



# FOIP FOLIO



## EMPLOYMENT OPPORTUNITY AT THE OIPC PORTFOLIO OFFICER (\$72,972 - \$94,884 / MCP 7)

**We value:**

**Integrity**

**Responsibility  
and  
Accountability**

**Excellence**

**Respectful  
Workplace**

**Promoting  
Knowledge**

The Office of the Saskatchewan Information and Privacy Commissioner is seeking a highly motivated individual to fill the permanent full-time position of Portfolio Officer. Strong interpersonal skills and flexibility are required to work in this multi-disciplinary team environment.

Portfolio Officers assist with the investigation and resolution of diverse access to information and privacy complaints, provide advice to public sector organizations and health trustees about related issues, and promote public awareness through education programs.

Qualifications for this position are a University degree plus proven research, analytical and excellent communication skills. Working knowledge of Microsoft Windows 7 and Microsoft Office is essential. An understanding of Saskatchewan and Canadian access and privacy legislation would be an asset.

Deadline for application is December 5, 2011. For more information please visit: [www.oipc.sk.ca](http://www.oipc.sk.ca)

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## NEWFOUNDLAND COMMISSIONER ENTITLED TO VIEW SOLICITOR-CLIENT DOCUMENTS



In our September 2011 FOIP FOLIO, reference was made to an excellent resource to help understand the recent spate of court decisions on the question of solicitor-client privilege. Much of this has now been

further clarified by the October 26, 2011 decision of the Newfoundland and Labrador Court of Appeal [*Newfoundland and Labrador (Information and Privacy Commissioner) v. Newfoundland and Labrador (Attorney General)*, 2011 NLCA 69].

At issue was whether the Newfoundland Commissioner **Ed Ring** was entitled to require that the Department of Justice produce for review certain records requested by the Commissioner. These were for the purpose of verifying a claim that the records were subject to solicitor-client privilege. The section in question provided that “The head of a public body shall produce to the commissioner within 14 days a record or copy of a record required under this section, notwithstanding another Act or regulations or a privilege under the law of evidence.”

Relying in part on the decision of our Saskatchewan Court of Appeal in *Law Society of*

*Saskatchewan v. Merchant*, 2008 SKCA 128, the Newfoundland Court of Appeal held that the statutory provision quoted above “... is unambiguous and explicitly permits the Commissioner to abrogate a claim to solicitor-client privilege in order to verify the legitimacy of such a claim in the discharge of his statutory mandate.” The Court also observed that: “The purpose of ATIPPA is to create an alternative to the courts. This goal would be defeated if the Commissioner cannot review denials of access to requested records where solicitor-client privilege is claimed and was forced to resort to applications to court to compel production.”

Saskatchewan public bodies are reminded that the Saskatchewan provision is very similar to that considered by the Newfoundland Court of Appeal. Section 54(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) provides 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; ...” There is a similar provision in section 43(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

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## AMENDMENTS TO THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (PIPEDA) RE-INTRODUCED

[Bill C-12](#) now before Parliament is unchanged from the Bill C-29 that died on the Order Paper when the federal election was called earlier this year. This bill to amend PIPEDA would create a

new standard of consent, would mandate breach notification and clarifies how organizations should disclose personal information to police and law enforcement agencies.



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## CONCERNS WITH LAWFUL ACCESS

On [March 9, 2011 a letter went to the Deputy Minister of Public Safety Canada](#) from **all of Canada's Information and Privacy Commissioners**. This outlined the significant privacy risks stemming from the government's initiative to amend the legal regime governing the use of electronic search, seizure and surveillance. Now that the federal government has made it clear it will proceed with this initiative, **Jennifer Stoddart**, Privacy Commissioner of Canada, has written an [open letter to the Minister of Public Safety](#). This letter underscores the lack of any convincing evidence that the new surveillance powers proposed are

necessary. As Commissioner Stoddart notes, the bills from the last session of Parliament would expand "the legal tools of the state to conduct surveillance and access private information" and would reduce the depth of judicial scrutiny. They went far beyond modernizing search powers. Commissioner Stoddart stated that, "They added significant new capabilities for investigators to track, and search and seize digital information about individuals." Everyone is encouraged to learn more about this issue. Commissioner Stoddart's letter is available at [http://www.priv.gc.ca/media/nr-c/2011/let\\_111027\\_e.cfm#contenttop](http://www.priv.gc.ca/media/nr-c/2011/let_111027_e.cfm#contenttop).

