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HISTORICAL DEVELOPMENTS IN B.C. PRIVACY LAW

This paper provides a history of three B.C. privacy statutes: the *Privacy Act*, the *Freedom of Information and Protection of Privacy Act*, and the *Personal Information Protection Act*. It also includes an overview of the development of the Office of the Information and Privacy Commissioner of British Columbia.

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British Columbia has privacy legislation dating back to the sixties, as well as much more recent statutes. This paper provides a history of three B.C. privacy statutes: the *Privacy Act*, the *Freedom of Information and Protection of Privacy Act*, and the *Personal Information Protection Act*. It also includes an overview of the development of the Office of the Information and Privacy Commissioner of British Columbia.

THE PRIVACY ACT RSBC 1996, c. 373

The [*Privacy Act*](#) “makes it a tort, actionable without proof of damage, to violate the privacy of an individual.”¹ It is administered by the Attorney General Ministry.

The law was created after a “bugging” episode led to a royal commission investigation. In November 1966, a private investigator working for one union planted eavesdropping devices in a hotel room occupied by another union’s leaders. The listening devices were discovered. It later came to light that the private investigator was put in touch with the original union by two RCMP officers.² A royal commission was appointed to investigate and the *Privacy Act* was passed in 1968, a year after the commission issued its report. The B.C. attorney general at the time said the bill was a first for Canada.³ A later writer suggested British Columbia was the “first Commonwealth jurisdiction to establish an independent cause of action for the unreasonable and unwarranted invasion of an individual’s privacy.”⁴

The *Privacy Act* has not been amended since 1982. The British Columbia Law Institute (BCLI) recently said the law does not deal adequately with new technology, nor does it incorporate newer developments, such as the inclusion of stalking as a civil wrong.⁵ In 2006, the BCLI said it had, “with the support of the ministry of the Attorney General, launched a project for a thorough review of the *Privacy Act* with a view to bringing its terms into keeping with present circumstances.”⁶

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT RSBC 1996, c. 165

The B.C. [*Freedom of Information and Protection of Privacy Act*](#) (FIPPA) regulates access to information held by public bodies, ranging from B.C. government ministries and Crown corporations to school boards and self-governing professions. It also specifies how personal information collected by these organizations can be used.⁷ It falls under the jurisdiction of the Ministry of Labour and Citizens’ Services.

FIPPA was proclaimed on October 4, 1993. Before then, there was no B.C. law guaranteeing access to information held by provincial bodies, or protecting personal information from disclosure.⁸ However, British Columbians did have a right to access information held by the federal government.⁹ In 1982, the Canadian government passed the [*Privacy Act*](#), regulating the collection and use of personal information by federal organizations. The same year, it passed the [*Access to Information Act*](#), which governed public access to information held by national public bodies. (Certain municipalities also passed access-to-information bylaws. In a 1991 article, one writer listed Vancouver, Victoria, Saanich, and Chilliwack as having passed bylaws regulating access to local government information.¹⁰)

The early nineties saw the publication of influential reports on privacy and information access. A report titled *Information Rights for British Columbia* was written by the B.C. Freedom of Information and Privacy Association in 1991. The report played

a “key role” in enacting the final legislation, according to one legislative committee report.¹¹ Also in 1991, the B.C. Ombudsman issued a report calling for a “fair and effective administrative policy” for dealing with privacy and public access to information.¹² The Social Credit government of the day called the report “very helpful” in developing a proposed bill released for discussion in 1991.¹³ Still, the Social Credit *Access to Information and Protection of Privacy Act* did not become law.

