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PRIVACY LIABILITY

If PIPEDA or other privacy laws purport to restrict or impinge upon courts' powers regarding disclosure of information, is the legislation constitutionally valid and otherwise effective in doing so?

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Privacy Laws and Inherent Jurisdiction: Trump or No Trump?

Introduction

In their recent two-part article in this journal (*Canadian Privacy Law Review*, September and October 2006) Jeffrey Kaufman and Alexis Kerr provide an analysis of Canadian privacy legislation and how it affects litigation. In particular, they identify some perceived shortcomings in the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") as it may affect the conduct of cases, and in particular the use and disclosure of personal information without consent.

This article takes a different approach to the issue of the effect of privacy legislation on litigation. Kaufman and Kerr ask, in effect, in what circumstances and under what conditions does privacy legislation permit such use and disclosure? This article instead addresses the following questions:

- What are the courts' powers to control or require the disclosure of personal information in the course of civil or criminal proceedings?
- If PIPEDA or other privacy laws purport to restrict or impinge upon courts' powers regarding disclosure of information, is the legislation constitutionally valid and otherwise effective in doing so?

These questions have at their core the courts' inherent jurisdiction to control their processes and ensure fair trials. As the cases discussed below indicate, any statutory infringement of that power is to be read narrowly and analyzed

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carefully regarding its constitutionality. There are well-established, but sometimes overlooked, constitutional principles that should be borne in mind when interpreting privacy legislation and determining its lawful import where it purports to affect court cases. There are also well-established, although adaptive, principles and practices governing courts' powers to control production and use of relevant information, with a view to protecting privacy and confidentiality.

Courts' Core Powers and Inherent Jurisdiction

Most litigators have either requested or opposed a court order based on a court's "inherent jurisdiction". What is the legal basis for that jurisdiction, and what does it include?

It is beyond dispute that as a matter of constitutional law, provincial superior courts (sometimes known in this context as "Section 96" courts in reference to the *Constitution Act, 1867*) have certain "core" powers that are not subject to being infringed by statute. An example is the power of any provincial superior court to declare federal or provincial law to be outside federal or provincial jurisdiction: *Jabour v. Law Society of British Columbia*.[1] Whatever the limits of this core jurisdiction (an issue which is discussed below) if legislation purports to remove from the jurisdiction of the courts a matter that falls within this core, the legislation is invalid in the absence of a constitutional amendment: *McEvoy v. New Brunswick*.[2]

Related to the concept of core jurisdiction is the courts' "inherent jurisdiction". This has been described as procedural law, "exercisable as part of the process of the administration of justice",[3] and as, "those powers which are essential to the administration of justice and the maintenance of the rule of law".[4] Jacob[5] places this power on a high plane, in the context of discussing courts' power to punish for contempt:

> *Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law.*

Although the nature and limits of this "ubiquitous" jurisdiction are not precisely defined, the powers it affords to courts may be exercised for various purposes. These have been said to include controlling their own proceedings and processes and preventing any obstruction or interference with the administration of justice,[6] and "ensuring fairness and convenience in legal proceedings".[7] Another important purpose of the power is, "to do justice between the parties and to secure a fair trial between them".[8] Inherent jurisdiction includes the power to order that a case be heard *in camera* and that details of proceedings not be published,[9] to seal trial exhibits,[10] and to allow witnesses to testify anonymously.[11] It

enables a court to protect the identity of a party to a civil action who is alleged to have committed sexual assault,[12] but has been held not to empower the court to protect the identity of an accused person in criminal proceedings.[13] As "part of the machinery of justice", inherent jurisdiction may be invoked against both parties and non-parties to litigation.[14]

As this brief summary illustrates, the potential significance of courts' inherent jurisdiction to issues of privacy and the use and disclosure of personal information that is relevant to legal proceedings is clear.

