

SUMMARY

Tabled in the National Assembly on December 16, 2004, Bill 86 represents the final stage of the five-year review process of the Québec legislation on access to information and protection of personal information.

For the members of the CAI, there is no doubt that the rules of access to information and protection of personal information must be updated. But before the last legislative steps of Bill 86 are taken, the CAI invites parliamentarians to consider its recommendations in this brief. These recommendations essentially seek to achieve the following objectives: maintain – and even strengthen – the values of administrative transparency and protection of personal information conveyed by the *Act respecting Access to documents held by public bodies and the Protection of personal information* and the *Act respecting the protection of personal information in the private sector*.

Promoting better circulation of information through the use of information and communications technologies will obviously lead to increased access to documents held by the public bodies subject to the application of the Access Act. As it specified in its 2002 five-year report, the CAI broadly supports any initiative that will assure citizens of expanded access to administrative documents. Deployment of the government information highway and implementation of automatic disclosure policies should thus go hand in hand. In this regard, subject the recommendations proposed in this brief, the CAI can only support the provision of Bill 86 which has the object of initiating implementation of automatic disclosure measures.

On the other hand, the reliance on information and communications technologies within the context of modernization of the State should not translate into a weakening of the rules of protection of personal information for the public. Yet according to the CAI, certain provisions of Bill 86 regarding the collection, use or release of personal information seriously impair the principles which are the foundation of the current regime for protection of personal information. The CAI believes that the maintenance of the current guarantees of protection of personal information is essential to ensure public confidence in management of personal information by the State. It also believes that maintaining these guarantees, contrary to what some may think, will not have the effect of hindering the deployment of online government or integrated service delivery.

While the members of the CAI enthusiastically welcome the arrival of two new colleagues, they question the relevance of confining them to only one of the two divisions provided for in the Bill and of introducing two vice-chairmanships. There is no doubt that the expertise developed by the members in connection with their adjudication activities is put to good use when they have to exercise their oversight functions. The reverse is also true.

The first part of the brief analyzes the impact of Bill 86 on the rules of protection of personal information and attempts to prove that the proposed amendments are more prejudicial to the public than beneficial to the deployment of online government or integrated service delivery.

The second part of the CAI brief comments on the provisions of Bill 86 regarding access to documents held by public bodies. Among other matters, it discusses, automatic disclosure of information, subjection of public bodies to the Access Act, independent of the person in charge of access to documents, and the rights to health, safety and environmental quality.

Finally, the third and last part of the brief discusses the provisions of the Bill regarding the CAI's structure, functions and powers. While noting the benefits that result from the CAI's multifunctional nature, this part of the brief draws attention to the provisions of the Bill that restrict the CAI's current functions and powers and limit its independence. It is also recommended that the CAI report directly to the National Assembly.

The CAI also appends all of the amendments it proposes to Bill 86. Some of these amendments are the subject of comments in the brief while others, sometimes more technical in nature, are only discussed in this appendix.

LIST OF THE PRINCIPAL RECOMMENDATIONS CONTAINED IN THE BRIEF

Recommendations regarding protection of personal information

1. THAT Section 64 (s. 29 of the Bill) of the Access Act should not be amended to allow a public body to have another public body collect personal information that is not necessary to the performance of its own functions.
2. THAT subsection 65.1 of the Access Act (s. 31 of the Bill) be amended to better define the uses that can be made of personal information without the consent of the person concerned.
3. THAT Section 67 of the Access Act (s. 33 of the Bill) provide for the obligation for public bodies to inform the CAI in advance of their proposed release under this legislative provision.
4. That subsection 67.2 of the Access Act (s. 34 of the Bill) provide for *a priori* control by the CAI when public bodies exchange personal information under a contract for work or services.

5. That Section 68 of the Access Act (s. 37 of the Bill) be clarified to prevent public bodies from being able to exempt themselves from the CAI's *a priori* control by making contracts for work or services contemplated in subsection 67.2 of the Access Act.
6. THAT subsection 68.1 of the Access Act (s. 38 of the Bill) not be amended so as to maintain the CAI's *a priori* control when personal information is communicated for the purposes of comparing it with a file held by another public body.
7. THAT regarding Section 55 of the Access Act (s. 25 of the Bill) and Section 1 of the Private Sector Act (s. 99 of the Bill)
 - 7.1 personal information of a public nature not be completely exempted from the rules of protection prescribed in the Access Act.
 - 7.2 personal information of a public nature remain subject to the rules of protection of personal information when it is used for purposes unrelated to the purpose contemplated by ascribing a public character to this information.
 - 7.3 the person in charge of access for a public body have the obligation to refuse access to a public file when he has reasonable grounds to believe that the information will be used for commercial purposes, solicitation purposes, purposes that would allow profiling or any other illegitimate purposes.
 - 7.4 the right be maintained for a person to request to be deleted from a nominative list serving for purposes of commercial or philanthropic prospection when personal information of a public nature is held by a private sector enterprise.

Recommendations regarding access to information

- 8.1 The obligations regarding disclosure of information that public bodies will have to observe should have binding force and their source should be a regulation rather than a policy.
- 8.2 All public bodies should have the obligation to implement a policy on dissemination of information, which can be adjusted according to the different types of subject bodies.
9. The CAI thus recommends that Bill 86 be amended to account for the recommendation that the Committee on Culture formulates in this regard in its May 2004 report. This recommendation reads as follows:

“The Committee [on Culture] thus considers that a provision of the Access Act should clearly stipulate that the person in charge of access must be able to benefit from a special protective mechanism to preserve the free access of his discretionary authority and guard him against all undue pressure in the performance of his mandate.”

Recommendations regarding the structure and functions of the CAI

10. THAT the members of the CAI can continue to perform all of their functions in order to maintain the expertise that allowed by the exercise of adjudication functions and oversight functions. Moreover, the CAI does not believe it is expedient to introduce vice-chairmanships.
11. THAT the CAI’s advisory function be expressly recognized in the Access Act.
12. THAT the amendment to Section 120 of the Access Act, which allows the Minister responsible to require the CAI to provide a copy of all notices, rules, reports, prescriptions and orders arising from its oversight functions, be withdrawn.
13. THAT the CAI retain its obligation to produce a report every five years on the implementation of the Access Act and the Private Sector Act.
14. THAT the CAI report directly to the National Assembly.

CONCLUSION

The CAI strongly hopes that Bill 86 can pass through the final stages of the legislative process in the months ahead. The various recommendations made by the CAI regarding the protection of personal information should not be seen as an attempt to delay this legislative process.

The CAI believes that it is possible to improve the provisions of the Bill pertaining to the protection of personal information without hindering the deployment of online government or the integrated transactional service delivery. In this regard, it is essential that the rule of protection of personal information set out in the Access Act be as clear as possible so that individual citizens can know what will happen to the personal information concerning them.

However, if Bill 86 were to suffer the same fate as Bills 451 and 122, many provisions which improve the right of access to information and the exercise of this right would be set aside again for an indeterminate period.