



June 20, 2012

Via email: [mcu@justice.gc.ca](mailto:mcu@justice.gc.ca)

The Honourable Robert Douglas Nicholson, P.C., Q.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON  
K1A 0H8

Dear Minister Nicholson:

**Re: *Privacy Act* amendments**

I am writing as the Chair of the Canadian Bar Association's National Privacy and Access Law Section (CBA) to urge the federal government to amend the *Privacy Act* to give the Privacy Commissioner of Canada discretionary power to decline complaints and discontinue investigations in certain circumstances.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, Québec notaries, law teachers and students, across Canada. Our primary objectives are to uphold the Rule of Law, improve the administration of justice, and promote equality in the law.

The *Privacy Act* currently requires the Commissioner to investigate each and every complaint. This immediate amendment should be a catalyst for a more comprehensive review.

We offer the following factors in support of the proposed amendment:

- Taxpayer dollars should not be spent investigating complaints under the *Privacy Act* that are trivial, frivolous, vexatious, made in bad faith, supported by insufficient evidence, have been dealt with already by the Commissioner or are better resolved in a different forum. Such investigations serve no purpose, do not further the objectives of the legislation and drain precious resources away from complaints that raise systemic or other privacy issues of importance to all Canadians;
- The Commissioner already has a similar discretionary power under privacy legislation in the private sector, the *Personal Information Protection and Electronic Documents Act*;
- Most provincial and territorial privacy and access laws contain similar discretionary powers to allow officials to decline complaints or discontinue investigations;
- The Commissioner has requested this power, in order to better allocate resources to complaints that raise systemic issues affecting all Canadians;

- The proposed amendment would bring the *Privacy Act* into closer alignment and consistency with the powers under similar private and public sector laws in Canada; and
- The proposed amendment would help achieve the important purposes of the *Privacy Act* in a manner that maximizes the efficient use of the Commissioner's limited resources.

The CBA urges the federal government to adopt the proposed amendment without delay. However, this should not be construed to diminish in any way the CBA's view that a more comprehensive review of the *Privacy Act* is needed. The CBA is a longstanding supporter of the need for the federal government to undertake a comprehensive review of the *Privacy Act*, in light of the dramatic technological and societal changes over the roughly three decades since the legislation was enacted. CBA Council adopted a resolution to this effect at its mid-winter meeting in February 2012 (attached).

Thank you for your consideration of this letter. I am confident that the federal government will agree with the CBA's position that the proposed amendment should be adopted. I look forward to hearing from you at your earliest opportunity.

Yours truly,

*(original signed by Noah Arshinoff for Alex Cameron)*

Alex Cameron  
Chair, National Privacy and Access Law Section

cc: Jennifer Stoddart  
Privacy Commissioner of Canada (jstoddart@privcom.gc.ca)

encl. CBA resolution 12-01-M

## ***Privacy Act Amendment***

**WHEREAS** the Canadian Bar Association has urged the federal government to undertake a comprehensive revision of the *Privacy Act* but the federal government has not taken steps to modernize the *Privacy Act*;

**WHEREAS** the federal government has amended the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to give the Privacy Commissioner of Canada discretion to decline complaints or discontinue investigations in the private sector in certain circumstances;

**WHEREAS** most provincial and territorial privacy and access laws give similar discretionary powers to allow officials to decline complaints or discontinue investigations for certain reasons including complaints better resolved in another forum, repeat complaints already dealt with, and complaints found to be frivolous, vexatious or made in bad faith;

## ***Modification à la Loi sur la protection des renseignements personnels***

**ATTENDU QUE** l'Association du Barreau canadien a exhorté le gouvernement fédéral à entreprendre une révision exhaustive de la *Loi sur la protection des renseignements personnels*, mais que le gouvernement fédéral n'a pas entrepris de démarches de modernisation de la *Loi sur la protection des renseignements personnels*;

**ATTENDU QUE** le gouvernement fédéral a modifié la *Loi sur la protection des renseignements personnels et les documents électroniques* (LPRPDE) pour permettre au Commissaire à la protection de la vie privée du Canada d'exercer son pouvoir discrétionnaire de refuser des plaintes ou d'abandonner des enquêtes dans le secteur privé dans certaines situations;

**ATTENDU QUE** la plupart des lois provinciales et territoriales sur la vie privée et l'accès à l'information permettent également au fonctionnaire désigné de refuser des plaintes ou d'abandonner des enquêtes pour certains motifs (par exemple, la possibilité de régler la plainte plus facilement dans un autre forum, les plaintes déjà réglées et les plaintes frivoles, vexatoires ou de mauvaise foi) ;

**WHEREAS** the Privacy Commissioner of Canada has requested the same discretionary power for public sector complaints in the *Privacy Act* to better allocate investigative resources to complaints that raise systemic issues affecting all Canadians;

**WHEREAS** the Privacy Commissioner of Canada's discretion pursuant to the *Privacy Act* should be consistent with provincial and territorial laws and federal laws applicable to the private sector, so that resources are allocated in an efficient and effective manner to better serve Canadians;

**BE IT RESOLVED THAT** the Canadian Bar Association urge the federal government to amend the *Privacy Act* to give the Privacy Commissioner of Canada discretion to decline complaints or discontinue investigations based on certain criteria, for example those that are trivial, frivolous, vexatious, made in bad faith, supported by insufficient evidence, have been dealt with already by the Commissioner or are better resolved in a different forum.

**ATTENDU QUE** le Commissaire à la protection de la vie privée du Canada a demandé d'inclure dans la *Loi sur la protection des renseignements personnels* les mêmes pouvoirs discrétionnaires pour les plaintes du secteur public, dans le but de mieux affecter les ressources d'enquête à des plaintes qui soulèvent des enjeux systémiques touchant tous les Canadiens et les Canadiennes;

**ATTENDU QUE** les pouvoirs discrétionnaires du Commissaire à la vie privée du Canada dans le cadre de la *Loi sur la protection des renseignements personnels* devraient correspondre aux lois provinciales et territoriales et aux lois fédérales applicables au secteur privé, pour que les ressources soient affectées de façon efficiente et efficace afin de mieux servir les Canadiens et les Canadiennes;

**QU'IL SOIT RÉSOLU QUE** l'Association du Barreau canadien exhorte le gouvernement fédéral à modifier la *Loi sur la protection des renseignements personnels* pour permettre au Commissaire à la vie privée du Canada d'exercer son pouvoir discrétionnaire de refuser des plaintes ou d'abandonner des enquêtes pour certains motifs, notamment les plaintes frivoles, vexatoires ou de mauvaise foi, le manque de preuve pour établir le bien-fondé d'une plainte et les plaintes déjà réglées par le Commissaire ou qui pourraient

être réglées plus facilement dans un autre  
forum.

**Certified true copy of a resolution carried by the  
Council of the Canadian Bar Association at the  
Mid-Winter Meeting held in Mayan Riviera, Mexico,  
February 11-12, 2012.**

**Copie certifiée d'une résolution adoptée par  
le Conseil de l'Association du Barreau canadien,  
lors de l'Assemblée de la mi-hiver, à Mayan Riviera,  
Mexique, du 11 au 12 février 2012.**

**John D.V. Hoyles  
Chief Executive Officer/Chef de la direction**