

## Privacy and Information Protection Bulletin

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### THE IMPACT OF AMERICAN LAWS IN CANADA

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Recent events have shown that American laws respecting the protection of personal information, notably the *USA Patriot Act*, can impact employees of Canadian companies.

Here are two examples that recently made headlines:

- a) Employees of Expro Tec, of Salaberry-de-Valleyfield, reached an agreement to avoid being subject to the application of the *USA Patriot Act*. Employees convinced their employer to take measures to prevent their personal information from being sent to the United States, which could then be subject to American laws respecting access to personal information;
- b) Bell Helicopter, for its part, was compelled to transmit personal information on its employees to the U.S. government, more specifically their nationality, under the U.S. International Traffic in Arms Regulation ("ITAR"). One effect of

ITAR would be to prevent businesses that agree to do business with the U.S. government from having employees with the nationality of any of the countries that the American government deems suspect. Consequently, several employees of Bell Helicopter in Canada were fired due to these requirements.

These two examples show the complexity of the interaction of the various laws with which Canadian organizations are faced. Bell Helicopter must now deal with proceedings invoking illegal discrimination because of its decision.

The impact of American laws and regulations that affect the protection of personal information of Canadians is a hot topic that is receiving more and more attention. Moreover, the Quebec legislator reacted in June 2006 by amending Section 17 of the *Act respecting the protection of personal information in the private sector*.

This article will now read as follows:

*17. Every person carrying on an enterprise in Québec who communicates personal information outside Québec or entrusts a person outside Québec with the task of holding, using or communicating such information on his behalf must first take all reasonable steps to ensure:*

- 1) that the information will not be used for purposes not relevant to the object of the file or communicated to third persons without the consent of the persons concerned, except in cases similar to those described in sections 18 and 23;*
- 2) in the case of nominative lists, that the persons concerned have a valid opportunity to refuse that personal information concerning them be used for purposes of commercial or philanthropic prospection and, if need be, to have such information deleted from the list.*

*Refusal to communicate the information.*

*If the person carrying on an enterprise considers that the information referred to in the first paragraph will not receive the protection afforded under subparagraphs 1 and 2, the person must refuse to communicate the information or refuse to entrust a person or a body outside Québec with the task of holding, using or communicating it on behalf of the person carrying on the enterprise.*  
(Our emphasis)

In addition, the Office of the Privacy Commissioner of Canada has also made important findings public in the past few months (Commissioner's Findings #313 and #333) in order to set out guidelines for the flow of personal information to the United States.

Our lawyers from the group are frequently called upon to provide counsel and work in files involving foreign laws, including the *USA Patriot Act*. For instance, on May 4, 2007, Antoine Aylwin will be giving a talk entitled "*Transborder Data flow: Should Canadians fear the Patriot Act?*" as part of the American Bar Association's 2007 Young Lawyer's

Division Spring Conference, which will be held in Montréal.

Karl Delwaide, for his part, will be a speaker at a conference organized by Verney Conference Management, to take place in Ottawa on March 6, 2007. The conference will deal with the recent amendments made to the *Act respecting the protection of personal information in the private sector*.

Fasken Martineau, which ranks among the four largest law firms in Canada (LEXPERT's 2006 Guide to the Leading 500 Lawyers in Canada), is a leading Canadian business and litigation law firm. With over 650 lawyers, the firm has offices in Vancouver, Calgary, Toronto, Montréal and Québec City, as well as in New York, London, and Johannesburg.

The members of the national Privacy and Information Protection Practice Group have extensive knowledge and expertise in relevant international legislation and policies and how these may impact the business interests of their clients. This extensive expertise allows them to have a broad understanding of the impacts of privacy and information security laws with regard to all aspects of a business.

We invite you to read a publication written by Karl Delwaide and Antoine Aylwin at the request of Ms. Jennifer Stoddart, Privacy Commissioner of Canada, entitled *Learning from a Decade of Experience: Quebec's Private Sector Privacy Act*, August 2005.

[http://www.privcom.gc.ca/information/pub/dec\\_050816\\_e.pdf](http://www.privcom.gc.ca/information/pub/dec_050816_e.pdf))

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