

# Personal Information Protection and Electronic Documents Act

2000, c. 5

P-8.6

[Assented to April 13th, 2000]

An Act 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 the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## SHORT TITLE

### Short title

**1.** This Act may be cited as the *Personal Information Protection and Electronic Documents Act*.

## PART 1

### PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR

#### INTERPRETATION

### Definitions

**2.** (1) The definitions in this subsection apply in this Part.

"alternative format"  
«*support de substitution* »

"alternative format" , with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information.

"commercial activity"  
«*activité commerciale* »

"commercial activity" means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.

"Commissioner"  
«*commissaire* »

"Commissioner" means the Privacy Commissioner appointed under section 53 of the *Privacy Act*.

"Court"  
«*Cour* »

"Court" means the Federal Court.

"federal work, undertaking or business"  
«*entreprises fédérales* »

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament. It includes

(a) a work, undertaking or business that is operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(b) a railway, canal, telegraph or other work or undertaking that connects a province with another province, or that extends beyond the limits of a province;

(c) a line of ships that connects a province with another province, or that extends beyond the limits of a province;

(d) a ferry between a province and another province or between a province and a country other than Canada;

(e) aerodromes, aircraft or a line of air transportation;

(f) a radio broadcasting station;

(g) a bank;

(h) a work that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more provinces;

(i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces; and

(j) a work, undertaking or business to which federal laws, within the meaning of section 2 of the *Oceans Act*, apply under section 20 of that Act and any regulations made under paragraph 26(1)(k) of that Act.

"organization"  
«*organisation* »

"organization" includes an association, a partnership, a person and a trade union.

"personal health information"  
«*renseignement personnel sur la santé* »

"personal health information" , with respect to an individual, whether living or deceased,  
means

- (a) information concerning the physical or mental health of the individual;
- (b) information concerning any health service provided to the individual;
- (c) information concerning the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (d) information that is collected in the course of providing health services to the individual; or
- (e) information that is collected incidentally to the provision of health services to the individual.

"personal information"  
«*renseignement personnel* »

"personal information" means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

"record"  
«*document* »

"record" includes 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.

### Notes in Schedule 1

(2) In this Part, a reference to clause 4.3 or 4.9 of Schedule 1 does not include a reference to the note that accompanies that clause.

2000, c. 5, s. 2; 2002, c. 8, s. 183.

## PURPOSE

### Purpose

**3.** The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to

collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

## APPLICATION

### Application

**4.** (1) This Part applies to every organization in respect of personal information that

(a) the organization collects, uses or discloses in the course of commercial activities; or

(b) is about an employee of the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business.

### Limit

(2) This Part does not apply to

(a) any government institution to which the *Privacy Act* applies;

(b) any individual in respect of personal information that the individual collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or

(c) any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

### Other Acts

\*(3) Every provision of this Part applies despite any provision, enacted after this subsection comes into force, of any other Act of Parliament, unless the other Act expressly declares that that provision operates despite the provision of this Part.

\* [Note: Subsection 4(3) in force January 1, 2001, see SI/2000-29.]

### Certificate under *Canada Evidence Act*

**4.1** (1) Where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of personal information of a specific individual is issued before a complaint is filed by that individual under this Part in respect of a request for access to that information, the provisions of this Part respecting that individual's right of access to his or her personal information do not apply to the information that is subject to the certificate.

### Certificate following filing of complaint

(2) Notwithstanding any other provision of this Part, where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of personal information of a specific individual is issued after the filing of a complaint under this Part in relation to a request for access to that information:

(a) all proceedings under this Part in respect of that information, including an investigation, audit, appeal or judicial review, are discontinued;

(b) the Commissioner shall not disclose the information and shall take all necessary precautions to prevent its disclosure; and

(c) the Commissioner shall, within 10 days after the certificate is published in the *Canada Gazette*, return the information to the organization that provided the information.

#### Information not to be disclosed

(3) The Commissioner and every person acting on behalf or under the direction of the Commissioner, in carrying out their functions under this Part, shall not disclose information subject to a certificate issued under section 38.13 of the *Canada Evidence Act*, and shall take every reasonable precaution to avoid the disclosure of that information.

#### Power to delegate

(4) The Commissioner may not delegate the investigation of any complaint relating to information subject to a certificate issued under section 38.13 of the *Canada Evidence Act* except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting that investigation.

2001, c. 41, s. 103.

