

ORDER-IN-COUNCIL
GOVERNMENT OF QUEBEC

500-09-014067-037

Number 1368-2003-12-30

December 17, 2003

CONCERNING a reference to the Court of Appeal
relating to the *Personal Information Protection and
Electronic Documents Act* (S.C. 2000, c. 5)

WHEREAS the Parliament of Canada adopted on April 13, 2000 the *Personal Information Protection and Electronic Documents Act* (S.C. 2000, c. 5, the “Federal Act”);

WHEREAS Part 1 of the Federal Act enters into force on January 1, 2004;

WHEREAS the provisions of Part 1 of the Federal Act establish a regime of protection of personal information in the private sector;

WHEREAS these provisions impinge upon the constitutional competence of Quebec in a matter concerning property and civil rights;

WHEREAS Quebec has put in place a regime for the protection of personal information by adopting, in 1993, the *Act respecting the protection of personal information in the private sector* (R.S.Q. c. P-39.1, the “Quebec Act”);

WHEREAS a province can be exempted from the application of the Federal Act by an Order-in-Council of the Governor in Council if he is convinced that a provincial law is essentially similar to the Federal Act;

WHEREAS the federal Minister of Industry has demonstrated to the Minister for Citizen Relations and Immigration in July 2002 its intention to proceed with the process of harmonization of provincial laws with the Federal Act, underlining that the Quebec Act is essentially similar to the Federal Act;

WHEREAS the process of determining the essentially similar character of a provincial law by the Governor in Council can be undertaken at the initiative of the federal Minister of Industry without a province’s having made a request for same;

WHEREAS on November 19, 2003, the Governor in Council adopted the *Organizations in the Province of Quebec Exemption Order* (P.C. 2003-1842, November 19, 2003, SOR/2003-374, the “Exclusion Order”) pursuant to s. 26(2)(b) of the Federal Act;

WHEREAS the Exclusion Order sets forth as follows:

1. Any organization, other than a federal work, undertaking or business, that carries on an enterprise within the meaning of section 1525 of the *Civil Code of Québec* and to which *An Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1, applies is exempt from the application of Part 1 of the *Personal Information*

Protection and Electronic Documents Act in respect of the collection, use and disclosure of personal information that occurs within the Province of Quebec.

2. This Order comes into force on the day on which it is registered.

WHEREAS Quebec has manifested its opposition to the Federal Act and the exclusion process provided for therein;

WHEREAS the exclusion process provided for in the Federal Act grants to the federal government a right of review over the content of the Quebec Act, which is incompatible with the foundation of Canadian federalism;

WHEREAS a constitutional challenge of the Federal Act will permit Quebec to have its competence in the matter of protection of privacy and personal information be respected;

WHEREAS the *Act respecting references to the Court of Appeal* (R.S.Q. c. R-23) provides that the government can submit to the Court of Appeal all questions that it considers appropriate and that it, after review and hearing, transmits to the government upon the questions submitted;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Justice:

THAT the Attorney-General of Quebec be given the mandate to contest, by reference to the Court of Appeal of Quebec, the constitutional validity of Part 1 of the Federal Act;

THAT the following constitutional question be submitted to the Court of Appeal for review and hearing:

“Does Part 1 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, exceed the legislative competence that the *Constitution Act, 1867* confers to the Parliament of Canada?”