The Rules of Court do not supplant but rather are "additional to" courts' inherent powers, such that, "[t]he two heads of power are generally cumulative, and not mutually exclusive".[15] Practice directions that supplement Rules of Court, for example, are exercises of inherent jurisdiction.[16]

Not all inherent powers have the same protection under the constitution. Some may be infringed upon by legislatures, and others may not. If a matter does not fall within the "untouchable"[17] part of the continuum of a court's inherent powers (as in *Jabour* and *McEvoy*, *supra*) a legislature may supplant courts' inherent jurisdiction regarding that matter and thereby preclude its operation. In order to do so, however, exceptional statutory clarity is required, in "clear and unambiguous terms".[18]

There is a considerable body of case law regarding statutory provisions that purport to affect, in the face of courts' inherent jurisdiction, litigants' access to and use of information. The cases both identify the scope of that jurisdiction (although it remains somewhat undefined) and discuss the competing policy considerations that affect the exercise of the courts' power. Those considerations include litigants' rights to fair trials, having all relevant evidence available to the courts, the public's interest in an open and accessible system of justice and, in some circumstances, the protection of privacy and confidentiality.

One of the leading authorities is the judgment of Justice Cory, as he then was, speaking for the Ontario Court of Appeal in *Cook v. Ip*.[19] There, the plaintiff in a personal injury action consented to the release of his medical records that were in the possession of a non-party, the Ontario Health Insurance Plan ("OHIP"). Despite this consent, OHIP refused to release the information, relying on the *Health Insurance Act*, R.S.O. 1980, c. 197, s. 44. The Act required OHIP employees to, "preserve secrecy with respect to all matters" that came to their knowledge in the course of employment, and not to communicate such matters to any person except as provided in the Act. The Act permitted disclosure of limited information to the person who received the medical services or to that person's representatives, or, "pursuant to a subpoena by a court of competent jurisdiction". There were conflicting lower court decisions on whether the Act constituted, "...a complete code of production which prohibited the court from obtaining other information".[20]

The Ontario Court of Appeal cited the following "policy considerations":[21]

> *There can be no doubt that it is in the public interest to ensure that all relevant evidence is available to the court. This is essential if justice is to be done between the parties.... The production of medical records is thus fundamental to a court's determination of the nature, extent and effect of the injuries....*
>
> *It is also important to the parties that they have early production of these documents. Settlement of disputes at an early date is of great benefit to the parties and to the judicial system....*
>
> *No doubt medical records are private and confidential in nature.*
>
> *Nevertheless, when damages are sought for personal injuries, the medical condition of the plaintiff both before and after the accident is relevant. In this case, it is the very issue in question. The plaintiff himself has raised the issue and placed it before the court. In these circumstances there can no longer be any privacy or confidentiality attaching to the plaintiff's medical records.*
>
> *There is an inherent jurisdiction in the court to ensure that all relevant documents are before it. The court requires this jurisdiction in order to determine properly and fairly the issues between the parties. [authority cited]*
>
> ...
>
> *On the other hand, it is quite clear that the Legislature may by statute prohibit OHIP employees from giving testimony [or] producing its records at trial. [example cited] If the Legislature is to achieve that result, it must specify the restriction in clear and unambiguous terms.*

Cory J.A. went on to find the *Health Insurance Act* was not a complete code and did not contain a clear statement of intention to oust the court's inherent power, "to ensure that it has, on the issue before it, all relevant material to enable it to reach a just conclusion".[22]

An example is cited in *Cook* of another statutory prohibition on the release of information about a litigant by a third party, which was found to be sufficiently clear to preclude the exercise of the court's inherent jurisdiction to order the release of information, in *Glover v. Glover*.[23] There, the federal *Income Tax Act* was held to include, "a comprehensive code designed to protect the confidentiality of all information given to the Minister". In the result, the court held it was not able to compel the Minister to produce to the applicant the respondent's address, which the applicant wished to use to enforce a child custody order.

