



**Presentation to the  
Special Committee to Review  
*The Personal Information Protection Act***

**June 9th, 2020**

**Freedom of Information and Privacy Association**

British Columbia



BC FREEDOM OF INFORMATION  
AND PRIVACY ASSOCIATION

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# Our Work

## **I. Content and legal analysis**

- Comparative Analysis
- Legislation, Amendments, Prior Recommendations

## **II. Relevant existing public surveys**

## **III. Gap analysis**

## **IV. Stakeholder consultation**

## **V. New public Opinion Survey**

# Public Opinion – Existing Research<sup>1</sup>

Question	% Canadians
In general, how concerned are you about the <b>protection</b> of your privacy?	92% at least somewhat concerned
How would you rate your <b>knowledge</b> of your privacy rights?	64% at least good
How much <b>control</b> do you feel you have over how your personal information is being used by companies you do business with.	67% feel little to no control
Willingness to do business with the company where a company provides <b>easy to understand</b> information about its <b>privacy practices</b> .	69% more willing
Willingness to do business with the company if under Canadian law, the company would <b>face strict financial penalties</b> , such as large fines, for misusing your personal information.	71% more willing
“I feel that businesses in general <b>respect my privacy rights</b> .”	38% agreed

# Public Opinion - FIPA's Survey

## PROTECTION



**43%** feel that current laws and practices are sufficient to protect their personal information.

## TRANSPARENCY



**33%** believe organizations are open and transparent about how they collect and use personal information.

## BUSINESS PRACTICES



**75%** are concerned about an organization transferring their personal information outside of Canada.

## KNOWLEDGE



**Less than 50%** are aware of their privacy rights and protections.

## EDUCATION



**High majority** support increased resources for education

# Review of Amendments

Overview of Substantive Amendments Since 2008				
	BC	AB	QC	PIPEDA
Date in Force	January 2004	January 2004	January 1993	January 2001
Approximate Substantive Amendments	0	>50	4	>50

**AB PIPA, QC, and PIPEDA have undergone various substantive\* amendments**

**Why isn't BC keeping pace?**

# Hope Springs Eternal ...

## Previous Reports

**46** total

recommendations

**None** acted upon

**2008**

### 31 Recommendations

- Prohibition on blanket consent forms by provincially regulated financial institutions
- Revision of consent exceptions re insurance industry
- Allow disclosure of personal contact information for health research
- Retain the minimal fee for access to personal information
- Streamline the complaints process in the province's privacy laws

**2014**

### 15 Recommendations

- Increased transparency of organizations in privacy policies and disclosures made without consent
- Amendments to respect a union's freedom of expression consistent with AB PIPA

**2008  
& 2014**

### Commonalities

- Increased accountability for cross-border data flows
- Mandatory notification of privacy breaches
- Strengthening the Information and Privacy Commissioner's oversight powers.

# GDPR - "The Global Gold Standard"

- Canada's Privacy Commissioner advocates a human rights-approach to data protection, similar to the GDPR<sup>2</sup>
- **Adequacy status** – Canada at risk?
- Quebec's adequacy status delayed – June 2014<sup>3</sup>
- Our submission is informed by the GDPR with respect to:
  - Enhanced Accountability & Transparency Practices of Organizations
  - Accountability of Organizations in Cross-Border Transfers
  - Expansion of Commissioner's Powers
  - Algorithmic Transparency





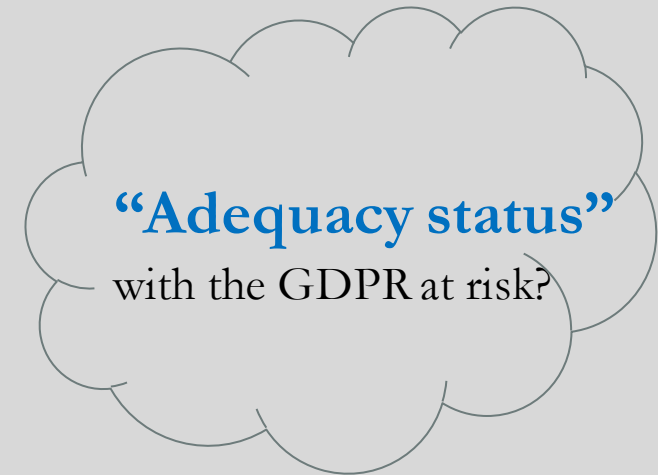
# Keeping Pace

- **Mandatory Breach Notification and Improved Record Keeping**
- **Enhanced Accountability & Transparency by Organizations**
  - Modify standards for purpose of collection
  - Public Privacy Policies
  - Mandatory Privacy Impact Assessments
  - Professional standards through accreditation
- **Accountability of Organizations in Interjurisdictional Transfers**
  - Ensure contracts with third parties provide equal protection
  - Mandatory components of the contracts
  - Privacy by default. Require explicit consent for transferring data internationally

*“Since reporting became mandatory, we’ve seen the **number of data breach reports skyrocket**”*  
- OPC Canada

