

CHAPTER 6

INFORMATION AND PRIVACY COMMISSIONER

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GENERAL

SECTION 109 Office of the commissioner

This provision creates the Office of the Information and Privacy Commissioner (OIPC) and clarifies this role is an officer of the legislative assembly.

109(1) The office of the Information and Privacy Commissioner is established.

109(2) The commissioner is an officer of the Legislative Assembly.

SECTION 110 Appointment of commissioner

These provisions are modelled after the *Public Interest Disclosure of Wrongdoing Act*, and clarify, unless another individual is appointed, the Ombudsman is to serve as the Commissioner. The Commissioner's staff are to be paid in accordance with the *Ombudsman Act*.

"COMMISSIONER" means (a) the individual appointed as the commissioner under subsection 110(3), or (b) if no appointment has been made under subsection 110(3), the Ombudsman.

"OMBUDSMAN" means (a) the individual appointed as the Ombudsman under the *Ombudsman Act*, or (b) an individual appointed as an acting Ombudsman under the *Ombudsman Act*.

110(1) Except if another individual is appointed under subsection (3)

110(1)(a) the individual appointed as the Ombudsman is considered to be the individual appointed as the commissioner;

110(1)(b) the office of the Ombudsman is to serve as the office of the commissioner;
and

110(1)(c) the commissioner's staff and expenses are to be supplied and paid in accordance with the *Ombudsman Act* except that money appropriated and spent for the purposes of this Act is to be identified in the public accounts separately from money appropriated for the purposes of the Ombudsman's staff and expenses.

Subsection 2 provides the flexibility for someone other than the Ombudsman to be the Commissioner with support of 2/3 of the Legislative Assembly.

110(2) The Legislative Assembly may, by resolution supported by at least two-thirds of its members, recommend the appointment of an individual, other than the Ombudsman or a member of the Legislative Assembly, to be appointed as the commissioner.

Subsection 3 states that upon receiving the recommendation from the Legislative Assembly, the Commissioner in Executive Council must appoint the individual who was recommended.

110(3) As soon as practicable after the Legislative Assembly makes a recommendation referred to in subsection (2), the Commissioner in Executive Council must appoint as the commissioner the individual who was recommended to be appointed.

Subsection 4 provides the flexibility to make any necessary modifications to provisions of the Ombudsman Act, if needed.

110(4) If an individual is appointed under subsection (3), sections 3 to 10 of the Ombudsman Act apply, with any necessary modifications, to the commissioner and the office of the commissioner.

SECTION 111 Additional powers of commissioner

This provision provides for and clarifies additional powers to the Commissioner. These powers are in addition to the ability to initiate own motion investigations and investigate complaints.

111(1) In addition to the commissioner's other powers under this Act, the commissioner may

111(1)(a) on request of a public body, approve under subparagraph 16(2)(c)(ii) the public body's collection of personal information from a source other than the individual whose information is to be collected and specify the source;

Subsection (1)(a) enables the Commissioner to approve the indirect collection of personal information.

Subsection (1)(b) allows the Commissioner to conduct a privacy audit on privacy matters related to personal information including: the personal identity service and how it has been implemented; a public body's management of personal information; or to confirm that a recommendation a head has accepted (if they were investigated by the Commissioner) has been implemented.

111(1)(b) conduct, in accordance with subsection (2) and the regulations, if any, a privacy compliance audit of a public body for the purpose of evaluating the public body's exercise of a power, or performance of a duty, under a provision of Part 2, including but not limited to

111(1)(b)(i) the public body's provision of a personal identity service, or

111(1)(b)(ii) the public body's management of the personal information that it holds;

Subsection (1)(c) enables the Commissioner to approve how notice is to be provided to an individual in the event the last known mailing address is not known.

111(1)(c) on request of a person referred to in paragraph 119(a)(iii), approve and specify the manner in which the person may provide a notice under a provision of this Act in compliance with the requirement for the notice to be provided by the person under that provision;

Subsection (1)(d) clarifies that the Commissioner may share personal information with territorial/federal/provincial counterparts to conduct a joint investigation.