It should be noted that B.C. MLAs of various political stripes unsuccessfully introduced similar bills in the years prior to FIPPA. On the day that FIPPA was introduced, one MLA said the issue had a “proud history of private members' bills” in the B.C. assembly.¹⁴ He cited attempts by the Conservatives, New Democrats and Liberals over the years.¹⁵

FIPPA passed third reading on June 23, 1992, and was proclaimed the following year. The original act covered all government ministries as well as designated agencies, boards, commissions, and corporations.¹⁶ Amendments in 1993 extended coverage to municipalities, school boards, hospital boards, police boards, universities, colleges and self-governing professions.¹⁷

By law, the act must be reviewed by a special committee of the Legislative Assembly before a deadline date set out in the legislation.¹⁸ Committees published reports on their reviews of the legislation in [1999](#) and [2004](#). Currently, the law requires FIPPA be reviewed at least once every six years.

PERSONAL INFORMATION PROTECTION ACT SBC 2003 CH. 63

The [Personal Information Protection Act](#) (PIPA) regulates the “the collection, use and disclosure of personal information” by private organizations.¹⁹ It recognizes people’s rights to safeguard their personal information, as well as organizations’ rights to collect and use information for appropriate purposes.²⁰ It falls under the responsibility of the Ministry of Labour and Citizens’ Services. Quebec was the first the Canadian jurisdiction to pass this type of legislation with [An Act respecting the protection of personal information in the private sector](#) in 1993.²¹ Three years later, the Canadian Standards Association created a [model code](#) for protecting privacy.²² Then, in 2000, the federal [Personal Information Protection and Electronic Documents Act](#) received Royal Assent. The federal government was in part motivated to create legislation by international developments.²³ The European Union and the Organization for Economic Cooperation and Development had established directives and guidelines, respectively, that related to privacy protection. Canada was driven by the need to compete in international e-commerce, necessitating the protection of information privacy, as noted by a B.C. special committee examining the issue.²⁴

The national act covered federally-regulated industries, such as telecommunications, broadcasting, and banking. However, law-makers stipulated that, after a certain period, the act would also cover provincially-regulated industries unless provincial legislation similar to the federal act was passed.²⁵ Alberta and British Columbia were the only two provinces to develop their own legislation in response to the federal act. (However, other provinces do have legislation affecting certain segments of the private sector. For example, private sector handling of personal health information in Ontario is regulated under the [Personal Health Information Protection Act](#).)²⁶

British Columbia legislators began in 1999 to study how information was handled by the private sector, when a special legislative committee was appointed. The B.C. Special Committee on Information Privacy in the Private Sector issued its [final report](#) on March 20, 2001. It recommended new legislation safeguarding personal information held by private bodies and balancing privacy concerns with legitimate uses.²⁷

British Columbia had three main reasons for creating its own legislation, according to a recent account before a current legislative committee. Policy-makers wanted to simplify the legislation for small businesses, to fill gaps not covered by the federal legislation, and to avoid relying on the federal privacy commissioner. (The federal commissioner's role was different from that of the already established B.C. information and privacy commissioner.²⁸)

PIPA came into force on January 1, 2004. The law stated a special committee would have to begin reviewing the act within three years of its enactment. That committee was appointed April 19, 2007.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

The [Office of the Information and Privacy Commissioner for British Columbia](#) independently oversees and enforces both FIPPA and PIPA. The commissioner's tasks can include investigating and resolving complaints and appeals under the acts, as well as researching matters related to the acts and educating the public.²⁹

The office was established in 1993 under FIPPA. More than 200 people applied for the job of commissioner.³⁰ David H. Flaherty was recommended for the position by a special legislative committee on July 13, 1993. He had 20 years of experience "with privacy protection and access to information issues as an academic and teacher, advisor and consultant, and advocate," wrote the committee in its report.³¹

The new office had opened 275 cases by April 1994.³² The public bodies most frequently involved in cases referred to the commissioner were the ministries of the attorney general and social services, as well as ICBC and the Workers' Compensation Board.³³

Flaherty completed his six-year mandate in 1999. His successor, David Loukidelis, began the job on August 15.³⁴ Loukidelis was a founding member of the B.C. Freedom of Information and Privacy Association, as well as its former president.³⁵ (He was also the main author of the association's previously noted paper, published in 1991.) Loukidelis was appointed to a second term as commissioner in November 2005.

