



## PRIVACY LAW & INVESTIGATIONS

Privacy Law and Investigations is an evolving legal subject that is rapidly emerging as its own practice specialty. McCague Borlack LLP has developed an expertise in this area to respond to the proliferation of private sector investigations as impacted by new privacy legislation in Canada.

This legislation directly affects the industry's service providers, including insurance adjusters, private investigators and claims representatives. It also affects any entity that is entrusted with, and must appropriately handle, personal information of individuals.

### Services

Our Privacy Law and Investigations Group has acted for various members of the investigative industry, including the Canadian Independent Adjusters Association, the Canadian Association of Special Investigative Units, and the Council of Private Investigators.

We have also acted for companies seeking to draft and implement appropriate privacy policies and practices. Finally, we have assisted insurance companies in the drafting of liability policies geared towards breach of privacy claims. Our lawyers have particular experience with the following matters:

Because investigations should be conducted under the protection of litigation privilege, we work directly with investigative

- complaints to both the Ontario and Federal Privacy Commissioner's Office under the Personal Information Protection and Electronic Documents Act (PIPEDA);
- PIPEDA and Freedom of Information applications;
- invasion of privacy claims;
- defamation claims;
- malicious prosecution claims;
- false arrest, false imprisonment, and excessive use of force claims; and
- negligent investigation claims;
- conspiracy claims.

specialists to help them provide their services in a legally effective manner. We specifically assist investigators and adjusters with the taking of statements under oath from insureds that are suspected of making fraudulent claims.

Through our national and international contacts within the investigative industry, we also facilitate and oversee:

- surveillance;
- the locating of assets and persons;
- interviewing of witnesses and suspects;
- database, hard drive, and email mirroring and surveillance; and
- internet, public databank, and media investigations.

### Featured Publications - for a complete list, please visit our website

- *Privacy Law for AB Insurers* by Catherine A. Korte, Anthony Gatensby and Bogdan Miscevic, Presented at a client seminar
- *Back-up Servers & Privacy Legislation: When information is reasonably retrievable under the Privacy Act* by Anthony Gatensby
- *PIPEDA and the Internal Complaints Process of Insurers and Banks Case Study: Decision from the Office of the Privacy Commissioner of Canada* by Anthony Gatensby
- *New Privacy Tort Recognized in Ontario: Jane Doe 464533 v. X* by Robert Smith, First published in MB Newsletter,
- *What Landlords need to know about PIPEDA* by Stephen Barbier, Presented at a Landlords Assoc. of Durham Meeting
- *Statute and Common Law: Reconciling PHIPA and the tort of Inclusion upon Seclusion* by Catherine A. Korte and Anthony Gatensby