These cases establish that:

1. courts have inherent jurisdiction to compel persons, including third parties, to produce relevant information, in order to achieve the policy objectives referred to in *Cook*;
2. any statutory reduction of or infringement on that jurisdiction will be narrowly construed and will require exceptional clarity to be effective; and
3. notwithstanding the first and second points, the inherent jurisdiction to compel production of relevant information may be impinged upon by sufficiently clear legislation, and is therefore not part of the "untouchable" core jurisdiction of Section 96 courts.

An exception to point 1 arises where the information in question does not fall within the ambit of the courts' historic power to order production. Cabinet confidences are subject to this exception, as found in *Babcock v. Canada*.[24] However, in that case the Supreme Court of Canada also confirmed that, "unwritten constitutional principles are capable of limiting government actions", although it distinguished cabinet documents from, "private documents in a commercial law suit", on constitutional grounds.[25]

Further examples of point 2 include:

- *Slattery v. Doane Raymond Ltd.*,[26] where *Glover* was distinguished and the statutory exceptions to the privacy provisions in the *Income Tax Act* (Canada) were given a broad interpretation;
- *Jahnke v. Wylie*,[27] where the Alberta Court of Appeal "read down" a statutory privilege attaching to documents in the possession of the Alberta Workers' Compensation Board in cases where the Board was a party to litigation and was exercising its right of subrogation; and
- *Potter v. Nova Scotia Securities Commission*,[28] where the claimant alleged impropriety by the Commission's investigators, and the Commission relied on a statutory provision prohibiting disclosure of information gathered in an investigation, except with the Commission's consent. The Nova Scotia Court of Appeal held the provision was not clear enough to oust the court's power to compel production of relevant evidence,[29] but remitted the matter to the Commission to exercise its statutory mandate.

Regarding point 3 above, "statutory" or "inferior" courts are often described as having no inherent jurisdiction, but rather only those powers granted by their governing legislation. There is, however, authority for the proposition that such courts have implied powers to carry out the functions assigned to them by statute.[30] Such implied power, although it does not have the constitutional status of at least some of the inherent jurisdiction of superior courts, may well extend to control over the production and use of relevant information and ensuring fair trials in proceedings before statutory courts.[31]

Fair Trials and Openness versus Privacy and Confidentiality

There is a long history of courts addressing the competing interests of (a) ensuring fair trials based on all available relevant evidence; (b) ensuring an open and accessible justice system; and (c) protecting the privacy and confidentiality of parties and non-parties, who may attempt to protect personal or commercial information that is relevant to a case.

The right to a fair trial has been described by the Supreme Court of Canada as, "a fundamental principle of justice".[32] An important element of a fair trial is, of course, the ability of the parties to use all relevant evidence. The courts, when applying the "fair trial" standard, "have an interest in having all relevant evidence before them in order to ensure that justice is done".[33] Impairment of the right to a fair trial may be, "an affront to the proper administration of justice", which in turn has been described as contrary to the public interest.[34] This principle applies *a fortiori* to

criminal matters, in light of the well-established right of accused persons to know the facts of the case they have to meet and make a full answer and defence.[35] The Manitoba Court of Appeal recently noted, "the trend in both criminal and civil litigation toward greater disclosure", which has as its goal, "a better search for the truth".[36]

Of perhaps even more significance regarding privacy concerns is, "the public interest in openness" of the courts, which is of, "fundamental importance".[37] There is a presumption of openness of court files and trials.[38] This can, of course, result in personal information about parties and non-parties being disclosed to all participants in and observers of the proceedings.