### DIVISION 1

#### PROTECTION OF PERSONAL INFORMATION

#### Compliance with obligations

**5.** (1) Subject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.

#### Meaning of "should"

(2) The word "should", when used in Schedule 1, indicates a recommendation and does not impose an obligation.

#### Appropriate purposes

(3) An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

#### Effect of designation of individual

**6.** The designation of an individual under clause 4.1 of Schedule 1 does not relieve the organization of the obligation to comply with the obligations set out in that Schedule.

#### Collection without knowledge or consent

**7.** (1) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

- (a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- (b) it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province;
- (c) the collection is solely for journalistic, artistic or literary purposes;
- (d) the information is publicly available and is specified by the regulations; or
- (e) the collection is made for the purpose of making a disclosure
  - (i) under subparagraph (3)(c.1)(i) or (d)(ii), or
  - (ii) that is required by law.

#### Use without knowledge or consent

(2) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if

- (a) in the course of its activities, the organization becomes aware of information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;
- (b) it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;
- (c) it is used for statistical, or scholarly study or research, purposes that cannot be achieved without using the information, the information is used in a manner that will

ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;

(c.1) it is publicly available and is specified by the regulations; or

(d) it was collected under paragraph (1)(a), (b) or (e).

### Disclosure without knowledge or consent

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

(b) for the purpose of collecting a debt owed by the individual to the organization;

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

(i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

(ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law, or

(iii) the disclosure is requested for the purpose of administering any law of Canada or a province;

(c.2) made to the government institution mentioned in section 7 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as required by that section;

\*(c.2) made to the government institution mentioned in section 7 of the *Proceeds of Crime (Money Laundering) Act* as required by that section;

\* [Note: Paragraph 7(3)(c.2), as enacted by paragraph 97(1)(a) of chapter 17 of the Statutes of Canada, 2000, will be repealed at a later date.]

(d) made on the initiative of the organization to an investigative body, a government institution or a part of a government institution and the organization

(i) has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

(ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

(i) one hundred years after the record containing the information was created, and

(ii) twenty years after the death of the individual whom the information is about;

(h.1) of information that is publicly available and is specified by the regulations;

(h.2) made by an investigative body and the disclosure is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province; or

(i) required by law.

#### Use without consent

(4) Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection (2).

#### Disclosure without consent

(5) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in any of the circumstances set out in paragraphs (3)(a) to (h.2).

2000, c. 5, s. 7, c. 17, s. 97; 2001, c. 41, s. 81; 2004, c. 15, s. 98.

#### Written request

8. (1) A request under clause 4.9 of Schedule 1 must be made in writing.

#### Assistance

(2) An organization shall assist any individual who informs the organization that they need assistance in preparing a request to the organization.

#### Time limit

(3) An organization shall respond to a request with due diligence and in any case not later than thirty days after receipt of the request.

#### Extension of time limit

(4) An organization may extend the time limit

(a) for a maximum of thirty days if

(i) meeting the time limit would unreasonably interfere with the activities of the organization, or

(ii) the time required to undertake any consultations necessary to respond to the request would make the time limit impracticable to meet; or

(b) for the period that is necessary in order to be able to convert the personal information into an alternative format.

In either case, the organization shall, no later than thirty days after the date of the request, send a notice of extension to the individual, advising them of the new time limit, the reasons for extending the time limit and of their right to make a complaint to the Commissioner in respect of the extension.

#### Deemed refusal

(5) If the organization fails to respond within the time limit, the organization is deemed to have refused the request.

#### Costs for responding

(6) An organization may respond to an individual's request at a cost to the individual only if

(a) the organization has informed the individual of the approximate cost; and

(b) the individual has advised the organization that the request is not being withdrawn.

#### Reasons

(7) An organization that responds within the time limit and refuses a request shall inform the individual in writing of the refusal, setting out the reasons and any recourse that they may have under this Part.

#### Retention of information

(8) Despite clause 4.5 of Schedule 1, an organization that has personal information that is the subject of a request shall retain the information for as long as is necessary to allow the individual to exhaust any recourse under this Part that they may have.

#### When access prohibited

**9.** (1) Despite clause 4.9 of Schedule 1, an organization shall not give an individual access to personal information if doing so would likely reveal personal information about a third party. However, if the information about the third party is severable from the record containing the information about the individual, the organization shall sever the information about the third party before giving the individual access.