111(1)(d) disclose information (including personal information) to the information and privacy commissioner of Canada, or of another province, for the purpose of conducting a joint investigation in respect of personal information held by a public body or a government institution or institution as defined under an Act of Parliament, or of a provincial legislature, that has substantially the same effect as this Act;

Subsection (1)(e) allows the Commissioner to conduct research in any matter under this Act.

111(1)(e) engage in or commission research into any matter relating to the purposes of this Act;

Subsection (1)(f) allows the Commissioner to consult with any person in respect of this Act, for example, the civil liberties association.

111(1)(f) consult with any person in respect of any matter relating to the purposes of this Act; or

Subsection (1)(g) allows the Commissioner to delegate any of their powers under the act, with the exception of the power to delegate.

111(1)(g) delegate, in writing, any of their duties or powers under this Act (except the power to delegate under this paragraph) to any person, subject to any conditions on the exercise of the delegated power or the performance of the delegated duty that the commissioner considers appropriate.

Subsection 2 clarifies what authority the Commissioner has when conducting an audit:

- The Commissioner can compel any information or record that is not subject to legal privilege; examine any record; enter any premise; converse with any person; conduct interviews with the head or employee of a public body; and receive any other type of information relevant to the audit.
- Any information given in the course of an audit is inadmissible in a proceeding, unless in limited circumstances (committing perjury, for example);
- The audit must be completed in 90 days.
- After 90 days, an audit reported is required to be completed in 30 business days.
- Any information provided in the course of an audit must be kept confidential by the Commissioner.

111(2) Subparagraph 95(c)(i), paragraphs 95(d) to (h) and sections 99, 100, 101 and 103 apply, with any necessary modifications, to the commissioner's conduct of a privacy compliance audit under paragraph (1)(b) as if it were an investigation conducted under Part 5.

SECTION 112 Additional duties of commissioner

This provision clarifies additional duties that the Information and Privacy Commissioner must perform. These duties are in addition to responding to complaints and the additional powers the Commissioner may exercise

112 In addition to the Commissioner's other duties under this Act, the Commissioner must perform the following duties:

112(a) inform the public about this Act;

Under **subsection (a)**, informing the public could include raising the profile of the Act or informing the public about issues that they should be aware of; for example, informing the public about how to ensure personal information is protected when interacting with government.

Subsection (b) specifies that the commissioner has to deliver educational campaigns to inform the public and public bodies about their rights under the Act.

112(b) deliver educational programs, as necessary, for the purpose of informing

112(b)(i) the public of their rights, and limits on those rights, under this Act, and

112(b)(ii) public bodies of their powers and duties under this Act;

Subsection (c) requires the Commissioner to assist individuals attempting to exercise their rights under the Act.

112(c) provide, on request of a person, reasonable assistance to the person in exercising their rights under this Act;

Under **subsection (d)** the Commissioner must receive comments from the general public regarding any concerns with the administration of the Act.

112(d) receive comments from the public in respect of a matter in relation to the protection of personal information or access to information under this Act, or a matter generally concerning the administration of this Act;

Under **subsection (e)**, the Commissioner can provide recommendations to public bodies in the exercise of their powers or duties under the Act.

112(e) provide recommendations, if the commissioner considers it necessary to do so, to the head of a public body in respect of the public body's exercise of its powers or performance of its duties under this Act;

Subsection (f) allows the Commissioner to comment on potential privacy-issues related to data-linking activities or the use of information technology services.

112(f) provide recommendations to the head of a public body on the implications for the protection of personal information or access to information under this Act of an existing or proposed enactment, or an existing or proposed policy, program or activity, specialized service or data-linking activity of the public body, and in particular, the public body's

112(f)(i) collection, use or disclosure, or proposed collection, use or disclosure of personal information for the purpose of a data-linking activity, or

112(f)(ii) use, or proposed use, of information technology for the purpose of the collecting or management of personal information;

Subsection (g) enables the Commissioner to promote changes to a public bodies practices to improve access to information or protection of privacy. This enables the Commissioner to allow a public body to make changes to procedures, if the Commissioner believes it is necessary, instead of commencing an own motion investigation or privacy compliance audit. This approach is similar to how the Commissioner may choose to mediate a complaint instead of conducting a formal investigation.

