

***WELCOME***

**Japan Federation  
of Bar Associations**

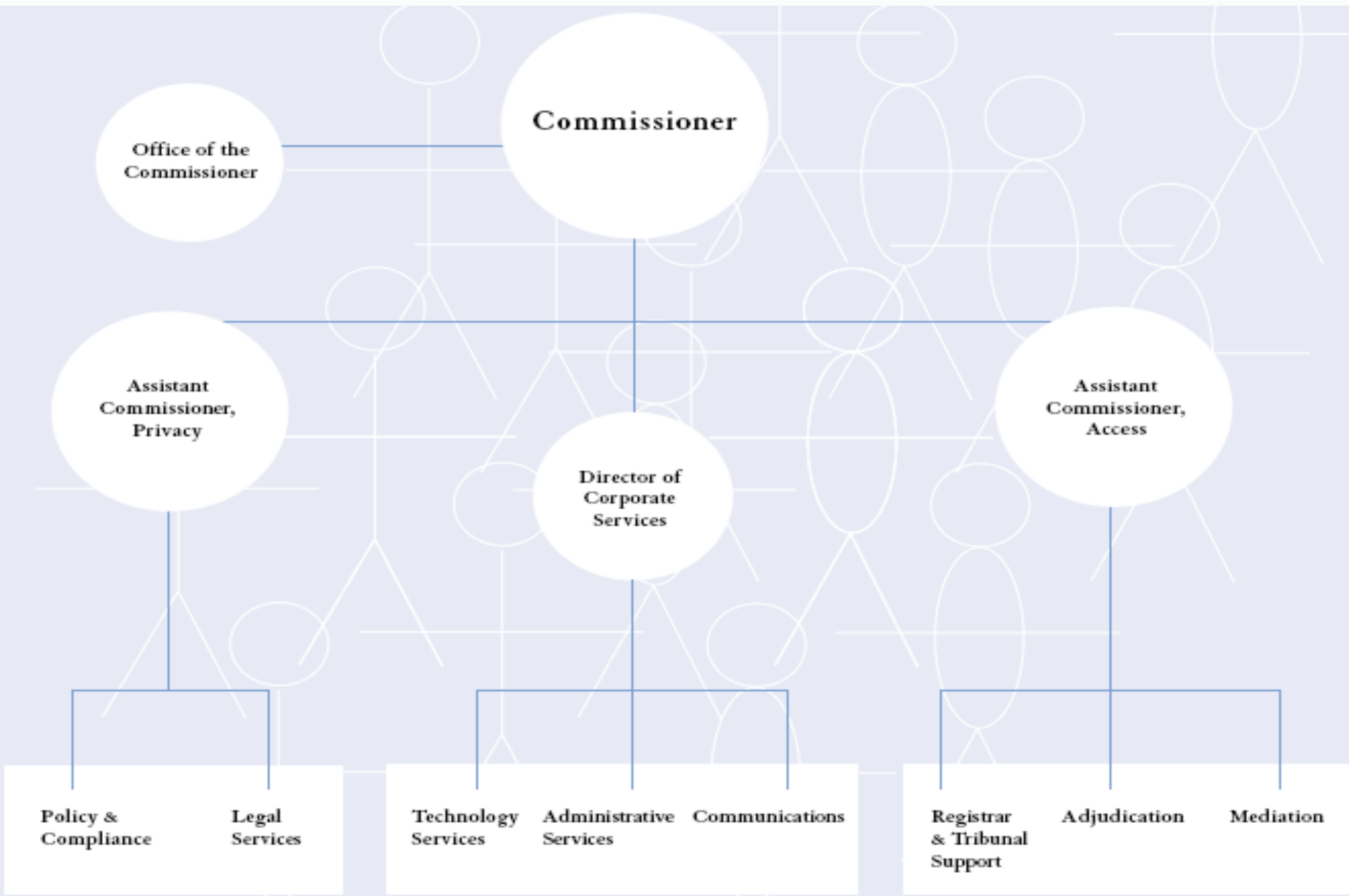
**Information and Privacy Commissioner of Ontario**  
*April 15, 2010*

# Presentation Outline

- 1. Role of the IPC*
- 2. Freedom of Information and Protection of Privacy Act (FIPPA)*
- 3. Access and Freedom of Information in Ontario*
- 4. Conclusions*

# *Role of the IPC*

# Corporate Structure of the IPC



# IPC: Our Role

- The IPC serves as an oversight agency, providing an independent review of government decisions and practices;
- The Commissioner is an officer of the legislature reporting to the legislative assembly;
- The Commissioner remains independent of the government of the day to ensure impartiality.

# IPC Mandate

**Under its statutory mandate, the IPC is responsible for:**

- Investigating privacy complaints;
- Resolving appeals from refusals to provide access to information;
- Ensuring that organizations comply with the access and privacy provisions of the *Acts*;
- Educating the public and raising awareness of Ontario's access and privacy laws;
- Conducting research on access and privacy issues; providing advice and comment on proposed government legislation and programs.

# Commissioner's Powers

## **The Commissioner has the power to:**

- Offer comment on the privacy protection implications of proposed programs of institutions;
- In appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- Engage in or commission research into matters affecting the carrying out of the purposes of the *Acts*;
- Conduct public education programs and provide information concerning this Act and the Commissioner's role and activities;
- Receive representations from the public concerning the operation of the *Acts*;
- Order the disclosure of government-held information.

