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Genealogy and the Law in Canada 2013

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GENEALOGY AND THE LAW IN CANADA WORKSHOP

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WHERE THE LAW INTERSECTS WITH GENEALOGY:

1. Who controls access to the information that you are seeking about a family or individual?
2. Who controls the information about a family tree that you pull together?
   - What about preventing the spread of misinformation?

1. WHO CONTROLS ACCESS TO THE INFORMATION ABOUT A FAMILY OR INDIVIDUAL THAT YOU ARE SEEKING?

- Privacy law
- Personal data protection legislation
- Access legislation
  - What about information in cemeteries?
    - Cemeteries legislation
  - What about health-related information?
- Copyright
  - Technological Protection Measures

2. WHO CONTROLS THE INFORMATION THAT YOU PULL TOGETHER? WHAT ABOUT MISINFORMATION?

- Personal data protection legislation for professional genealogists
- Copyright
  - In genealogical software, in photographs, in church records, in vital statistics, in tombstones, in death notices and obituaries…
- What about preventing the spread of misinformation?
  - Personal data protection legislation re: professional genealogists
  - Copyright
    - Moral Rights
  - Libel law

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- Privacy law
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- **Copyright**
  - **Technological Protection Measures - 2012**

WHAT ARE TECHNOLOGICAL PROTECTION MEASURES?

Defined by Parliament in the new s.41:

"any effective technology, device or component that … controls access to a work, …[to a recorded performance] or to a sound recording … [that is being made available under the authority of the copyright holders]"

AND

"any effective technology, device or component that… restricts the doing of any act [which is controlled by a copyright holder or for which the rightsholder is entitled to remuneration]"

There are similar protections in the new s.41.22 for "rights management information in electronic form" [usually referred to as DRM] – which cannot be removed or altered.

TPMS EXISTED BEFORE 2012 – WHAT CHANGED IN 2012?

Since 2012 it has become illegal in Canada to circumvent a digital lock (s.41.1 (a))

TPM provisions will in fact interfere with your access to information whether or not that information is merely data or facts and not in copyright or the works or recordings or performances "behind" the locks are older and thus out of copyright because, although the Act defines TPMs in terms of works, performer's performances and sound recordings (which would be those within copyright as defined in the Act), how could a user ever know that when there is no exception for circumventing in order to check?

CIRCUMVENTION OF TPMS IS **NOT** ABOUT INFRINGEMENT (THE COPYRIGHT CONVERSATION) – IT IS ABOUT CONTRAVENTION-

Under **s. 42 (3.1)** ordinary Canadians face

(*a) on conviction on indictment,* … a fine not exceeding $1,000,000 or … imprisonment for a term not exceeding five years or … both; or

(*b) on summary conviction,* … a fine not exceeding $25,000 or … imprisonment for a term not exceeding six months or … both.

AND, under s.41.11(2), all the remedies available for infringement.

Theoretical question whether TPM and related Digital Rights Management (DRM) provisions are copyright at all – but now in *Copyright Act*.

ARE THERE EXCEPTIONS ALLOWING CIRCUMVENTION OF TPMS?

Parliament has provided the following exceptions – situations in which you can "go behind" a digital lock:

- For encryption research (s.41.13)
- For law enforcement (s.41.11)
- To allow interoperability between programs where a person owns or has a license for the program and circumvents its TPM (s.41.12)
- Where a person is taking measures connected with protecting personal data (s.41.14)
- For verifying a computer security system (s.41.15)
- When making alternative format copies for the perceptually disabled (s. 41.16)

NOTE – the exceptions to copyright infringement ("users' rights" such as fair dealing, for instance) do NOT apply in the context of TPMs.

HOW DOES THE NEW LAW ON TPMS CHANGE THINGS?

