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TOM WRIGHT, COMMISSIONER

Workplace Privacy

As part of its mandate, the Office of the Information and Privacy Commissioner researches and comments on access and privacy issues which may have implications for government organizations and the broader community. Over the past decade there has been a growing awareness of the need to deal with workplace privacy issues. Accordingly, we have recently focused on the matter in a paper entitled *Workplace Privacy: The Need for a Safety-Net.* In this paper, we present our position on surveillance and electronic monitoring, as well as privacy issues in employee testing and the potential for misuse of employment records in the workplace.

Every person working in Ontario is affected by the issues raised in the paper. The ever-growing capabilities of technology increase the potential for the electronic collection, storage and use of personal information. Consequently, they provide greater third party access to employee information. A significant

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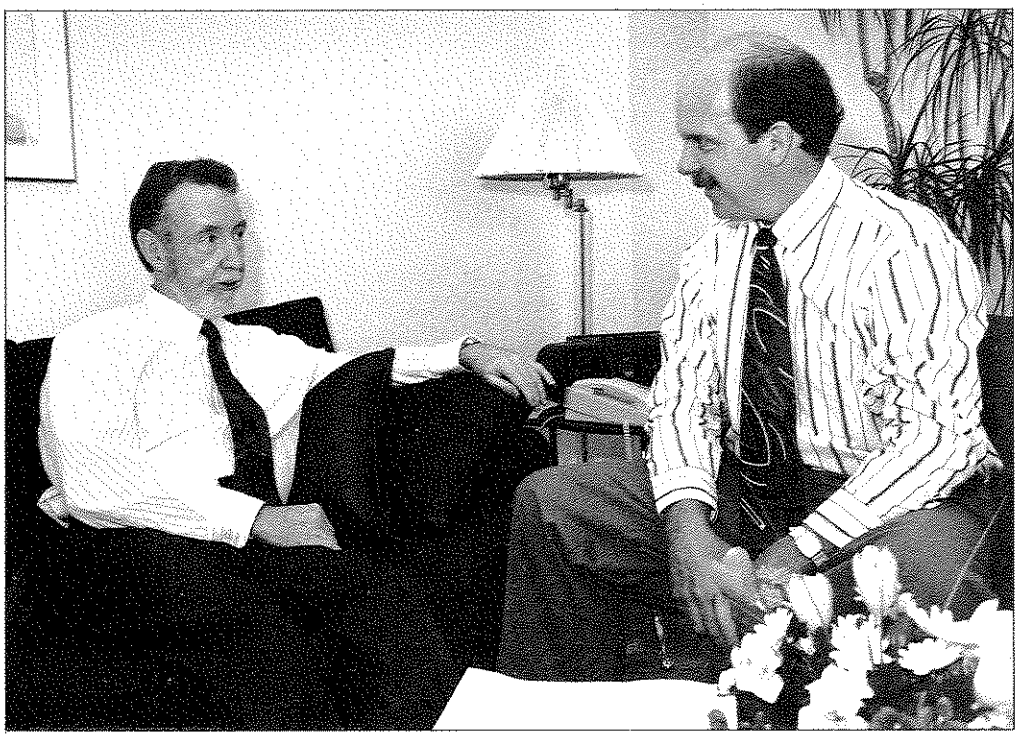

Commissioner Tom Wright hosts David Flaherty (left), appointed in July 1993, as British Columbia's first Commissioner for freedom of information and protection of privacy.

Book Review

McNairn and Woodbury also include some useful tools for finding one's way around the legislation ...

MCNAIRN & WOODBURY'S SECOND PUBLICATION on access and privacy law in Canada, "The Annotated Ontario Freedom of Information and Protection of Privacy Acts 1993", is a comprehensive annotation of the provincial and municipal *Acts*.

The annotations for each section, which cover IPC orders up to September 1992, are organized under four main headings: "Commentary", "Commissioner's Orders", "Related Provisions", and "Municipal Information and Privacy Act". [The authors also provide relevant references to their previous text on access and privacy, "Government Information - Access and Privacy".]

Under "Commentary", the authors provide a concise description of each section. Those unfamiliar with the legislation are likely to find these descriptions very useful, particularly for relatively complex sections such as section 21 of the provincial *Act*, and for the Parts of the *Acts* relating to protection of privacy for which there are no orders from the Commissioner.

