

Federal political parties covered by B.C. privacy law, commissioner's office finds

Wednesday, March 23, 2022 @ 12:32 PM | By [Ian Burns](#)

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The office of B.C.'s information and privacy commissioner has ruled that federal political parties are subject to the province's privacy law, a decision that experts say could have a ripple effect across the country.

The [order](#) from adjudicator David Loukidelis comes as a result of a complaint by three British Columbia residents, who had asked the federal Liberal, Conservative, NDP and Green parties about what personal information they possessed about them, how it was used and to whom it had been disclosed. They tried to have their concerns investigated by the Office of Information and Privacy Commissioner (OIPC), but the parties argued that, because they were subject to rules in the *Canada Elections Act* and other federal statutes relating to data collection, the B.C. *Personal Information Protection Act* (PIPA) did not apply to their personal information practices.

But Loukidelis rejected that argument, finding that PIPA is a constitutionally valid law in respect of property and civil rights and matters of a local nature, both areas of provincial jurisdiction, and the parties are an "organization" within the meaning of the Act. In British Columbia, provincial political parties are covered by PIPA as well.

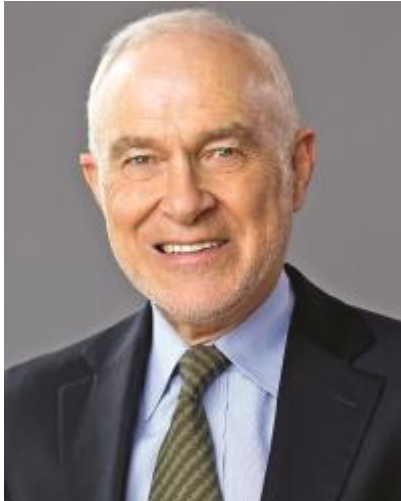
"It is not constitutionally inapplicable to the organizations because of the constitutional doctrines of paramountcy or interjurisdictional immunity," he wrote. "It follows that an OIPC investigation of the complaints about the respondent parties can proceed."

Loukidelis, who formerly served as B.C.'s deputy attorney general and justice minister, wrote that PIPA is a law of general application in the province validly enacted under provincial heads of authority, so arguments that Parliament intended there to be no role for a provincial law were not persuasive.

"It is open to Parliament to legislate in respect of federal political parties' collection, use and disclosure of personal information in a manner that creates uniform rules for all parties and unequivocally ousts provincial legislation," he wrote. "But this possibility is not a basis for a finding that, under the paramountcy doctrine, PIPA's application would frustrate a federal purpose."

Colin Bennett, a political science professor at the University of Victoria who specializes in privacy and data protection issues, said the ruling "moves the goalposts" in terms of how data is handled by federal political parties, if it is upheld after possible judicial review. He also pointed to a [previous report](#) from the B.C. privacy commissioner's office, which showed that the data collected by provincial political parties was extensive, ranging from a person's name and address to their religion and occupation.

“It is only reasonable to assume that the federal political parties are doing the same thing — they have more money and more resources to do the analytics,” he said. “So, number one it would mean the federal political parties would have to improve their standards to comply with the law, and it would also mean that B.C. citizens would have more rights than anybody else in the country with respect to the data held by federal political parties. And how will citizens in other parts of the country react to that?”



David Young, David Young Law

Privacy lawyer David Young noted the federal privacy commissioner ruled last year that he did not have jurisdiction over political parties because Canada’s *Personal Information Protection and Electronic Documents Act* (PIPEDA) primarily applies to the commercial activities of organizations, and political parties are not commercial in nature.

“And the *Canada Elections Act*’s privacy rules are very bare bones, because all they really say is that a political party must have a privacy policy, and it stipulates what headings of items must be in it,” the principal of David Young Law said. “I think this ruling is very significant, and if it is upheld then these political parties will have to follow these rules and get consent in British Columbia — so are you going to have one law for B.C. and another for rest of country? It just doesn’t make sense, and there is huge pressure at the national level to amend PIPEDA and make political parties subject to it or a similar law. There has been huge political pressure in Ottawa to do it, but it hasn’t happened yet.”

Bennett said what should happen now is for the parties improve their overall privacy rules to meet with the B.C. standard.

“Alternatively, if they continue to insist on the principle that they are only governed by federal law they should go to the government and say let’s make PIPEDA apply to us — and that would be the end of the matter because there would be a consistent standard across the country,” he said. “But this issue may drag on for a while.”

Liberal Party of Canada spokesperson Matteo Rossi said the party was reviewing the decision.

“All of the Liberal Party’s democratic engagement fully complies with Elections Canada rules and

regulations, and follows our party's clear and stringent privacy policy, which is designed to protect individual Canadians' private information by ensuring its confidentiality, security and accuracy," he said.

Representatives of the federal Conservatives and NDP did not respond to a request for comment. The Green Party did not make submissions to Loukidelis during his investigation.

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