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## **Data Protection Canada DPA Needs Direct Fining Authority To Enforce Privacy Laws, Stoddart Says**

*by Peter Menyas*

OTTAWA—Canada's federal data protection authority may need additional powers to ensure compliance with the Personal Information Protection and Electronic Documents Act, including the power to issue orders and levy fines directly against non-compliant organizations, Federal Privacy Commissioner Jennifer Stoddart said Jan. 19.

The Federal Court of Canada has the power to impose damages against organizations that violate the Act, but has set a very high threshold for doing so and has awarded damages only once in the 10 years the statute has been in effect, Stoddart said in a speech to the University of Ottawa's Centre for Law, Technology, and Society, in which she outlined her priorities for her second term as privacy commissioner.

“I am increasingly of the view that we may need stronger powers in order to be an effective privacy guardian for Canadians. We've become one of the few major countries where the data protection regulator lacks the ability to issue orders and impose fines,” she said. “Hefty fines get just about any company to sit up and take notice, and to place a greater importance on compliance.”

### **PIPEDA Review Presents Opportunity**

The upcoming statutory review of the Personal Information Protection and Electronic Documents Act (PIPEDA), which is expected to start in 2011, will also provide an opportunity to consider the naming of organizations being investigated for non-compliance, a change that privacy advocates have suggested over the years, she said.

Initially, it seemed a reasonable approach to name offenders only when it was deemed to be in the public interest, but the public interest test is proving to be a very high jurisprudential threshold, she said. “I have a growing discomfort with the secretive nature of how we work under PIPEDA,” she said. “It seems to me that not naming names is robbing the Canadian public of much of the educational value of our investigative findings.”

Stoddart also noted that other areas of PIPEDA need updating, including strengthening its approach to organizations' accountability for their protection of personal information. The Act was fairly innovative when it took effect in 2001, making organizations responsible for

information under their control, even if the data was transferred to a third party, but that was in sharp contrast to the European approach of database registration and dataflow controls, she said.

“There is no simple mechanism for us to go in and check on compliance, unless we happen to get a complaint,” she said. “Too many organizations are collecting too much information about too many people for us to continue to rely solely on a complaint-based system in order to assure Canadians that the organizations they deal with are accountable and compliant with PIPEDA.”

**Fortunately, there is a growing discussion of privacy accountability at the global level, including through the Accountability Project at the U.S.-based Centre for Information Policy Leadership, at Hunton & Williams LLP, she said. Europe's data protection authorities have also released an Opinion on Accountability that proposes establishment of a statutory accountability principle, she said. “We are seeing some convergence around the concept of accountability as a way to move forward,” she said.**