¹ Ann McLean, "News from the BC Law Institute," *The Advocate* 65, Part 2 (2007): 211.

² British Columbia, Commission of Inquiry into Invasion of Privacy, R.A. Sargent, *Report of the Commission of Inquiry into Invasion of Privacy*, Victoria: The Commission, 1967, p. 3-10.

³ John Mika, "Personal privacy bill believed to be first in Canada," *The Times*, January 26, 1968, p. 15.

⁴ Philip H. Osborne, "The Privacy Acts of British Columbia, Manitoba and Saskatchewan," in *Aspects of Privacy Law: Essays in Honour of John M. Sharp*, ed. Dale Gibson, Toronto: Butterworths, 1980, p. 74; See also Jerome Atrens, "Comment on the Privacy Act", *The Advocate* 26, Part. 5, September – October, (1968): 183.

⁵ British Columbia Law Institute, *Annual Report 2006*, Vancouver: The Institute, 2006, p. 10.

<http://www.bcli.org/pages/publications/annualreports/2006/AR2006.pdf>

⁶ Ibid.

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- ⁷ British Columbia, Office of the Information and Privacy Commissioner for British Columbia, *The OIPC'S Role and Mandate*, Victoria: The Office, [n.d.], p.1. <http://www.oipcbc.org/pdfs/public/OIPC-Role-and-Mandate.pdf>
- ⁸ B.C. Freedom of Information and Privacy Association, Legislative Task Force Discussion Paper, *Toward Freedom of Information and Protection of Privacy in British Columbia*, Vancouver: The Association, 1991, p. 2.; See also British Columbia, Ombudsman, *Public Report No.26: Access to Information and Privacy, March 1991*, Victoria: The Ombudsman, 1991, p.3.
- ⁹ B.C. Freedom of Information and Privacy Association, Legislative Task Force Discussion Paper, *Toward Freedom of Information and Protection of Privacy in British Columbia*, Vancouver: The Association, 1991, p. 4.
- ¹⁰ Frances Fournier, Notes and Communications: Freedom of Information and Privacy: The Story of Vancouver's By-Law," *Archivaria* 32 (Summer 1991), p. 199, 204.
- ¹¹ British Columbia, Legislative Assembly, Special Committee to Appoint an Information and Privacy Commissioner, *Report*, Victoria: The Committee, 1999, p. 15.
- ¹² British Columbia, Ombudsman, *Public Report No.26: Access to Information and Privacy, March 1991*, Victoria: The Ombudsman, 1991, p.1.
- ¹³ British Columbia, Ministry of Provincial Secretary, "Access to Information and Protection of Privacy Act: Questions and Answers, June 1991" [booklet include in portfolio titled *A Proposal for Access to Information and Protection of Privacy Legislation*], Victoria: The Ministry, 1991, 2; Vaughn Palmer, "New bill fails truth-in-advertising test," *Vancouver Sun*, June 26, 1991, p. 12.
- ¹⁴ B. Jones, "Freedom of Information," In British Columbia, Legislative Assembly, *Legislative Debates (Hansard)*, 35th Parl., 1st Sess. (May 22, 1992) (Online) Available: <http://www.leg.bc.ca/hansard/35th1st/h0522am.htm#1738> [12 June, 2006].
- ¹⁵ Ibid.
- ¹⁶ Barbara McIsaac, et al, "Protection of Personal Information in the Public Sector," *The Law of Privacy in Canada*, Scarborough: Carswell, 2000, p. 3-34.
- ¹⁷ British Columbia, Office of the Information and Privacy Officer, *Annual Report 1993-1994*, Victoria: The Office, 1994, p.9; See also Barbara McIsaac, et al, "Protection of Personal Information in the Public Sector," *The Law of Privacy in Canada*, Scarborough: Carswell, 2000, p. 3-34.
- ¹⁸ *Freedom of Information and Protection of Privacy*, RSBC 1996, ch. 165, sec.80. http://www.qp.gov.bc.ca/statreg/stat/F/96165_06.htm#section80
- ¹⁹ *Personal Information Protection Act*, SBC 2003, Ch. 63, sec. 2, http://www.qp.gov.bc.ca/statreg/stat/P/03063_01.htm#section2
- ²⁰ Ibid.
- ²¹ Karl Delwaide, Antoine Aylwin "Message from the Privacy Commissioner of Canada," in *Learning from a Decade of Experience: Quebec's Private Sector Privacy Act*, Ottawa: Privacy Commissioner of Canada, 2005. http://www.privcom.gc.ca/information/pub/dec_050816_e.pdf ; See also Barbara McIsaac, et al, "Protection of Personal Information in Private Sector," *The Law of Privacy in Canada*, Scarborough: Carswell, 2000, p. 4-95.
- ²² Canada, Department of Justice, "Privacy Provision Highlights," *Department of Justice website*, Ottawa: The Department, 2005. <http://www.justice.gc.ca/en/news/nr/1998/attback2.html>
- ²³ British Columbia, Special Committee on Information Privacy in the Private Sector, *Report*, Victoria: The Committee, 2001, p. 13, http://www.leg.bc.ca/cmt/36thParl/priv_ps/Reports/report010320.htm
- ²⁴ Ibid, 14.
- ²⁵ Canada, Office of the Privacy Commissioner of Canada, "Privacy Legislation Implementation Schedule," *Office of the Privacy Commissioner of Canada website*, Ottawa: The Office, 2004. http://www.privcom.gc.ca/legislation/02_06_02a_e.asp
- ²⁶ Canada, Privacy Commissioner of Canada, "Fact Sheet: Privacy Legislation in Canada", Privacy Commissioner of Canada webpage, Ottawa: The Commissioner, 2004. http://www.privcom.gc.ca/fs-fi/02_05_d_15_e.asp ; See also David Loukidelis in British Columbia, Legislative Assembly, Special Committee to Review the Personal Information Protection, *Report of Proceedings, Special Committee to Review the Personal Information Protection Act, Tuesday, May 29, 2007*, Victoria: The Committee, 2007, p. 12.

