



October 15, 2003

The Right Honourable Jean Chrétien, P.C., M.P.  
Prime Minister of Canada  
80 Wellington St.  
Ottawa, Ontario  
K1A 0A2

Dear Prime Minister:

**Re:** Appointment of Privacy Commissioner of Canada

Parliament will soon be considering candidates for the position of Privacy Commissioner of Canada. I write on behalf of the Privacy Law Section of the Canadian Bar Association to recommend a number of criteria we believe you should apply in the selection process. The Section was created by the CBA to promote legal education and to provide responsible advocacy on privacy and access matters on behalf of Canadian lawyers. Members of the Section have the benefit of working with different privacy laws and providing advice to organizations and individuals in all parts of Canada.

This is a critical time in privacy regulation. The office of Privacy Commissioner of Canada is extremely important in overseeing the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). With the scope of PIPEDA set to expand in just a few months time, the Privacy Commissioner will have a significant impact on most businesses and organizations across Canada.

The legitimacy and persuasive authority of this key Parliamentary officer can be impaired or enhanced by the selection process. We think the position should be widely advertised in major newspapers across Canada.

We suggest as well that the following criteria be considered in assessing candidates:

- 1) Familiarity with privacy legislation – It is important that the Commissioner be familiar with the array of provincial and territorial privacy laws as well as the two federal statutes that the office oversees.

- 2) Familiarity with the operation of both government institutions and private sector organizations – Commencing January 1, 2004 the Commissioner will interpret PIPEDA for thousands of small businesses across Canada as well as for larger, nationally focused businesses. The Commissioner must be sensitive to the differential impact of privacy legislation on both types of organizations.
- 3) An established reputation for fairness and integrity – A Commissioner without order-making ability must rely on persuasive ability to remedy breaches of privacy. That ability to influence demands that the Commissioner be well respected.
- 4) Flexibility and conciliation skills – The breadth of the Commissioner’s mandate after January 1, 2004 captures so many different kinds of organizations that it will be essential to understand the need for different approaches to protect the privacy of Canadians.
- 5) Strong communication skills – Previous Privacy Commissioners have clearly demonstrated the importance of communication. This includes communication with Parliament, the Government of Canada, provincial and territorial Privacy Commissioners, small and large business operators and Canadians generally. This communication must be two-way: the Commissioner must have the ability to listen, and to learn, as Canada moves into a very new privacy environment.
- 6) Demonstrated ability in accountability and transparency.

We believe that the appointment should be based on merit through a regularized appointment process. If we can be of any assistance as the selection process proceeds, please do not hesitate to contact the CBA's National Privacy Law Section.

Yours truly,

*Original signed by Tamra L. Thomson for Priscilla Platt.*

Priscilla Platt  
Chair  
National Privacy Law Section

c.c.

Stephen Harper, M.P., Leader of the Official Opposition  
Peter MacKay, M.P., Leader, Progressive Conservative Party  
Gilles Duceppe, M.P., Leader, Bloc Québécois  
Jack Layton, M.P., Leader, New Democratic Party  
Reg Alcock, M.P., Chair, Government Operations Committee