#### Limit

(2) Subsection (1) does not apply if the third party consents to the access or the individual needs the information because an individual's life, health or security is threatened.

#### Information related to paragraphs 7(3)(c), (c.1) or (d)

(2.1) An organization shall comply with subsection (2.2) if an individual requests that the organization

(a) inform the individual about

(i) any disclosure of information to a government institution or a part of a government institution under paragraph 7(3)(c), subparagraph 7(3)(c.1)(i) or (ii) or paragraph 7(3)(c.2) or (d), or

(ii) the existence of any information that the organization has relating to a disclosure referred to in subparagraph (i), to a subpoena, warrant or order referred to in paragraph 7(3)(c) or to a request made by a government institution or a part of a government institution under subparagraph 7(3)(c.1)(i) or (ii); or

(b) give the individual access to the information referred to in subparagraph (a)(ii).

#### Notification and response

(2.2) An organization to which subsection (2.1) applies

(a) shall, in writing and without delay, notify the institution or part concerned of the request made by the individual; and

(b) shall not respond to the request before the earlier of

- (i) the day on which it is notified under subsection (2.3), and
- (ii) thirty days after the day on which the institution or part was notified.

### Objection

(2.3) Within thirty days after the day on which it is notified under subsection (2.2), the institution or part shall notify the organization whether or not the institution or part objects to the organization complying with the request. The institution or part may object only if the institution or part is of the opinion that compliance with the request could reasonably be expected to be injurious to

(a) national security, the defence of Canada or the conduct of international affairs;

(a.1) the detection, prevention or deterrence of money laundering or the financing of terrorist activities; or

\*(a.1) the detection, prevention or deterrence of money laundering; or

\* [Note: Paragraph 9(2.3)(a.1), as enacted by paragraph 97(1)(c) of chapter 17 of the Statutes of Canada, 2000, will be repealed at a later date.]

(b) the enforcement of any law of Canada, a province or a foreign jurisdiction, an investigation relating to the enforcement of any such law or the gathering of intelligence for the purpose of enforcing any such law.

### Prohibition

(2.4) Despite clause 4.9 of Schedule 1, if an organization is notified under subsection (2.3) that the institution or part objects to the organization complying with the request, the organization

(a) shall refuse the request to the extent that it relates to paragraph (2.1)(a) or to information referred to in subparagraph (2.1)(a)(ii);

(b) shall notify the Commissioner, in writing and without delay, of the refusal; and

(c) shall not disclose to the individual

(i) any information that the organization has relating to a disclosure to a government institution or a part of a government institution under paragraph 7(3)(c), subparagraph 7(3)(c.1)(i) or (ii) or paragraph 7(3)(c.2) or (d) or to a request made by a government institution under either of those subparagraphs,

(ii) that the organization notified an institution or part under paragraph (2.2)(a) or the Commissioner under paragraph (b), or

(iii) that the institution or part objects.

### When access may be refused

(3) Despite the note that accompanies clause 4.9 of Schedule 1, an organization is not required to give access to personal information only if

(a) the information is protected by solicitor-client privilege;

(b) to do so would reveal confidential commercial information;

(c) to do so could reasonably be expected to threaten the life or security of another individual;

(c.1) the information was collected under paragraph 7(1)(b);

(d) the information was generated in the course of a formal dispute resolution process; or

(e) the information was created for the purpose of making a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that Act.

However, in the circumstances described in paragraph (b) or (c), if giving access to the information would reveal confidential commercial information or could reasonably be expected to threaten the life or security of another individual, as the case may be, and that information is severable from the record containing any other information for which access is requested, the organization shall give the individual access after severing.

#### Limit

(4) Subsection (3) does not apply if the individual needs the information because an individual's life, health or security is threatened.

#### Notice

(5) If an organization decides not to give access to personal information in the circumstances set out in paragraph (3)(c.1), the organization shall, in writing, so notify the Commissioner, and shall include in the notification any information that the Commissioner may specify.

2000, c. 5, s. 9, c. 17, s. 97; 2001, c. 41, s. 82; 2005, c. 46, s. 57; 2006, c. 9, s. 223.

#### Sensory disability

**10.** An organization shall give access to personal information in an alternative format to an individual with a sensory disability who has a right of access to personal information under this Part and who requests that it be transmitted in the alternative format if

(a) a version of the information already exists in that format; or

(b) its conversion into that format is reasonable and necessary in order for the individual to be able to exercise rights under this Part.

