
In the area of privacy

**The five-year review of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., Ch. A-2.1)
(Commission d'accès à l'information)**

The report of the Commission d'accès à l'information on the implementation of the *Act respecting the protection of personal information in the private sector* led to an in-depth reflection on the future of the rights vested by these laws.

The recent past often holds clues to the future, which is why there is ample cause for concern about whether the goals of ensuring government openness and protection of privacy that guided the National Assembly in 1982 still prevail. Other goals appear to have taken their place. Whether for the purpose of controlling and tightening up government spending or promoting the use and development of information and communications technologies, there appears to be a growing trend toward cloaking government actions in secrecy while placing citizens under ever increasing scrutiny.

Legislative proposals—whether acted on or abandoned—for dealing with tax evasion and the underground economy, consolidating personal data, using information for multiple purposes, or introducing prescription drug insurance as well as a citizen's card and a health card are very revealing to close observers. Citizens are increasingly caught up in a bureaucratic web that is growing more and more difficult to untangle and control.

Projects like the ones mentioned above inevitably alter the relationship between government and the governed, a key concern of the Québec Ombudsman, as he revealed with the *Social Contract* he proposed to the public service in his 1993–94 *Annual Report*.

This is why the Québec Ombudsman spoke out during debate on these projects to stress the need for establishing real communication between citizens and the state. True communication can only exist when citizens are well informed and have the means to voice their opinions, criticisms and suggestions—in short, to make their needs and expectations known to their elected representatives as well as those who implement policy. True communication also requires trust and mutual respect.

The review of the *Act respecting Access* should therefore have provided the opportunity to question its fundamental values and its implicit and explicit objectives as the 21st century draws nigh.

The *Act respecting Access*, like the *Charter of Human Rights and Freedoms*, has an overriding character and the values it reflects are viewed by the Québec Ombudsman as a key feature of state-citizen relations. The review of the act was to give everyone a chance to think about the human need to protect privacy, but also an opportunity to redefine areas where the state may be authorized to obtain or release private information in the interest of the common good.

The Québec Ombudsman therefore insisted on the need to restrict the circulation of personal information of a public nature in order to avoid the proliferation of databanks on private individuals.

He also called for changes to section 168, which affirms the preponderance of the *Act respecting Access*, to make it impossible to ignore the rights recognized in the law unless the exemption is clearly defined and justifiable in a free and democratic society. For the Québec Ombudsman, all applications for exemption must be accompanied by the following information:

- a detailed description of the problem;
- a social and legal assessment of the issues;
- a cost analysis;
- alternatives measures for protecting the rights recognized under the law;
- a description of the technologies and structures that will be used, as the case may be.

Similarly, the Québec Ombudsman stressed that the law should also include a mechanism to assess the social impact of information technologies so that all legislative, regulatory and administrative measures employing information technology be evaluated prior to implementation.

Bill 451, which was drafted in response to the Commission d'accès d'information report to amend the *Act respecting Access*, was recently the subject of public consultations in which the Québec Ombudsman also took part. He pointed out that a number of the proposed amendments were significant improvements on the current law, notably measures aimed at facilitating access to information for the handicapped and tightening conditions for the exchange of personal information, as well as provisions on the use of information technologies.

He also declared that the responsibility for assessing the impact of information technologies newly conferred on the Commission d'accès à l'information marked an important step forward in law for the protection of personal information.

In contrast, the Québec Ombudsman had to reiterate that the preponderant nature of the *Act respecting Access* was not stated strongly enough in the current legislation and that the amendments proposed in Bill 451 failed to meet his expectations in this regard.

Identity Card Issues (Human rights and freedoms)

In March 1997, the Parliamentary Committee on Culture took the initiative of holding public hearings on identity cards and privacy protection. The hearings came in response to concerns raised by the Auditor General, the Québec Ombudsman and the Commission d'accès à l'information regarding various government projects to develop cards for use as identification and in obtaining services. Among these were the Chief Electoral Officer's proposal for a voter's card, the smart card being developed by the Régie de l'assurance-maladie to replace existing health insurance cards, and the multiservice card, or so-called "citizen's card" that the Secrétariat de l'autoroute de l'information was talking about.

The Québec Ombudsman submitted two briefs on the issue, the first at the beginning of the hearings and the second at the request of the Committee on Culture, which wanted the Ombudsman, the Commission d'accès à l'information, the Auditor General and the Commission de protection des droits de la personne et des droits de la jeunesse to summarize the debate and make suggestions in light of the discussions.

The Ombudsman looked at the social implications of an identity card from the perspective of state-citizen relations, the confidentiality of personal information, control of information by the person concerned, and the development of the information highway.

In an era where communications and data processing systems can provide access to megafiles and highly sensitive information, he stressed the urgent need to develop ways of guaranteeing system security.

At the same time, he urged the government to ensure that all public servants received practical, hands-on training on the universal individual right to respect for privacy, and to continually raise awareness of the issue. Rights, ethics, even morality are at stake, not to mention that respecting privacy is an obligation inherent in the duties of the public servant. It must never be forgotten that behind each piece of personal data lies a person who trusted someone, and who must maintain that sense of trust.

With regard to the issue of an identity card, the Québec Ombudsman identified the following objectives:

- Respect Québec culture in the area of rights and liberties: identity cards should not be compulsory (a guarantee to this effect should be included in the *Charter*);
- Protect against the emergence of a society where Big Brother is always watching: the card should not be linked or provide access to a central database;
- Dissociate "identification" and "government services";
- Help individuals maintain control over information that concerns them;
- Identify the costs associated with the various formats and technologies available;

In his complementary brief, the Québec Ombudsman reached the following conclusion:

«A simple means of identification requiring no superfluous personal information, free of such risks as fraudulent or undesirable use, should be available to all citizens. A simple and economic solution should be possible, provided it is not included in a sophisticated package (citizen identification card, private and public multiservice card, smart card) that responds to both the real needs of the citizen and the potential needs of government and private industry. Different needs, different solutions. The government could entrust one of its departments with the responsibility of issuing identification cards to interested citizens.

Through the use of technology to minimize the risk of falsification or forgery, such a card could contain the holder's photo, birth date, address, signature and registration number identifying the card rather than the individual.

The physical support of such a card should be developed so as to minimize costs, which, in fact, would be assumed by the citizen.

The government department responsible for this card should not be permitted to generate a population file from the data collected or supplement any other file it may have as a result of this information. To ensure the government itself abides by this provision, legislation should be adopted to this effect».

Lastly, the Québec Ombudsman reiterated his initial proposal that citizens not be obligated to carry an identification card and, to show his concern, that such a provision be entrenched in the *Charter of Human Rights and Freedoms*.