The competing concern to protect privacy and confidentiality affects both private and public interests. The Supreme Court has referred to, "the public interest in confidentiality"[39] in identifying the "commercial interest" that must be shown to exist to warrant a confidentiality order under Federal Court Rule 151, for example. Mere "confidentiality" of the information will not suffice. This is so even if the information was obtained from a non-party "in confidence", if an order restricting the use of the information would, "inhibit the plaintiff's ability to effectively scrutinize the documents [obtained by the defendant from a non-party] and prepare its case".[40] Potential breach of a confidentiality agreement intended to protect the information may, however, engage the public interest in preserving the confidentiality of the affected information.[41]

Balancing these considerations takes place on a case by case basis. It is significant to the present discussion that courts have been balancing these competing interests and making orders affecting the use and disclosure of personal information for many years. There is a well-established body of law pertaining to this exercise of courts' inherent jurisdiction. It is also clear that orders protecting confidentiality and privacy at the possible expense of "fair trials" and "openness" are the exception rather than the norm.

Examples of Courts Balancing Competing Interests

There are innumerable cases on this subject. The following examples highlight some of the issues recently considered by Canadian courts:[42]

- In criminal proceedings, complainants' medical records that had been voluntarily released to the Crown and were relevant to the proceedings were ordered to be produced to the accused, and any issue of privacy or privilege was lost when the documents were provided to the Crown. However, where the accused person sought an order for production of such records in the possession of a third party, the court was required to exercise its discretion by balancing the competing considerations of the accused's right to make a full answer and defence, the probative value of the evidence, and the privacy, dignity and security of the person to whom the information pertains.[43]
- The names and addresses of former staff members at a reformatory, at which the plaintiff alleged he was abused, were ordered to be produced on discovery by the defendant government that owned the reformatory. However, telephone numbers of former staff were held not to be compellable, on the basis that, "disclosure could bring about inappropriate direct interference with [their] physical and social privacy" and based on, "[b]alancing the interests of confidentiality and disclosure".[44]
- The plaintiff in a personal injury action was ordered to provide the names and addresses of witnesses to the accident, but was held not to be required to produce his credit card and banking records, where their relevance was "tenuous and the privacy concerns [were] substantial".[45] The court noted the litigation exception in B.C. *Personal Information Protection Act*, S.B.C. 2003, c. 63, s. 3(4), and also held that PIPEDA did not apply to the action.[46]
- It has been held in several recent cases that witnesses generally do not have a right of confidentiality or to testify under a pseudonym, and only exceptional circumstances, such as a fear for safety that could interfere with the administration of justice, will justify not revealing a witness's identity.[47]

Conclusions

In light of the foregoing principles and authorities, one may reasonably ask:

- If privacy legislation purports to restrict courts' powers to order production and permit the use of relevant personal information, would that legislation be subject to "reading down" or alternatively being ruled unconstitutional as an infringement of either (a) courts' inherent jurisdiction, or (b) the jurisdiction of the other level of government to make procedural laws and rules governing the court in question?

- Is there any need for a privacy law to include exemptions to its procedures and protections, when the personal information in question is relevant to litigation and falls within the historic purview of courts' inherent powers to order its production and permit its use?

The answers to these questions may explain why the drafters of PIPEDA did not include a litigation exemption as found in the provincial privacy laws reviewed by Kaufman and Kerr. Definitive answers will have to await judicial consideration of the legislation in the context of demands for production of, or attempts to use, personal information in the course of litigation. In light of the strong foundation of courts' inherent jurisdiction in this area, and the courts' apparent willingness to defend that power against all but the clearest statutory infringements, there are interesting and challenging cases ahead.

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1 [1982] S.C.J. No. 70 (QL), [1982] 2 S.C.R. 307, 137 D.L.R. (3d) 1. See also *MacMillan Bloedel Ltd. v. Simpson*, [1995] S.C.J. No. 101 (QL), [1995] 4 S.C.R. 725, 130 D.L.R. (4th) 385 at paras. 34-36; *Unity Insurance Brokers (Windsor) Ltd. v. Unity Realty & Insurance Inc.*, [2005] O.J. No. 1069 (QL), 251 D.L.R. (4th) 368 at paras. 31-40 (S.C.J.); and *Communications, Energy and Paperworkers Union of Canada, Local 707 v. Alberta (Labour Relations Board)*, [2004] A.J. No. 83 (QL), 2004 ABQB 63, 11 Admin. L.R. (4th) 107 at paras. 104-33 for a review of authorities on the constitutional role and inherent powers of the courts.

