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<p>PRIVACY LAW IN THE PRIVATE SECTOR Jeffrey Kaufman Release No. 2023-10, December 2023</p>

This indispensable guide to the law regulating privacy in the private sector in Canada provides the text and cross-referencing for current federal and provincial statutes and regulations that address private sector privacy, together with annotations, commentaries and case law references and summaries.

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Privacy law in the Private Sector: An Annotation of the legislation in Canada

- This release features updates to the case law in Chapter 3 (Personal Information Protection Act (British Columbia)). Appendices A, B, and G, have been updated. Appendix M (Prince Edward Island) has been added.

Highlights:

APPENDIX B. SASKATCHEWAN—APPENDIX B2. THE HEALTH INFORMATION PROTECTION REGULATIONS—The appendix has been replaced as the Act was repealed and replaced. The Appendix now includes *The Health Information Protection Regulations, 2023*.

APPENDIX M—PRINCE EDWARD ISLAND—APPENDIX M1—HEALTH INFORMATION ACT—A new appendix has been added for Prince Edward Island. Appendix M1 provides the full text of the *Health Information Act, 2014*.

APPENDIX M—PRINCE EDWARD ISLAND—APPENDIX M2—HEALTH INFORMATION REGULATIONS—A new appendix has been added for Prince Edward Island. Appendix M2 provides the full text of the *Health Information Regulations, 2023*.

APPENDIX B. SASKATCHEWAN—APPENDIX B1. HEALTH INFORMATION PROTECTION ACT—PART 1 PRELIMINARY MATTERS—APPENDIX B1:3—DEFINITION UPDATE—The definition of “custody or control” has been added to the appendix. The Commissioner in *Medical Transportation Manager, Re, 2023 Carswell-Sask 475* (Sask. I.P.C.) defined the terms as follows: “‘Custody’ is a physical possession of a record by a trustee with a measure of control” and “‘Control’ means having authority over a record. A record is under a trustee’s control when the trustee has the authority to manage the record, including its disposal”.

APPENDIX B. SASKATCHEWAN—APPENDIX B3. AN ACT RESPECTING THE PROTECTION OF PRIVACY—PART 1 VIOLATION OF PRIVACY—APPENDIX B3:3—SECTION 2 VIOLATION OF PRIVACY—In *Bierman v. Haidash, 2021 SKQB 44, 2021 CarswellSask 123* (Sask. Q.B.), the defendant doctor used the last name of his former partner when training staff on how to use a medical records database. He briefly accessed records of the plaintiff for which the plaintiff brought an action for invasion of privacy. The defendant was found liable, and damages were awarded as he did not have a right to access the information since she was not his patient.

APPENDIX A. MANITOBA—APPENDIX A3. THE PRIVACY ACT—APPENDIX A3:3 SECTION 2 VIOLATION OF PRIVACY—In *Larocque v. Yahoo! Inc.*, 2023 SKCA 63, 2023 CarswellSask 264 (Sask. C.A.), there was a question regarding the wording of Manitoba’s Privacy Act compared to other provincial statutes. Manitoba required that the violation be “substantial” and “unreasonable” while others state that the violation be committed “wilfully.” The Court of Appeal stated that “[the trial Judge] noted this distinction and also observed that he had “not found any cases that have addressed the question whether this wording raises a mental element associated with the statutory tort”.

APPENDIX G. ONTARIO—APPENDIX G1. PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004—PART V ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION—APPENDIX G1:58 SECTION 55 CORRECTION—In *Hospital For Sick Children, Re*, 2023 CarswellOnt 14022 (Ont. Information & Privacy Comm.), the father of a minor patient requested that a hospital remove a record of the results of a genetic test from the patient’s record as he said it was false and inaccurate. However, Section 55(8) places the onus on the person making the request to demonstrate why the record is incorrect. The complainant did not provide information demonstrating his allegations hence the hospital had insufficient evidence to evaluate the request. The adjudicator noted that Section 55(10) does not give a person the right to have incorrect information “removed, replaced, or amended in such a manner that the incorrect information is completely obliterated—it must remain legible.”

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