



THE CANADIAN
BAR ASSOCIATION

Privacy and Access Rights in the Age of Technology: The State of Canadians' Information Rights in 2010 and Beyond

September 19-20, 2010

Sheraton Ottawa Hotel

150 Albert Street, Ottawa, ON

Sunday, September 19, 2010

18:00-21:00

Penthouse A/B
17th Floor

Reception and Dinner with Keynote Speakers

Alasdair Roberts, Jerome L. Rappaport Professor of Law and Public Policy,
Suffolk University Law School, Boston

Paul Szabo, Member of Parliament for Mississauga South and Chair, House of
Commons Committee on Access to Information, Privacy and Ethics

Monday, September 20, 2010

7:15 – 7:45

2nd Floor Foyer

Registration

7:45 – 8:45

Rideau Room
2nd Floor

Discussion with Industry Canada's Electronic Commerce Branch - PIPEDA Amendments and the Anti-Spam Bill"

Speakers:

Bruce Wallace, Director of Electronic Commerce Policy, Electronic Commerce
Branch, Industry Canada

Andy Kaplan-Myrth, Policy Analyst, Electronic Commerce Branch, Industry
Canada

8:45

Welcome and Introduction

David Fraser, McInnes Cooper, Halifax, NS & Chair, CBA National Privacy
and Access Law Section

Steve Seiferling, McKercher LLP, Saskatoon, SK & Conference Co-Chair

Mandy Woodland, St. John's, NL & Conference Co-Chair

9:00-10:30

Rideau Room
2nd Floor

Plenary Session: The Past Year in Review

This opening plenary session will provide a unique opportunity to hear the federal and three provincial Privacy and Access Commissioners discuss the challenges and recent developments that they have addressed over the past year and a half. This session will set the stage for a number of the issues that will be discussed in the working groups and informally throughout the day. By looking to the events of the past year, the speakers will seek to provide insight into how these issues will play out in the future.

Speakers are subject to change

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Moderator: **Gary Dickson**, Information and Privacy Commissioner of Saskatchewan

Speakers: **Jennifer Stoddart**, Privacy Commissioner of Canada
Suzanne Legault, Information Commissioner of Canada
Elizabeth Denham, Information and Privacy Commissioner for British Columbia
Jacques Saint-Laurent, Chair, Access to Information Commission of Quebec

10:30-10:45
2nd Floor Foyer

Break

10:45-12:15
Rideau Room
2nd Floor

Navigating Murky Waters: Anatomy of a Privacy Breach

Organizations as well as the individuals concerned have an interest in addressing privacy breaches as promptly and effectively as possible. Yet despite the fact that the requirement to protect personal information goes to core mandate of privacy legislation, as of now there are very few legislated breach notification provisions. Various Privacy Commissioners' offices have endeavored to fill this gap with general guidelines, etc., but each organization seeking to navigate the treacherous waters of responding to a privacy breach will have their own specific context and concerns to balance at each stage of such response. In this unique session, we examine in detail the key issues the organization subject to a privacy breach will need to consider during each step of the response, from identification of the breach, through risk evaluation and containment, and notification and/or reporting, to the implementation of remedial plans - in each case from the perspective of the organization's in-house counsel and privacy officer, and the privacy commissioner.

Moderator: **John Beardwood**, Partner, Vice-Chair Privacy and Information Access Group, and Co-Chair Technology and Intellectual Property Group, Fasken Martineau LLP

Speakers: **Patricia Kosseim**, Office of the Privacy Commissioner of Canada
Janice Campbell, Risk Manager/Privacy Officer, Department of Quality and Risk Management, Hospital for Sick Children, Toronto
Jill Clayton, Assistant Information and Privacy Commissioner of Alberta (Private Sector Privacy), Calgary
Suzanne Morin, Assistant General Counsel, Regulatory Law and Policy, Bell Privacy Ombudsman, Bell Canada, Ottawa

12:15-14:00
2nd Floor Foyer

Luncheon with Keynote Speaker

Mike Hintz, Associate General Counsel, Microsoft

Does Every One have a Silver Lining? Privacy and Cloud Computing

“Cloud computing” is more than just the latest catch phrase. It represents today’s rapidly changing technology environment, including how we collect,

store and use vital personal data. Our keynote speaker will review the privacy and access issues raised by how cloud service providers use data; law enforcement access to data held by cloud services; global implications and jurisdictional conflicts; and business models and approaches that enhance user choice and control.