2 [1984] S.C.J. No. 1 (QL), [1983] 1 S.C.R. 704, 148 D.L.R. (3d) 25.

3 I.H. Jacob, "*The Inherent Jurisdiction of the Court*" (1970), 23 Curr. Legal Prob. 23 at 24.

4 *MacMillan Bloedel Ltd. v. Simpson*, *supra*, note 1, at para. 38.

5 Jacob, *supra*, note 3, at p. 27, citing *Connelly v. D.P.P.*, [1964] A.C. 1254 at 1301, [1964] 2 All E.R. 401 (H.L.) *per* Lord Morris.

6 *Western Surety Co. v. National Bank of Canada*, [1997] N.B.J. No. 23 (QL), 186 N.B.R. (2d) 36 at para. 36 (C.A.), cited in *Pelisek v. Pelisek*, [2003] M.J. No. 436 (QL), 2003 MBCA 145, 234 D.L.R. (4th) 557 at para. 25.

7 Mason: *The Inherent Jurisdiction of the Court* (1983), 57 A.L.J. 449 at 449 and 452, cited in *MacMillan Bloedel Ltd. v. Simpson*, *supra*, note 1, at para. 33.

8 Jacob, *supra*, note 3, at 51; *R. v. Rose*, [1998] S.C.J. No. 81 (QL), [1998] 3 S.C.R. 262, 166 D.L.R. (4th) 385 at para. 133; *Bass v. McNally*, [2003] N.J. No. 84 (QL), 2003 NLCA 15 at para. 12; *Pelisek v. Pelisek*, *supra*, note 6, at paras. 19 and 23.

9 Jacob, *supra*, note 3, at 39.

10 *R. v. Moosemay*, [2001] A.J. No. 1164 (QL), 2001 ABPC 156, [2002] 2 W.W.R. 581 at paras. 23-27 and 31.

11 *Ibid.*, at paras. 4 and 11.

12 *Dr. "A" v. Mr. "C"*, [1994] B.C.J. No. 488 (QL), [1994] 6 W.W.R. 183, 113 D.L.R. (4th) 726 at 736, 89 B.C.L.R. (2d) 92 (S.C.).

13 *Re: Regina and Unnamed Person*, [1985] O.J. No. 189 (QL), 22 C.C.C. (3d) 284 (C.A.); *R. v. Dalzell*, [1991] O.J. No. 335 (QL), 2 O.R. (3d) 498 (C.A.).

14 Jacob, *supra*, note 3, at 25.

15 *Ibid.*

16 *Clarke v. Clarke*, [2002] O.J. No. 3223 at para. 51-61 (QL), 32 R.F.L. (5th) 282 (S.C.J.); *R. (C.) v. Children's Aid Society of Hamilton*, [2004] O.J. No. 1449 at paras. 29-35 (QL), 70 O.R. (3d) 618 (S.C.J.).

17 *MacMillan Bloedel v. Simpson*, [1994] B.C.J. No. 670 (QL), 113 D.L.R. (4th) 368 at 399 (C.A.); aff'd *supra*, note 1.

18 *R. v. Cooper*, [2002] A.J. No. 759 (QL), 2002 ABCA 156 at para. 5; leave to appeal denied, [2002] S.C.C.A. No. 286 (QL); *Communications, Energy and Paperworkers Union of Canada, Local 707 v. Alberta (Labour Relations Board)*, *supra*, note 1, at para. 120; *S.L. v. N.B.*, [2005] O.J. No. 1411 at paras. 31-32 (QL), 12 C.P.C. (6th) 34, 195 C.C.C. (3d) 481, 196 O.A.C. 320.

