

# BULLETIN

THIS EDITION: ELECTION ACT + BILL C-30 SHELVED + BC ID CARDS DEBUT + ELECTION PREVIEW

## ELECTION ACT GAG LAW FORCES CHARTER CHALLENGE

With the 2013 provincial election a little more than a month away, the B.C. government's stubborn refusal to fix unconstitutional third-party advertising provisions in the *Election Act* has forced a Charter challenge from FIPA.

As currently written, the *Act* defines "election advertising" as any form of communication with the public that "...promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated."

In addition to casting an incredibly wide net over what kinds of communication count as "advertising," this definition also fails to set a lower spending limit. This means that even communication with the public that costs nothing--potentially something as small as a hand-written window sign--can be classified as elections advertising. The "sponsor" of that advertising, in turn, must register with Elections BC. Failure to do so could result in a \$10,000 fine and up to a year in jail.

These provisions are supposed to keep big money out

of election campaigns. But in failing to establish a spending floor that separates "big money" from low-to-no-cost advertising, the *Act* wrongly demands that small organizations and individuals register simply to exercise their right to free speech.

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pulled out of the *Act*) puts a serious chill on free political speech. That same year, the Chief Electoral Officer also pointed out the problem in his report to the legislature.

In the spring of 2012, when the government introduced amendments to the *Act*, they again failed to create a spending floor. After a B.C. Court of Appeal hearing in the fall, where FIPA was an intervenor, the Court told the government its amendments were unconstitutional. Following that hearing, our legal counsel Sean Hern contacted the government's lawyers to ask how they could justify their refusal to fix the flaw. In their response, they defended the law and all but dared us to challenge it in court.

This issue is hardly unknown to the government. Back in 2010, FIPA, the BC Civil Liberties Association and the Canadian Centre for Policy Alternatives co-published a report called *Election Chill Effect*, outlining how the requirement to register as an advertiser in the pre-campaign period (a provision since struck down and

The government's consistent refusal to amend this legislation is an insult to British Columbians. Even as we head toward an election, our free speech is being curtailed by a law known to be both unconstitutional and out of step with similar laws in other jurisdictions (Alberta has a spending floor of \$1000, while the federal registration requirement kicks in at \$500).

To add insult to injury, in February, the government introduced a new bill setting out a plan to establish senate nomination elections.

## VICTORIA POLICE COME AROUND TO PRIVACY--SORT OF

It seems as if the Victoria Police Department might be coming to its senses on privacy and surveillance, at least when it comes to the Automatic Licence Plate Recognition (ALPR) system.

Late last year, the Vic PD turned up its nose at a [report](#) issued by the Information and Privacy Commissioner, who found that the force's use of the RCMP's ALPR system [violated the Freedom of Information and Protection of Privacy Act](#). In a statement, Police Chief Jamie Graham "respectfully disagreed" with the commissioner and declared that his force would continue to use the system despite her findings.

The system uses cameras mounted on police cruisers to check license plates against police databases that keep track of various vehicular and driver infractions (as well as other more problematic information like attempted suicides). In her report, the commissioner made several recommendations for bringing the system into compliance with provincial law.

In mid-January, it was announced that privacy upgrades are in the cards for the Victoria ALPR program. Denis Boucher, superintendent for the RCMP's E Division traffic services, which provides the technology to regional police forces like the Vic PD, announced the changes at a Victoria Police Board meeting. Boucher stated that both "hit" (positive matches between scans and the databases) and "non-hit" data would be collected by the cameras while a car is on shift, but would be deleted at the end of the day. We have also heard that the

Like the *Election Act*, this bill proposes limits on third party advertising spending. And just like the *Election Act*, it lacks a floor. They are consistent, if nothing else.

If this government wanted to demonstrate a meaningful commitment to democracy, especially with an election just around the corner, they should have already taken one of the many opportunities they've had to fix this law and stop interfering with the constitutional rights of British Columbians. But it seems they'd rather fight.

RCMP are indeed working very hard and very quickly to upgrade the system.

