

**CHECK AGAINST DELIVERY**

**SPEECH TO THE  
SELECT STANDING COMMITTEE ON FINANCE & GOVERNMENT  
SERVICES  
November 18, 2021**

**Michael McEvoy  
INFORMATION AND PRIVACY COMMISSIONER/REGISTRAR OF  
LOBBYISTS**

Good morning, Chair, Deputy Chair, and Members of the Committee.

I would first like to acknowledge and respect that we are meeting today on the traditional territories of the Ləkʷəŋjínəŋ-speaking people of the Songhees and Esquimalt Nations.

The Budget and Service Plan before you this morning encompasses both the Office of the Information and Privacy Commissioner and the Office of the Registrar of Lobbyists for British Columbia.

To assist me in this task are Deputy Commissioners oline Twiss and Jeannette van den Bulk along with Dave Van Swieten, Executive Director of Shared Services for the four Officers of the Legislature headquartered at 947 Fort Street.

This morning I will briefly review recent actions of our office and then focus on three specific requests explaining why these are important to our work of providing services to British Columbians.

Just before doing this, I want to first follow up on comments from our June meeting concerning our COVID office plans.

We are now in phase three of our COVID-19 Safety and Transition plan that allows our team the choice of working at 947 Fort Street with the proviso that only 50% of staff can be in the office at any one time. Those working in the office must be fully vaccinated - and that has been the case since October 14<sup>th</sup> of this year.

This past summer our senior leadership team identified January 31, 2022 as the earliest date for a staff wide return to office. On November 10, last week, we let staff know that we expect each of them to be fully vaccinated by January 31, subject to a proper medical exemption or accommodation under the Human Rights Code.

A failure to vaccinate, consistent with provincial government protocols, will result in an employee being placed on leave without pay for three months followed by termination. Should infection rates continue to decline over the winter I would expect a greater proportion of employees will return to the worksite early in the New Year.

My senior leadership team is also working on a plan which will see a greater proportion of our employees working from home in the future. I will continue to update the Committee as matters progress.

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I want to now turn to the recent work and accomplishments of the OIPC since my last appearance in June.

The mix of files we have processed in the past year has undoubtedly been impacted by COVID. The number of general information queries we have answered have jumped along with requests by public bodies and organizations seeking guidance from us in drafting privacy impact assessments.

This shouldn't be especially surprising since more British Columbians during the pandemic have had to rely on new online tools to conduct their affairs, and individuals, public bodies and organizations alike have worked to understand how new public health measures affect them.

My office has also experienced an increase in case files involving complaints, requests for review, and privacy breaches which are on track this fiscal to reach a five-year high. That increase may be due in part to public bodies and organizations catching up after the first year of the pandemic, and or the result of an increased desire by citizens, exercising their access to information and privacy rights, to hold public bodies to account.

It might be useful to pause at this point Chair to give you and the members of the committee some sense of who the applicants or complainants are that come to our office. Recent public commentary might suggest that the files my office has received emanate from a small number of media members or opposition political parties.

This is not the case. Of the almost 1000 files logged to date in this fiscal year only 6% are media and 1% come from political parties. Fully 89% of complaints and requests for reviews are initiated by individuals, your constituents.

[PAUSE]

Perhaps the most concerning and operationally challenging development during the last fiscal year was the sharp rise in files going to a formal adjudication process. It now appears that this rise in adjudication inquiries was not a statistical aberration; last year's numbers are set to repeat again this year. I will have more to say about this issue and the need to address it in a few minutes because it has significant implications for my mandate and the public.

[PAUSE]

The COVID-19 pandemic has touched upon issues relating to the protection of people's personal information. Issues like proof of vaccination cards have put matters of privacy protection squarely on society's agenda. As you can imagine, the August announcement of a vaccine card sparked much public conversation and concern, leading to an increase in calls from the public to our office. In addition to consultations with BC's Public Health Officer about the logistics of the card, my office published guidance explaining how the card and Public Health Orders work together with BC's public and private sector privacy laws.

These issues, of course, have national and international dimensions. BC's proof of vaccination, for example, will have to operate for travel outside BC and Canada. For this reason, we have been deeply engaged with regulatory colleagues nationally and internationally discussing current common regulatory challenges.

The relationships British Columbia has built with our counterparts, particularly in the Asia Pacific Region, have proven especially important. I would like to restate our appreciation to the Committee's funding of my Office's leadership role as Secretariat to the Asia Pacific Privacy Authorities. Supported by fellow APPA members we are seeking to continue that position for an additional three years and we ask the Committee for continued funding over this same time period.