19 [1985] O.J. No. 2653 (QL), 22 D.L.R. (4th) 1, 55 O.R. (2d) 289 (C.A.); leave to appeal denied (1986), 55 O.R. (2d) 288*n* (S.C.C.).

20 *Ibid.*, at 4 (D.L.R.).

21 *Ibid.*, at 4-5 (D.L.R.).

22 *Ibid.*, at 8 (D.L.R.).

23 [1980] O.J. No. 3676 (QL), 113 D.L.R. (3d) 161 (C.A.); aff'd, [1981] S.C.J. No. 97 (QL), [1981] 2 S.C.R. 561, 130 D.L.R. (3d) 383.

24 [2002] S.C.J. No. 58 (QL), 2002 SCC 57, [2002] 3 S.C.R. 3, 214 D.L.R. (4th) 193.

25 *Ibid.*, at paras. 54-61.

26 [1993] S.C.J. No. 100 (QL), [1993] 3 S.C.R. 430, 106 D.L.R. (4th) 212.

27 [1994] A.J. No. 912 (QL), 119 D.L.R. (4th) 385.

28 [2006] N.S.J. No. 147 (QL), 2006 NSCA 45, 266 D.L.R. (4th) 147.

29 *Ibid.*, at paras. 46-47.

30 *Bass v. McNally*, *supra*, note 8, at paras. 11-28; *Hudson Bay Mining and Smelting Co. v. Cummings*, [2004] M.J. 425 (QL), 2004 MBCA 182, 247 D.L.R. (4th) 554 at paras. 21-28; *R. v. Gunn*, [2003] A.J. No. 467 (QL), 2003 ABQB 314 at paras. 17-29.

31 *Hudson Bay*, *supra*, at para. 27.

32 *Sierra Club of Canada v. Canada*, [2002] S.C.J. No. 42 (QL), 2002 SCC 41, [2002] 2 S.C.R. 522, 211 D.L.R. (4th) 193 at para. 70. See also para. 55.

33 *Ibid.*, at para. 50.

34 *Shannex Health Care Management Inc. v. Nova Scotia (Attorney General)*, [2005] N.S.J. No. 496 (QL), 2005 NSCA 158, 22 C.P.C. (4th) 354 at para. 22.

35 *R. v. Stinchcombe*, [1991] S.C.J. No. 83 (QL), [1991] 3 S.C.R. 326; *R. v. O'Connor*, [1995] S.C.J. No. 98 (QL), [1995] 4 S.C.R. 411, 130 D.L.R. (4th) 235.

36 *Hudson Bay Mining and Smelting Co. v. Cummings*, [2006] M.J. No. 304 (QL), 2006 MBCA 98 at paras. 101-103. This decision and an earlier judgment in the same case, *supra*, note 30, are rare examples of submissions being made on behalf of non-party witnesses. Both the Crown and the witnesses' union opposed the production of the witnesses' statements to Crown counsel given prior to an inquest into an industrial accident. The court ordered their production in the absence of evidence that the witnesses, as opposed to their union, had an expectation of confidentiality.

37 *Sierra Club*, *supra*, note 32, at paras. 55-56; *B.G. v. British Columbia*, [2002] B.C.J. No. 168 (QL), 2002 BCCA 69 at para. 33; *Apotex Inc. v. Canada*, [2006] F.C.J. No. 1070 (QL), 2006 FC 846 at para. 15.

38 *Dr. "A" v. Mr. "C"*, *supra*, note 12; *Toronto Star Newspapers Ltd. v. Ontario*, [2005] S.C.J. No. 41 (QL), 2005 SCC 41, [2005] 2 S.C.R. 188, 253 D.L.R. (4th) 577.

39 *Sierra Club*, *supra*, note 32, at para. 55; *Jane Doe 1 v. Manitoba*, [2005] M.J. No. 151 (QL), 2005 MBCA 57, [2006] W.W.R. 476 at paras. 15-16; leave to appeal denied, [2005] S.C.C.A. No. 513 (QL).