In its initial reluctance to comply, the Vic PD stood alone. Other police forces that use the ALPR system have been much more amenable to the idea that they shouldn't break the law. In this province, Saanich Police suspended use of ALPRs until privacy concerns could be addressed and the system brought into compliance.

Police in Ottawa [recently announced](#) that until the public has had an adequate chance to provide input on the program, and until privacy concerns have been addressed, squad cars will not be equipped with ALPR scanners.

Eli El-Chantiry, chair of the Ottawa police service board, has stated, "I can assure you we will not agree to anything that's going to contradict (Ontario's) privacy commissioner."

The Ottawa ALPR system will delete "non-hits" within twenty minutes, and [Ontario Commissioner Ann Cavoukian](#) is pushing for the department to cut that in half.

"My goal is to have this done automatically; as soon as determination that's it's a non-hit, the next step, immediately, should be deleted," she told the *Ottawa Citizen*.

So while it looks like there is a fix coming for some of the privacy concerns expressed by the commissioner over the retention of the non-hit information, more

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work will have to be done to deal with some of her other concerns about what comes under the “hit” category. There is no reason for police interactions like suicide attempts to be counted as a hit, and no reason to retain that sort of personal information.

Hopefully the momentum that has been building to find a way for this technology to function without infringing on our privacy rights can be maintained. We will be keeping our eye out for developments and report back to you.

# ANNUAL GENERAL MEETING

Thursday, April 11, 2013

People’s Law School (900 Howe Street)

6:45-9:00 PM

Open to all members of the public

We’re pleased to invite you to join our staff and Board of Directors on Thursday, April 11th for our Annual General Meeting. 2012 was an extremely busy and eventful year for FIPA, and we look forward to reflecting on our many accomplishments alongside our members.



This year, we’re excited to welcome **Bob Mackin** as our guest speaker. Mr. Mackin is an award-winning Vancouver journalist who has written countless investigative stories for a wide range of local, national, and international publications. Much of his works involves lengthy and complicated FOI battles with public bodies. This is a task that

Mackin does not take lightly.

In a blog post written in response to the BC Pavillion Corporation’s (PavCo) attempt to have his requests shut down and classified as “frivolous and vexatious,” Mackin writes, “I am a frequent requester, but what I do is not frivolous or vexatious. Nor is it repetitive or wasteful. In fact, it is necessary and it is in the public interest... FOI has become the best and only tool for gaining knowledge of what goes on behind closed-doors.” At a time when provincial FOI performance is in dramatic decline and an ‘oral culture’ dominates the highest levels of government, we couldn’t agree more.

Renewals, registrations, and donations can be processed on-site. Payment by cheque is strongly encouraged. If you have any questions about attendance, procedure, or membership, please don’t hesitate to contact FIPA at [fipa@fipa.bc.ca](mailto:fipa@fipa.bc.ca). We sincerely look forward to reconnecting with our members and hope to see many of you there.

## QUESTIONS?

FIPA provides assistance, referrals, and support to the public on information rights issues free of charge. If you have FOI or privacy concerns, get in touch.

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After a delay late last year due to a labour dispute at ICBC, the B.C. government has finally unveiled its new BC Services Card. The card, which combines the old CareCard and the provincial driver's license, is meant to streamline service provision while cutting down on fraudulent health care billing—a problem that, according to the government, plagues our province.

But despite a province-wide advertising and PR blitz, there remain precious few details on just why the card is

comes to implementing major tech initiatives. Multiple government computer systems, such as the Integrated Case Management system, the Ministry of Justice's JUSTIN case management system, and BCeSIS, our provincial student information environment, have been plagued by technical difficulties in recent months. Could the gag on information about the new ID Card point toward another technological quagmire in the making?

The Information and Privacy Commissioner has also weighed in. Shortly after bus and print ads started popping up across the province to announce the card's mid-February launch date, Commissioner Elizabeth Denham released a brief statement noting that her office had yet to receive the information it needed to complete a proper review of the card.

# BAD ID(EA)

## AS PROVINCIAL GOVERNMENT CHARGES AHEAD WITH NEW I.D. CARD, SERIOUS PRIVACY CONCERNS REMAIN

needed, how it is being developed, and importantly, how the privacy of British Columbians will be protected.