In less than two weeks my office will virtually host the 56<sup>th</sup> APPA forum. Nineteen member-organizations and approximately 100 attendees will participate in three days of enforcement discussions, jurisdictional updates and collaboration on some of the key privacy issues we face today, including those associated with virtual healthcare, enabling cross-data border flows, and guidance on the ethical development and use of AI.

Meanwhile my office continues with its responsibilities to report, investigate, and comment on privacy and access to information matters.

After my Committee appearance in June, we released a compliance report revealing that few private liquor and cannabis retailers maintain adequate privacy management programs or document privacy policies, contrary to their obligations under BC's *Personal Information Protection Act*.

The report contained 18 recommendations for the sector. These included establishing and maintaining privacy management programs as well as terminating the use of biometric tools like facial recognition technology to collect personal information. Reports like these are meant to ensure legal compliance but they also serve to broadly educate organizations about their statutory responsibilities which will ultimately build more trust with their customers.

This compliance report and the guidance that followed garnered considerable interest in BC and beyond. I

participated in a podcast hosted by UK based Privacy Laws & Business in September to discuss how our PIPA legislation applies to cannabis retailers.

In August, I announced an investigation into the Liberal Party of Canada's use of facial recognition technology to confirm the identity of individuals participating in virtual nomination meetings in British Columbia in the lead up to the October federal election. This investigation is ongoing and in the meantime, I have encouraged the use of alternative verification methods that do not make use of facial recognition technology.

And finally, in response to the introduction of Bill 22, The Freedom of Information and Protection of Privacy Amendment Act 2021, I published a statement and letter setting out the privacy and access implications of this legislation for British Columbians.

Certain provisions of the Bill, specifically, proposed requirements for privacy management programs, privacy impact assessments, and mandatory breach reporting would, if approved, have a direct impact on the staffing and resources of my office.

However, given the Bill is before the house it would be premature for me to set out in detail what these impacts could be.

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There are however immediate and urgent resourcing issues facing the office which I am now asking this Committee to address through its recommendations to government.

Chair and members of the Committee, the biggest proportion of requests for reviews and complaints we deal with, around 87%, are resolved in a relatively timely manner through investigation and mediation. However, when a case cannot be resolved by these means the matter must be determined by a formal adjudicative inquiry. Most often these are what I would describe as the "hard" cases. They are more contentious and complex and the law's application may not be clear; or the legal matters at issue may be novel. And frequently some or all these factors are combined with records at issue often numbering in the hundreds which must be individually assessed.

An adjudicative inquiry is governed by the rules of natural justice and administrative fairness. It means parties are given the opportunity to provide submissions to make their case and a chance to reply to the opposing party. Matters are often punctuated by preliminary objections and the need to assess evidence in camera. This is necessarily an exacting process that can be challenging and time consuming as one would expect of a quasi-judicial proceeding.

It is also fundamental to the democratic fabric of British Columbia and critically meaningful for citizens.

For the indigenous woman seeking records about her grandmother's incarceration in a juvenile reformatory in the 1940s to help validate her claim for Status under the Indian Act.

For homeowners asking their local District government for documents that could help them understand how

geotechnical issues made their properties uninhabitable

For the woman seeking access to an investigation report concerning allegations of sexual assault and sexual harassment that impacted her life

These Orders and others rendered by our adjudicators are final, save and except where a party seeks a review by the Supreme Court of British Columbia.

As I explained at the outset, these adjudicative inquiries have increased dramatically, and demand shows no signs of retreating.

Prior to the 2019/20 fiscal year we could expect about 100 files proceeding to adjudication annually. It was a challenge but we managed to keep pace with our team of five adjudicators, supplemented by contractors using reallocated resources. The adjudicators are supported by one full-time and one part-time registrar.

In 2019/20 the number of adjudications jumped to 120 files: a 20% increase. I didn't come to you for assistance last year because it wasn't clear to me whether this was an aberration that could be handled internally by temporarily reallocating resources. However, this last fiscal year saw that number go even higher to 155. We are on track to again reach 150 files by the end of this fiscal year.

Adjudicative processes are driven from external factors, over which we have no control. I **cannot** tell you with certainty the reasons for the recent rise. Some of it may be a greater desire for citizen accountability of public bodies or a greater distrust of them. Some may be the result of public bodies themselves being more resistant to resolving matters at the investigation stage.

Whatever the case, I can say with certainty that our ability to keep pace with our legislative obligations have been surpassed. We have now reached a backlog of 216 files – or to put it differently, parties may have to wait up to 18 months from the time a case goes to adjudication until a decision is rendered: an unacceptable period.

Without additional support the backlog will worsen. What we ask is that you recommend a provision of resources by way of added adjudicator FTEs that will allow us to keep up with the increased number of inquiries received annually as well shorter-term help to reduce the existing backlog.

