

Privacy Protection and Access to Information: The Canadian Approach

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FEDERAL PUBLIC SECTOR

FEDERAL PRIVATE SECTOR

PROVINCIAL PUBLIC SECTOR

PROVINCIAL PRIVATE SECTOR

THE FEDERAL PUBLIC SECTOR

- **The Privacy Act of 1982**
 - **Overseen by the Office of the Privacy Commissioner of Canada**
- **The Access to Information Act of 1982**
 - **Overseen by the Office of the Information Commissioner of Canada**

THE PROVINCIAL PUBLIC SECTORS

PROVINCIAL INFORMATION AND PRIVACY LEGISLATION

- Overseen by Information and Privacy Commissioners (BC, Alberta, Saskatchewan, Ontario), Commission d'Accès à l'Information (Quebec) or Ombudsmen elsewhere.

SEPARATE HEALTH PRIVACY LEGISLATION: ALBERTA, ONTARIO, SASKATCHEWAN, MANITOBA

- Overseen by Provincial Information and Privacy Commissioners

FEDERALLY REGULATED PRIVATE SECTOR

- **The Protection of Personal Information and Electronic Documents Act 2000**
 - Applies to federally regulated businesses (communications, transportation, banking) and any enterprise that transmits personal data across provincial or international boundaries for a commercial purpose
 - Overseen by the Office of the Privacy Commissioner of Canada

PROVINCIALY REGULATED PRIVATE SECTOR

- **“Substantially similar” private sector data protection legislation in Alberta, British Columbia and Quebec, overseen by Information and Privacy Commissioners of Alberta and BC, and Commission d’Accès in Quebec**
- **Older consumer credit legislation in most provinces**
- **Older and little used “privacy tort” statutes in several provinces**
- **Health information statutes cover use of health information for commercial purposes**

THE “MARRIAGE” OF PRIVACY AND ACCESS TO INFORMATION

ADVANTAGES

- **Allows the same Commissioner to balance access and privacy issues when cases arise**
- **Allows for the integration of exemptions to access and privacy within the same statute**
- **Some cost-savings for provincial government**

THE 'MARRIAGE' OF PRIVACY AND ACCESS TO INFORMATION

DISADVANTAGES

- Few issues actually need a direct “balancing” of interests between privacy and FOI
- Access to information applies to government; privacy to government and business
- Systemic privacy work can be overwhelmed by routine access to information requests (with statutory deadlines)
- A public perception that the offices are working at cross-purposes
- The combination undermines the ability of the Commissioner to champion the privacy cause nationally and internationally