Under "Commissioner's Orders", the authors summarize the essence of important orders. The summaries are brief and informative. For example, in the annotation to section 2(1) of the provincial *Act* dealing with the definition of "personal information", the authors cite Order 113 and state:

> *The name and title of a person writing in an official organizational capacity are not personal information. The views expressed are not personal views nor are the issues addressed personal issues.*

References to orders made under the municipal *Act* are located in the annotations of the corresponding provincial sections. Thus Order M-29, which deals with the definition of "trade secret" in section 10 of the municipal *Act*, is contained in the annotation of section 17 of the provincial *Act*.

Under "Related Provisions", the authors provide a handy cross-reference to related provisions in the *Acts*. For example, in the annotation of section 41 of the provincial *Act*, which deals with use of personal information in the control of an institution, the authors refer to the orders under section 10 of the *Act* which discuss the meaning of "control".

Finally, under "Municipal Information and Privacy Act", the authors discuss, for each section, the similarities and differences of the provincial and municipal *Acts*. This section is particularly useful for sections which contain important differences in wording, such as the definition of "head" in section 2(1) of the *Acts*.

McNairn and Woodbury also include some useful tools for finding one's way around the legislation: a table of concordance which cross-references the section numbers of the provincial and municipal *Acts*, and a detailed index. The authors have also included the full text of the municipal *Act* and the Regulations made under both *Acts*.

Readers of "The Annotated Ontario Freedom of Information and Protection of Privacy Acts 1993", will find it a useful, comprehensive summary of access and privacy law in Ontario .

Workplace Privacy

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result of such access is that it will become more difficult, and also more important, to ensure the protection of employees' privacy in the workplace.

Currently, some of the most common forms of employee surveillance techniques include: visual surveillance devices, such as closed circuit television systems; telephone surveillance, in the form of call management systems and service observation; and computer-based monitoring used to collect performance data from employees working on computers.

Surveillance of employees through electronic monitoring in the workplace is the daily reality for hundreds of thousands of Canadian employees. Although there are viable reasons why a business might collect and use personal information about its employees – such as the need to ensure safety or improve business operations – it is the potential for inappropriate uses of such technology that governments should address.

Our research has determined that some limited measures have already been taken to regulate telephone monitoring, the use of lie detector tests, drug testing, and the misuse of employment records. However, it is evident these measures are disparate and piecemeal. The advanced technologies used in areas such as computer monitoring and genetic testing do not, as yet, have any form of government regulation.

The rapidly expanding availability of invasive technologies which can be used in the workplace dictates an urgency for action and change. Globally, legislative responses to evolving technologies and their applications are in a formative phase. In Ontario, although some provisions for the protection of employees' privacy do exist, it is necessary to expand these and to look ahead to ensure that future generations of employees work in environments which respect the individual's right to privacy.

The challenge is to develop timely policies that maximize the benefits of new technology while ensuring an individual's protection of privacy. Therefore, we are recommending that the Ontario government conduct a thorough province-wide, multi-sector consultation followed by the introduction of workplace legislation. The outcome must be the best long-term results for all concerned – employees, government, business and society.

Tom Wright
Commissioner

A copy of *Workplace Privacy: The Need for a Safety-Net* may be obtained from the IPC Communications department.

Staff from the IPC's Appeals and Compliance departments made a series of presentations to Commissioner Flaherty during his visit.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC

Q: *Why aren't all the Commissioner's orders summarized in IPC Précis?*

A: All orders are highlighted in *IPC Précis.* However, only certain orders include textual summaries.

Every order is listed with the date, institution, appeal number, decision maker and "keywords". This information allows you to decide whether you want to purchase the full-text order from Publications Ontario.

Précis includes textual summaries for those orders that discuss new issues; contain new interpretations; or cover issues that the IPC feels should be reinforced for government organizations.

If you wish to quickly locate the issue of Précis in which specific orders and compliance investigation reports have been highlighted, you may refer to the *Directory to IPC Précis.*

(See New Research Tool, p. 6)

IPC Summary of Statistics

Appeal-related statistics, January 1 to June 30, 1993.

At the end of the second quarter, a total of 568 active appeal files were opened – 293 provincial files, and 275 municipal files. For the same time period, a total of 673 active appeal files were closed – 379 provincial files, and 294 municipal files.

Of the 379 provincial appeal files closed, 28 per cent were resolved by order and 72 per cent were resolved by a method other than by order. Of the 294 municipal appeal files closed, 30 per cent were closed by order and 70 per cent were closed other than by order.

Compliance investigation statistics, January 1 to June 30, 1993.

At the end of the second quarter, a total of 91 compliance investigation files were opened. Of these, 56 were provincial files, and 30 were municipal files*. For the same time period, a total of 108 compliance investigation files were closed – 55 provincial, and 48 municipal*.

* The remainder were non-jurisdictional.