Canada's Copyright Act still provides the law concerning all the rights that a copyright holder holds – and in what –

For example, it defines

"work" - "original work"- "substantial portions of works"

Ideas and facts are still <u>not</u> covered by copyright – but if you reproduce a chart containing those facts, there may be copyright in the chart (as a compilation of the facts). A chart will still only be a copyrightable compilation if its arrangement of the facts is completely original

– the arrangement of a telephone directory, for example, is not original and the directory is not in copyright

-- genealogy charts seem standard – no copyright

In Canada, an insubstantial taking from a copyright work is still not an infringement…

BUT, YOU CANNOT GO BEHIND A DIGITAL LOCK, RISK-FREE, TO MAKE AN INSUBSTANTIAL TAKING BECAUSE YOU WILL HAVE TO CIRCUMVENT THE LOCK… WHICH IS NOW ILLEGAL…

AND YOU CANNOT, RISK-FREE, EXERCISE YOUR USER'S RIGHTS UNDER COPYRIGHT

WHEREAS IT USED TO BE SAFE TO SAY

- *IF you can get access, you can copy –*
  - *ON THE BASIS OF YOUR RIGHT for PRIVATE STUDY AND RESEARCH (PART OF "FAIR DEALING" IN THE COPYRIGHT ACT (s.29))*
  - *On the authority of the 2004 Supreme Court of Canada decision in CCH et al v. Law Society of Upper Canada*

NOW

- *If you can get access without circumventing a digital lock, you can copy… for research and private study…*

ASSUMING NO DIGITAL LOCKS, WE AWAIT THE SUPREME COURT CLARIFYING SUBSTANTIALITY

- ***Robinson et al v France Animation S.A. et al*** – cases numbered 34466, 34467, 34468, 34469 –
  - 1982 sketches created for proposed children's TV series "Robinson Curiosity"
  - 1985 Copyright Office issued certificate of copyright registration for "Robinson Curiosity"
  - 1995 first episode of "Robinson Sucroe" was broadcast in Quebec
  - Rightsholders in "Robinson Curiosity" are suing those involved in "Robinson Sucroe" for infringement
- Plaintiffs' success at trial reduced by Quebec CA (2011 QCCA 1361)
- It arises from facts occurring before the recent changes to the Copyright Act and will be decided on the law as it stood in Canada before the *Copyright Modernization Act* created the current state of the *Copyright Act*.
- Appeal heard by SCC February 13, 2013 – judgment reserved…

- We will mention copyright matters further when we turn to discuss what you can do with your family tree research after you have put it together…

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  - Technological Protection Measures - 2012

WHEREAS BEFORE 2011, IN CANADA, YOU MIGHT ONLY FIND YOURSELF REALISTICALLY INVOLVED IN AVOIDING OTHERS' PRIVACY INTERESTS IN QUEBEC…

Quebec has a provincial statute which it has entitled the

Quebec Charter of Rights and Freedoms

s.4 Every person has a right to the safeguard of his dignity, honour and reputation

s.5 Every person has a right to respect for his private life

s.9 Every person has a right to non-disclosure of confidential information

Some years ago, the Supreme Court of Canada rendered a decision on a case brought by a woman in Quebec whose unidentified photograph appeared in magazine published in Quebec:

- **Aubry v.Editions Vice Versa (1998)**

THERE HAS BEEN AN IMPORTANT DEVELOPMENT IN THE COMMON LAW: THE ONTARIO COURT OF APPEAL, IN 2011…

- A new legal action for "intrusion upon seclusion"
- There will be liability where someone
  - (1) intentionally (including recklessly) intrudes, physically or otherwise,
  - (2) by invading, without lawful justification, the seclusion of another or his private affairs or concerns, and
  - (3) that invasion would be highly offensive to a reasonable person, causing distress, humiliation or anguish but not necessarily economic harm.

In this case***, Jones v Tsige***, the defendant Tsige, one bank employee, repeatedly accessed the bank records of another employee, the plaintiff Jones, as part of a personal feud.

Jones was awarded $10,000 (but not costs).

BUT IN ADDITION TO AVOIDING INTRUDING UPON SECLUSION…

- Your access to information about others held by organizations had already been limited by law because…
- Since 1977 we have had increasing PERSONAL DATA PROTECTION legislation in this country – beginning in the public sector…
- Especially since 2004, most private sector organizations in Canada have also become subject to personal data protection legislation – in most places by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA)

HOW MATTERS OF PRIVACY AND PERSONAL DATA PROTECTION RELATE IS NOT ALWAYS CLEAR – EVEN TO COURTS…

In 2005, not long after PIPEDA came into effect, the Federal Court of Appeal decided, in a music copyright case (**BMG v John Doe**), that principles of privacy were the applicable law to apply, not the new personal data protection statute PIPEDA.

