



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

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SPEECH TO

L'ASSEMBLÉE NATIONALE DU QUÉBEC, COMMISSION DES INSTITUTIONS

(English Version)

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INFORMATION AND PRIVACY COMMISSIONER FOR BC**

Monsieur le Ministre, Messieurs et Mesdames les députes

Je vous remercie énormément de m'accorder l'occasion de vous adresser la parole sur un sujet très important.

Je suis Elizabeth Denham, Commissaire à l'information et à la protection de la vie privée de la Colombie Britannique.

C'est pour moi un privilège et un honneur de comparaître devant vous aujourd'hui.

I apologize that I could not attend in person, but fortunately, advances in technology have permitted me to make this presentation virtually, and answer any questions that you have.

I have been a privacy regulator in three Canadian jurisdictions – in Alberta, in Ottawa and in British Columbia.

While the focus of my remarks today will be on the British Columbia model — my 15 years of experience in privacy and access to information regulation leads me to

conclude that a single agency approach provides the greatest advantage for citizens and ensures sound interpretation of our laws.

For more than 20 years, B.C. has had regulatory oversight of access to information and protection of privacy in the public sector and 10 years in the private sector. The British Columbia and QC jurisdictions are therefore equivalent and the structure and functions of the offices are similar.

In British Columbia, my mandate includes promotion of access and privacy rights, public education, advice to public bodies and businesses, investigation of complaints, informal resolution, and independent adjudication. The functions of teacher, counsellor, policeman, and decision maker, contained within one agency, are complimentary rather than contradictory.

In my experience, all these functions are best delivered under one roof. Why?

First and foremost, retaining adjudication with the other critical functions ensures the necessary expertise in the law.

This is important because a technical mastery of the legislation, jurisprudence, and familiarity with inter-jurisdictional access and privacy issues is necessary to correctly apply the law in particular circumstances.

Privacy and access to information issues are dynamic in our digital world, and this is a very specialized area of law. It is imperative that the individuals making legal and binding decisions have the requisite skills, up to date knowledge about what is happening on the ground.

Our adjudicators receive the same technical training and professional development as our investigators, and are routinely exposed to new technologies, emerging ideas and global trends affecting privacy and access to information law.

I believe that it would be extremely difficult for another administrative tribunal in British Columbia to retain the same level of expertise and provide for efficient and timely analysis for citizens.

Adjudication enhances the other functions. Being the decision maker, deeply knowledgeable about the decision, means that we are in the best position to explain it to the public, and to government agencies and businesses. A series of related decisions can be translated into guidelines that promote best practices and compliance with the law.

As Commissioner, I am familiar with what is happening on the ground -- the types of complaints that come to our office.

That said, we must take steps to protect the integrity of the adjudicative process. In British Columbia, no information about investigation files or attempts at informal resolution is ever disclosed to the adjudicators.

We ensure that adjudicators bring fresh eyes to each case and are not in any way biased by the opinions of other staff. It is both possible and important to serve the citizens of the province while preserving adjudicative independence

We have also taken steps to ensure that the processes for adjudicating complaints and appeals are completed as efficiently as possible. We recently undertook a comprehensive review of all of our processes and re-engineered some of them to ensure our case files are proceeding as efficiently as possible – to close more files faster, and give better service to citizens.

On that note, there is also a benefit of an integrated model for citizens, too. Combining the investigation and informal resolution processes with adjudication provides one-stop shopping for citizens. This level of convenience is important. There is no confusion over which of two bodies citizens need to apply to.

While it has been suggested that the public education or advisory functions of a Commissioner might pose a risk of undermining the adjudicative function, we have not found that to be the case in British Columbia.

Provincial government, local governments, health and education bodies have all consulted with the Office to flag any general concerns. Government ministries in particular consult with us on a regular basis – to determine access and privacy implications of new technologies, policies or services at the design stage.

The advice we provide is of a general nature. We clarify that this feedback is based on the information provided at the time and that it is not binding on the Commissioner with respect to making a formal finding in the event that we receive a future complaint.

This kind of advice helps public bodies to avoid situations of non-compliance, while preserving the sanctity of the adjudicative process to apply the law correctly based on the specific circumstances of a particular case.

The same principle applies with promoting a culture of privacy and access in government. We are able to communicate about general principles and recommend best practices without prejudging individual cases.

We are able to perform these various roles effectively because our legislation explicitly gives us these powers and spells them out in detail. We also have the public credibility to accomplish these goals because we are independent of government.

The mandate of our office is broad but we find that the components work well together. Adjudication enhances rather than impedes our work. For example, we resolve about 90% of our complaints and access appeals on an informal basis. Our adjudicative function lends greater authority to our investigators, because most parties have incentive to avoid formal adjudication.

One of the purposes of our legislation is to create a culture of transparency within the BC public sector. It takes a strong level of authority to influence this type of cultural change. The fact that we have the public education and advisory functions, complemented by investigation powers, with the ultimate ability to order compliance through our adjudicative function, gives us a level of authority that can influence this change. Without this complete suite of functions, we would not have the same level of influence.

En résumé, je crois que nous avons réussi en Colombie Britannique à atteindre les objectifs décrits dans le *document d'orientation*. Nous préservons l'accès et les droits à la vie privée des citoyens dans toute la mesure du possible car nous avons clairement défini dans notre législation l'effectif complet des fonctions, y compris l'arbitrage.

Merci. Il me fera plaisir de répondre à vos questions.