



May 17, 2007

BY EMAIL AND MAIL

Senator Donald H. Oliver
Chair, Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Dear Senator Oliver:

Re: *Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act*

We are writing to express our concerns about certain privacy-invasive aspects of Bill C-31. We understand that your Committee is reviewing Bill C-31 at this time.

CIPPIC is a legal policy clinic based at the University of Ottawa with the mandate of filling important gaps in public debates and policy-making on issues arising from the use of new technologies. One of our primary areas of focus is privacy, and in particular, the threats to privacy posed by the combination of technology and market forces.

We are not experts in elections law, nor have we attempted to review and comment on all aspects of Bill C-31. Our concerns relate specifically to proposals regarding the creation of a unique identifier for elections purposes, the collection of date of birth information from electors, and the provision of this information to Members of Parliament and political parties.

The Current Situation

It is our understanding that, pursuant to the *Canada Elections Act*, Elections Canada maintains a National Register of Electors, including the surname, given names, sex, date of birth, civic address, mailing address of each elector, for the purpose of administering elections. From this Register, Elections Canada then compiles a "list of electors" for disclosure to political parties and Members of Parliament. This list includes the surname, given names, civic address and mailing address of each elector in a polling division. Members of Parliament and political parties are entitled under the Act to a copy of this list annually, and to preliminary, revised and final lists of electors with the same information, during an election. Section 110 of the Act provides that Members of Parliament, political parties, and candidates may use these lists for communicating with

electors, including using them for soliciting contributions and recruiting party members. Section 111 prohibits any other uses of this personal information.

Proposals in Bill C-31

Bill C-31 would amend the Act so as to include more personal information (specifically the elector's date of birth and a unique personal identifier for each elector) in the lists of electors shared with Members of Parliament, registered parties, and candidates.

Specifically, Bill C-31 proposes to:

- Create a unique, randomly generated identifier for each elector that would be assigned by the Chief Electoral Officer. (Clause 4, amending s. 44 of the Act)
- Amend the definition of "list of electors" to include the identifier assigned by the Chief Electoral Officer created by the Bill. (Clause 1, amending s. 2 of the Act)
- Include the date of birth and identifier in the list of electors sent to Members of Parliament and registered parties every year. (Clause 5, amending s. 45(2) of the Act)
- Include the date of birth and identifier in the preliminary list of electors distributed to registered parties and candidates during an election. (Clause 13, amending s. 93(2) of the Act)
- Include the date of birth in the revised list of electors sent to candidates during an election. (Clause 18, amending s. 107(3) of the Act)

It is these specific proposals in Bill C-31 that raise concerns from a privacy perspective and on which we wish to comment.

Unique Personal Identifier

Bill C-31 would require the Chief Electoral Officer to assign a "unique, randomly generated identifier" to each elector, for the purpose of increasing the accuracy of elector information in Elections Canada's register. We are concerned about the proposal to share this unique identifier with political parties, Members of Parliament and candidates for fundraising or other secondary purposes.

Communication with electors for fundraising or other purposes is clearly a secondary use, and should therefore not be permitted with respect to any personal information other than name and address. Indeed, it is questionable whether the sharing of even that information without the informed consent of individuals is appropriate. In any case, unique identifiers are particularly sensitive to abuse. Sharing them with political parties or others is unnecessary and simply increases the risk that they will be accessed and used for unauthorized purposes.

We therefore submit that, should Bill C-31 go forward, it be further amended to prohibit the sharing of unique identifiers with to Members of Parliament, political parties, or political candidates.

Date of Birth

Date of birth is another important piece of personally identifying information that should be kept free from circulation in order to guard against identity theft and other potential abuses, as well as to conform to the reasonable expectations of individuals. Indeed, in keeping with widely accepted fair information practices and privacy laws, date of birth should not be collected, shared or used for purposes other than those to which the individual in question has explicitly consented.

Yet, clauses 5, 13 and 18 of Bill C-31 would add date of birth to the lists of electors shared with political parties, Members of Parliament and candidates.

Elections Canada collects date of birth, along with other identifying information, from electors in its National Register for the purpose of preventing voter fraud. Consistent with fair information practices, date of birth should not be made available to third parties for other purposes. In particular, it should not be shared with Members of Parliament, political parties, or candidates – especially without the individual’s express consent.

Recommendations:

Clauses 5, 13 and 18 of Bill C-31 should be further amended to remove date of birth and unique elector identifiers from the information that is included in the lists of electors shared with Members of Parliament, candidates and political parties.

Discussion

The Proposed Amendments Run Contrary to PIPEDA and Fair Information Practices

These proposed amendments are particularly disturbing given that they fly in the face of legislation governing private sector organizations’ collection, use and disclosure of personal information. Indeed, to the extent that fundraising or other permitted uses of the information constitute “commercial activities” under *Personal Information Protection and Electronic Documents Act* (PIPEDA), political parties are subject to PIPEDA, and its provisions take precedence over any subsequently enacted statutory provisions such as those under consideration (unless expressly provided otherwise - see subs.4(3) of PIPEDA).

We submit that the collection and use of date of birth information by political parties, as proposed by Bill C-31, would violate PIPEDA and the fair information practices on which it is based, in three ways.

First, the disclosure by Elections Canada of date of birth and unique identifier information about electors to political parties, Members of Parliament and candidates for the purpose of campaigning and fundraising would, in our view, be considered inappropriate by most Canadians. Subsection 5(3) of PIPEDA requires that organizations collect, use and disclose personal information only for purposes that a reasonable person

would consider appropriate in the circumstances. Political fundraising is clearly secondary to the three primary purposes of the Act: (1) integrity and accuracy of the register of electors; (2) voter identification; or (3) voter fraud prevention, and is not a purpose for which most electors would expect their electoral information to be used. This is particularly true of date of birth or other personal information beyond name and address.

Second, Principle 4.4 of PIPEDA requires that organizations limit their collection of personal information to that necessary for their identified purposes. The collection of date of birth and unique identifier information goes far beyond what is necessary for the purpose of communicating with electors. Even year of birth, in our view, is unnecessary for the purpose of communicating with electors.

Third, Principle 4.5 of PIPEDA prohibits the use or disclosure of personal information for purposes other than those for which it was collected, except with the consent of the individual. Date of birth information is collected by Elections Canada for the purpose of voter authentication. Secondary uses such as political fundraising and campaigning, require the informed consent of individuals. Such consent cannot be implied in this circumstance.

Conclusion

Bill C-31 raises serious privacy concerns insofar as it would add to the personal information about electors that is currently shared by Elections Canada with political parties, Members of Parliament, and candidates, without the informed consent of individual electors. It should be amended to remove date of birth and elector identifiers from the information shared with these third parties.

Yours truly,

Original signed

Philippa Lawson, Director

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Janet Lo, CIPPIC student intern

cc: Privacy Commissioner of Canada