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## CONDITIONS IN BRITISH COLUMBIA CARE HOMES

*The Province* newspaper in B.C. has revealed some alarming statistics about what is going on in care homes in that province. As a result of access to information requests, *The Province* has learned that "in Interior Health residential facilities there were 12 'patient safety event causing death' incidents, 25 cases of 'sexual incident toward patient' plus 692 'physical toward patient incidents'. In Vancouver coastal licensed care homes, there were 26 attempted

suicides, 18 chokings, 44 disease outbreaks and 42 medication errors. In Fraser Health licensed facilities, there were 70 unexpected deaths, 120 disease outbreaks, 15 cases of neglect and seven poisonings. In Northern Health, there were 10 physical-abuse incidents". The article suggests that the B.C. Ombudsman may report on these matters soon. [Wed. Oct. 19, 2011, page A11, byline: Sam Cooper]

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## BRITISH COLUMBIA CONSIDERS FURTHER AMENDMENTS TO ITS FOIP ACT

In early October, the B.C. government introduced a bill to amend its *Freedom of Information and Protection of Privacy Act*. This bill would allow electronic interaction of government with citizens. It includes a number of new privacy features. It will require that privacy impact assessments be submitted to the Information and Privacy Commissioner before new information sharing systems can be implemented. Overall, this initiative should make it easier for the

government to offer services online and facilitate sharing of personal information between different ministries. Interestingly, the B.C. FOIP Act came into force in 1994 but has been substantially amended three different times to reflect the early experience with the law and new technologies and challenges. In contrast, our older law (1992) has never been opened up or revised in its entire 19 year history.



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## ONTARIO COMMISSIONER ORDERS END TO PAPER TRANSMISSION OF CANCER SCREENING REPORTS

**Ann Cavoukian**, Ontario Information and Privacy Commissioner (IPC), has recently issued her [PHIPA Order HO-011](#). This concerned the initiative of Cancer Care Ontario (CCO) to deliver screening reports to over 7,000 physicians in Ontario by Canada Post's Xpresspost courier service. The Ontario IPC was alerted that a number of packages were unaccounted for and believed lost. Her office concluded that the CCO had not taken reasonable steps to ensure the secure transfer of the records containing personal health information. She ordered the CCO to discontinue the practice of transferring Screening Reports containing personal health information to physicians in paper format.

The full Order is available at [www.ipc.on.ca](http://www.ipc.on.ca).

In Saskatchewan the OIPC has not taken that position. We have discussed in past investigation reports that mail would be an appropriate way for personal information to be sent to individuals if courier service was not feasible but by the use of a double envelope system. Full details are available in [OIPC Investigation Report F-2007-001](#) at [www.oipc.sk.ca](http://www.oipc.sk.ca)



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## CITY OF VANCOUVER ORDERED TO DISCLOSE LEASE INFORMATION

British Columbia's Information and Privacy Commissioner Adjudicator, **Michael McEvoy**, ordered the City of Vancouver to release information related to a lease agreement between the City and a private company. The company had objected on the basis that the disclosure would be harmful to its business

interests. The adjudicator found that the 'business harms test' was not met because it related to a negotiated agreement between the parties and not supplied information as required by the B.C. FOIP Act. The [Order F11-30](#) is available at [www.oipc.bc.ca](http://www.oipc.bc.ca).

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## NEW RESOURCE FOR ONLINE PRIVACY



The Privacy Commissioner of Canada, **Jennifer Stoddart**, has produced an excellent series of FAQs as well as more detailed information on

behavioural advertising – [Every Move You Make...Advertisers are tracking your online behavior](#). This handy resource is available at [www.priv.gc.ca](http://www.priv.gc.ca).

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## PATIENT CONFIDENCE NOT TO BE TAKEN FOR GRANTED

Thanks to Toronto privacy lawyer, **Michael Power**, we learned of a survey of just over 1,000 patients in the United Kingdom. More than half of those patients have either withheld information or would withhold information from clinicians and nearly 40% have or would put off seeking

treatment if a hospital had a poor reputation for security. The full story is available at [www.publicservice.co.uk/news\\_story.asp?id=17693](http://www.publicservice.co.uk/news_story.asp?id=17693).



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## BRITISH COLUMBIA COMMISSIONER OFFERS GUIDANCE ON SOCIAL MEDIA BACKGROUND CHECKS

On October 12, 2011 the Information and Privacy Commissioner of British Columbia, **Elizabeth Denham**, issued guidance to assist organizations and public bodies using social media sites to conduct background checks of prospective



employees, volunteers and candidates. The use of social media background checks received attention earlier this year when a political party requested the passwords of its potential leadership

candidates to permit an examination of their social media sites. [The guidelines and the results](#) of her investigation are available at [www.oipc.bc.ca](http://www.oipc.bc.ca).

Saskatchewan readers should note that, unlike our province, British Columbia and Alberta have a *Personal Information Protection Act* that covers businesses and political associations. In Saskatchewan there is no privacy law that covers most non-commercial or non-profit organizations.

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## ONTARIO LAW FIRM MUST PAY DAMAGES FOR DISCLOSING NAME OF COMPLAINANT

The customary practice of Information and Privacy Commissioners across Canada is to treat the name of a privacy complainant as personal information that is not to be disclosed to the public or any third parties without consent or as necessary to conclude an investigation or review. An Ontario law firm learned that lesson the hard way when it was ordered to pay \$1500 in damages under section 14 of the PIPEDA for the improper disclosure of the complainant's

personal information. In this case, the identity of the complainant in an investigation undertaken by the Privacy Commissioner of Canada was disclosed on the law firm's website when reporting on that investigation. The citation for the decision is *Girao and Zarek Taylor Grossman Hanrahan LLP*, 2011 FC 1070.

