



CCTV and the Law

A Proposal for Privacy

A look at the content and potential implications of Ontario's proposed *Privacy Act*

By Elliott Goldstein

Q Is Ontario considering enacting a *Privacy Act* and, if so, how might it affect those who conduct video surveillance?

A Yes. The Ontario Ministry of Consumer and Corporate Relations (MCCR) is considering the enactment of a *Privacy Act* to govern the private sector. The proposed Ontario *Privacy Act* would apply to all businesses and not-for-profit organizations, except government organizations covered by public sector legislation and those organizations specifically subject to federal jurisdiction.

The *Freedom of Information and Protection of Privacy Act* (FIPPA) and *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) regulate personal privacy in the public sector in Ontario. Alberta has similar legislation, as does the federal government.

Ontario's Information and Privacy Commissioner provides independent oversight of FIPPA and MFIPPA, which provide access to provincial and municipal government information and set rules for the collection, use and disclosure of personal information. These Acts apply to surveillance videotapes because videotapes fall within the definition of "record" under both provincial Acts.

The proposed Ontario *Privacy Act* would "increase an individual's ability to control whether and how information about him or her is collected, used and disclosed. Clear privacy rules would also provide for the appropriate use and exchange of personal information by businesses and organizations."¹

In response to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) passed in April 2000, Ontario's MCCR recently issued a consultation paper. It asked questions that focus on different approaches the new legislation can take.²

Canada's PIPEDA initially applies to privacy in the federally regulated private sector (for example, banking and telecommunications) and the flow of

commercial information across borders (for example, between Canada and the United States).

Beginning in 2004, PIPEDA will apply to all commercial transactions within those provinces that do not have similar legislation in place. So if Ontario passes substantially similar legislation, PIPEDA will not apply in Ontario, hence the urgency for that province to develop its own legislation.

PIPEDA includes the Canadian Standards Association (CSA) standard "Model Code for the Protection of Personal Information" as a schedule in its legislation. In Canada, the CSA standard has been adopted as a national standard. The proposed Ontario *Privacy Act* would also be based on the CSA standard, as Ontario fully endorses and supports it, according to the provincial government. (For a review of the standard, check out Appendix A at the MCCR Web site.)³

While the proposed Ontario *Privacy Act* would closely resemble the federal legislation on the key elements of the CSA standard, it would be drafted similarly to Québec's privacy legislation, which was enacted in 1994. Under Ontario's proposed act, individuals would be assured of three things:

- they would have greater ability to control whether and how their personal information is collected, used and disclosed;
- they would be able to see and, if necessary, correct their personal information; and
- they would be able to file a complaint if their personal information has been collected, used or disclosed in violation of the act.

Under the proposed Ontario *Privacy Act*, an individual would be asked to give his or her consent before personal information is collected. What kind of information an organization is asking for and why would have to be explained

by the organization doing the collecting. Consent would usually be "express." For example, by signing a paper or filling in an online form on a computer. The act would only allow "implied" consent in reasonable and obvious circumstances. For example, it would be reasonable for a newspaper to assume implied consent for using your home address if you call to buy a subscription for home delivery.

After collection, the individual could withdraw his or her consent for the collection, use or disclosure of personal information. The implications of withdrawing consent would be explained by the organization to which it was originally given. However, a person would not be able to withdraw consent to break a contract. For example, a person would not be able to stop a lender from using his or her personal information in order to collect on a civil debt that he or she owed to that lender.

The proposed act would not prevent organizations from moving information within or outside Canada. However, organizations would be required to take reasonable steps to ensure the provisions of the act are respected. This might include adding provisions to contracts to make sure the personal information is only used for the purposes identified and for which the individual gave consent.

For "law enforcement cooperation" purposes, information can be collected, used or disclosed without the individual's consent. A person or an organization would be allowed to disclose personal information to law enforcement agencies if there are reasonable grounds to suspect an offence. Individuals would not be able to access their personal information if such access would place an investigation at risk. For example, an organization would not have to reveal to an individual that it had provided information to a law enforcement agency about that individual.

Interestingly, the proposed act (like the federal legislation) would provide "whistleblower protection" to protect employees who report privacy infractions from reprisal.

Compliance orders could be used to ensure that organizations take corrective action without assigning penalties or blame. If there are reasonable and probable grounds to believe that a vio-

CCTV and the Law

lation of the act has taken place, a compliance order could be issued.

For example, if information in the form of a surveillance videotape was used inappropriately or a person was denied access to his or her own personal information (for example, a videotape of that person), a compliance order might require an organization to do one or more of the following:

- provide the person with the surveillance videotape;
- stop or change a particular prohibited information practice (such as stopping the release of surveillance videotapes to a third party); and/or
- implement procedures to ensure compliance with the proposed act (such as documentation or security measures).

Violation of a compliance order would be an offence under the proposed Ontario *Privacy Act*. Appeal provisions would be included in the act to enable the individual or organization the right to appeal the compliance order.

A person subject to surveillance, who suffers damages as a result of a violation of his or her rights under the

proposed Ontario *Privacy Act*, could sue in civil courts. But persons engaged in the enforcement of the proposed act could not be called as witnesses in civil actions. ♦

Elliott Goldstein BA, LL.B., is a lawyer and visual evidence consultant based in Toronto, Ontario. He is also a member of the Canadian Security Editorial Advisory Board.