Beyond vague estimates, for example, the government has failed to demonstrate that fraudulent billing is the financial scourge that it claims. While it's true that CareCards outnumber residents by a ratio of almost two to one in B.C., only \$3 million in documented health billing fraud has actually been presented, far below the government's claim that it's a \$260 million per year problem.

Details around the card's procurement and development are similarly scant. Multiple interview and freedom of information requests have been either denied or returned non-responsive. Even a request for copies of correspondence between the Chief Information Officer and SecureKey (the company contracted to develop the readers for the cards) was returned with nothing. This silence is all the more troubling given the government's less than stellar track record when it

A few weeks later, presumably after receiving these records, Denham's office released a short report. While she approved of the initiative's first phase on purely legal grounds, she noted, "phase 2 will be a significantly larger step that brings with it considerable risks to personal privacy."

On the subject of transparency (or lack thereof), she added: "I remain deeply concerned that the public has not been consulted about the BC Services Card program as a whole. Given the program's profound reach and the amount and type of personal information involved, it is critical that citizens are included in the dialogue."

The commissioner's recommendations and concerns are valuable, but we need to go farther. That's why FIPA, along with the BC Civil Liberties Association, has renewed its call for a public inquiry into the government's data sharing initiatives. To properly evaluate these costly, privacy invasive systems, the government needs to put them on blocks, drop the secrecy, and conduct a real investigation. There's too much public money and private information on the line to gamble on yet another IT flop.

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Information & Privacy Commissioner  
Elizabeth Denham. Emphasis added.

# ORAL CULTURE AT TOP LEVELS OF GOVERNMENT GROWS UNDER ‘OPEN GOVERNMENT PREMIER’

According to a recent [investigation report](#) from the Information and Privacy Commissioner, prompted by a complaint filed last year by FIPA, the failure of senior government officials to make and keep records is a serious and growing problem in British Columbia

FIPA’s [complaint](#) outlined a dramatic increase in the number of general FOI requests returned with “no responsive records” over the past ten years, particularly over the last three. The Commissioner’s report, released in early March, not only confirms our findings, but also shows that in some key areas, the problem is even worse than we thought.



Most damning among the report’s findings is that the Office of the Premier has seen a dramatic spike in non-responsive FOI requests over the past year. In the 2011/12 fiscal year, fully 45% of all FOI requests received by the Premier’s Office were returned with no responsive records. Denham calls the Premier’s apparent allergy to disclosure “the single biggest cause” of increases in overall non-responsive rates between 2010 and 2012.

Such figures are astounding. The Office of the Premier sets the tone for government, and Denham’s report demonstrates that nearly half of all requests it receives are returned unresponsive. This is simply unacceptable.

As FIPA’s calculations from last year show, media requesters were hit the hardest by this decline in performance. Denham’s investigators found that, in the 2010/11 fiscal year, 37% of media requests filed with the Office of the Premier came back unresponsive.

By the end of the 2011/12 fiscal, that number had jumped to 49%. Denham points to a growing “oral culture” as one cause of the problem. Her report shows that most communication in the Premier’s Office happens verbally or is classified as “transient,” meaning whatever records are generated are quickly deleted. This is apparently what happened with the investigation of former chief of staff Ken Boessenkool.

The OIPC report calls for the creation of a legislative “duty to document” to ensure records are in fact created, along with five other recommendations meant to “enhance applicants’ confidence in government’s search efforts and to help reverse the trend of no responsive records requests in government.”

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In the government’s response, Kim Henderson, Deputy Minister of Citizen Services and Open Government, agreed with some of Denham’s suggestions. As for the main recommendation (duty to document), Henderson indicated that it wouldn’t even be on the agenda until the next scheduled review of the *FIPPA* in 2016.

But where the government delighted in Denham’s conclusion that, overall, government is compliant with their legislated duty to assist, we take a less rosy view. Given the staggering numbers and troubling cases turned up by the Commissioner’s investigators, we simply don’t understand how the OIPC can claim that government is meeting its duty to assist requesters.

