



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision P07-03

CONSTITUENCY OFFICE OF A FEDERAL MEMBER OF PARLIAMENT

Catherine Boies Parker, Adjudicator

September 20, 2007

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Summary: The complainant alleged that her Member of Parliament's constituency office had improperly disclosed her personal information, contrary to PIPA. The MP raised a preliminary issue regarding jurisdiction. PIPA does not apply to the office of federal legislators and, as result, there is no jurisdiction in this Office to investigate the complaint.

Statutes Considered: *Personal Information Protection Act*, ss. 1 and 3; *Freedom of Information and Protection of Privacy Act*, Schedule 1; *Privacy Act*, s. 3; *Personal Information Protection and Electronic Documents Act*, s. 4.

Cases Considered: *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667; *British Columbia (Attorney General) v. Lafarge* 2007 SCC 23; *Canadian Western Bank v. Alberta*, 2007 SCC 22.

1.0 INTRODUCTION

[1] This decision arises from a complaint filed pursuant to the *Personal Information Protection Act* ("PIPA"). The complainant alleges the improper disclosure of her personal information by the constituency office of her Member of Parliament ("MP"). The MP has raised a preliminary issue regarding jurisdiction.

2.0 ISSUE

[2] The preliminary issue addressed in this decision is whether PIPA applies to the MP's constituency office.

3.0 DISCUSSION

[3] **3.1 Factual Background**—The complainant asserts that she attended at the MP's constituency office for the purposes of obtaining assistance in making an access to information and privacy request in order to obtain access to information that she believed was located within R.C.M.P. files.¹ For this purpose, the complainant completed an "Authorization and Consent for Parliamentarians" form. This form authorized the R.C.M.P. to disclose to the MP or his staff "information of any kind relating to [the complainant] as identified below." The form states:

I want a copy of any possible arrest
Why are they concerned about my bank accounts
Am I being investigated for anything?²

[4] It appears that the MP's constituency office manager ("the Manager") contacted by telephone her friend who is an R.C.M.P. corporal. During the course of their conversation they discussed "mental health" concerns regarding the complainant. The Manager contacted the complainant's supervisor at work and alleged that, when attending at the MP's constituency office, the complainant stated that she was being poisoned "and that she said something else to her involving 'urine'".³ The complainant denies these allegations.⁴ There is some suggestion that the R.C.M.P. directed the Manager to contact the complainant's employer; the R.C.M.P. has denied that this was the case.⁵ The complainant states that as a result of the Manager's conversation with her employer, she was suspended from her employment.⁶

[5] The MP has written to counsel for the complainant and stated that his office contacted the complainant's employer "only for the purpose of completeness." The MP's letter states that the constituency office will have on hand a copy of PIPA and will abide by its terms.⁷

¹ Correspondence from McLeod & Company to this office, dated February 13, 2007, para. 2.

² Correspondence from McLeod & Co. to this office, June 15, 2006, attachment (b).

³ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 8-9.

⁴ Correspondence from McLeod & Co. to this office, June 15, 2006, page 2-3.

⁵ Correspondence from McLeod & Company to this office, dated February 13, 2007, para. 9 and 13; Correspondence from McLeod & Co. to this office, June 15, 2006, page 3.

⁶ Correspondence from McLeod & Company to this office, dated February 13, 2007, para. 9.

⁷ Correspondence from MP to complainant's counsel, dated March 21, 2006.

[6] **3.2 The Legislative Scheme**—Section 3 of PIPA provides, in part:

Application

- 3(1) Subject to this section, this Act applies to every organization.
- (2) This Act does not apply to the following:
- ...
- (c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use or disclosure of the personal information;
- (d) personal information if the *Freedom of Information and Protection of Privacy Act* applies to the personal information;
- ...
- (g) the collection, use or disclosure by a member or officer of the Legislature or Legislative Assembly of personal information that relates to the exercise of the functions of that member or officer; ...

[7] Section 1 of PIPA provides, in part:

"organization" includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include

- (a) an individual acting in a personal or domestic capacity or acting as an employee,
- (b) a public body ...

[8] The *Freedom of Information and Protection of Privacy Act* ("FIPPA") does not apply to the offices of federal MP's located in British Columbia. In addition, the definition of "public body" in FIPPA specifically excludes "the office of a person who is a member of the Legislative Assembly" ("MLA").

[9] The "federal Act" referred to in s. 3(2)(c) of PIPA is the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). Section 4 of PIPEDA provides:

- 4(1) This Part applies to every organization in respect of personal information that
- (a) the organization collects, uses or discloses in the course of commercial activities; or
- (b) is about an employee of the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business

[10] The federal *Privacy Act* governs personal information in the federal public sector. It applies to “government institutions”, which are defined as

any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule.

[11] The offices of MPs are not listed in the schedule as “government institutions”.