112(g) take actions that the commissioner considers necessary to identify and promote changes to public bodies' practices and procedures for improving the protection of personal information and access to information under this Act;

112(h) notify the head if the commissioner becomes aware of persistent failures of the public body in its processing of access requests;

Subsection (i) states the Commissioner can inform the public of perceived deficiencies with the Act, including their office.

112(i) inform the public in respect of perceived deficiencies in the administration of this Act, including within the office of the commissioner;

Subsection (j) clarifies the Commissioner can establish procedures for their office in order to comply with this Act.

112(j) establish and implement practices and procedures for the office of the commissioner in order to ensure its efficient and timely compliance with this Act.

SECTION 113 Restricted authority to disclose

This provision establishes instances where the Commissioner may disclose information in the performance of their powers.

113(1) Subject to subsection (2), the commissioner, a delegate of the commissioner and any other person acting under the direction of the commissioner must not disclose to another person any information or record obtained, or of which they become aware, in the performance of their duties or the exercise of their powers under this Act.

This provision creates exceptions to the confidentiality obligations imposed on the commissioner in **section 103**.

Subsection 2 authorizes the Commissioner to disclose information necessary to:

- Conduct an investigation;
- Establish reasons when making a determination of fact or law when conducting an investigation;
- Provide reasons for a recommendation set out in an investigation report;
- In a proceeding to which the limited exceptions apply (for example, committing perjury or obstructing the commissioner);
- Conduct a joint investigation with a commissioner from another jurisdiction

113(2) The commissioner may disclose, or authorize a delegate or a person acting under the direction of the commissioner to disclose, information or a record

113(2)(a) the disclosure of which, in the opinion of the commissioner, is necessary to conduct an investigation under Division 2 of Part 5;

113(2)(b) in the course of a proceeding of a type referred to in any of paragraphs 99(a) to (d);

113(2)(c) in accordance with paragraph 111(1)(d); or

113(2)(d) to the Attorney General in respect of information or a record that the commissioner reasonably believes is relevant to the alleged commission of an offence under an Act of the Legislature or of Parliament.

SECTION 114 Commissioner and delegates not compellable

This provision clarifies that the Commissioner cannot be called on to be a witness in a proceeding unless it is for a proceeding listed in **section 99** (for example, committing perjury or obstructing the Commissioner).

114 The commissioner, a delegate of the commissioner or any other person acting under the direction of the commissioner is not a competent or compellable witness in

any proceeding, other than a proceeding of a type referred to in any of paragraphs 99(a) to (d), in respect of any matter of which the commissioner, the delegate or the person becomes aware as a result of performing duties or exercising powers during an investigation under Division 2 of Part 5.

SECTION 115 Commissioner and delegates protected from liability

This provision protects the Commissioner's office from liability. The Commissioner, a delegate of the Commissioner and the staff of the Commissioner's Office (OIPC) are not liable for anything they do, report or say in good faith in the exercise of their duties under Part 6 of the Act (Office of the Information and Privacy Commissioner), or Part 5 of the Act (Investigations and Court Reviews) (**section 95**).

This section protects the Commissioner and his or her staff from legal proceedings arising from any acts undertaken in good faith or with an honest intention in the performance of the duties, powers or functions specified in Part 6.

115 No legal proceeding for damages may be commenced or maintained against the commissioner, a delegate of the commissioner or any other person acting under the direction of the commissioner in respect of anything done or omitted to be done in good faith

115(a) in the performance, or intended performance, of any duty under this Act; or

115(b) in the exercise, or intended exercise, of any power under this Act.

SECTION 116 Acting commissioner if conflict of interest, etc.