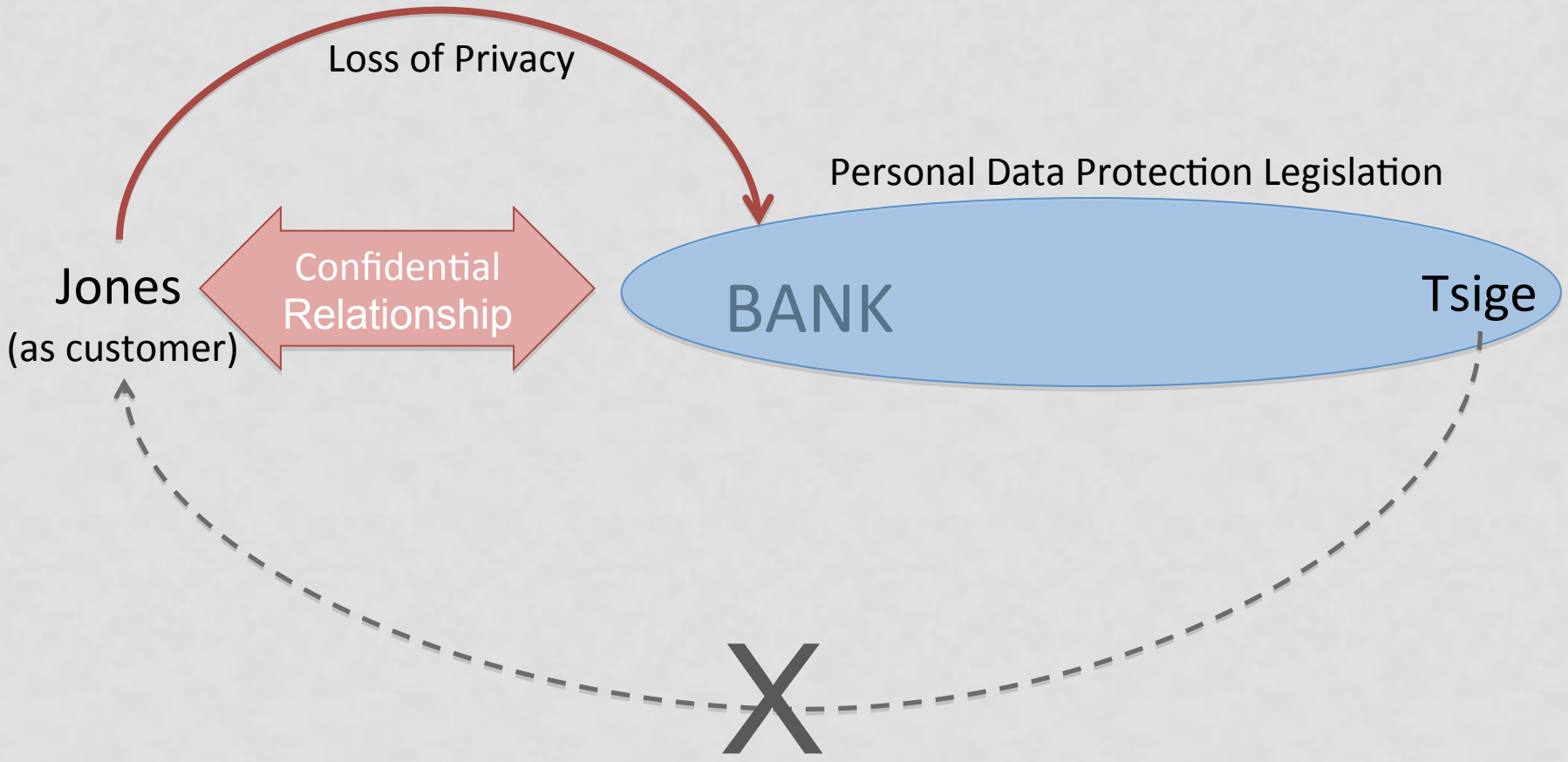
> In a published piece, "Battleground between New and Old Orders: Control conflicts between copyright and personal data protection, " I argue this case was wrongly decided in this respect.

Similarly, I argue in chapter which will be available in February that Justice Sharpe, for the Ontario Court of Appeal, was wrong to declare the tort of "**intrusion upon seclusion**" in **Jones v Tsige** because that situation was already completely dealt with by **PIPEDA**, based upon the confidentiality which exists between a bank and its customers (a relationship of confidence made explicit in the federal *Bank Act*)…

IS THERE REALLY A NEW PRIVACY PROTECTION AT COMMON LAW FOR "INTRUSION UPON SECLUSION"?