## DIVISION 2

### REMEDIES

#### *Filing of Complaints*

##### Contravention

**11.** (1) An individual may file with the Commissioner a written complaint against an organization for contravening a provision of Division 1 or for not following a recommendation set out in Schedule 1.

##### Commissioner may initiate complaint

(2) If the Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Part, the Commissioner may initiate a complaint in respect of the matter.

##### Time limit

(3) A complaint that results from the refusal to grant a request under section 8 must be filed within six months, or any longer period that the Commissioner allows, after the refusal or after the expiry of the time limit for responding to the request, as the case may be.

##### Notice

(4) The Commissioner shall give notice of a complaint to the organization against which the complaint was made.

#### *Investigations of Complaints*

##### Powers of Commissioner

**12.** (1) The Commissioner shall conduct an investigation in respect of a complaint and, for that purpose, may

(a) summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Commissioner considers necessary to investigate the complaint, in the same manner and to the same extent as a superior court of record;

(b) administer oaths;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, whether or not it is or would be admissible in a court of law;

(d) at any reasonable time, enter any premises, other than a dwelling-house, occupied by an organization on satisfying any security requirements of the organization relating to the premises;

(e) converse in private with any person in any premises entered under paragraph (d) and otherwise carry out in those premises any inquiries that the Commissioner sees fit; and

(f) examine or obtain copies of or extracts from records found in any premises entered under paragraph (d) that contain any matter relevant to the investigation.

### Dispute resolution mechanisms

(2) The Commissioner may attempt to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation.

### Delegation

(3) The Commissioner may delegate any of the powers set out in subsection (1) or (2).

### Return of records

(4) The Commissioner or the delegate shall return to a person or an organization any record or thing that they produced under this section within ten days after they make a request to the Commissioner or the delegate, but nothing precludes the Commissioner or the delegate from again requiring that the record or thing be produced.

### Certificate of delegation

(5) Any person to whom powers set out in subsection (1) are delegated shall be given a certificate of the delegation and the delegate shall produce the certificate, on request, to the person in charge of any premises to be entered under paragraph (1)(d).

## *Commissioner's Report*

### Contents

**13.** (1) The Commissioner shall, within one year after the day on which a complaint is filed or is initiated by the Commissioner, prepare a report that contains

(a) the Commissioner's findings and recommendations;

(b) any settlement that was reached by the parties;

(c) if appropriate, a request that the organization give the Commissioner, within a specified time, notice of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken; and

(d) the recourse, if any, that is available under section 14.

#### Where no report

(2) The Commissioner is not required to prepare a report if the Commissioner is satisfied that

(a) the complainant ought first to exhaust grievance or review procedures otherwise reasonably available;

(b) the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under the laws of Canada, other than this Part, or the laws of a province;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date when the complaint was filed is such that a report would not serve a useful purpose; or

(d) the complaint is trivial, frivolous or vexatious or is made in bad faith.

If a report is not to be prepared, the Commissioner shall inform the complainant and the organization and give reasons.

#### Report to parties

(3) The report shall be sent to the complainant and the organization without delay.

### *Hearing by Court*

#### Application

**14.** (1) A complainant may, after receiving the Commissioner's report, apply to the Court for a hearing in respect of any matter in respect of which the complaint was made, or that is referred to in the Commissioner's report, and that is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of that Schedule as modified or clarified by Division 1, in subsection 5(3) or 8(6) or (7) or in section 10.

#### Time of application

(2) The application must be made within forty-five days after the report is sent or within any further time that the Court may, either before or after the expiry of those forty-five days, allow.

#### For greater certainty

(3) For greater certainty, subsections (1) and (2) apply in the same manner to complaints referred to in subsection 11(2) as to complaints referred to in subsection 11(1).

#### Commissioner may apply or appear

**15.** The Commissioner may, in respect of a complaint that the Commissioner did not initiate,

(a) apply to the Court, within the time limited by section 14, for a hearing in respect of any matter described in that section, if the Commissioner has the consent of the complainant;

(b) appear before the Court on behalf of any complainant who has applied for a hearing under section 14; or

(c) with leave of the Court, appear as a party to any hearing applied for under section 14.

### Remedies

**16.** The Court may, in addition to any other remedies it may give,

(a) order an organization to correct its practices in order to comply with sections 5 to 10;

(b) order an organization to publish a notice of any action taken or proposed to be taken to correct its practices, whether or not ordered to correct them under paragraph (a); and

(c) award damages to the complainant, including damages for any humiliation that the complainant has suffered.