# IPC: Three Statutes

**The role of the Information and Privacy Commissioner of Ontario (IPC) is set out in three statutes:**

- *Freedom of Information and Protection of Privacy Act (FIPPA);*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA);*
- *Personal Health Information Protection Act (PHIPA).*



*Freedom of Information and  
Protection of Privacy Act*

**FIPPA**

# *FIPPA: Purposes*

## **Purposes:**

1. The purposes of this *Act* are,
  - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
    - (i) information should be available to the public,
    - (ii) necessary exemptions from the right of access should be limited and specific, and
    - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
  - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. F.31, s. 1.

*Access and  
Freedom of Information  
in Ontario*

# Supreme Court Justice La Forest

**In the Supreme Court of Canada, Mr. Justice La Forest addressed the underlying value of FOI laws:**

*“The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”*

**— *Dagg v. Canada (Minister of Finance)*  
(1997), 148 D.L.R. (4th) 385:**

# Williams Commission

- In 1980, the Williams Commission studied the importance of FOI and privacy legislation for public sector institutions in Ontario;
- This resulted in a report on: *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy (1980)*:

*“... a public institution which is either wholly financed from the provincial consolidated revenue fund, or controlled by the government (whether through ownership or through a power of appointment), should be considered a governmental institution for the purpose of our freedom of information scheme.”*

# Williams Commission: *FIPPA* and *MFIPPA*

- As a result of the Williams Commission, Ontario passed the *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* which embed Justice La Forest's principles into a purpose clause that overlays the operation of the *Acts*:

- Section 1 of both Ontario statutes are virtually identical:

The purposes are:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that;
  - (i) information should be available to the public;
  - (ii) necessary exemptions from the right of access should be limited and specific; and
  - (iii) decisions on the disclosure of government information should be reviewed independently of government.

# Ensuring Accountability for Ontario Funding

- In **December 1991**, a Standing Committee of the Legislative Assembly reviewed *FIPPA* and said:

*“... the public has a right to follow public money wherever it may flow, regardless of whether the recipient organizations receive all or only a portion of their funding from the government, and regardless of whether these organizations are commonly viewed as institutions of government. **Institutions receiving significant public funds, such as hospitals and universities, should be accountable to the public for the use of those funds.**”*

# IPC Submission to the Legislative Assembly: Suggested Changes to *MFIPPA*

- In 1994, the IPC called on the government to extend both access and privacy laws to a wider set of public organizations to make all public bodies such as hospitals, universities and social services agencies, more accountable to the public;

*“... self-governing professions carry out a public function and should be more accessible and accountable to the public. These bodies are created by provincial legislation and regulate professions in the public interest. Although these bodies may or may not be receiving public funds, they are carrying out an important public function. For that reason it is in the public interest to make them more accountable. As well, they may possess sensitive personal information which needs the safeguards of privacy protection legislation. Extending coverage would be consistent with the goal of making more information publicly available while at the same time ensuring the protection of personal privacy.”*



# Challenge from the Commissioner

- The *Audit Statute Law Amendment Act, 2004*, extended the power of the Auditor General of Ontario to conduct value-for-money audits of institutions in the broader public sector, including audits of hospitals and universities. **In response, the Commissioner asked for similar powers: “*Similar amendments should be undertaken with respect to records under Ontario’s FOI regime.*”**

*“I urge the government to launch an immediate review to compile a list of institutions that are primarily funded by government, but not yet covered by the Acts. Part two of this project should be a short review of which of these institutions should be placed under the Acts – with the default position being that each institution on the list would be added unless there are very unique and compelling reasons not to do so.”*

— Commissioner Cavoukian,  
MGS Annual Access & Privacy Conference,  
October, 2005.

# Court Endorsement of IPC Oversight

- Both *FIPPA* and *MFIPPA* contain a “public interest override” that may apply in the case of certain exemptions;
- *While this is not open-ended*, it allows my office to order the disclosure of information where there is a “compelling public purpose” that “clearly outweighs the purpose of the exemption;”
- This is an important tool – but one that can be rarely used.

# Court Endorsement of IPC Oversight (Cont'd)

- In the 2007, *Criminal Lawyers' Association* case, the Ontario Court of Appeal took the extraordinary step of using the *Charter* to extend the reach of the “public interest override” so that it could be applied in more circumstances;
- As part of its reasons for doing so, the Court of Appeal explained that it was important to have the IPC *independently* assess the public interest in disclosure;
- This underscores the importance of having an independent review of disclosure decisions made by organizations such as publicly funded hospitals, that carry out public functions.

# Access as an Enabler, Not a Barrier

- There may be some concerns that the requirements of access legislation will become administratively burdensome;
- But if access is built into the design of hospital information systems and accountable business processes, it should not interfere in their efficient operation;
- You can have both transparency *and* efficiency – there is no need to trade-off one for the other – I call this taking a positive-sum (not zero-sum) approach;
- Building access in upfront, in a positive-sum manner, facilitates routine access and disclosure – making transparency routine;
- Transparency will help build public confidence and trust in Ontario's health care system, which is currently at an all time low.

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