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Privacy law update good Job needs full-time commissioner

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On the Cutting Edge / Brian T. D. Bowman

The Manitoba government is planning to amend the province's outdated privacy and access to information laws. The amendments include the controversial creation of a Manitoba Information and Privacy Adjudicator, rather than a Manitoba Privacy Commissioner as promised by Gary Doer.

Four years after the province held public consultations, it is welcome news that the province is finally introducing amendments to Manitoba's Freedom of Information and Protection of Privacy Act (FIPPA) and Personal Health Information Act (PHIA).

FIPPA provides rights to Manitobans in respect of their personal information collected by Manitoba's government bodies, while PHIA applies to personal health information collected by certain public and private sector organizations. Considering that FIPPA and PHIA were brought into force in the late 1990s, both laws are in desperate need of modernization.

The oversight for compliance with FIPPA and PHIA is administered by the Manitoba Ombudsman. The Ombudsman does not have order-making power, but merely has power to "recommend" compliance. Instead of an Ombudsman, nine other provinces and territories have a privacy commissioner including all of the other western provinces. Partly because the term "privacy commissioner" is easy to understand, many of these privacy commissioners enjoy much greater public profile than the Manitoba Ombudsman.

Perhaps for this reason, Doer promised in 1999 to "establish a (Manitoba) Privacy Commissioner as is the case in other jurisdictions". Notwithstanding Doer's promise, the Manitoba government is proposing the creation of an Information and Privacy Adjudicator who would be appointed as an officer of the legislature. He or she would have the power, only at the request of the Ombudsman, to issue orders against public bodies that have not acted on the Ombudsman's recommendations. For example, an order could require a public body to change the way it collects, uses or discloses personal information.

Manitobans would still have to initiate FIPPA and PHIA complaints to the Ombudsman. This could increase the amount of time and cost to organizations and complainants seeking the timely resolution of privacy or access to information disputes.

And despite the billing by the government that the Information and Privacy Adjudicator would be "independent", he or she would be requested to weigh in on privacy and access to

information disputes only if the Ombudsman deemed it appropriate. Parties who do not agree with the Ombudsman's initial handling of a complaint would not have the ability to complain directly to the Information and Privacy Adjudicator.

What if the Ombudsman did not agree with previous decisions by the Information of Privacy Adjudicator? Over time, the Ombudsman could simply decide not to request that the Information and Privacy Adjudicator review any of the Ombudsman's decisions.

The Information and Privacy Adjudicator would have the limited mandate of reviewing decisions by the Ombudsman. In other provinces like Saskatchewan, privacy commissioners have greater responsibilities including informing the public of their privacy rights. In Manitoba, this responsibility would remain with the Ombudsman.

The amendments set up a structure of increased bureaucracy where the Information and Privacy Adjudicator may be effectively viewed as a junior Ombudsman. If the amendments are passed into law, Manitobans will likely be as confused about their privacy and access to information rights as they are now.

Manitobans deserve and should demand a Privacy Commissioner as promised by Gary Doer.

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