

**Comparative Chart of Ombudsman’s Submissions to Law Amendments
Committee (Oct 2008) on Bill 82 and Provisions of New Bill 89—*Right to
Information and Protection of Privacy Act***

Status – Introduced May 29, 2009

| Ombudsman’s Concerns on Bill 82 | Bill 89 | Concerns addressed? |
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| Definition of “government body” not broad enough | Section 1 definition expanded to include additional agencies, boards and commissions that are considered provincial government entities; list of entities to be listed in Schedule “A” | YES |
| Definition of “personal information” doesn’t reflect best practices as found in other Canadian laws | Same definition as Bill 82 | NO |
| Purpose Clause – not strongly worded to sufficiently protect rights to information and privacy | Section 2: Bill 82’s “to make public bodies accountable and to protect the privacy of the public” removed, making a weakened, not strengthened, purpose clause | NO |
| Protecting powers of subpoena and compulsion of records for legislative officers (including Ombudsman and Child and Youth Advocate) | Section 3(e) added to include this protection. | YES |
| Limiting types of excluded records – some exclusions in Bill 82 better addressed as exemptions | Discretionary exemptions to disclosure: section 29(1)(h) – <i>Coroners Act</i> records where inquest/investigation ongoing; section 30(1)(f) – credit union records under <i>Credit Unions Act</i> ; section 31 – examinations and test questions. | YES |
| Limiting types of excluded records – some exclusions in Bill 82 better addressed as exemptions | Exclusions: section 4 (g) – records relating to constituency matters of elected officials; 4(h) teaching materials or research information of educational institutions. | NO |
| Exclusion of records relating to legal affairs of Attorney General—unprecedented exclusion in Canadian law | Exclusion: section 4(b) – records relating to legal affairs of Attorney General. | NO |
| Expressly proclaimed right to information | Section 6 revised to incorporate wording of current <i>Right to Information Act</i> ’s purpose clause, BUT weakened effect given the wording of section 2 | IN PART |
| Express protection of fundamental privacy rights | Privacy provisions unchanged from Bill 82. | NO |
| Need for a general public | Section 28(2) expands public interest override to | IN PART |

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| interest override clause to allow disclosure where “clearly in the public interest” | include where “risk of significant harm to the environment or to the health or safety of the public or a group of people” | |
| Exceptions: cabinet confidence and advice to minister – could veil policy development process | Discretionary exception under subsection 26(1) no longer includes “analyses or policy options; but Mandatory exception for Executive Council confidences – Subsection 17(1)(b) includes “discussion papers, policy analyses, proposals,” etc. Also, ss. 17(2) no longer provides for discretionary disclosure where the Executive Council consents or where five years have passed since decision. | NO |
| Exceptions: disclosure harmful to law enforcement and disclosure harmful to economic and other interests of a public body – concerns about expansion of discretionary exceptions | Section 1 includes definition of “law enforcement” No changes to exceptions. | NO |
| Exception: information that is or will be publicly available – concerns that provision be narrowed to prevent overuse | Ss. 33(2)(b) limits to where the head “reasonably believes” the information will be published within 90 days. | YES |
| Fee structure not to be based on cost-recovery model; no increase in fees; no fees for own personal information | Ss. 80(1) provides that fees be “fair and reasonable”; ss. 80(2) provides for no fees for accessing one’s own personal information Actual fee structure to be set out in regulations. | IN PART |
| Privacy rights: retain 10 privacy principles as set out in current <i>Protection of Personal Information Act</i> | No changes to privacy provisions in Bill 89. | NO |
| Privacy provisions: include personal information bank model to encourage and protect approved usage and storage safety | No changes to privacy provisions in Bill 89. | NO |
| Privacy provisions: include a mandatory breach notification clause | No changes to privacy provisions in Bill 89. | NO |
| Oversight body: provide with binding order-making and other investigative powers | Section 60 sets out powers and duties – power of recommendation only, no additional powers | NO |
| Oversight body: stronger guarantees of independence with fixed term, fixed salary, and experience requirement | Ss. 49(3) sets Commissioner’s term as five-year renewable term. ss. 51(1) states salary and benefits to be determined by Lieutenant-Governor in Council | IN PART |

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| of 10 years' call to provincial bar | No inclusion of experience requirements | |
| Oversight body: include power to review privilege-claimed records to verify proper use of privilege claims | Not included in Bill 89. | NO |
| Legislative review period: 3 year initial review, 5 years thereafter | S. 97: four year review period. | YES |