



BC FREEDOM OF
INFORMATION
AND PRIVACY
ASSOCIATION

Submission on Bill S-4

Submission to the Committee on Industry, Science and Technology

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INTRODUCTION

FIPA is a non-partisan, non-profit society that was established in 1991 to promote and defend freedom of information and privacy rights in Canada. Our goal is to empower citizens by increasing their access to information and their control over their own personal information. We serve a wide variety of individuals and organizations through programs of public education, public assistance, research, and law reform.

While our work focuses primarily on access and information rights in British Columbia, we have also played an active role in federal sphere, including in relation to the *Personal Information Protection and Protection of Electronic Documents Act (PIPEDA)*. In November 2006, we prepared a joint submission with the BC Civil Liberties Association for the statutory review of *PIPEDA* for the Access to Information, Ethics and Privacy (ETHI) Committee.¹

Some of the key recommendations included:

- The Office of the Privacy Commissioner (OPC) should publicize complaints.
- The OPC should develop an effective education function.
- Fix the responses to security (data) breaches.
- Address Trans-border Data Flows of Personal Information.
- Address workplace privacy issues.
- Address the privacy implications of Electronic Medical Records (EMR).
- Confront the challenges of emerging privacy-threatening technologies.
- Review sections in *PIPEDA* dealing with consent that are inadequate.
- Move away from an Ombudsman model and towards order-making powers for the Privacy Commissioner.

We thank you for the opportunity to appear before you on this latest proposed update to a very important piece of legislation.

Comments on Bill S-4

You have heard from a number of groups and individuals speaking on a number of aspects of the bill, so we will use our limited time to deal with one aspect which also has particular relevance to British Columbia. We have made some recommendations for reform of *PIPEDA* to the ETHI committee during their hearings into Big Data, and would refer you to those, as well as to our 2006 submission cited above.²

¹ https://fipa.bc.ca/wordpress/wp-content/uploads/2014/04/PIPEDA_Review_Submission_Nov2006.pdf

² https://fipa.bc.ca/wordpress/wp-content/uploads/2014/03/FIPA_Submission_ETHI_Dec2012.pdf

I. Report of the BC Special Legislative Committee on the Personal Information Protection Act

The Special Committee has issued its report on our provincial private sector privacy law earlier this year.³

As part of its report, the Committee considered the effect of the Supreme Court of Canada decision in *R. v. Spencer*⁴ on s.18 of *PIPA*, which is the equivalent of s.7 of *PIPEDA*.

The sections of *PIPA* that permit warrantless disclosure [sections 18(1)(c) and (j)], state:

18(1) An organization may only disclose personal information about an individual without the consent of the individual, if ...

(c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or proceeding ...

(j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation

BC FIPA proposed that these provisions be narrowed, as did the BC Information and Privacy Commissioner. Commissioner Denham recommended amendments to limit this disclosure of information to circumstances where the disclosure is necessary for purposes related to an investigation or proceeding [section 18(1)(c)], and to limit authority for warrantless disclosures to those that are initiated by the organization [section 18(1)(j)]. She also stated that organizations should be required to document and publish transparency reports on disclosures made without consent.

The BC Ministry of Technology, Innovation and Citizens' Services is apparently reviewing the *Spencer* decision and its possible implications for *PIPA*.

The Committee recommended a narrowing of sections 18(1)(c) and (j) of *PIPA* "because of the implications of the Supreme Court of Canada decision and the possibility of a *Charter* challenge."

It is our view that this approach should also be followed with this Bill.

³ <http://www.leg.bc.ca/cmt/40thparl/session-3/pipa/reports/PDF/Rpt-PIPA-40-3-Report-2015-FEB-06.pdf>

⁴ *R. v. Spencer* 2014 SCC 43 <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14233/index.do>

Important elements missing from Bill S-4

1. Bring Canadian political parties under *PIPEDA*

We feel it is important to highlight to this Committee the fact that federal political parties and their use of personal information is not covered under *PIPEDA* or any other legislation for that matter.

This is at a time when there is growing public concern about what is being done with our personal information in federal political parties' databases and how it is being protected.

As we stated in our 2012 submission to ETHI, it would be best if the parties were brought under the private sector privacy law.⁵

In 2012, the Office of the Privacy Commissioner of Canada released a paper by University of Victoria Professor Colin Bennett on the lack of rules governing how political parties collect, use, and disseminate our personal information.

In his synopsis of the situation, Professor Bennett had this to say:

“...the current reality is that the parties are managing vast databases within which a variety of sensitive personal information from disparate sources is processed. For the most part, individuals have no legal rights to learn what information is contained therein, to access and correct those data, to remove themselves from the systems, or to restrict the collection, use and disclosure of their personal data. For the most part, parties have no legal obligations to keep that information secure, to only retain it for as long as necessary, and to control who has access to it.”⁶

It does not have to be this way.

In British Columbia, our political parties fall under the *Personal Information and Privacy Act (PIPA)*, and our Commissioner has the power to receive complaints, conduct hearings, investigations and ultimately issue orders. She has already investigated the NDP's requirement that leadership candidates hand over the keys to social media and other communications tools to the party⁷. She has also investigated the Liberal Party's involvement in the 'quick wins' ethnic vote scandal and the use of government information for political purposes.⁸

The political world has not yet collapsed in BC, and there is no reason to think the federal system would collapse if political parties were put under *PIPEDA*. The amendment required to do this

⁵ http://fipa.bc.ca/library/Reports_and_Submissions/FIPA_Submission_ETHI_Dec2012.doc

⁶ http://www.priv.gc.ca/information/research-recherche/2012/pp_201203_e.asp#toc6

⁷ <http://www.oipc.bc.ca/mediation-summaries/1399>

⁸ <http://www.oipc.bc.ca/investigation-reports/1559>

would not be complicated, and since this Committee is studying the Bill before Second Reading, we presume the government is open to amendments.

We hope you see fit to recommend this before the coming federal election.

2. The Connected Car: FIPA report on privacy and automotive telematics to be released March 25, 2015

Thanks to funding from the federal Privacy Commissioner's Contributions Program, FIPA is completing a year-long study to examine the effect of electronic monitoring systems in our vehicles on our privacy rights and consumer choice.

Our vehicles are no longer simple mechanical devices which provide us with transportation, but rolling electronic platforms that collect and process large amounts of information, much of which is personal information and some of it highly sensitive.

The growing use of telematics by vehicle manufacturers and insurers raises significant privacy concerns, including:

- To what extent will automobile owners and drivers have choice over how and when their vehicles are being tracked?
- What happens when the use of telematics becomes industry norm? Will those who opt out for privacy reasons have to pay a premium to maintain their privacy? Or will that option simply disappear?
- Will consumers be able to make truly informed decisions if the choice is between concrete benefits and real but elusive risks?
- Are there viable alternatives to what the automobile and insurance industries are developing that can provide the benefits consumers seek while not sacrificing their rights?

The lead researcher for the study is Philippa Lawson, who is testifying here today. Although we can't reveal the recommendations of the Connected Car report, we have found a number of issues related to express and implied consent which will be of interest to this Committee.

We would be pleased to provide you with a copy of the report when it is released

CONCLUSION

The B.C. Freedom of Information and Privacy Association thanks and applauds the House Standing Committee for welcoming submissions on this important issue.