40 *Powerscreen of Canada (Western) Ltd. v. Powerscreen International Distribution Ltd.*, [2004] B.C.J. No. 950 (QL), 2004 BCSC 624 at paras. 41-49, where *Sierra Club* was distinguished as involving an order to prevent publication of confidential information "to the world", not an order to restrict the use of information within the litigation.

41 *Sierra Club*, *supra*, note 32, at para. 55.

42 See also *Shannex*, *supra*, note 34, at para. 29; *Apotex*, *supra*, note 37, at para. 5; *Orange County Choppers Inc. v. Trio Selection Inc.*, [2006] F.C.J. No. 1414 (QL), 2006 FC 1122 at paras. 2 and 6-11.

43 *R. v. O'Connor*, *supra*, note 35. In a civil law context, see *Frenette v. Metropolitan Life Insurance Co.*, [1992] S.C.J. No. 24 (QL), [1992] 1 S.C.R. 647, 89 D.L.R. (4th) 653, where the interests of justice and the defendant's ability to investigate the relevant facts were held to outweigh the right of privacy and confidentiality attaching to medical records.

44 *B.G. v. British Columbia*, *supra*, note 37, at paras. 63-66.

45 *Shilton v. Fassnacht*, [2006] B.C.J. No. 565 (QL), 2006 BCSC 431 at paras. 23 and 27.

46 *Ibid.*, at paras. 12-17.

47 *R. v. Moosemay*, *supra*, note 10, at paras. 10-14, 29-30 and 41; *R. v. Mousseau*, [2002] A.J. No. 254 (QL), 2002 ABQB 210, 350 A.R. 90 at paras. 24-28; *R. v. Stanton*, [2002] B.C.J. No. 473 (QL), 2002 BCPC 68.

CORPORATE LIABILITY

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Limiting the Liability Exposure Resulting From Security Breaches in Québec

Introduction

In December 2006, one of the largest computer security breaches ever at an American university occurred: "hackers have gained access to a UCLA database containing personal information on about 800,000 of the university's current and former students, faculty and staff members".[1] They were able to access records containing names, Social Security numbers and birth dates.

Security breaches may often involve the disclosure of personal information useful to identity thieves, such as names, addresses, Social Security numbers, bank account numbers, and driver's licence numbers. Security breaches can occur many different ways. For instance, a breach could occur when computer files containing personal information are hacked; when an organization's computer back-up tape with customer account data is lost while being shipped to a storage facility; when a dishonest employee who has access to computer files containing individual's records sell the records; or when a company laptop containing account data on hundreds of thousands of customers is stolen from the back seat of an employee's car. A breach may also occur if access to personal information is granted to unauthorized individuals due to a faulty action on the part of the organization's employees or if inadequate policies have been adopted and put in place pertaining to security measures to use when sending e-mails or faxes, or when destroying documents containing personal information.

The Québec privacy law, an *Act Respecting the Protection of Personal Information in the Private Sector*,[2] (the "Québec Privacy Law") has been in force since 1994. "*Personal information*" is defined in s. 2 of the Québec Privacy Law as "*any information which relates to a natural person and allows that person to be identified*". The Québec Privacy Law applies to Québec employees and to personal information, whatever the nature of its medium and whatever the form in which it is accessible.

The *Personal Information Protection and Electronic Documents Act*[3] ("PIPEDA") came into force in stages, beginning January 1, 2001 and was fully implemented by January 2004 when it was extended to cover organizations from the private sector engaged in commercial activities. PIPEDA applies to all Canadian provinces unless a province has enacted a privacy law that has been found to be substantially similar to PIPEDA, in which case the provincial law will regulate intra-provincial privacy matters. As of now, British Columbia, Alberta and Québec have enacted such privacy laws. Therefore, four different privacy regimes co-exist in Canada.