14:00-15:15

Rideau Room
2nd Floor

Concurrent Sessions

Session I: Anatomy of an Access Request

Current freedom of information regimes are based on two fundamental principles. The first is that individuals have a right of access to records under the control of public institutions. The second is that requesters have a right to complain about decisions made by institutions to independent oversight bodies that can investigate and resolve their complaints. Critics claim that this system is dead or at least on life support. They cite heavily redacted documents, excessive response times and often refer to potential political or bureaucratic interference as leading causes of the demise. They also cite ineffective oversight mechanisms. This session will follow the progress of an access request from its inception, through the processing stages and finally through the complaint process. Speakers representing requesters, access professionals and oversight bodies will provide their assessments of the state of health of the system and offer suggestions on how it can be revived.

Moderator: **Dulcie McCallum**, Freedom of Information and Protection of Privacy Review Officer, Nova Scotia

Speakers: **Alasdair Roberts**, Jerome L. Rappaport Professor of Law and Public Policy, Suffolk University Law School, Boston
Francine Farley, Access to Information and Privacy Coordinator, Department of Justice, Ottawa
Priscilla Platt, Counsel, Heenan Blaikie, Toronto
Ross Hodgins, Office of the Information Commissioner of Canada, Ottawa
Marylin Mun, Assistant Information and Privacy Commissioner of Alberta (Access to Information), Edmonton

O'Connor Room
Ground Floor

Session II: Privacy Challenges Identified in Early Stages of an EHR Roll-Out

With the varying degrees of progress, most if not all provinces are moving forward with a roll-out of an electronic health record. This session will discuss focussed privacy issues being experienced in these early stage EHR systems. Each member of the panel will respond to questions that pose concretely some of the challenges, including: accountability, patient control of the data, approaches to secondary uses and disclosures and maintaining security in a role-based access system. Speakers will relate their own differing perspectives to these issues. A round-table discussion with session attendees will enable consideration of further perspectives.

Moderator: **Gary Dickson**, Information and Privacy Commissioner of Saskatchewan

Speakers: **Leroy Brower**, Office of the Information and Privacy
Commissioner of Alberta
Debra Grant, Office of the Information and Privacy
Commissioner of Ontario
Mary Jane Dykeman, Privacy Officer, Mount Sinai Hospital;
Partner, Dykeman, Dewhirst, O'Brien, Toronto

15:15-15:30
2nd Floor Foyer

Break

15:45-17:00
*Rideau Room
2nd Floor*

Concurrent Sessions

Session I: Liberating Information: Shifting from Reactive Disclosure to Open Government

Our current freedom of information laws are fundamentally reactive. Access to information is granted only when someone requests it. Every day, we learn about new and exciting initiatives which transform reactive disclosure to the proactive mode. Proactive disclosure refers to an environment where information is routinely disseminated because it can be, thanks to technology. It is an essential component of Open Government. Open Government is based on a system that disseminates information in open formats and allows individuals to use and re-use data for both private and public benefits. What are the roles of the various players in this environment? What challenges does the shift from reactive disclosure to Open Government pose for advocates, information managers and oversight bodies?

Moderator: **Allison Knight**, Office of the Information and Privacy
Commissioner of Ontario

Speakers: **Andrea Neill**, Assistant Information Commissioner of Canada
Brian Beamish, Assistant Information and Privacy
Commissioner of Ontario
Eric Sauve, Vice President Tomoye
Guy Michaud, Chief Information Officer, City of Ottawa

*O'Connor Room
Ground Floor*

Session II: Privacy on the Internet – Issues of Social Networks, Behavioural Advertising and Other Challenges

Is there an expectation or rule of privacy on the Internet? Many commentators and some courts have suggested that there is not. The federal Privacy Commissioner, supported by privacy regulators in other countries, has firmly stated the view that privacy should exist online and has backed this up with a seminal decision involving Facebook's privacy settings and practices. However, challenges to the protection and user control of personal information continue to abound. This topical session will pose the question of whether online privacy exists in the context of a focussed discussion of current unresolved issues including: third party developer collection of social network user information, search engine disclosure of email personal data, behavioural advertising and compulsory disclosure to law enforcement.

Moderator: **David Young**, Partner and Co-Chair, Privacy Law Group, Lang

Michener LLP

Speakers:

Dan Caron, Office of the Privacy Commissioner of Canada

Valerie Steeves, Professor, University of Ottawa

Jacob Glick, Policy Counsel, Google Canada

17:00-17:30

*Rideau Room
2nd Floor*

Closing Plenary/Wrap-up: Where do Privacy and Access Take Us Next?

This concluding plenary will seek to draw together the ideas articulated in response to the privacy and access challenges during the day's sessions. A goal will be to identify future regulatory and policy approaches of interest to both public and private sector stakeholders.

Rapporteur

David Fraser, McInnes Cooper, Halifax, NS & Chair, CBA
National Privacy and Access Law Section

17:30

*Rideau Room
2nd Floor*

Closing Remarks

Steve Seiferling, McKercher LLP, Saskatoon, SK &
Conference Co-Chair

Mandy Woodland, St. John's, NL & Conference Co-Chair