



# FOIP FOLIO

## WE NEED HELP

Our office is holding an open competition for a one year term Portfolio Officer position.

The Portfolio Officer position reports to the Director of Compliance and is responsible for the examination and resolution of diverse access to information and privacy issues arising from *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA). As a Portfolio Officer you will: monitor compliance with the Acts; mediate between individuals and public sector organizations and health trustees on

access and disclosure issues; and generally uphold the access and privacy rights of Saskatchewan residents. You will also promote public awareness through accessible education programs.

Please visit our website at [www.oipc.sk.ca](http://www.oipc.sk.ca) for a copy of the employment ad and the Position Summary/Responsibilities.

You can also view the ad on the Public Service Commission's website at the Career Centre (<http://www.careers.gov.sk.ca>). The closing date for the competition is July 31, 2008.

## DISTINGUISHED SCHOLAR TO LAUNCH RIGHT TO KNOW WEEK 2008



Professor Alasdair Roberts, an internationally recognized expert on access to information, will be in Saskatchewan to kick off Right to Know Week, September 29-October 3, 2008.

Alasdair Roberts is the Jerome L. Rappaport Professor of Law

and Public Policy at Suffolk University Law School. Previously, he was a professor of public administration in the Maxwell School of Citizenship and Public Affairs at Syracuse University, and an associate professor of public administration at Queen's University, Canada.

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## DISTINGUISHED SCHOLAR (CONT'D)

Professor Roberts writes extensively on problems of governance, law and public policy. His most recent book, *The Collapse of Fortress Bush: The Crisis of Authority in American Government*, was published by New York University Press in 2008. *Kirkus Reviews* called it "a trenchant analysis of the last eight years of American political history." His previous book, *Blacked Out: Government Secrecy in the Information Age*, received the 2006 Brownlow Book Award from the US National Academy of Public Administration, and three other academic book awards. He has also won several awards for his journal articles.

Professor Roberts was elected as a fellow of the

US National Academy of Public Administration in 2007. He is also an Honorary Senior Research Fellow of the School of Public Policy, University College London. Previously he has had fellowships with the Open Society Institute and the Woodrow Wilson International Center for Scholars. He is on the editorial boards of several journals in the field of public administration.

A Canadian, Professor Roberts received a JD from the University of Toronto in 1984, a Master's degree in Public Policy from Harvard University in 1986, and a Ph.D. in Public Policy from Harvard University in 1994. His web address is [www.aroberts.us](http://www.aroberts.us).

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## MORE RIGHT TO KNOW



The Sheldon Chumir Foundation for Ethics in Leadership recently agreed to become a sponsor for Saskatchewan Right to Know Week 2008. Other sponsors include the Saskatchewan Law Foundation, the Canadian Bar Association Saskatchewan Branch, Leader-Post, Saskatoon Star Phoenix, and McKercher LLP.

### *Nominations for Culliton Award*

This year, the steering committee is again seeking nominations for the *Chief Justice E.M. Culliton Right to Know Award*. Last year, the Saskatchewan Health Quality Council received the award.

The intent of the award is to celebrate and to recognize leadership in promoting open and accountable government. To be eligible, the body must be a Saskatchewan government institution (provincial government ministry, Crown corporation, board, commission or agency) or a local authority (regional health authority, municipality, library, school, university or college). The nominee should be an agency that

has demonstrated some or all of the following qualities:

- Leadership in promoting public access to the agency's information;
- Creativity in building public awareness of access to information;
- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

The deadline for nominations is **September 15, 2008**. Nominations can be self-initiated or third party. The nomination should include:

- a letter of nomination (up to 1,000 words), and
- samples of materials relevant to the nomination (testimonials or other material).

The Award will be presented during Right to Know Week. Nominations should be sent to the Right to Know Steering Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax (306) 798-1603 or email [kphilip@oipc.sk.ca](mailto:kphilip@oipc.sk.ca).

*Continued on page 3 (Right to Know).*



## RIGHT TO KNOW (CONT'D)

### *RTK Essay Contests*

Also again this year, the Right to Know Steering Committee is announcing two essay contests on the topic: “*Why the right of access to information is important in a modern democratic society.*” One contest is at the high school level and offers a \$300 award. The other contest is at the university level and offers a \$500 award. Submissions are due **Monday, September 22,**

**2008.** Prizes will be awarded during this year’s Right to Know Week, September 28-October 3rd.

If you would like more information about Right to Know Week 2008 events, including the essay contest, visit our website at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Right to Know* tab or contact us at (306) 787-8350.