### Summary hearings

**17.** (1) An application made under section 14 or 15 shall be heard and determined without delay and in a summary way unless the Court considers it inappropriate to do so.

### Precautions

(2) In any proceedings arising from an application made under section 14 or 15, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the disclosure by the Court or any person of any information or other material that the organization would be authorized to refuse to disclose if it were requested under clause 4.9 of Schedule 1.

DIVISION 3

## AUDITS

### To ensure compliance

**18.** (1) The Commissioner may, on reasonable notice and at any reasonable time, audit the personal information management practices of an organization if the Commissioner has reasonable grounds to believe that the organization is contravening a provision of Division 1 or is not following a recommendation set out in Schedule 1, and for that purpose may

(a) summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Commissioner considers necessary for the audit, in the same manner and to the same extent as a superior court of record;

(b) administer oaths;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, whether or not it is or would be admissible in a court of law;

(d) at any reasonable time, enter any premises, other than a dwelling-house, occupied by the organization on satisfying any security requirements of the organization relating to the premises;

(e) converse in private with any person in any premises entered under paragraph (d) and otherwise carry out in those premises any inquiries that the Commissioner sees fit; and

(f) examine or obtain copies of or extracts from records found in any premises entered under paragraph (d) that contain any matter relevant to the audit.

#### Delegation

(2) The Commissioner may delegate any of the powers set out in subsection (1).

#### Return of records

(3) The Commissioner or the delegate shall return to a person or an organization any record or thing they produced under this section within ten days after they make a request to the Commissioner or the delegate, but nothing precludes the Commissioner or the delegate from again requiring that the record or thing be produced.

#### Certificate of delegation

(4) Any person to whom powers set out in subsection (1) are delegated shall be given a certificate of the delegation and the delegate shall produce the certificate, on request, to the person in charge of any premises to be entered under paragraph (1)(d).

#### Report of findings and recommendations

**19.** (1) After an audit, the Commissioner shall provide the audited organization with a report that contains the findings of the audit and any recommendations that the Commissioner considers appropriate.

#### Reports may be included in annual reports

(2) The report may be included in a report made under section 25.

DIVISION 4

## GENERAL

### Confidentiality

**20.** (1) Subject to subsections (2) to (5), 13(3) and 19(1), the Commissioner or any person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part.

### Public interest

(2) The Commissioner may make public any information relating to the personal information management practices of an organization if the Commissioner considers that it is in the public interest to do so.

### Disclosure of necessary information

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that in the Commissioner's opinion is necessary to

- (a) conduct an investigation or audit under this Part; or
- (b) establish the grounds for findings and recommendations contained in any report under this Part.

### Disclosure in the course of proceedings

(4) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information in the course of

- (a) a prosecution for an offence under section 28;
- (b) a prosecution for an offence under section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Part;
- (c) a hearing before the Court under this Part; or
- (d) an appeal from a decision of the Court.

### Disclosure of offence authorized

(5) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law of Canada or a province on the part of an officer or employee of an organization if, in the Commissioner's opinion, there is evidence of an offence.

### Not competent witness

**21.** The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part in any proceeding other than

- (a) a prosecution for an offence under section 28;
- (b) a prosecution for an offence under section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Part;
- (c) a hearing before the Court under this Part; or
- (d) an appeal from a decision of the Court.

### Protection of Commissioner

**22.** (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of any duty or power of the Commissioner under this Part.

### Libel or slander

- (2) For the purposes of any law relating to libel or slander,
- (a) anything said, any information supplied or any record or thing produced in good faith in the course of an investigation or audit carried out by or on behalf of the Commissioner under this Part is privileged; and
  - (b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

### Consultations with provinces

**23.** (1) If the Commissioner considers it appropriate to do so, or on the request of an interested person, the Commissioner may, in order to ensure that personal information is protected in as consistent a manner as possible, consult with any person who, under provincial legislation that is substantially similar to this Part, has powers and duties similar to those of the Commissioner.

### Agreements

- (2) The Commissioner may enter into agreements with any person with whom the Commissioner may consult under subsection (1)
- (a) to coordinate the activities of their offices and the office of the Commissioner, including to provide for mechanisms for the handling of any complaint in which they are mutually interested;

(b) to undertake and publish research related to the protection of personal information; and

(c) to develop model contracts for the protection of personal information that is collected, used or disclosed interprovincially or internationally.