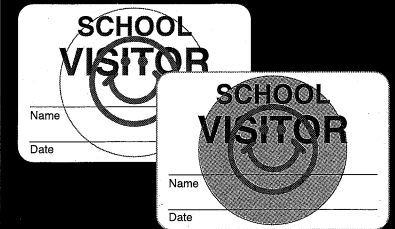
Author's Notes

- 1 Quoted from *A Consultation Paper: Proposed Ontario Privacy Act*, published by the Ministry of Consumer and Commercial Relations, July 2000, Government of Ontario (and reproduced on the Ministry's Web site cited below).
- 2 This legislation was discussed in an earlier issue of *Canadian Security*. See "Getting Personal," April/May 1999, page 24.
- 3 Web site URL www.ccr.gov.on.ca, choose News and Publications and then Consultation Documents, then see Appendix A.

TEMPbadge®



School Visitor Pass



Security with a smile!

800-628-0022

www.tempbadge.com

CIRCLE 10 on Reader Service Card

CORPORATE
♦
MILITARY
♦
SECURITY



INTERNATIONAL SCHOOL OF INVESTIGATION AND PROTECTIVE SERVICES



EP-STC-04

- Eight (8) Day Resident Diploma Program
- Cost Includes: Tuition, Course Materials, All Meals, Accommodation, and use of Recreational Facilities
- Total Cost \$2,175.00 (Canadian Funds)

HIGH RISK VIP/EXECUTIVE PROTECTION SPECIALIST

Topics include:

Vehicle, Aircraft and marine Security, Technical Surveillance Countermeasures, Foot and Vehicle Formations, Advance Surveys, Search and Rescue, Tactical Evacuation, Kidnapping and Hostage Survival, Terrorism, Protective Intelligence, Bomb and Explosives Incidents, Close Quarter Battle, Interview and Investigation, Protecting Children, Witnesses, Celebrities, and Executives, Workplace Violence, Stalker Intervention, and more...

Dates Available — Call Today

• January 21-28, 2001	• April 22-29, 2001
• February 4-11, 2001	• May 13-20, 2001
• March 11-18, 2001	

2810 Matheson Blvd. E, Suite 200
Mississauga, Ontario, Canada L4W 4X7
Tel: 905-624-4391 Fax: 905-624-6636
E-mail: school@ipg-protect.com
Visit Our Web Site for Details

 www.ipg-protect.com

CIRCLE 11 on Reader Service Card

AmeriSys: When you need more than just access control

If you are looking for innovative and expandable solutions, we are the people to talk to.

We manufacture a wide range of proximity smart card products that can be tailored to your needs.

Universal Weigand Reader



Portable Reader Writer



Did you know that the State of New Jersey adopted the AmeriSys reader and card system for all its public buildings? Our in-depth knowledge of multiple application systems exceeded expectations. Are you also ready to choose a winning solution?

IS014443/Mifare Compatible

Tel.: (514) 620-8522
Fax: (514) 620-3900
info@amerisys.com
www.amerisys.com



AmeriSys inc.
Smart Cards for Smart People™

CIRCLE 12 on Reader Service Card

Contents

December 2000 Volume 22 Number 9

18

Controlling the Tower

How Canterra Tower's base building team has successfully taken care of everything from high-end security systems to elevator controls

By Tom Pullam

22

The In Crowd

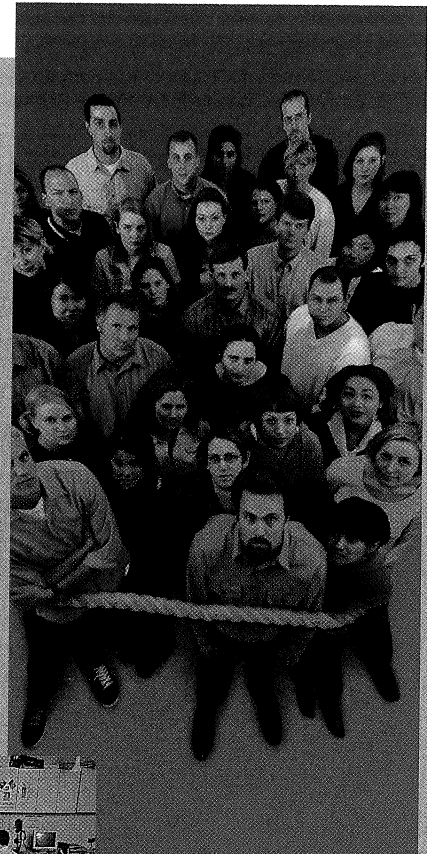
Maintaining control of a crowd is essential if you want to avoid dealing with a mob or even a riot, so here is a look at how to do it

By Jim Maddin

34

2000 Annual Index

A listing by subject of all of the articles that appear in the 2000 issues of *Canadian Security*



page 22



page 18

In Each Issue

4 Editor's Notebook

A Fond Farewell

6 Industry Updates

The future of fire safety; advanced IS services from Verizon and JAWZ; DuPont invests in safety products; and more

12 Alarm Industry News

VProtect starts eWeb CCTV; Kalatel acquires 8x8 product line; Telular and Camden announce partnership; and more

14 CCTV and the Law

A Proposal for Privacy

By Elliott Goldstein

26 CSIS Information

Us and a Word

By Robert Marentette

28 The Law in Brief

Dealing With Double Jeopardy

31 Viewpoint

The Message in the Mergers

By Jess Gregory

31 Calendar of Events

32 People on the Move

35 Advertisers' Index

36 New Product Highlights

Some of the security-related products now available in Canada

38 Q&A

Victims of Crime

An interview with Statistics

Canada's Karen Mihorean