Without this assistance we project that over the next five years the backlog will increase to 485 inquiries, which would extend the wait time at adjudication to 42 months. You can see this projection found at page 13 of the budget submission document. To state the obvious this is simply unacceptable.

We have looked at, and will continue to examine, ways to streamline our adjudicative processes and reallocate resources where possible. However, it is clear to me that we now face a structural issue driven by increased demand, with no signs of resolution short of allocating more resources to the adjudication team.

Therefore, I am asking the committee to provide me with the resources needed to add 7 FTEs to the adjudication division to address this sustained increase in demand. The FTEs would consist of five permanent adjudicator positions, and two additional FTEs that would be time bound for a three-year period, tasked with

directly addressing the backlog to reduce wait times.

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I now turn to the recent work with the Office of the Registrar of Lobbyists. As you know, the *Lobbyists Transparency Act*, or LTA, designates me as the Registrar for the ORL by virtue of my position as Information and Privacy Commissioner. My responsibilities as Registrar under the LTA include a mandate to establish and maintain a registry for lobbyists and to oversee and enforce compliance with the Act.

We continue the work of educating lobbyists and the public about the Act and the Registry. Since our June appearance, we have updated three guidance documents and eight user guides.

We continue to publish *Influencing BC*, our online newsletter featuring updates on the recent legislative amendments, and *Who's Lobbying Who*, a monthly summary of active or re-activated Registration Returns. This public education work will ramp up over the coming year as the new positions provided in this year's budget are fully integrated.

ORL staff continue to manage the Lobbyists Registry to promote compliance and making changes to ensure the steps for registration are easy to follow. As an example, we recently built an "all MLA" checkbox into the Registry so that lobbyists don't need to enter the names of each of you separately when their lobbying activities are directed at all of you as MLA's collectively.

In September, my office hosted virtually the Lobbyists Registrar and Commissioners Network Conference.

The LRCN conferences provide a valuable opportunity to share jurisdictional developments among members on legislative reforms and lobbying issues. In our meeting this fall, we focussed on lobbying issues related to elections and social media. We also met with representatives of the Organisation for Economic Co-operation and Development to discuss their work in strengthening the principles of transparency and integrity in lobbying.

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I will spend my final minutes here this morning summarizing the remaining two elements of our 2022/23 budget request; the costs associated with inflation and the update our CaseTracker system.

Most of my budget for the two offices consists of salaries and benefits. We have a staff complement of 43 positions.

For the forthcoming fiscal year, my office is faced with an adjustment of \$202,000 in inflationary costs, which includes \$185,000 for salary increments and adjustments; an increase in our Shared Services costs of \$7,000, and an increase in our information system costs of \$10,000.

I have reviewed our budget in detail and have determined that we have exhausted our fiscal flexibility. Therefore, I am unable to absorb these cost pressures without reducing staffing resources and disrupting service to British Columbians.

I also am including \$363,000 in operating costs and \$275,000 in capital costs for my office's share of replacing the Case Tracker System. As you know, the funds for the first stage to update our almost 30-year-old system were approved in February, and I along with my fellow Officer's at 947 Fort Street appreciate the committee's support for the project.

PAUSE

To recap, I have three requests:

- Adjudicator positions to address wait times for citizens;
- my office's share of the cost to replace the CaseTracker System; and
- an adjustment to cover inflationary costs.

The combined operating budget request to cover these new and ongoing cost pressures is therefore an increase of \$1,507,000, for a total operating budget of \$9,096,000 and a capital budget of \$360,000 for the 2022/23 fiscal year.

This represents an increase of 12.44% to secure a complement of adjudicators to address wait times for inquiries, 4.78 % for the CaseTracker replacement, and 2.66% for inflationary cost pressures, an overall budget increase of 19.86% compared to the current fiscal year.

Before I invite your questions, I want to finish this presentation by acknowledging the incredible work being done by everyone at the OIPC and the ORL. The work of our team has supported the continuity of operations under the unique pressures brought on by the pandemic. I say with regret that my staff are encountering a greater number of frustrated individuals in the day-to-day course of their work.

Our team has met these circumstances in a very professional manner, often deescalating difficult situations. Whether it's COVID's effect or a general trend in society there is no excuse for conduct that crosses the line from frustration to abuse. We have in place strict protocols which allow our staff to disengage those who do cross that line in a manner that is fair and clear about expectations. And we provide full support and assistance to our office colleagues where that is called for.

I cannot say enough about the staff of the OIPC and ORL who serve British Columbians. Their service is exemplary, and it's my privilege to work with each one of them.

With that Chair, I thank you and the Committee for your attention this morning. My team and I would now be pleased to answer any questions you may have.