JONES V TSIGE (OCA, 2012) ON THE FACTS

- AS DIAGRAMED BY WILKINSON IN CHAPTER "THE CONFIDENTIALITY OF SECLUSION: STUDYING INFORMATION FLOWS TO TEST INTELLECTUAL PROPERTY PARADIGMS"



WHO CONTROLS ACCESS TO THE INFORMATION THAT YOU ARE SEEKING ABOUT A FAMILY OR INDIVIDUAL?

The new tort of "intrusion upon seclusion" may limit the ways in which you can go about seeking information about others…

You must avoid intruding upon the seclusion others enjoy…

Note, however, that the British Columbia courts are refusing to follow Ontario's lead: just this past July (2013), a British Columbia court again refused to accept that there is a common law action for protection of privacy such as "intrusion upon seclusion" (*Avi v Insurance Corporation of BC*).

THERE IS, HOWEVER, CERTAINLY PERSONAL DATA PROTECTION IN PLACE IN CANADA

- Collection
- Use
- Dissemination
- Disposal

- The whole "life cycle" of personally identifiable information, in the hands of an organization subject to this law, is affected by personal data protection legislation…

WHY DOES PERSONAL DATA PROTECTION AFFECT GENEALOGY?

- Under personal data protection legislation, only information about you is *your* data – information about other members of your family is *their* data.
- Under personal data protection legislation, the general principle is that if organizations hold data about other people, including the members of your family, organizations must NOT release it to you.
- If, on the other hand, organizations hold information about you, those organizations must release it to you.

SINCE EACH IS LEGISLATED BY A DIFFERENT ELECTED BODY, EACH STATUTE IS UNIQUE -- FOR EXAMPLE, IN THE PRIVATE SECTOR LEGISLATION, PIPEDA:

"personal information" means any information about an identifiable individual, but does not include the name, title or business address or telephone number of any employee of an organization

- *However, this particular legislation will not affect information you are gathering about individuals who have been dead more than 20 years…*
- *Or information gathered from records made over 100 years ago*

But each statute in Canada differs in these details…

HOW LONG MUST ORGANIZATIONS KEEP PERSONALLY IDENTIFIABLE INFORMATION CONFIDENTIAL ?

- Federal Privacy Act
- Ontario FOIPPA & MFOIPPA
- Alberta, Saskatchewan
- British Columbia, Nova Scotia, PEI
- Manitoba
- New Brunswick
- *PIPEDA (private sector)*

Eg. PHIA Nfld (2011)

- 20 years after death – and then the information falls out of the Act
- 30 years after death, out of Act
- 25 years after death, accessible
- 20 years after death, accessible
- 10 years after death, accessible
- *20 years after death, accessible (2011) or if document is over 100*
- *May disclose 20 yrs after individual's death, or, if shorter, 100 years after record made*
- *120 years after record created or 50 years after death*

HOW DOES THIS AFFECT GENEALOGY WORK ?