²⁷ British Columbia, Special Committee on Information Privacy in the Private Sector, *Report*, Victoria: The Committee, 2001, p. 9, http://www.leg.bc.ca/cmt/36thParl/priv_ps/Reports/report010320.htm

²⁸ Susan Plater in British Columbia, Legislative Assembly, Special Committee to Review the Personal Information Protection, *Report of Proceedings, Special Committee to Review the Personal Information Protection Act, Wednesday, May 16, 2007*, Victoria: The Committee, 2007, p.4. <http://www.leg.bc.ca/cmt/38thparl/session-3/pipa/hansard/V70516a.htm>

²⁹ British Columbia, Office of the Information and Privacy Commissioner for British Columbia, *Annual Report 2004/2005*, Victoria: The Office, 2005, p. 17-18.

http://www.oipcbc.org/publications/annual_reports/2005AR/OIPC_Annual_Report_web.pdf

³⁰ British Columbia, Legislative Assembly, Special Committee to Appoint an Information and Privacy Commissioner, *Report*, Victoria: The Committee, 1993, p. 5.

³¹ *Ibid.*, p. 12.

³² British Columbia, Office of the Information and Privacy Commissioner, *Annual Report 1993-1994*, Victoria: The Office, 1994, p. 4.

³³ *Ibid.*, p. 19.

³⁴ British Columbia, Office of the Information and Privacy Commissioner of British Columbia, *Annual Report 1999/2000*, Victoria: The Office, 2000, p. 9.

³⁵ British Columbia, Legislative Assembly, Special Committee to Appoint an Information and Privacy Commissioner, *Report*, Victoria: The Committee, 1999, p. 15.