[12] **3.3 The Positions of the Parties**—Counsel for the MP states that PIPA does not apply to the MP’s constituency office. Counsel notes that the drafters of PIPA and FIPPA expressly excluded members of the Legislative Assembly from their scope, and argues that it would be an absurd result for the provincial legislation to apply to federal MPs but not provincial MLAs.⁸ Counsel argues that there is a principle of statutory interpretation of “implied exclusion” and that since federal bodies and agencies are not included in the definition of “public body” in the provincial legislation, they are meant to be excluded from the scope of the provincial legislation.⁹

[13] Counsel for the MP also argues that s. 18 of the *Constitution Act 1867* provides that Parliament has the exclusive power to govern the actions of federal MPs, and that the doctrine of interjurisdictional immunity means the provincial legislation, PIPA, does not apply.¹⁰ Counsel notes that the fact that the federal privacy statutes do not apply to MPs has been brought to Parliament’s attention.¹¹

[14] Counsel for the complainant argues that PIPA applies because an MP and/or his or her offices located in the territory of British Columbia fall within PIPA’s definition of an “organization” and are not otherwise excluded from PIPA’s operation.¹² Because MPs are not regulated by the federal legislation, the exception in s. 3(2)(c) does not apply.¹³ Because MPs are not within the definition of “public body” under FIPPA, s. 3(2)(d) does not apply.¹⁴ While “Legislature” is not defined in PIPA, its definition in the *Interpretation Act* limits it to the provincial legislature, with the result that the exception set out in

⁸ Correspondence from Lawson Lundell to this office, dated November 24, 2006, page 3-4.

⁹ Correspondence from Lawson Lundell to this office, dated November 24, 2006, page 4.

¹⁰ Correspondence from Lawson Lundell to this office, dated November 24, 2006, page 4.

¹¹ Correspondence from Lawson Lundell to this office, dated November 24, 2006, page 5.

¹² Correspondence from McLeod & Company to this office, dated February 13, 2007, para. 15.

¹³ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 29 and 36.

¹⁴ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 38 and 43.

s. 3(2)(g) does not apply.¹⁵ The complainant argues that the exceptions set out in s. 3(2) are detailed and exhaustive.¹⁶

[15] The complainant's counsel notes that MLAs are excluded from PIPA only to the extent that their actions relate to the exercise of the functions of the member or the office of the MLA, and submits that if the MP in this case were an MLA, s. 3(2)(g) would not constitute a bar to the application of PIPA on the facts.¹⁷ The complainant states that the actions of the Manager were "high-handed", such that "they are outside of the bounds of what could be considered the actions of a federal MP and should not be excluded from regulation pursuant to PIPA".¹⁸

[16] The complainant's counsel argues that the doctrine of interjurisdictional immunity only requires that provincial laws be read down so as not to affect the "unassailable core" of a federal power, and that "there is nothing about the collection, use, and disclosure of personal information that is colourable as an exclusive federal power, let alone the "unassailable core" of such a power as that term is defined in the case law."¹⁹

[17] **3.4 Analysis**—I find that PIPA does not apply to the operation of an MP's constituency office. As noted, s. 18 of the *Constitution Act, 1867* provides that the federal Parliament has authority over the "privileges, immunities and powers to be held, enjoyed and exercised" by members of the House of Commons. This would include the members' activities in "holding the government to account for the conduct of the country's business".²⁰ As a result, jurisdiction to legislate to affect the manner in which an MP's office operates in its assistance of constituents lies with the federal government.

[18] It is well recognized that the labour relations and human rights obligations of federally regulated entities are matters of exclusive federal jurisdiction. Similarly, the privacy obligations of federal works, undertakings and businesses are regulated by federal legislation. The offices of MPs are also subject to federal jurisdiction in this area.

[19] It is significant that the federal government has not extended the *Privacy Act* or PIPEDA to cover MPs. Where the federal government has declined to impose privacy obligations on federal MPs, it is not open to provincial legislation to do so. The fact that both FIPPA and PIPA exclude the activities of MLAs from

¹⁵ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 45 and 46.

¹⁶ Correspondence from McLeod & Company to this office, dated February 13, 2007, para. 22.

¹⁷ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 48-52.

¹⁸ Correspondence from McLeod & Co. to this office, June 15, 2006, page 2, para. B.

¹⁹ Correspondence from McLeod & Company to this office, dated February 13, 2007, paras. 63-67.

²⁰ See *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667, at paras. 41 and 62.

their scope confirms that a legislature may indeed decide to exclude legislators from the scope of privacy legislation. The fact that MPs are not explicitly excluded from the provincial legislation simply reflects the fact that federal legislators are not subject to provincial jurisdiction in that regard.

[20] The result is the same whether obtained by the application of the doctrine of interjurisdictional immunity or the doctrine of federal paramountcy. With respect to the former, I find that the activities of an MP's office in obtaining and managing information are integral to the MP's ability to carry out her or his activities in assisting constituents. With respect to the latter doctrine, I find that the fact that Parliament has enacted legislation addressing the privacy obligations of federal governmental bodies and has not included MPs in the operation of that legislation means that the provincial legislation cannot operate to frustrate the federal purpose in that regard.²¹

[21] I recognize that the complainant has argued that the actions of the Manager were such that they should not properly be considered "the actions of a federal MP." Either the Manager was acting as part of the office of the MP or as an individual. In either case, PIPA has no application.

4.0 CONCLUSION

[22] PIPA does not apply to the constituency office of a Member of Parliament. As a result, this Office does not have jurisdiction to consider the complaint.

September 20, 2007

ORIGINAL SIGNED BY

Catherine Boies Parker
Adjudicator

OIPC File No. P06-29886

²¹ See *British Columbia (Attorney General) v. Lafarge* 2007 SCC 23; *Canadian Western Bank v. Alberta*, 2007 SCC 22.