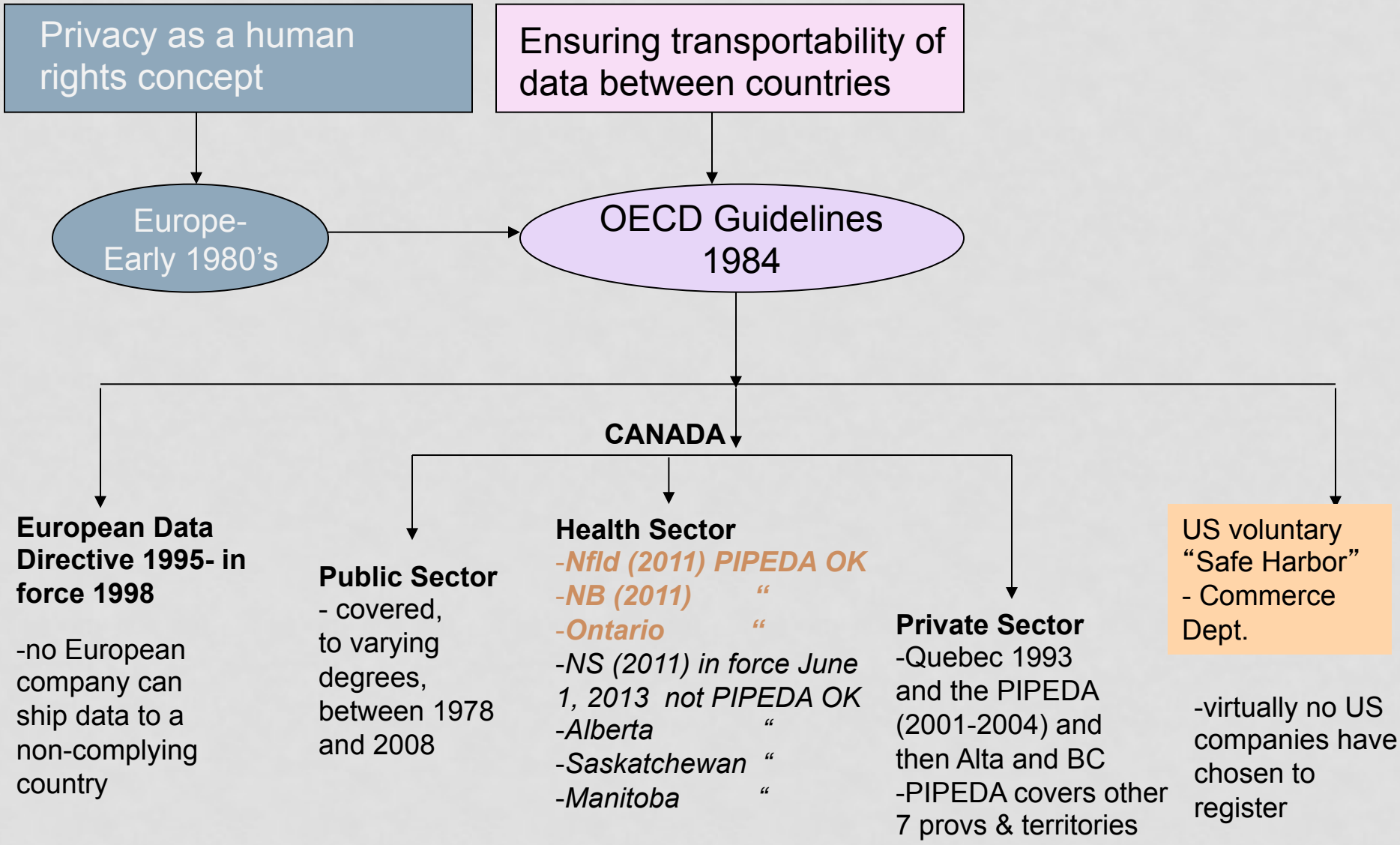
- Government and private sources will refuse to give information about people living or recently deceased to anyone working on genealogy …
- If you are working on a genealogy for money in Ontario, you yourself will have to comply with the federal private sector personal data protection legislation (PIPEDA) in your own handling of information you collect from any source about persons who are alive or recently deceased …

WHY DOES A GENEALOGIST WORKING ON FAMILY HISTORIES AS A HOBBY, NOT HAVE TO WORRY ABOUT HER OR HIS HANDLING OF INFORMATION ABOUT LIVING OR RECENTLY DEAD PEOPLE?

- *PIPEDA s.4(2) This part does not apply to (b) any individual in respect of information that the individual collects, uses or discloses FOR PERSONAL or DOMESTIC PURPOSES and does not collect, use or disclose for any other purpose*

- *PIPEDA s.4(2) This part does not apply to (c) any organization in respect of personal information that the organization collects, uses or discloses FOR JOURNALISTIC, ARTISTIC or LITERARY PURPOSES and does not collect, use or disclose for any other purpose.*

The Continuing Evolution of Personal Data Protection



HOSPITAL RECORDS, FOR EXAMPLE

Health is a provincial matter constitutionally;

Relevant legislation includes -

- Public Hospitals Acts
- Provincial Health Information Acts (where passed)
- PIPEDA (except where provincial legislation has been deemed equivalent)
- Provincial or territorial public sector personal data protection and access legislation where no specific health information legislation has been passed

And, even where there is no applicable statute, there can be Common Law precedents (except in Quebec).