News from the front —

HOME ADDRESSES ARE NO LONGER ROUTINELY disclosed by the Ministry of Transportation when they receive information requests. After deliberation with the IPC and various stakeholders, the Ministry of Transportation agreed to implement a number of changes to reduce access to the information contained in their driver and vehicle databases.

Home addresses are now available on a limited and specific basis. Individuals can now obtain the address of others only for the purposes of identification for the "administration of justice", such as locating the owner of an illegally parked car; locating the parties in or witnesses of a collision; or filing a claim in Small Claims Court. Organizations can obtain addresses for purposes such as identification and location for the administration of justice, automobile insurance, motor vehicle safety recall and statistical research.

The Ministry's new administrative procedures appear to have made an impact. Preliminary findings show a reduction in the processing of special requests for address information.

B.C. Commissioner visits IPC

THE IPC RECENTLY PLAYED HOST TO DAVID Flaherty, appointed in July 1993 as British Columbia's first Commissioner for freedom of information and protection of privacy. He was at the IPC to learn more about how the Ontario system works in processing appeals and compliance investigations.

As has been reported in previous issues of *Perspectives*, B.C.'s new *Freedom of Information and Protection of Privacy Act* has a number of similarities to Ontario's provincial and municipal *Acts*. Staff from the IPC's Appeals and Compliance departments made a series of presentations to Commissioner Flaherty during his visit, addressing how the IPC is fulfilling its legislative mandate and serving our customers in processing appeals and compliance investigations.

Commissioner Flaherty felt he could obtain valuable insights from the IPC because we have almost six years experience with Ontario's provincial *Act*, and nearly three years working with the municipal *Act*. His visit also included sessions with Ontario's Commissioner Tom Wright, and Assistant Commissioners Ann Cavoukian and Irwin Glasberg, discussing access and privacy issues being addressed in Ontario and British Columbia.

Formerly professor of history and law at the University of Western Ontario, Commissioner Flaherty began his six-year term immediately upon his appointment. As Commissioner, he will be responsible for upholding the public's rights of access to general information held by governments, and the protection of privacy of personal information, held in government files. The B.C. legislation, which will eventually cover all provincial and local government organizations across the province, came into effect October 1 of this year.

B.C. Commissioner Flaherty's visit included sessions with Ontario's Assistant Commissioners Ann Cavoukian (left) and Irwin Glasberg (right).

Fall Noticeboard

Share your IPC materials!
The IPC is committed to providing timely information in *Perspectives*, *Précis* and other agency publications. This will continue through regular mailings, although only single copies of any publication will be available to those on our mailing list. So from now on, we ask that you share or photocopy items of interest for your colleagues.

Take Note
The IPC is pleased to announce that full-text compliance investigation reports are now available through Publications Ontario. Reports (released on or after June 1, 1993) may be ordered by writing: Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8. For your convenience, highlights of significant reports and orders will continue to be published in *IPC Précis.*

New Research Tool
To help you find summarized decisions from the Office of the Information and Privacy Commissioner, you may now refer to the new *Directory to Précis.* This new publication catalogues both the orders and compliance investigations that have been highlighted in *IPC Précis* and will be updated annually. If you have not already received a copy of the new directory and wish to receive one, call Jennifer at the IPC Communications department. In Toronto, call (416) 326-3952; Ontario residents may call 1-800-387-0073.

IPC Reference Library
Research into access and privacy matters can be demanding; so much information and so little time. There could be a half-dozen places where answers might be found.

The IPC can help make this task a little easier. Its reference library is open to visitors from 9 a.m. to 5 p.m., Monday through Friday. The library includes general Canadian, American and overseas access and privacy texts, articles and legislation; as well as IPC publications and orders.

To arrange a visit, call or write the IPC Legal department Secretary at 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1; (416) 326-3924 or 1-800-387-0073.

Legal Aid Adopts FOI Policy —
In order to provide a framework for dealing with the increasing volume and complexity of information requests, the Law Society of Upper Canada's Ontario Legal Aid Plan recently adopted a formal freedom of information policy. With guidance from the IPC, the Ontario Legal Aid Plan has developed a policy that presents basic principles for access and privacy, along with a brief explanatory text.

One of the guidelines stipulates that there should be a right of access by individuals to information about themselves, subject only to clear and specific exemptions. The policy also provides for a right to appeal all decisions concerning requests handled by area directors and the provincial office. Appeals will be heard by the Deputy Director, Appeals, for the Ontario Legal Aid Plan.

A copy of the policy can be obtained by contacting the Ontario Legal Aid Plan at (416) 979-1446 ■

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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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