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NEWS RELEASE

**Privacy Commissioner finds businesses in breach of law;
Consumer groups declare victory and demand compliance**

In a slew of findings released today, the Privacy Commissioner of Canada upheld the view of consumer advocates that consumers should be provided, up front, with clear, detailed information on how their personal information will be used by businesses. He also found that consumers should be given a convenient, inexpensive means of opting out of secondary marketing purposes.

George Radwanski found that companies are violating the federal data protection law by failing to obtain meaningful consent from consumers to secondary uses of their personal information.

In October 2001, the Public Interest Advocacy Centre (PIAC) lodged complaints against a number of large companies, alleging that they were in breach of the legal requirement for informed consent. In some cases (e.g., Bell Canada), the Commissioner found that the company did not use or share customer data with affiliates. One company, Scotiabank, was found to have an “exemplary” policy of personally bringing optional secondary purposes to the attention of customers, and guiding customers through the opt-out process.

However, the Commissioner had harsh words for MBNA Canada’s practices regarding use of customer information for secondary purposes, and found that Bell Mobility, Bell ExpressVu, and Loyalty Management Group (operating the AIR MILES program) all ran afoul of the federal law.

“This sends an important message to the marketplace”, said Philippa Lawson, the PIAC lawyer who lodged the complaints last year. “Businesses can’t simply deem customer consent to the use of personal information for secondary purposes, on the basis of hidden contract terms or website postings. In order to meet legal standards, consent must be obtained in a manner that ensures that it is conscious, informed, and intentional.”

“The Commissioner has made it clear that this means bringing the matter to the attention of the individual customer during the application process, rather than relying upon generally available policy documents. It means stating the purposes in clear, plain language and in sufficient detail for the ordinary consumer to appreciate what it is they are consenting to. And finally, it means giving consumers an easy, inexpensive way to opt-out of secondary purposes”, she added.

The Commissioner further stated, in his findings on Bell Mobility, that “where an organization intends to disclose personal information that the individual is likely to consider sensitive, such as credit records and complaint records”, the individual should “be consulted directly and positively”, though “positive or opt-in consent rather than the negative option”.

“These findings reflect the clearly expressed preferences of Canadians”, said Ms. Lawson. In a nation-wide survey conducted by EKOS Research Associates Inc. last year, 82% of Canadians said that businesses should obtain their permission before using their information for further marketing purposes. 69% do not consider approve of opt-out approaches to consent for such purposes. If opt-out is nevertheless used, 88% said that the opt-out process should be clear and easy for them to execute. (See <http://www.piac.ca/privacy.htm> for a copy of the survey report or summary conclusions)

“It’s time for the marketplace to wake up”, said Ms. Lawson. “Consumers are demanding control over their personal information, and the law supports their demand. Companies who think they can just assume customer consent to secondary uses of their personal information should think again. Consumers value their privacy, and expect companies to respect it.”

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See http://www.privcom.gc.ca/cf-dc/index2_e.asp for the Commissioner’s Summary Findings.

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