FIPA supports the Commissioner’s call for law reforms that would require government to produce written records. But only a serious and far-reaching commitment to the duty to assist will ensure that these records end up in the hands of the public.

# FEDS KILL ONLINE SPYING BILL, BUT SPIRIT OF SURVEILLANCE LIVES ON

In early February, federal Justice Minister Rob Nicholson announced that Bill C-30, better known as the warrantless online spying bill, would not be returning to parliament; laid to rest at long last by an enormous public outcry voiced in large part through the Stop Online Spying campaign lead by OpenMedia.ca and supported by FIPA.

This is a huge victory for Canadians. C-30 would have dramatically expanded the government's surveillance powers by making it easier for law enforcement agencies to get personal information held by telecom and internet companies without a warrant. The bill also would have mandated that new Canadian telecom infrastructure include built-in "back doors," accessible to law enforcement agencies for surveillance purposes, but also vulnerable to hackers. And it all would have come on the taxpayer's dime.

C-30's demise, then, saves us from a costly, privacy-invasive, and totally unnecessary experiment in Orwellian surveillance.

Nicholson's announcement came just days ahead of the one-year anniversary of the #TellVicEverything phenomenon: a hilarious and creative online protest staged following Public Safety Minister Vic Toews' despicable claim in the House of Commons that anyone who voiced opposition to C-30 supported child pornographers. Using the #TellVicEverything hashtag, Canadians flooded the minister's Twitter stream with the most mundane details of their days, cleverly lampooning C-30's massive information grab.

But as much as this is a time for celebration, it's important for privacy advocates to remain vigilant. C-30 might be dead, but this government's commitment to expanding its powers of surveillance is alive and kicking.

Another piece of privacy-invasive legislation, Bill C-12, is still winding its way through the House of Commons. If passed, C-12 could pave the way for new and perhaps

even nastier "lawful access" bills in the future.

The bill would amend *PIPEDA* in full, the law that governs privacy in Canada's private sector, so as to encourage telecom and internet companies to *voluntarily* disclose consumers' personal information to any "lawful authority" that requests it. But because the bill doesn't define what exactly a lawful authority is, this means that a whole range of people—police officers, border service agents, even employees at private security companies—could get easy access to your personal information.

And the trouble doesn't stop there. As FIPA members might already be aware, Canada has also recently signed on to the Trans-Pacific Partnership, a secretive trade agreement currently being hammered out behind closed doors by industry lobbyists and government bureaucrats.

By creating new controls around the circulation of intellectual property and by encouraging the sharing of citizen data among signatory nations, the TPP threatens to criminalize certain everyday uses of the Internet and undermine our national privacy laws. Yet despite these sweeping proposals, citizens have been almost entirely shut out of the negotiations.

FIPA, alongside civil society organizations from around the globe, are organizing against the TPP with the Stop the Trap Coalition. The Coalition's petition, which calls for transparent negotiations and opposes the agreement's attack on internet freedom, already has more than 120,000 signatures.

And so while C-30's consignment to the legislative dustbin is a remarkable development, it's only one front in the broader fight against government surveillance and for an open, accessible, and privacy-protective internet.

By forcing the government to drop this bill, Canadians have already shown the government what they can do once. It's important that they know we can do it again.

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# ELECTION PREVIEW: FOCUS ON INFO RIGHTS

On April 16th, the writ will drop on the 2013 provincial election, kicking off 28 days of heated campaigning. Given recent events, information and privacy should be front and centre for all candidates vying for office.

As this and past editions of the *FIPA Bulletin* show, there is certainly no shortage of major information issues to be tackled by this province's next government, no matter its political stripe.

The most recent issue to emerge is the deliberate attempt by the Office of the Premier to get around FOI by failing to keep records and destroying the few that they do create. Hopefully the outrage on the part of the media and the public in response to this problem will keep it on the front burner throughout the campaign, but there are also a number of other issues that need to be addressed:

Subsidiary corporations owned or operated by public bodies like school boards and universities inexplicably remain out of the scope of the *Freedom of Information and Privacy Act*. Liberal ministers have been promising legislative action on this issue since 2006, but we've yet to see any real action. This information laundering loophole must be plugged, and the parties should be told how they intend on doing it.

