



ABOVE BOARD

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New Acting Information and Privacy Commissioner

Welcome Acting Commissioner Jackie Lake Kavanagh

Effective May 6, 2024, Jackie Lake Kavanagh was appointed as the Acting Information and Privacy Commissioner until the position is permanently filled in accordance with the Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015).

Ms. Lake Kavanagh previously served as this province's Child and Youth Advocate from 2016 to 2021. Prior to that role she served as Assistant Deputy Minister with the Department of Advanced Education, Skills and Labour, and Assistant Deputy Minister for the Public Safety and Enforcement Branch, Department of Justice and Public Safety. Throughout her public service career, she also held a number of senior positions with the Department of Justice and Public Safety.



Acting Commissioner's Message

I am pleased to take on my new role of Acting Information and Privacy Commissioner while recruitment is underway to find a permanent Commissioner. I have always held this Office in high regard and I look forward to providing leadership and supporting this valuable work during my time here. I have received a very warm welcome from staff. Their knowledge, expertise and commitment continues to impress me. I wish former Commissioner Michael Harvey my sincere best.

Permanent Commissioner Appointment Process

In accordance with section 85(3) of ATIPPA, 2015, the Speaker of the House of Assembly established a selection committee for the permanent appointment of the Information and Privacy Commissioner. For more information on this permanent appointment process, please see section 85 of ATIPPA, 2015 and the [House of Assembly news release](#).

Privacy and IP Addresses – Supreme Court of Canada Decision

In this case, [R. v. Bykovets, 2024 SCC 6](#), the Supreme Court of Canada (SCC) was asked to determine whether there was a reasonable expectation of privacy attached to an IP address.

What is an IP Address?

- An IP address is a unique identification number that identifies internet-connected activity and enables the transfer of information from one source to another.
- An IP address identifies the source of every online activity and connects that activity (through a modem) to a specific location.
- An Internet Service Provider (ISP) keeps track of the subscriber information that attaches to each IP address.
- A user's ISP can be determined by entering their IP address into an IP lookup website. The police can then request subscriber information for the assigned IP address from the ISP.
- IP addresses are the means by which internet-connected devices both send and receive data.

Background

While the police were investigating fraudulent online purchases from a liquor store they learned that the store's online sales were managed by a third party payment processing company. The police asked the third party company for the IP addresses used for the fraudulent transactions under investigation and the third party identified two IP addresses. The police then had to obtain an order compelling the addresses' Internet Service Provider (ISP) to disclose the subscriber information for each IP address which led to identifying an individual. The individual who was identified, and who later became the appellant in the court proceedings, alleged that the police request for the IP address violated his right against unreasonable search and seizure under section 8 of the **Canadian Charter of Rights and Freedoms** and that he had a reasonable expectation of privacy in his IP address.

Canadian Charter of Rights and Freedoms

Section 8 of the **Canadian Charter of Rights and Freedoms** guarantees "the right to be secure against unreasonable search or seizure." The objective of this section is to protect the right to privacy, including informational privacy, that is, the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others. Courts assess an expectation of privacy by analyzing many difference factors such as: the subject matter of the search; a claimant's interest in the subject matter; a claimant's subjective expectation of privacy and whether the subjective expectation of privacy is objectively reasonable.

Courts must determine what degree of privacy one ought to have. To read the full analysis of the SCC please refer to the [case](#).

Court Decision

In this decision, the Court found that Canadians have a reasonable expectation of privacy in their IP address. IP addresses provide a means through which to draw immediate and direct links about the user behind specific Internet activity.

The Court stated at paragraph 90:

Thus, viewed normatively, s. 8 of the Charter ought to extend a reasonable expectation of privacy to IP addresses. They provide the state with the means through which to obtain information of a deeply personal nature about a specific Internet user and, ultimately, their identity whether or not another warrant is required. An IP address plays an integral role in maintaining privacy on the Internet. It is the key to unlocking an Internet user's online activity and the key to identifying the user behind online activity. Given these serious privacy concerns, the public's interest in being left alone should prevail over the relatively straightforward burden imposed on law enforcement. Recognizing a reasonable expectation of privacy in IP addresses would ensure that the veil of privacy all Canadians expect when they access the Internet is only lifted when an independent judicial officer is satisfied that providing this information to the state will serve a legitimate law enforcement purpose.

This is an extremely important decision in terms of the current reality where almost all individuals are engaged on the Internet in some form. This decision will likely impact future efforts to identify individuals and their activities through IP addresses.

City of St. John's v. OIPC

Background

The City of St. John's owns St. John's Sports and Entertainment Limited, which owns and operates the Mary Brown's Centre ("Centre"). Employees of the Centre filed harassment complaints, and after a workplace investigation was conducted, the complaints were settled. The Centre also resolved disputes with its hockey tenant.