### Promoting the purposes of the Part

**24.** The Commissioner shall

(a) develop and conduct information programs to foster public understanding, and recognition of the purposes, of this Part;

(b) undertake and publish research that is related to the protection of personal information, including any such research that is requested by the Minister of Industry;

(c) encourage organizations to develop detailed policies and practices, including organizational codes of practice, to comply with sections 5 to 10; and

(d) promote, by any means that the Commissioner considers appropriate, the purposes of this Part.

### Annual report

**25.** (1) The Commissioner shall, as soon as practicable after the end of each calendar year, submit to Parliament a report concerning the application of this Part, the extent to which the provinces have enacted legislation that is substantially similar to this Part and the application of any such legislation.

### Consultation

(2) Before preparing the report, the Commissioner shall consult with those persons in the provinces who, in the Commissioner's opinion, are in a position to assist the Commissioner in reporting respecting personal information that is collected, used or disclosed interprovincially or internationally.

### Regulations

**26.** (1) The Governor in Council may make regulations

(a) specifying, by name or by class, what is a government institution or part of a government institution for the purposes of any provision of this Part;

(a.01) specifying, by name or by class, what is an investigative body for the purposes of paragraph 7(3)(d) or (h.2);

(a.1) specifying information or classes of information for the purpose of paragraph 7(1)(d), (2)(c.1) or (3)(h.1); and

(b) for carrying out the purposes and provisions of this Part.

### Orders

(2) The Governor in Council may, by order,

(a) provide that this Part is binding on any agent of Her Majesty in right of Canada to which the *Privacy Act* does not apply; and

(b) if satisfied that legislation of a province that is substantially similar to this Part applies to an organization, a class of organizations, an activity or a class of activities, exempt the organization, activity or class from the application of this Part in respect of the collection, use or disclosure of personal information that occurs within that province.

### Whistleblowing

**27.** (1) Any person who has reasonable grounds to believe that a person has contravened or intends to contravene a provision of Division 1, may notify the Commissioner of the particulars of the matter and may request that their identity be kept confidential with respect to the notification.

### Confidentiality

(2) The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under subsection (1) and to whom an assurance of confidentiality has been provided by the Commissioner.

### Prohibition

**27.1** (1) No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has contravened or intends to contravene a provision of Division 1;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is a contravention of a provision of Division 1;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that a provision of Division 1 not be contravened; or

(d) the employer believes that the employee will do anything referred to in paragraph (a), (b) or (c).

### Saving

(2) Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

### Definitions

(3) In this section, “employee” includes an independent contractor and “employer” has a corresponding meaning.

### Offence and punishment

**28.** Every person who knowingly contravenes subsection 8(8) or 27.1(1) or who obstructs the Commissioner or the Commissioner’s delegate in the investigation of a complaint or in conducting an audit is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding \$10,000; or

(b) an indictable offence and liable to a fine not exceeding \$100,000.

### Review of Part by parliamentary committee

**\*29.** (1) The administration of this Part shall, every five years after this Part comes into force, be reviewed by the committee of the House of Commons, or of both Houses of Parliament, that may be designated or established by Parliament for that purpose.

\* [Note: Part 1 in force January 1, 2001, see SI/2000-29.]

### Review and report

(2) The committee shall undertake a review of the provisions and operation of this Part and shall, within a year after the review is undertaken or within any further period that the House of Commons may authorize, submit a report to Parliament that includes a statement of any changes to this Part or its administration that the committee recommends.

DIVISION 5

## TRANSITIONAL PROVISIONS

### Application

**30.** (1) This Part does not apply to any organization in respect of personal information that it collects, uses or discloses within a province whose legislature has the power to regulate the collection, use or disclosure of the information, unless the organization does it in connection with the operation of a federal work, undertaking or business or the organization discloses the information outside the province for consideration.

### Application

(1.1) This Part does not apply to any organization in respect of personal health information that it collects, uses or discloses.

Expiry date

\*(2) Subsection (1) ceases to have effect three years after the day on which this section comes into force.

\* [Note: Section 30 in force January 1, 2001, see SI/2000-29.]

Expiry date

\*(2.1) Subsection (1.1) ceases to have effect one year after the day on which this section comes into force.

\* [Note: Section 30 in force January 1, 2001, see SI/2000-29.]