The application of *FIPPA*'s 'policy advice' exception has reached epidemic proportions since the B.C. Court of Appeal's 'Dr. Doe' decision in 2002. The most egregious example of this abuse was the government's denial of a request for copies of an HST information pamphlet destined for every household in B.C. (before being scrapped) on the grounds that it was 'advice to the minister.' Legislative change is imperative if this abuse is to be stopped. The exemption for cabinet confidences is also in need of amendment for similar reasons.

The obligation to release documents without a request if they are in the public interest (s.25) is now the subject of a review by the Information and Privacy Commissioner following a complaint by FIPA

and the Environmental Law Clinic at UVic. Regardless of what the Commissioner says in her report, however, it will be up to the Legislature to make the changes. That's why we need to know where the parties and candidates stand on this issue.

Perennial problems like delays and fees will also require parties and candidates to take a stand. As well, we want to hear their plans for improving Open Data systems and supporting the proactive release of public information.

When it comes to privacy, our next government will inherit responsibility for fixing disastrous initiatives like the Integrated Case Management system. It must also develop a plan for managing and implementing the privacy-invasive B.C. ID card, which made its delayed debut in February.

Commissioner Denham has called for a wide ranging public consultation on these data linking initiatives. As well, FIPA and our allies have called for a public inquiry specifically to investigate the disaster that is the ICM. It's clear that something is seriously wrong with the way these projects are being managed, and we need to have answers from our candidates as to how they intend to deal with the situation.

Finally, something must be done about B.C.'s unconstitutional *Election Act*. In using an incredibly broad definition of "election advertising" that neglects to define a lower spending limit (see lead story for more details), the *Act* unfairly interferes with residents' rights to free political speech. Unless they are spending significant money (more than \$500) producing election ads, small organizations and individuals should not have to register as an advertiser with Elections BC on pain of jail time or fines. The law should be amended to reflect this, and the parties need to tell us where they stand.

FIPA will be tracking the election closely and distributing surveys to each campaign asking for clear positions on the information issues that matter to British Columbians.

Check our website ([fipa.bc.ca](http://fipa.bc.ca)) regularly for election updates or sign up for email news at [fipa.bc.ca/updates](http://fipa.bc.ca/updates).

# EVENT RECAP:

## Privacy Skills Breakfast

On January 22, FIPA, the BC Civil Liberties Association, and OpenMedia.ca teamed up to present our first of hopefully many Privacy Skills Networking breakfasts. About 20 representatives from a wide range of community organizations gathered at the People's Law School to hear presentations that outlined their privacy and information management duties under provincial law, the challenges that small organizations face in protecting constituent privacy, and policy and tech solutions to those issues.

The event was a fantastic, discussion-filled opportunity

to connect with those organizations looking to take the privacy of their constituents more seriously.

FIPA would like to extend its warm thanks to the BC-CLA and OpenMedia.ca for their contributions, as well as to the People's Law School for generously providing our venue.

If you would like to see FIPA offering more programming like this in the future, visit [fipa.bc.ca](http://fipa.bc.ca) and become a member or a donor. We rely on your contributions to serve our community.

# SUPPORT FIPA

FIPA relies on the contributions of members, community groups, and individual donors to support its work. **HERE'S HOW YOU CAN HELP:**

### BECOME A MEMBER

Join as an individual or as an organization to receive early notice of events, first-run access to the FIPA Bulletin, special offers, and AGM voting privileges.

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The best way to support FIPA is by signing up as a monthly contributor. One-time gifts and donations are also greatly appreciated! Visit [fipa.bc.ca](http://fipa.bc.ca) and click "Donate" to contribute online.

### SPREAD THE WORD

Follow us on Twitter (@bcfipa), subscribe to our news updates, and share our bulletin with your circles! We're always looking to expand the information rights community in B.C.

For any questions about giving or donations, including membership, sponsorship, or legacy funds, contact Tyler Morgenstern at [tyler@fipa.bc.ca](mailto:tyler@fipa.bc.ca)