The City received an access to information request for two items in the Centre's financial statements:

- an "Employee amount" showing financial liability relating to the settlement with employees; and
- a "Tenant Amount" reflecting payments to the Centre to settle both employee and other issues.

ATIPPA, 2015 exceptions applied by the City

The City applied various sections to withhold the information:

- sections 35(1)(b) and 35(1)(g) - disclosure harmful to the financial or economic interests of a public body;
- section 30(1) and 30(2) – legal advice; and
- while not listed as an exception to access under ATIPPA, 2015, the City also claimed that settlement privilege applied to withhold the information.

Can the City withhold the information under section 35(1)(b)?

Section 35(1)(b) allows public bodies to withhold information “which could reasonably be expected to disclose financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value.” The Court found that neither the Employee amount nor the Tenant amount had monetary value. While the Centre expressed concerns that if the employee amount was known, some employees with closed settlement files may choose to reopen their files, the Court found there was no evidence to support this conclusion.

Can the City withhold the information under section 35(1)(g)?

Section 35(1)(g) allows public bodies to withhold information where the disclosure of such information “could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body.” The Court found that for both the Employee amount and the Tenant amount, the information could not be used to re-create the value of any individual settlement or predict the value of a future severance claim. The Court found there was not enough evidence to support a reasonable expectation of probable harm to the City if the amounts were disclosed.

Can the City withhold the information under section 30?

The Court found that the information could not be withheld under section 30 (legal advice). For information to be withheld under litigation privilege, a public body must prove that the dominant purpose of the document is litigation and in this case the information appeared in financial statements and the expenses had already occurred. Similarly, the Court also found that the information was not subject to solicitor-client privilege as it did not qualify as communication between solicitor and client.

Can the City withhold the information under settlement privilege?

The Court found that settlement privilege is not an exception to disclosure. It noted that the information could be redacted under section 35(1)(g) if it would prejudice the public body, however, in this case no prejudice or financial harm was found.

Court Decision

The City was ordered to comply with the Commissioner’s recommendation to release the information from the financial statements.

To read the full case please see: [City of St. John’s v. NL \(Information and Privacy Commissioner\) 2024 NLSC 40 \(Supreme Court of NL\)](#).

Reminder - New Forms!

Our Office has new forms and new guidelines to assist coordinators and individuals in the complaint process!

We ask that all Coordinators use our new forms when submitting a Disregard Application or Time Extension Application to our Office. Please visit our [Public Body Forms webpage](#) to view the new forms.

Similarly, we ask that all Complainants use our new complaint forms, which can be found on our [Public Forms webpage](#).

Upcoming Events – Save the Date!

Right to Know Week – September 23 - 29, 2024

Right to Know Day is on September 28th every year. It is an internationally recognized day dedicated to creating awareness about the importance of people's right to access government information, while promoting freedom of information as essential to both democracy and good governance.

Right to Know Day now extends to a week of celebrations, known as Right to Know Week, which will take place this year from September 23 - 29, 2024.

Join our Office along with other provinces and territories across Canada in celebrating Right to Know Week!

Please check our website or contact our Office for updates on activities and plans in celebrating Right to Know Week!

APSIM Conference – November 28 - 29, 2024

The Access, Privacy, Security and Information Management (APSIM) Conference is scheduled for November 28th and 29th this fall. This will be an in-person conference in St. John's, NL. There will also be a virtual half-day municipal specific workshop, which will take place a few days prior to the conference (date to be confirmed).

This conference aims to bring together members of the Newfoundland and Labrador access, privacy, information security, and information management communities to promote collaboration and build awareness of the overlap and interplay between these various disciplines.

This conference is intended for individuals working within the public sector, health care community, and anyone interested in access, privacy, security, and information management issues.

Please check our website or contact our Office for updates on APSIM and registration deadlines!

ATIPPA, 2015 Privacy Breach Statistics April 1 – June 30, 2024

During the second quarter of 2024 (April 1 – June 30, 2024), OIPC received 37 privacy breach reports from 19 public bodies under ATIPPA, 2015. This is a significant decrease from the 59 breaches reported during the previous quarter.

There was one intentional breach where an employee accessed information for purposes other than work related duties and without authorization. It was determined that the employee accessed information and provided information to other individuals that had no right to the information. The public body is continuing its investigation and will be providing OIPC with updates when available.

Summary by Public Body	
Central Health	1
City of St. John's	1
College of the North Atlantic	5
Department of Digital Government and Service NL	2
Department of Education	1
Department of Health and Community Services	2
Department of Immigration, Population Growth and Skills	2
Department of Justice and Public Safety	1
Department of Labrador Affairs	1
Department of Municipal and Provincial Affairs	1
Human Rights Commission	1
Memorial University	7
Newfoundland and Labrador Housing Corporation	2
Public Service Commission	2
Royal Newfoundland Constabulary	2
Town of Brigus	1
Town of Gander	1
Town of New-Wes-Valley	1
Treasury Board Secretariat	3

