

# Canadian Privacy Commissioner warns of threat to privacy

Report by Eugene Oscapella

**I**N HIS 2000-01 ANNUAL REPORT, released December 12th, Canada's federal Privacy Commissioner, George Radwanski, painted an almost apocalyptic scenario for privacy, and stressed that there is an "unwarranted air of legitimacy" surrounding surveillance technologies.

"Privacy is threatened as it's never been before," warned Radwanski. "The alarm about 'the end of privacy' has been sounded often enough in the past. But it's a sad fact that this alarm was easy for people to dismiss as exaggerated. A reasonably informed person cannot dismiss it anymore... " Saying that it can become all too easy to believe that the more the state knows about everyone, the safer we will all be, he cautioned:

"That, in turn, can give an unwarranted aura of legitimacy as to what are precisely some of the greatest threats to privacy – for instance, proliferating video surveillance, widespread use of biometric recognition technology, or national ID cards."

## **BIG BROTHER IS WATCHING**

The Commissioner added: "We're all confronted now with the real possibility of having to go through life with someone looking over our shoulder, either metaphorically or quite literally. We face the real and imminent prospect of having to live our lives weighing every action, every purchase, every statement, every human contact, wondering who might find out about it, judge it, misconstrue it, or somehow use it to our detriment. That's not

freedom. That, on the contrary, is a distinguishing characteristic of totalitarian societies."

The Commissioner warned that if we respond to terrorism by excessively and unnecessarily depriving ourselves of privacy and the freedoms that flow from it, then terrorism will have won a "great and terrible victory."

The report also addresses the privacy risks posed by an "eager" surveillance industry:

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"In the days and weeks following the attacks, the general public got a good look at what privacy advocates have long been worrying about. They saw that there is a huge industry eager to manufacture and sell the technology

of surveillance: video cameras, facial recognition systems, fingerprint readers, e-mail and web monitoring, "smart" identification cards, location tracking. And they saw how many people are eager to argue that if you don't have anything to hide, you shouldn't mind revealing everything."

The tone of the annual report stands in contrast to the Commissioner's much more reserved comments before a Senate committee less than three months earlier, and only days after the September 11th attacks, to discuss Senator Sheila Finestone's proposed Privacy Rights Charter. He cautioned against "creating a self-fulfilling prophecy in terms of privacy being under threat."

The annual report is the Commissioner's first. It is also the first annual report dealing with Canada's new private sector data protection law – the Personal Information Protection and Electronic Documents Act – most parts of which came into force on January 1st 2001.

Among the other issues the report covers are surveillance by both the police and private companies in public spaces, and the matching of government databases. The report also sets out and then challenges many of the justifications being advanced for increased surveillance of employees.

The report notes that the new Personal Information Protection and Electronic Documents Act limits the collection, use, and disclosure of information for “purposes that a reasonable person would consider appropriate.” The Commissioner called the Act an important restriction on monitoring and surveillance in the workplace. Since the Act – or provincial legislation very much like it – will be binding on many employers throughout the country very soon, all employers should be looking at it, he said.

#### INTERNAL CONFLICTS

The Commissioner also addressed his

controversial disagreement with Canada’s Information Commissioner, John Reid. The Information Commissioner had sought access to the Prime Minister’s agendas. Calling this the twisting of the values of openness and access to information into an attack on privacy, the Privacy Commissioner said that access to information cannot bulldoze everything in its path, or justify a violation of individual privacy. “Once again, privacy has to be asserted in all its societal importance, as a fundamental right.” He repeated his view that access is an administrative right that can enhance democracy, while privacy is a funda-

mental human right that is the very essence of democracy.



*Further information:  
Privacy Commissioner of Canada,  
Annual Report to Parliament,  
2000–2001: [www.privcom.gc.ca/  
information/ar/02\\_04\\_09\\_e.asp](http://www.privcom.gc.ca/information/ar/02_04_09_e.asp)*

*Continued from page 23*

promise employers’ efforts to maintain health and safety regulations. Some businesses might see the use of drug testing as necessary for the protection of its employees from accidents caused by workers who are unfit for duty. Access to medical data could also be of benefit to the employee. Information relating to individuals’ medical records could allow employers to adjust workplace environments in order to meet health and safety requirements.

UNICE has also taken issue with the Commission’s attitude on requiring consent for legitimising the collection of personal information. The Commission suggests that in cases where the processing of personal data is unavoidable, reliance on the use of consent is misleading and should only be used in situations where employees have genuine free choice and the ability to withdraw their consent without discrimination.

UNICE has expressed concern that the Commission seems to take the view that “prospective workers are likely to be pressured and ill-informed when giving consent.” It also questions the fact that there is no evidence provided suggesting workers are “subordinate and dependent”. But Willy Buschak, of the ETUC, agrees with the Commission,

saying that applicants for employment or promotion “are normally in a relatively weak position, and are tempted to accept more than they would like, just to get the job.”

#### COMMUNITY LEVEL ACTION

In addition to its opposition over restrictions on the collection of data, UNICE suggests there is no need for introducing a “one-size-fits-all” approach across the EU. It says this kind of approach conflicts with existing national labour laws, and fails to acknowledge the diversity that exists between businesses in terms of size, structure and type. The Commission, however disregards the accusation of conflict with national labour laws, stating that it recognises a need for interaction between data protection law and labour law “which is necessary and valuable and should assist the development of solutions that properly protect workers’ interests.” The ETUC argues that because employment problems exist right across Europe, there should be an initiative taken at Community level.

#### REASSURANCE NEEDED

UNICE remains strongly opposed to the Commission’s plans and is likely to raise further objections, unless it is given some reassurance or justification that any additional directives will be in the interests of all the parties concerned.

“If they [the Commission] want to propose a revision of the directive,” says de Lledekerke, “they will have to consult us a second time. I hope that if they do go down that route, they would at least give us the evidence that we have been asking for.”



*UNICE’s response to the  
Commission’s consultation can be  
found at: [www.unice.org/unice/  
docum.nsf/AllDocumentsSearchEng/  
FB34BE19AFFA5030C1256AFE003  
EE7D6/\\$File/011030DataProt-E.pdf](http://www.unice.org/unice/docum.nsf/AllDocumentsSearchEng/FB34BE19AFFA5030C1256AFE003EE7D6/$File/011030DataProt-E.pdf)*

*For a copy of the Commission’s  
Communication on worker’s personal  
data and the ETUC’s response,  
visit the respective websites at:  
[www.europe.eu.int](http://www.europe.eu.int) or  
[www.etuc.org](http://www.etuc.org). Alternatively,  
contact: [alan@privacylaws.com](mailto:alan@privacylaws.com)*