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## OIPC 2007-2008 ANNUAL REPORT



On June 27, 2008, our office tabled our latest Annual Report with the Legislative Assembly. There were two major themes in the Annual Report. The first one is the need to update Saskatchewan’s access and privacy legislation. In many

Canadian provinces similar laws include a requirement that the Legislative Assembly must formally review laws every three to five years. The reason for this feature is the rapid increase and change in terms of threats to privacy in new technological developments. Saskatchewan’s legislation, which came into force in 1992, has never been revisited or reviewed at any time during the last sixteen years. FOIP was closely modelled on the federal *Access to Information Act* and the federal *Privacy Act*, both of which were enacted in the early 1980s. It is noted in our Annual Report:

*When those federal laws were enacted, it was a time of innocence in terms of the challenges of information privacy. There was no internet, no pervasive video surveillance, no global positioning systems, no radio frequency identification devices and no powerful search engines. Identity theft was largely unknown; and electronic health records only existed in people’s imaginations. Information privacy is now an*

*important issue for Canadians as confirmed by countless opinion surveys and the experience of the OIPC over the last four and one-half years.* [page 3]

The Annual Report’s Appendix I summarizes extensive legislative activity and reform in other Canadian jurisdictions with similar laws.

The second theme is the need for the Legislative Assembly to revisit the Electronic Health Record (EHR). The initial privacy safeguards and protections for the EHR were set out in HIPA. At that time, it was expected that the EHR to be built in Saskatchewan would be a single large database including the personal health information on all citizens. In fact, the EHR, now being constructed in Saskatchewan, looks very different from that original model. The EHR now consists of a series of distributed databases and a number of different domain registries. The Commissioner has encouraged the Legislative Assembly to reconsider the original privacy protections created by HIPA and assess whether there is a need for new provisions to ensure that HIPA is aligned with the expectations of Saskatchewan residents in 2008.

The 2007-2008 Annual Report is available at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Reports* tab.



## PRIVACY ON AUTOMOBILE INJURY APPEAL COMMISSION AGENDA

Saskatchewan residents may be interested in an article written by Christopher Berzins which appears in the legal periodical, *The Advocate's Quarterly* (Volume 34, Number 3, July 2008). This article considers in detail the past practice of the Automobile Injury Appeal Commission of Saskatchewan (AIAC) in which they published

personal information about claimants on the Internet. Effective June 1, 2008, the AIAC has adopted the new policy of masking the identity of claimants when its decisions are posted on its website. This is a very welcome development and one consistent with the recommendations in our Investigation Report 2005-001.

## SUPREME COURT LIMITS PRIVACY COMMISSIONER POWERS UNDER PIPEDA



On July 17, 2008, the Supreme Court of Canada delivered its

decision in the case: *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* (2008 SCC 44). The Supreme Court found that routine access by the Privacy Commissioner in the course of an investigation under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to solicitor-client confidences is not necessary. The Supreme Court concluded that if, in any given investiga-

tion, the Commissioner requires access to solicitor-client confidences, she has other remedies that are less intrusive. This included a referral to the Federal Court or bringing an application to the court. The Supreme Court noted that: "*It is common ground that PIPEDA does not expressly grant to the Privacy Commissioner the power to review documents in respect of which solicitor-client privilege is claimed - either to verify the privilege claim, or for any other purpose. The question is thus whether the legislation implicitly grants that power.*"

For Saskatchewan readers it is

important to note that FOIP and LA FOIP have a specific provision that is missing from PIPEDA. This provision is that:

*Notwithstanding any other Act or any privilege that is available at law, the commissioner may, in a review:*

- (a) require to be produced and examine any record that is in the possession or under the control of a government institution; and
- (b) enter and inspect any premises occupied by a government institution.

[emphasis added]

## CANADA'S COMMISSIONERS MEET IN REGINA



On June 4-6, 2008, Regina hosted the first ever Saskatchewan meeting of the Information and Privacy Commissioners/Ombudsmen from all Canadian jurisdictions. The first day of the conference, all Commissioners issued a statement focussed on child internet privacy in Canada. The joint resolution and news release is

available at [www.oipc.sk.ca](http://www.oipc.sk.ca). This coincided with the launch of a new website created by the Privacy Commissioner of Canada, [www.youthprivacy.ca](http://www.youthprivacy.ca). We are very grateful for the support of His Honour Lieutenant Governor Barnhart who hosted a dinner at Government House, and the Speaker of the Legislative Assembly, the Honourable Don Toth, who hosted a luncheon at the Legislative Building.