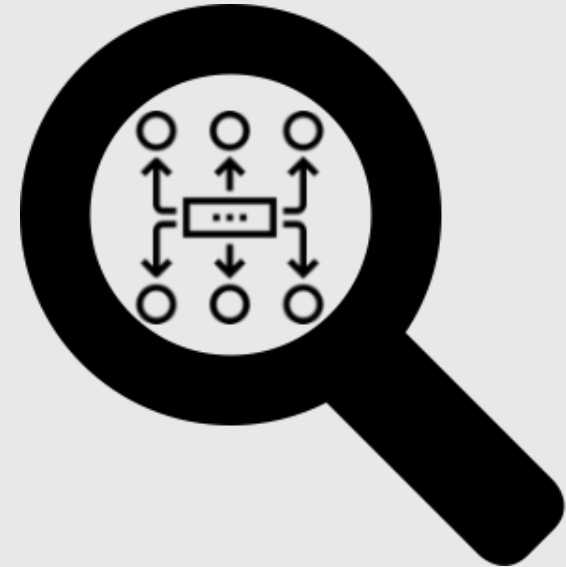
# Keeping Pace Continued

- **Access Delayed is Access Denied** - Legislate on OIPC Policies<sup>4</sup>
- **Expansion of Commissioner's Enforcement Powers**
  - Fines for contravention (a ladder approach emphasizing mediation)
  - Order-making powers
  - Third party review and audit
- **Document Third-Party Source of Information**
  - Section 7 of Quebec's Privacy Act



# Nothing About Me Without Me

- **Algorithmic Transparency is Required<sup>5</sup>**
  - Automated decision making – the right to know the logic
- **Labour Concerns** as employers surveil employees
  - **Support BCGEU's** recommendations
- Covid-19 highlights the necessity of the digital world
- More data appended to more people than ever before
  - IoT, Big Data, Smart Cities
- Value of data & use of machine learning systems will only increase
- **Recommendation: amend PIPA to provide individuals with the right to algorithmic transparency**



# Blurred Lines - Public Funding Private Companies

- 87% of British Columbians support legislative reform in this area<sup>7</sup>
- **Support BBCLA:** Personal information sharing from private to public entities should be limited
- **Corporate veil:** prevents access, transparency, and accountability in the use of these public funds

## Policing – Barwatch

Enables combined private and public police forces that gain access to and maintain files on citizens via Barwatch

## Healthcare – Lifelabs

Provincial healthcare signed and oversaw the LifeLabs contract that put Health Information of BC citizens at risk

## Education

- SFU<sup>8</sup>
- UBC<sup>9</sup>

- **Recommendation:** BC Legislature address the legislative gap which allows private entities to exercise public functions, but prevents their transparency, access, and accountability

7. FIPA 2018 Omnibus Survey via IPSOS

8. *Simon Fraser University v. British Columbia* (Information and Privacy Commissioner), 2009 BCSC 1481

9.. <https://www.oipc.bc.ca/orders/993>; <https://www.oipc.bc.ca/orders/1038>

# Increased Public Education



**92%** of Canadians are concerned about the protection of their privacy



**Less than 50%** of British Columbians are aware of their privacy rights and protections.



**Over 85%** of British Columbians support increased education and resources.



**28%** of BC Teachers have privacy training in MyEducation BC. **14%** found it adequate<sup>10</sup>

- OIPC BC & OPC - educational lesson plans & PrivacyRight<sup>11</sup>
- Increase in public education at the cost of an increase in complaint processing & adjudication times
- **Recommendation: increase resources to public education campaigns re PIPA**

# Political Parties & BC's Leadership

We support the OIPC Recommendations<sup>12,13</sup> re: PIPA and provincial political parties

- BC is the only Canadian province that subjects its political parties to PIPA
- **By recognizing and protecting personal information in the political domain, BC has become a national leader**
- Protection of personal information protects freedom of **expression**, freedom to hold **opinions**, and the possibility to think **without manipulation** (EU Data Protection Board regarding Cambridge-Analytica)<sup>13</sup>
- Consistent with the “gold standard” GDPR
- **Recommendation: we urge BC to continue leading in this field**

12. <https://www.oipc.bc.ca/investigation-reports/2278>

13. <https://www.oipc.bc.ca/annual-reports/2347>

14. [https://privacyconference2019.info/wp-content/uploads/2019/11/Privacy-and-International-Democratic-Engagement\\_finalv2.pdf](https://privacyconference2019.info/wp-content/uploads/2019/11/Privacy-and-International-Democratic-Engagement_finalv2.pdf)

# Capitalizing on Opportunity

- Private information is rapidly increasing in value while its protections are lagging. It's time for a change.
- AB PIPA was originally modelled off BC PIPA, but has made numerous notable amendments since.
- Once a leader, BC is now largely behind.
- This is an opportunity for BC to regain its leadership position.



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# Summary of Recommendations

1. **Mandatory Breach Notification and Improved Record Keeping**
2. **Enhanced Accountability & Transparency of Organizations**
  - i. Modify standards for purpose of collection
  - ii. Public Privacy Policies
  - iii. Mandatory Privacy Impact Assessments
  - iv. Professional standards through accreditation
3. **Accountability of Organizations in Cross-Border Transfers**
  - i. Ensure contracts with third parties provide equal protection
  - ii. Mandatory components of the contracts
  - iii. Privacy by default. Require explicit consent for transferring data internationally
4. **Failure to Respond to Information Request Deemed Refusal**
5. **Expansion of Commissioner's Powers - Fines, order-making**
6. **Document Third-Party Source of Information**
7. **Algorithmic Transparency**
8. **Increased resources for public education re PIPA**
9. **Address the Corporate Veil**
10. **BC Continue its Leadership**