AFTER THE TIME OF PROTECTION HAS EXPIRED:

Government sources will give information about identifiable individuals…

because they are subject to the "flip-side" of personal data protection legislation in the public sector ---

which is Access legislation ---

legislation that requires that any information held by government NOT explicitly required to be withheld be given to any one who requests it…

BUT ORGANIZATIONS IN THE PRIVATE SECTOR MAY NOT:

- There is no access legislation, so after personal data protection ceases to apply, there is no access to a person's information by *anyone* required by law – but nor is the information necessarily to be treated in any particular way by an organization governed by PIPEDA – so it could be released, at the organization's option
  - Clause 4.9 of Schedule 1 to PIPEDA provides for the principle that an individual must be able to access personal data held by businesses covered by PIPEDA – but there is no provision for access to the information about that individual after death in either the Schedule or the Act itself, see s.8.

BUT THERE IS INFORMATION PEOPLE HAVE ALWAYS BEEN ABLE TO GET – AND ARE STILL ABLE TO GET – FROM GOVERNMENT, ABOUT OTHERS – WHY?

Public sector personal data protection legislation and other laws specifically exempt from coverage various records that have traditionally been publicly available.

For example, your access to birth and death registrations, that have always been publicly available to anyone, is unaffected by the passage of all this new law since 1977… but whether you can access information about the records which lie behind the registrations is a different matter and has been the subject of a series of decisions in Ontario, for example… as we shall see in a moment…

IN DISPUTES ABOUT ACCESS INVOLVING PERSONAL INFORMATION, SOMETIMES ADJUDICATORS LOOK AT THE RECORDS AS A WHOLE…

- Nova Scotia FOIPOP Report of Review Officer FI-09-52 January 2012
  - Africville descendent (area of Halifax) asked Halifax Regional Municipality for information about lands and deeds in the names of relatives held between 1940 and 1969 and for information about the Africville expropriation which took place
  - The government tried block access claiming:
    - solicitor-client privilege - which was rejected; or
    - Personal data protection for the relatives – which was also rejected because the relatives were deceased more than 20 years so no personal data protection bar
  - Descendent was able to access the information requested.

IN OTHER CASES, THE ADJUDICATORS APPLY THE PRINCIPLE OF "SEVERABILITY" AND ANALYZE EACH RECORD INTO ITS CONSTITUENT PARTS -

- Ontario Freedom of Information and Protection of Privacy Commissioner's Office has dealt (since my book was written) with a series of requests for the personal information of others made in pursuit of genealogies (see PO-2802-I; PO-2807; PO-2877; PO-2979; PO-2998; PO-3060)
- Each record is analyzed individually - certain information in some death records, for instance, has been released but not in the case of other death records
- Each decision about each piece of information about an individual that appears in a record (including a record about another individual – ie, information about a wife in records about a husband now deceased – or about witnesses to a document about another) is based on weighing a number of factors:
  - The sensitivity of the information being sought about a person,
  - A person's expectation of confidentiality when the information sought was given,
  - A presumption of a diminished privacy interest after a person dies,
  - The risk of identity theft if information is released,
  - The possibility of benefits to unknown heirs by releasing information about a deceased.

INDIVIDUAL DECISIONS ON EACH RECORD IN PO-3060, BASED ON THE INFORMATION IN IT – NOT DECISIONS ON CLASSES OF DOCUMENTS…

Ministry to disclose

- On the Statement of Marriage under examination
  - Witnesses' signatures and addresses
- On at least one of the 4 Death Certificates under examination-
  - Dates of birth and place of birth
  - Place of death
  - Spouses' last names
  - Usual residences of the deceased

Ministry NOT to disclose

- On at least one of the 4 Death Certificates under examination-
  - Names, relationship to the deceased, signature and address of the informants

WHAT ARE PUBLIC IS NOT ALWAYS CLEAR – FOR INSTANCE, CEMETERIES ARE NOT NECESSARILY OPEN TO THE PUBLIC:

PIPEDA mitigates against public access to cemeteries owned by private operators and churches (Toronto's Mount Pleasant, London's St. Peter's) because of information about living or recently dead individuals on the stones and markers…

Public sector personal data protection legislation would similarly tend to restrict access to municipal cemeteries …

- Cemeteries legislation in some provinces states that cemeteries are to be publicly accessible (Saskatchewan and, in certain hours, BC) – but not all provinces have this law
- Ontario's Cemeteries Act is no longer in force: and the much awaited Funeral, Burial and Cremation Services Act, 2002, (in force since July 1, 2012) does not explicitly provide for a right of public access to cemeteries…

WHAT WOULD HAPPEN IN A CHALLENGE UNDER PIPEDA?

s.5(3)(c) of Ontario's newly in force *Funeral, Burial and Cremation Services Act* creates a duty for the operator of a cemetery to ensure that

> "every person has reasonable access to a lot or scattering ground at any time except as prohibited by the cemetery by-laws."