## ACCESS TO SASKATCHEWAN COURT RECORDS



Saskatchewan courts are to be congratulated for their very useful publication – *Public Access to Courts Records in Saskatchewan*.

This is a set of guidelines for court officials, the media and the public. This describes not only how the court system works, but how one can

make requests for access to court records. It discusses the circumstances where access will be denied. It also includes a request for access form and additional guidelines and information. The access to court records document is accessible at [www.sasklawcourts.ca](http://www.sasklawcourts.ca). Court records are excluded from FOIP and LA FOIP.

## NEWBORN SCREENING AND GENETIC INFORMATION



The New Zealand Privacy Commissioner has called for legislation to cover the use of the genetic information held

on the newborn metabolic screening database. The Privacy Commissioner, Marie Schroff, is quoted in the newsletter of the Office of the Privacy Commissioner (Issue 66 - May 2008). She observed that:

*Newborn metabolic screening is available to all New Zealand babies and done at 48 hours*

*after birth. The sample includes information about the baby such as its name, sex, date and time of birth, National Health Index number, the mother's name, and contact detail for the Lead Maternity Carer.*

*Although parents are now asked to give consent on behalf of the child to have a blood sample taken, there are no clear rules about the indefinite storage and future uses of the data.*

Commissioner Shroff stated that:

*DNA testing is only going to get easier and cheaper. Demand*

*for tests – of all varieties – will certainly grow. There will be pressure to make specimens such as the Guthrie blood spots available for other purposes.*

*Effective and ongoing participation in the programme is dependent upon building and maintaining high levels of trust within the community.*

This newsletter is available at [www.privacy.org.nz](http://www.privacy.org.nz).

## NEW LEGISLATION IN NEWFOUNDLAND/LABRADOR TO PROTECT PERSONAL HEALTH INFORMATION



The *Personal Health Information Act* has been introduced by the provincial government of Newfoundland and Labrador to protect the privacy of individuals and their personal health information. The legislation is targeted for proclamation in eighteen months to ensure an opportu-

nity for education and new legislative requirements within the health and community services system and the general public. For more information visit [www.releases.gov.nl.ca](http://www.releases.gov.nl.ca).



## NEW PIPEDA RESOURCE

The Privacy Commissioner of Canada has launched a new book, available online, to assist businesses in complying with PIPEDA. The book entitled *Leading by Example: Key Developments in the First Seven Years of PIPEDA* summarizes numerous findings and judicial decisions. This is available online at [www.privcom.gc.ca](http://www.privcom.gc.ca).

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## PRIVACY IN THE CLOUDS



Ann Cavoukian, the Ontario Information and Privacy Commissioner, has produced *A White Paper on Privacy and Digital Identity: Implications for the Internet*. The paper explores how privacy may be protected in a world where more and more personal information is

created, shared, used and stored online somewhere out there in the network “cloud” – that is, beyond an individual’s direct control. This very interesting and helpful document is available at [www.ipc.on.ca](http://www.ipc.on.ca).

**Cloud**, in a telecommunications context means the unpredictable part of any network through

which data passes between two end points. In this Ontario IPC paper, it refers to any computer, network or system through which personal information is transmitted, processed and stored, and over which individuals have little direct knowledge, involvement or control.

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## FUTURE EVENTS

**September 4, 2008 - Youth Privacy Online: Take Control, Make it Your Choice** – Toronto, Ontario (visit <http://www.verney.ca/ypo2008/> for more details)

**September 29, 2008-October 3, 2008 - Saskatchewan Right to Know Week** - Regina and Saskatoon, Saskatchewan (visit <http://www.oipc.sk.ca/RighttoKnow.htm> for more details)

**September 30, 2008 - Right to Know Reception** featuring **Professor Alasdair Roberts** - Regina, Saskatchewan (location to be determined)

**October 2, 2008 - Right to Know Event** featuring **Suzanne Legault, Assistant Information Commissioner of Canada** - Saskatoon, Saskatchewan (location to be determined)

**October 22, 2008 - Prairie Health Information Privacy Day 2008** – Winnipeg, Manitoba (visit <http://verney.ca/phipd2008/> for more details)

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