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## ADMINISTRATIVE TRIBUNALS AND INTERNET PRIVACY

Assistant Privacy Commissioner of Canada, **Chantal Bernier**, delivered an excellent presentation to the Employment and Labour Law Section of the Canadian Bar Association (Quebec) on September 27, 2011. [A copy of her presentation](#) is available online at [www.priv.gc.ca](http://www.priv.gc.ca).

You can also find a number of other resources addressing the same question of what Saskatchewan administrative tribunals should consider before publishing any personal information on the Internet at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Resources* tab.



## HELP FOR SASKATCHEWAN FOIP COORDINATORS

Our office gets a lot of requests from FOIP Coordinators in this province for resources to assist them in processing access requests. Since the Saskatchewan Government has not yet produced a comprehensive manual on FOIP that is publicly accessible, our office is always on the lookout for useful materials to assist FOIP Coordinators. We usually refer to the detailed manuals prepared by the Governments of Newfoundland, Ontario, British Columbia, Alberta and the Treasury Board at the federal level. An additional resource we wish to highlight is something entitled [Investigators Guide to Interpreting ATIA \(The Grids\)](#). This



resource, available on the website of the Information Commissioner of Canada at [www.oic-ci.gc.ca](http://www.oic-ci.gc.ca) under the *Investigations* tab, is a very detailed and practical guide complete with checklists, examples and references to relevant court decisions.

Although the law is different in some respects, you will find that our Saskatchewan FOIP Act in many respects was modeled on the federal *Access to Information Act* and in some cases uses identical wording.

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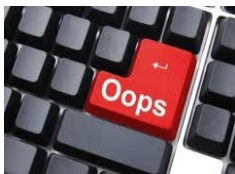
## FOREIGN COMPANIES MUST COMPLY WITH CANADIAN PIPEDA

In the Privacy Commissioner's Report of [Findings #2011-002](#), Commissioner **Jennifer Stoddart** held that KLM Royal Dutch Airlines was subject to the requirements of PIPEDA since it was engaged in commercial activities and had a real and substantial connection to Canada. As a result it was required to have an access to personal information request procedure that is straightforward and that will be adhered to by the

personnel handling the requests. Although KLM argued that it was in compliance with the Dutch *Personal Data Protection Act*, the Commissioner found that did not excuse a company from also meeting Canadian requirements when they were different. This Report is available at [www.priv.gc.ca](http://www.priv.gc.ca).

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## MISUSE OF PERSONAL INFORMATION BY ELECTED OFFICIAL



The Ontario Information and Privacy Commissioner's office investigated a complaint from a citizen that the former member of Toronto City Council acquired his personal e-mail address as a result of being a City Councillor and then used the email address for his own personal purposes. The

Investigator found that the use of the complainant's email address was a violation of FOIP. The Privacy Complaint [Reports MC10-75 and MC11-18](#) are available at [www.ipc.on.ca](http://www.ipc.on.ca).



## FOIP COORDINATORS – CHECKING IN

A recent interesting addition to the Privacy Commissioner of Canada’s website is the [public opinion survey of March 31, 2011](#) that surveyed federal Access to Information and Privacy (ATIP) Officers. This would be the equivalent community to FOIP Coordinators in Saskatchewan. According to the survey, ATIP Coordinators wish “training that is less ‘theoretical’ and more ‘practical’ (e.g. applying specific clauses of the Privacy Act, exclusions/exemptions under the law, new or emerging issues, privacy issues related to social media, preparing PIAs, etc.)”... “Overall participants have positive impressions of the OPC resources they have used. The general impression is that

they are informative, provide general guidance, and keep practitioners up-to-date on issues”... “Participants routinely identified two organizational strengths in the OPC: its openness or receptivity (including a willingness to help) and its professionalism.” We encourage SK FOIP Coordinators to review this document. We encourage the Saskatchewan Government to undertake a similar survey in this jurisdiction to get a better handle on the concerns and issues for these important public sector employees. The Survey is available at [http://www.priv.gc.ca/information/survey/2011/por\\_2011\\_02\\_atip\\_e.cfm#toc1](http://www.priv.gc.ca/information/survey/2011/por_2011_02_atip_e.cfm#toc1).

## MARK YOUR CALENDAR!

M	T	W	T	F	S	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		



**November 14, 2011: Electronic Health Information Laboratory Webinar “Health Information Privacy Breaches”** For more information, please visit <https://www.ehealthinformation.ca/survey/webinarnov142011.aspx>

**June 13-15, 2012: Access and Privacy Conference 2012 - Edmonton, Alberta.** For more information, please visit: <http://accessandprivacy.virb.com/>

**April 30-May 1, 2012: Western Canada Health Information Privacy Symposium, Calgary, Alberta.** For more information, please visit: <http://www.wchips2012.ca/>

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