A Regulation to the new Act (Ontario Regulation 30/11), in s.110, requires a cemetery operator to maintain a register available for inspection by the public with the same information in it as was required under the old Ontario *Cemeteries Act*.

The new Act has a confidentiality provision (s.106) requiring persons who obtain information through their powers or duties under the Act or regulations to preserve secrecy.

2. WHO CONTROLS THE INFORMATION THAT YOU PULL TOGETHER? WHAT ABOUT MISINFORMATION?

- **Personal data protection legislation where there is a professional genealogists**
- Copyright
  - In genealogical software, in photographs, in church records, in vital statistics, in tombstones, in death notices and obituaries…
  - What about preventing the spread of misinformation?
    - **Personal data protection legislation re: professional genealogists**
    - Copyright
      - Moral Rights
    - **Libel law**

OTHERS CAN EXERCISE CONTROL OVER INFORMATION HELD BY PROFESSIONAL GENEALOGISTS -- THROUGH PERSONAL DATA PROTECTION LAW

Personal data protection legislation for professional genealogists (those who do genealogy as a commercial activity, ie, for money) means the person who is the subject of the information is entitled to control the genealogist's dealings with it …

But you can also stop someone else from making information available improperly if the person or organization is subject to PIPEDA -- for instance, information about your family members:

s.11 (1) [You] can file with the Commissioner a written complaint against an organization for contravening a provision of Division 1 or for not following a recommendation set out in Schedule 1.

(2) If the Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Part, the Commissioner may initiate a complaint in respect of the matter.

HOW ELSE CAN YOU STOP THE SPREAD OF MISINFORMATION?

One might think of bringing a lawsuit for libel but…

It is not possible to libel the dead – but, in your own work, in focussing on a deceased person, you must be careful not to be publishing an untruth about a living person which damages her or his reputation or you could be sued successfully for libel…

VERY IMPORTANT RECENT SUPREME COURT DECISION

- Libel (defamation) case about "publication" –*Crookes v Newton (2011 SCC 47)*
- The majority, Abella, Binnie, LeBel, Charron, Rothstein and Cromwell, were clear that linking does not constitute publication:
- "Making reference to the existence and/or location of content by hyperlink… is not publication of that content." [para.42 (Abella)] Justice Abella analogized between a traditional paper publishing world "reference" and the link in the new digital internet realm and said they perform the same function and therefore "a hyperlink, by itself, is content neutral"[para.30]
- only 2 of 9 (Chief Justice McLaughlin and Justice Fish) endorsed any of "contextual" approach taken in the courts below … though a 3rd judge, Justice Deschamps (retired this past August), also took a nuanced approach…
- *This decision on linking connects our conversation about libel with one about copyright: if you are not doing anything the copyright holder controls, you can do it without involving copyright –here* ***linking*** ***is taken, apparently, out of both copyright and libel consideration…***
- Although copyright is not mentioned, the way in which the majority expresses itself leaves little doubt that this Court would think the same way in a copyright case.

2. WHO CONTROLS THE INFORMATION THAT YOU PULL TOGETHER?

- **Copyright**
  - **In genealogical software, in photographs, in church records, in vital statistics, in tombstones, in death notices and obituaries…**

Where the information is being disseminated in a work which is in copyright, the holder of the right involved is entitled to control the spread of that work.

GENEALOGISTS SHARING RESEARCH WITH OTHERS -

- **Software in computer programs**
  - All the genealogists to whom I have ever spoken use genealogy programs under license and therefore must abide by the terms of the license…
  - The terms can and do often include giving up control of your work…
- **Photographs**
  - BEFORE 2012 rights were owned by the photographer, except where the photo was commissioned – and then the commissioning party owned them…
  - NOW, those who commission or have commissioned photographs have special rights to use photographs but do not "own" copyright them – the photographers control the copyrights…
  - This may make it harder for genealogists because the photographer will have to be identified if the photo is in copyright, even if the photo seems undoubtedly commissioned by the way the subjects are posed and you have permission of the subjects …

Recent Supreme Court "Pentalogy" July 12, 2012 included a decision on Fair Dealing that might be of interest –

Alberta (Education) et al v Canadian Copyright Licensing Agency (Access Copyright) 2012 SCC 37

