nominally indexed or nominally retrieved fashion i.e. by name or SIN in databases or in person-based case files.

Recommendation: that the definition of personal information be restricted only to personal information organized in a nominally indexed or nominally retrieved fashion.

2. Disclosure for statistical, or scholarly study or research purposes:

Section 7. (3)(f) permits the disclosure of personal information “for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed.” The ACA is concerned that the requirement to inform the Privacy Commissioner for conditional disclosure is cumbersome. It drains already scarce archival resources away from critical archival preservation tasks to the administration of this act and delays, inconveniences, and discourages researchers. The ACA recommends an amendment to PIPEDA that mirrors the approach in the *Federal Privacy Act*, which allows archival institutions discretion to assess sensitive versus non-sensitive personal information for release, using an injury test done by the archival institution without recourse to the Privacy Commissioner.

Recommendation: that institutions whose functions include the conservation of records of historic or archival importance be given discretion to assess sensitive versus non-sensitive personal information for disclosure, using an injury test and without recourse to the Privacy Commissioner.

3. Exemption for archives:

The ACA further requests that section 4.(2)(c), the exemption from coverage for “any organisation in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purpose,” be extended to include “any organisation in respect of personal information that the organisation collects, uses or discloses for archival or heritage purposes, or for scholarly or statistical research.” We believe that Canadians value archives and the history resulting from their use as much as they do literary and artistic endeavours. As a result, we believe that this blanket exemption is merited and thereby would eliminate the other concerns expressed in this brief.

Recommendation: that section 4.(2)(c) be extended to include “any organisation in respect of personal information that the organisation collects, uses or discloses for archival or heritage purposes, or for scholarly or statistical research.”

We hope that the Standing Committee on Access to Information, Privacy and Ethics will consider the ACA’s recommendations concerning Part I, the Protection of Personal Information in the Private Sector, of the *Personal Information Protection and Electronic Documents Act*.

I would be happy to discuss the ACA’s concerns further with you. Further, the ACA would be pleased to send a representative to appear before your Committee if desired. I may be reached via e-mail at scott.goodine@gov.ab.ca or via phone at (780) 427-8773.

Best Regards,



Scott Goodine
ACA President