



THE CANADIAN CHAMBER OF COMMERCE
LA CHAMBRE DE COMMERCE DU CANADA

PIPEDA

(Personal Information Protection and Electronic Documents Act)

Speaking notes for an address by

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and

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Bell Canada

February 1, 2007

**House of Commons Standing Committee on
Access to Information, Privacy & Ethics
Ottawa, ON**

(Check Against Delivery)

The Voice of Canadian Business™

Le porte-parole des entreprises canadiennes^{MD}



Introduction

MICHAEL MURPHY:

Good morning Mr. Chairman, Honourable Members of the Committee. My name is Michael Murphy, Executive Vice-President with the Canadian Chamber of Commerce. Also appearing with me today are Chris Gray, Policy Analyst with the Canadian Chamber and David Elder, Vice President, Regulatory Law with Bell Canada, which is a member of the Canadian Chamber. Mr. Elder is also Bell's Privacy Ombudsman.



En tant que *Porte-parole des entreprises canadiennes*, la Chambre de commerce du Canada est l'organisation de gens d'affaires la plus importante et représentative du Canada.

Elle s'exprime au nom d'un réseau de 350 chambres de commerce et autres associations de gens d'affaires comptant plus de 170 000 entreprises membres.

Elle parle au nom de toutes les entreprises – de la plus petite à la plus grande, dans tous les secteurs, dans toutes les régions et circonscriptions du pays.



The Canadian Chamber is pleased to provide its input on the five year statutory review of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). Since PIPEDA was enacted, we have worked closely with our members, local chambers and boards of trade to ensure that businesses of all sizes understand their roles and responsibilities under the Act. The majority of our members have only been subjected to complying with PIPEDA since 2004.

We communicate with our members through a variety of communications vehicles regarding their obligations and we are always considering how we can continue to better educate all businesses, especially SMEs.



To assist our members with PIPEDA, the Canadian Chamber developed a privacy policy template, model contractual clauses and informed them on how to conduct a privacy audit.

My remarks today will be based on our submission to the Privacy Commissioner's consultation on PIPEDA from last fall. We have met with the Privacy Commissioner's office on a number of occasions since the legislation came into force. I have brought additional copies of that submission today for your reference.



General comments

En général, la position de la Chambre de commerce du Canada à l'égard de cet examen de la LPRPDE est semblable à celle que d'autres organisations de gens d'affaires (notamment l'ACTI et l'AMC) vous ont communiquée lors d'entretiens antérieurs. La protection de la vie privée et des renseignements personnels est une question primordiale pour les consommateurs et les entreprises.



Elle est particulièrement importante aujourd'hui à cause des nouvelles technologies qui accroissent le risque de compromission des renseignements personnels. L'adoption de bonnes pratiques en matière de protection des renseignements personnels est tout simplement une saine gestion des affaires. Une entreprise qui utilise des pratiques efficaces à cet égard renforce la confiance du consommateur et tous deux en bénéficient.

Dans l'optique du commerce et de l'industrie, la LPRPDE fonctionne bien et n'exige aucune modification à ce moment-ci. D'ailleurs, la plupart des secteurs industriels et des entreprises individuelles viennent tout juste de commencer à travailler au sein du cadre actuel.



Both business and the Privacy Commissioner's Office have demonstrated a solid, co-operative working relationship. The structure of PIPEDA allows for an effective and workable balance between the interests of protecting an individual's personal information and allowing for business to operate effectively. In addition, there is flexibility built into PIPEDA that is an important factor in allowing industry to efficiently respond to any privacy issues. PIPEDA, as it currently exists, also has relatively low associated costs and a very efficient complaints mechanism.

Also, by maintaining technological neutrality, this legislation transcends advances in technology.



I would now like to turn it over to David Elder to get into more specific comments from the Canadian Chamber's perspective that we believe the honourable members should consider when discussing the principles of PIPEDA.

DAVID ELDER:

Thank you Mike.

The Canadian Chamber and its members believe that Canadian privacy legislation should continue to strike the correct balance between the privacy rights of individuals and the legitimate needs of businesses to collect and disclose customer information.



The flexibility built into PIPEDA has been very beneficial to consumers and business alike during the five years since its implementation.