Teacher-initiated copies for classroom use can be "research" or "private study" (2 of the then 5 categories of "fair dealing" in the Copyright Act – since 2012 amendments to the Act came into force there are 8 categories) and may be fair (ie, they may meet the six factor test set out by the Supreme Court in its 2004 decision CCH v Law Society of Upper Canada)

– The majority and minority in the decision differed over whether, on the facts before the court in this dispute arising out of a Tariff application to the Copyright Board of Canada for copies made across Canada (except Quebec) in K-12, such copies actually were fair

- The minority would have said "fair" on the evidence BUT
- Majority sent the case back to the Board for re-determination –

– The parties agreed before the Board and therefore we do not have the Board's reasons to guide us in knowing how to apply what the Supreme Court said

– Probably the decision makes it safer for you to provide copies of things to multiple fellow researchers and genealogists engaged in private study…

IF **YOU** HOLD THE RIGHTS IN WHAT YOU HAVE COLLECTED, YOU WILL HAVE THE FOLLOWING RIGHTS, OTHERWISE **YOU CANNOT** DO THE FOLLOWING THINGS WITH WHAT YOU HAVE

Right to publish
Right to reproduce
Right to telecommunicate to the public

- Posting a work to the internet is "authorizing" telecommunication and is therefore a right of the copyright holder – and not something the genealogist can do without permission if there is any copyright interest in the material in the posting which the genealogist did not create (the software generated charts the genealogist uses or the photographs embedded in the work, for example, would require permission of the copyright holders before posting)

FROM A TYPICAL LICENSE IN A GENEALOGY PRODUCT:

"You … agree that all Intellectual Property Rights in all material or content supplied… shall remain at all times vested in Us [the vendor]. You are permitted to use this website and the material contained therein only as expressly authorised by us."

"You… agree that the material and content… is … for your personal, non-commercial use only and that you may… download such material and content on to only one computer hard drive for such purpose. Any other use of the material and content … is strictly prohibited."

CONTINUING WITH A TYPICAL LICENSE:

"You agree not to assist or facilitate any third party to copy, reproduce, transmit, publish, display, distribute, commercially exploit or create derivative works of such material and content… you shall not assist or facilitate any third party to systematically extract and/or re-utilise parts of the contents… or… any substantial parts…"

" You may not create and/or publish your own database that features substantial parts of this Website."

RISKS IN VIOLATING A SOFTWARE AGREEMENT:

- The software agreement usually includes terms covering the copyright interests of the vendor – but it also covers other agreements (such as the terms of access to updates and to online resources and so on)
- Violating the terms of the agreement would put the genealogist at risk of either or both of the following claims in a lawsuit:
  - **Breach of contract**
  - **Copyright and/or patent infringement**
- And violating the agreement can mean an end to access to an online product or to updates and so on from a vendor, who may also refuse to sell to the genealogist again if the opportunity arises…

WHO CONTROLS THE INFORMATION IN A PERSON'S FAMILY TREE?

1. Greatest control often held by the **vendor of the genealogy software**!

2. Almost complete control of unpublished information about living relatives and recently deceased relatives lies, in the case of the living, with **the relatives,** individually, and in the case of the recently deceased, with their legal representatives, if that information is held by organizations anywhere in Canada.

3. Anyone can **access information in copyrighted records – unless they are protected by a TPM** which you must not circumvent**, but use of them is limited to research work**: no one can copy works created by others and redistribute those works without the copyright holders' permission – whether those works were created in Canada or elsewhere.

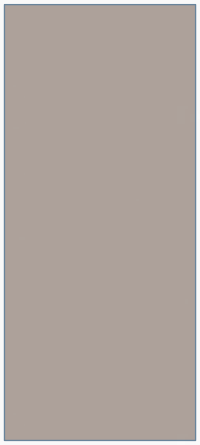
4. **As an individual in Canada, you control** in Canada:
   - Information about yourself held by government organizations and private commercial organizations (other than the press);
   - Expressions of information that you have created (unless you have agreed to give up this copyright control somehow – for instance, in your software license for using a genealogy program); and
   - Access to information held by government bodies about those who have been dead long enough (including your relatives) and also any government-held information that is considered "public".

THANK YOU!

Genealogy and the Law in Canada.

Genealogist's Reference Shelf Series.

Dundurn Press, with the Ontario Genealogical Society, **2010**.



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