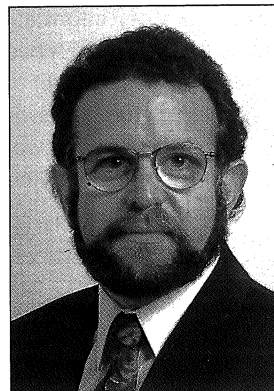


CCTV and the Law

Getting Personal

How a new piece of legislation dealing with personal information will adversely affect the industry

By Elliott Goldstein



Q: Will Bill C-54, the *Personal Information Protection and Electronic Documents Act*, have an impact on the alarm and security industries?

A: Yes! Unfortunately, a negative impact!

Currently, federal privacy legislation and all provincial privacy legislation (with the exception of Québec) cover only government departments, branches and agencies.¹ Now before Parliament, Bill C-54 will impose strict rules on federally regulated, private-sector businesses regarding collection, use and distribution of personal information.²

The official purpose of the proposed Act is "to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending" certain other Acts, including the *Canada Evidence Act*.

If passed in its present form, Bill C-54 will do the following nine things:

- ◆ set limits within which personal information can be lawfully collected, used and distributed by security professionals;
- ◆ substantially limit the ability of investigative units of private business and industry to lawfully communicate information concerning third parties to their clients;
- ◆ provide a means by which individuals who are the subject of investigation can demand access to any "records" held by a firm that pertains to them;
- ◆ define a "record" to include "any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and

any other documentary material, regardless of physical form or characteristics, and any copy of any of those things";

- ◆ require businesses, in some circumstances, to disclose to a requester the nature of any information concerning the requester that has been disclosed to third parties and to furnish the identity of anyone (that is, any

Various organizations have suggested amendments to the proposed legislation

client) who has received such information;

- ◆ require businesses to respond to requests for personal information within specified time frames or risk sanctions;
- ◆ provide a complaint mechanism for dissatisfied information seekers that gives substantial powers to the Federal Privacy Commissioner of Canada to both investigate and audit (the businesses);
- ◆ grant jurisdiction and powers to the Federal Court (of Canada) to conduct hearings upon application by either a complainant or the Privacy Commissioner concerning alleged violations of the draft law, and to impose sanctions that can range up to or beyond \$20,000; and
- ◆ impose an administrative burden (nightmare?) by requiring the devel-

opment and adoption of specified information management practices and policies, (hiring and) training of staff and time-consuming handling of information requests and complaints, investigations, audits and possible (numerous? expensive? time-consuming?) court appearances.³

Various organizations have suggested amendments to the proposed legislation. For example, the Council of Private Investigators - Ontario⁴ (CPI) has proposed that the Act be amended to include a definition of "law enforcement agency" as follows:

"'law enforcement agency' means any police officer, peace officer, any person licensed under the laws of a province to investigate criminal or civil torts, or any person employed by a corporation whose sole function is to investigate criminal or civil torts against the business affairs of his or her employer."

This and the many other amendments proposed by CPI would provide an exemption for law enforcement agencies and purposes. Another example of a change requested by CPI is a call for legislated immunity for good faith compliance (that is, that persons or organizations from which information is sought be immune from prosecution under the proposed Act or from any civil tort based on the Act.)

To ensure adequate safeguards without the creation of a collateral federal regulating agency, CPI recommends that the Act be amended to require "a person or organization to file a 'privacy protection plan' with the federal or

provincial authority licensing or regulating that person or organization."

It will be interesting to see what changes, if any, are made to Bill C-54 at third reading and in the Senate. Stay tuned for more information on this important piece of legislation. In the meantime, interested parties can download a copy of the current draft of the legislation from Parliamentary Internet,

a Government of Canada website located at www.parl.gc.ca.

Elliott Goldstein, B.A., LL.B., is a barrister and solicitor in private practice. He is also author of Visual Evidence: A Practitioner's Manual, which can be obtained from Dean Avola at Sony of Canada Ltd. by calling (416) 495-3389.

Author's Notes

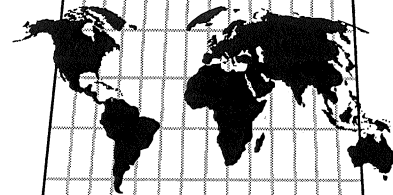
1 See sidebar "Are you being reasonable?" in the CCTV and the Law article entitled "Surveillance in the Unionized Workplace," *Canadian Security*, October 1998, page 26, and IPC Practices compliance letter (#10, dated September 1998), which can be downloaded from the Internet site located at www.ipc.on.ca.

2 Federally regulated businesses include, but are not limited to, those in the banking, transportation (truck, train, ship and airplane) and communications sectors, and generally any business to which the *Canada Labour Code* applies.

3 The cost of accessing the courts, arbitrations, and alternative dispute resolution forums is already too high. It costs on average approximately \$10,000 to \$20,000 to complete the pleadings and discovery stages of a civil lawsuit. Trials cost approximately \$1,500 to \$2,000 per day in legal fees alone.

4 For more information, please contact the Council of Private Investigators - Ontario by calling (519) 641-1521 or sending an e-mail to director@cpo-ontario.com. Or visit the website at www.cpi-ontario.com.

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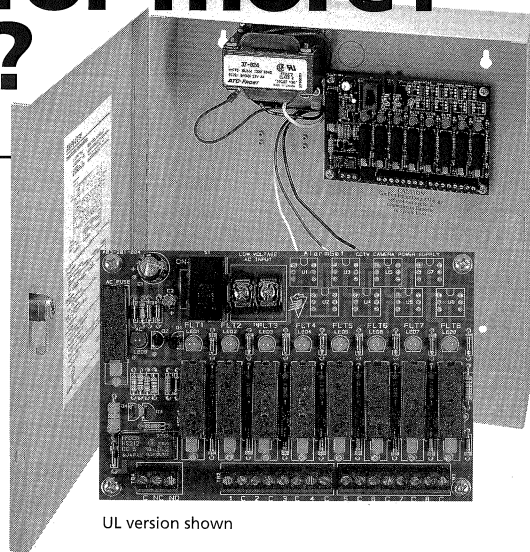
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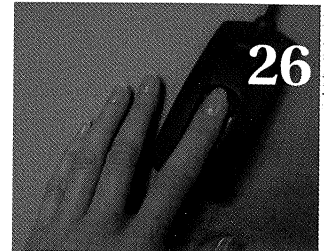
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By Ed Murrer



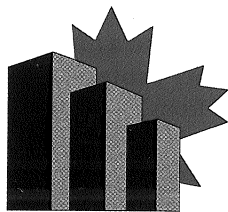
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