Order Making Powers

With regard to the Privacy Commissioner's Order Making Powers, the current ombudsman model is an effective manner in which to best protect an individual's need for privacy and, at the same time, address the interests of business. This mechanism for resolving privacy issues is critical for consumers and it is cost effective.



Implementation of an order making process would require a complete review and overhaul of the role of the Office of the Privacy Commissioner (OPC) and the Federal Court. Since any such orders would be subject to appeals, this could potentially result in a less timely resolution of issues. In 2004, the OPC increased its emphasis on settling complaints with 45% settled without a formal investigation.

Changes to the current ombudsman model could significantly adversely impact the ability of the OPC to effect such early settlement. The current model provides the Commissioner with a wide range of powers – including complaint investigation and audit powers.



Duty to Notify

Now turning to the issue of Duty of Notify; in the Canadian Chamber's view the current model is operating successfully. There already exist significant reputational, financial and legal incentives for businesses to notify customers when there have been serious breaches.

Instituting a duty to notify could create a more adversarial relationship between business and the OPC. In addition, imposing a duty to notify on every potential breach could well do a disservice to the very consumers it is meant to protect. This kind of requirement could result in a flood of notices being sent to consumers desensitizing them to the gravity of a truly serious privacy breach.



Given this, the Canadian Chamber does not believe that mandatory breach notification is necessary in the legislation. We would encourage businesses to continue to work closely with the Privacy Commissioner's office in order to identify breaches and notify those who could be affected by a possible breach in privacy. This flexibility enables notice where appropriate in the circumstances with no adverse impact on consumers.

I would also like to note that it would be beneficial for the Canadian Chamber and other business associations to develop a "best practices" set of guidelines that can be used when breaches in privacy occur.



To that end, business groups, including the Canadian Chamber, ITAC, the CMA and others, are currently developing breach notification guidelines in conjunction with the OPC.

Details on these “best practices” guidelines will be coming out this spring.

Naming Powers

With regard to Naming Powers, The Canadian Chamber believes that reputation is key for businesses and, therefore, the naming power that currently exists in PIPEDA should not be used lightly.



Any proposed changes to the Privacy Commissioner's powers in this regard would represent a change to a fundamental element and the structure of PIPEDA and would be opposed by the Canadian Chamber.

Take the retail sector for instance; it is extremely competitive, which is good for consumers, but the "naming of names" could do serious damage.

Therefore, this power should be reserved for those parties who demonstrate a clear pattern of non-compliance.



If there was a routine “naming of names”, it would not help the relationship between business and the OPC. Even the Privacy Commissioner herself has stated that she does not require naming powers. Most cases can be adequately mediated between business and the OPC.

Given this, it is essential that businesses in all sectors are educated about PIPEDA and their responsibilities as a business in handling personal information.

There needs to be a good balance between enforcement of the law and ensuring businesses, especially SMEs, have a good understanding of PIPEDA so that inadvertent infractions are minimized.



Trans-border data flow

On the issue of trans-border data flow, international data flow is an economic reality and any restrictions could hinder Canada's competitiveness in a global economy. Companies understand that their business reputations are on the line and they do not take that responsibility lightly.

Policy consistency is essential for efficient trans-border data flow as was illustrated in the APEC Privacy Framework and the Security and Prosperity Partnership (SPP) initiatives. The accountability principle that is built into PIPEDA is an effective means of ensuring that Canadian businesses communicate their privacy practices to the public in an open and transparent manner.



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The accountability principle also requires businesses to enter into contractual agreements with any third party providers, regardless of where the third party is located. This provides an added level of protection to consumers.



MICHAEL MURPHY:

Conclusion

In conclusion, the Canadian Chamber would recommend the following:

- That no changes be made to PIPEDA at this time and that the Privacy Commissioner be given the additional five years she has requested to work with the current Act;
- Ensure a proper balance is maintained so that the interests of both consumer and businesses are considered;
- Maintain the current ombudsman model to effectively protect privacy; with this model in place, mandatory privacy breach notification is not required;



- Make no changes to the Privacy Commissioner's powers with regard to naming power;
- Do not place restrictions on trans-border data flow that could impede trade and competitiveness;
- That the Privacy Commissioner's office and other business groups continue to play a strong leadership role in educating and informing firms (especially SMEs) and individuals of their rights and obligations under the Act.

Thank you for the opportunity to present the Canadian Chamber's views. We would be happy to take any questions you may have.