This provision allows the appointment of an Acting Commissioner. The Commissioner must notify the Speaker if there is an instance of perceived bias or conflict of interest. The Speaker may then appoint an acting commissioner after consulting with Member Services Board. The Acting Commissioner has the same powers as the commissioner.

116(1) The commissioner must notify the Speaker of the Legislative Assembly, without delay after the commissioner determines that, with respect to the performance of a duty or exercise of a power under this Act in relation to a particular matter

116(1)(a) the commissioner has a conflict of interest; or

116(1)(b) there would be a reasonable apprehension of bias if the commissioner considered or dealt with the matter.

116(2) Without delay after being notified of a determination under subsection (1), the Speaker must

116(2)(a) consult with the Members' Services Board (being a standing committee of the Legislative Assembly); and

116(2)(b) appoint, in writing, an acting commissioner for the purpose of considering or dealing with the particular matter to which the notification relates.

116(3) An acting commissioner appointed under subsection (2)

116(3)(a) must perform all of the duties of the commissioner in respect of the matter in relation to which they are appointed; and

116(3)(b) may exercise any of the powers of the commissioner in respect of the matter in relation to which they are appointed.

SECTION 117 Annual and special reports

This provision requires the Commissioner to produce an annual report and also enables the Commissioner to write a special report, if needed. As an independent Officer of the Legislature, the Commissioner reports annually to the Legislative Assembly, describing the work of the Commissioner's Office.

Subsection 1 requires the commissioner to table an annual report to the Speaker of the Legislative Assembly.

117(1) The Commissioner must, on an annual basis, provide a report to the Speaker of the Legislative Assembly in respect of the performance of their duties and the exercise of their powers under this Act for the year immediately preceding the year in which the report is provided to the Speaker.

Subsection 2 requires the Commissioner to include the following information in their report:

- A list of each Privacy Impact Assessment the Commissioner commented on;
- Each complaint made to the Commissioner and the manner in which it was resolved (for example, successfully mediated or investigation required);
- Each investigation conducted and results (for example, recommendations accepted or refused);
- Any identified persistent failure by a head when responding to an ATIPP request (this could result after numerous complaints being filed against the same public body);
- Any concerns with the performance of the Access and Privacy Officer, Designated Access Officers or Privacy Officers;
- Any other matter the Commissioner believes should be brought to the attention of the Legislative Assembly.

117(2) The commissioner's report under subsection (1) must address the following matters in detail or in summary form as considered appropriate by the commissioner:

117(2)(a) each privacy impact assessment for which the commissioner provided recommendations;

117(2)(b) each complaint made to the commissioner under this Act and the manner in which it was resolved or concluded;

117(2)(c) each investigation conducted by the commissioner under this Act and the manner in which it was resolved or concluded;

117(2)(d) each recommendation set out in an investigation report provided to a respondent under this Act and the respondent's response to the recommendation;

117(2)(e) persistent failures of the head of a public body to perform their duties under this Act, and in particular, their duty to respond to access requests in a timely, open, accurate and complete manner;

117(2)(f) any significant concerns in respect of the performance of duties or the exercise of powers under this Act by the access and privacy officer, designated privacy officers and designated access officers;

117(2)(g) any other matter that the commissioner considers should be brought before the Legislative Assembly in order to strengthen the protection of personal information or access to information under this Act.

Subsection 3 enables the Commissioner to write a special report, if it is in the public interest to do so, regarding any of the Commissioner's powers or duties.

117(3) If the commissioner considers that it is in the public interest to do so, the commissioner may also provide a special report to the Speaker, in the form of an investigation report provided to a respondent under subparagraph 101(b)(ii) or any other form, in relation to any matter relating to the commissioner's powers or duties under this Act.

Subsection 4 requires the Speaker to table any report provided by the Commissioner as soon as practicable.

117(4) The Speaker must table each report provided under subsection (1) or (3) in the Legislative Assembly as soon as is practicable after it is provided to the Speaker.

