



EXTREMELY URGENT

January 22, 2010

Honourable Bill Barisoff
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, British Columbia

Dear Honourable Speaker:

Urgent need for appointment of Acting Information and Privacy Commissioner

I write to you urgently about a most serious matter and request your urgent assistance in remedying this situation at the earliest possible opportunity.

The operations of the Office of the Information and Privacy Commissioner ("Office") are, because no Acting Information and Privacy Commissioner has been appointed, at present frozen and the Office is unable to discharge its statutory obligations under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), the *Personal Information Protection Act* and the *Lobbyists Registry Act*.

The previous Information and Privacy Commissioner, David Loukidelis, resigned effective January 19, 2010. Our legal counsel has advised that, because there is no Commissioner or Acting Commissioner as provided for in s. 39 of FIPPA, the delegation of powers, duties and functions that Mr. Loukidelis had made to Office staff as Commissioner have lapsed with his resignation and no one in the Office can make valid delegations until an Acting Commissioner is appointed. While there is some legal case authority for the proposition that a delegation given by a public officer will remain valid when the public officer is replaced, that authority involved the replacement of a public officer by a successor, not a situation such as the present, where no one has been appointed to the office at all. It is one thing to say that delegations of authority remain operative despite a change in the occupant of the office. It is another thing to say that they remain operative when there is no occupant in the office, which is now the case for the Office.

Yesterday I wrote to the Premier's Office to raise this pressing concern. Despite having attempted to learn if an Acting Commissioner has been appointed or, if

not, when this will occur, as of the time of writing, this Office has received no response.

The clear advice of legal counsel to this Office is that we have no legal authority to act in any manner, including to discharge our functions in independently reviewing government's decisions on requests for access to information. In order to, among other things, avoid any perception that this Office has acted without authority under law in reviewing Cabinet records, law enforcement information and other disputed records or information for appeal purposes, it has been necessary to suspend the entire operations of the Office under FIPPA (as well as the *Personal Information Protection Act*, and the *Lobbyists Registration Act*).

To be clear, the Office has been forced to refrain from any activity requiring delegated authority, which includes opening appeal files and privacy complaints, securing and reviewing records the subject of an appeal, authorizing time extensions to respond to access requests, policing the timeliness of government responses to access requests, issue audit and other public reports and issue orders or other decisions respecting access to information requests or privacy complaints.

In effect, at this time British Columbia has no independent office of the Legislature that can hold the provincial government and close to 3,000 public bodies to account under FIPPA or can perform the functions delegated by the Legislature under the *Personal Information Protection Act* and the *Lobbyists Registration Act*.

In view of your role as Speaker of the Legislative Assembly, I ask you to take make urgent representations to the Executive, at your earliest opportunity, to secure appointment of an Acting Commissioner, so that this Office can again perform its important functions.

Yours truly,

Mary Carlson
Executive Director and Deputy Registrar,
Office of the Information and Privacy Commissioner

c.c. Gordon Campbell, Premier

Carol James, Leader of the Official Opposition

George MacMinn QC
Clerk of the Legislative Assembly

Craig James
Clerk Assistant & Clerk of Committees
Legislative Assembly