OFFICE OF THE INFORMATION & PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

O.R.L. office of the registrar of lobbyists BRITISH COLUMBIA

CHECK AGAINST DELIVERY

Speech to the
Select Standing Committee on Finance & Government Services
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Good morning, Chair, Deputy Chair, and Members of the Committee.

Before I begin, I would like to respectfully acknowledge the traditional territories of the Lək^{w}əŋiṅəŋ people, today known as the Songhees First Nation and the X^{w}sepsəm [wh-sep-sum] or Esquimalt First Nation, where we are meeting today.

I am privileged to be able to live in this beautiful place with my family, surrounded by nature, which reminds me to always reflect on how that comes with both privilege and responsibility, to the land itself, to the people that have lived here, and to the people that live here now.

As an Officer of the British Columbia Legislature, I also acknowledge that I am privileged to work with people across many traditional Indigenous territories, covering all regions of our province. This privilege comes with a responsibility to seek every opportunity to advance goals of truth and reconciliation as I conduct my legislative mandates and, as a Canadian, as I live my life.

Joining me this morning are Deputy Commissioner Jeannette Van Den Bulk, Deputy Commissioner and Deputy Registrar oline Twiss, and Director of Communications Michelle Mitchell in the back. I am also joined by Dave Van Swieten, Deputy of Corporate Shared Services, with whom you are quite familiar.

As requested by the Committee, I will focus my remarks this morning on operational updates from both the Office of the Information and Privacy Commissioner and the Office of the Registrar of Lobbyists for British Columbia.

I will start with progress we have made on priority areas and key initiatives.

As part of our mandate, we provide a demand-driven service that supports individuals who are in dispute with both public bodies and the private sector – and we cannot control the volume of files that come through our door.

This past year, we have seen unprecedented increases in demands on our services. For the access and privacy complaints and requests for review that we consider our bread and butter files, we have seen an 86 percent increase in the number of privacy and access complaints received in the past year alone. For requests for reviews, we have seen a 50 percent increase, and a 28 percent increase for privacy breaches reported to my office. To give you a sense of magnitude, that is almost 3,900 files coming in the door. That the file count increased is not a surprise; as I have mentioned in my previous appearances, our file count has been growing steadily for the past five years. But this sharp year-over-year increase was a shock. It's what, in data visualization terms, you would call a "hockey stick". This jump now means that the number of files coming into our office has more than doubled over the last five years.

As you can imagine, this has put strain on our staff – particularly the case review officers, investigators, and adjudicators that process these files, communicate with applicants, and ultimately make decisions. It also puts strain on management, who are the senior leaders of the office and who also make decisions – whether on Commissioner-initiated investigations or reconsiderations – and who are making process improvements to keep up with the demand.

One example of how we continue to identify and implement efficiencies in our processes is that in the past year we assigned one of our investigators the task of early resolution investigator, who is responsible for resolving straight-forward matters at the outset. So far, we have resolved approximately 104 more files than expected with this new process, and have built it into ongoing operations.

The teams are also making greater use of their discretion to either decline to investigate or discontinue investigations. This is done in a way that is procedurally fair, particularly in cases where proceeding will not serve to meaningfully protect privacy or support accountability.

We also continue to identify and examine other sources of procedural efficiencies based on what we have seen in other jurisdictions, such as implementing submission limits on files, and putting a limit on the number of active files that individuals can have open at OIPC any one time.

These process improvements have been quite effective in preventing the sharp increase in file counts from translating into a corresponding sharp increase in the queue and thus the time it takes to close a file. We are exploring numerous explanations for this increase. While more than one reason may be true, one phenomenon we *are* seeing is a lot of complaints and requests for review that have been generated by, and possibly suggested by, artificial intelligence large language models.

For example, someone may receive a response to an FOI request, feed it into their LLM and ask "what should I do about this". The LLM responds that they have an option to come to our office about it – this is obvious because every FOI response must include this provision. It is reasonable to think that the next prompt will be "ok, well please generate me a complaint". In many instances, early resolution techniques seem to be quite effective in closing these sorts of files early and quickly; however, the known issues with LLMs to hallucinate,

exaggerate, and extrapolate mean that many others are *more* complicated than normal. We will continue to study this trend and innovate on how best to respond .

But there is only so much efficiency that you can get. Our queue at investigations isn't as high as you might expect given this spike in files, but it is still too high. Last year, we did close 36 percent more of these files compared to the previous year, which is no mean feat. But a year over year increase of 60 percent in the file count, like we saw this past year, means that there is a gap. If we do not address this gap, we will not be adequately meeting our legislative mandate as an administrative tribunal. Additional resources will be required. When I appear before you in the fall as part of the budget process, I will be presenting you a request that is as prudent as possible, considering the fiscal circumstances. Further, as part of my due diligence in thinking about the resources we need, I will be looking closely at our budget and where money can be best re-allocated going forward in light of these new demands.

I *am* pleased to report that, with the funding provided to make two adjudicator positions permanent last year, the queue at adjudications has stabilized and remains at 150 files, as anticipated. That said, I am not satisfied with stabilization as, in my mind, a queue of 150 still means that the time it takes to complete an order is longer than it should be. For this reason, we will be focused on process improvements in adjudications in the coming year.

In addition to the public-initiated files we handle, we have also published a number of commissioner-initiated investigation reports over the past few months. I will highlight two for you this morning. The first addresses one of our key priority areas in our strategic plan – supporting organizations in adopting a privacy-aware approach to surveillance technologies.

The report, released in January, examined the City of Richmond's use of ultra-high resolution surveillance cameras as part of a field test at a busy intersection in Richmond. The cameras collected the personal information from tens of thousands of people that passed through the intersection every day. The City stated that the purpose of the cameras was to share video footage with the RCMP to assist in identifying criminal subjects.

We found that the City was not authorized under FIPPA to collect personal information for that purpose. Ultimately, I ordered the City to stop collecting the personal information, delete all recordings, and take down the equipment.

This matter is now before the courts, as the City of Richmond has appealed the order. In the meantime, the City has stopped recording and has deleted the recordings.

I can't say more about the details of the report since it is now before the courts. However, speaking about surveillance in general in British Columbia, I will emphasize that it is a priority area in our strategic plan. I am concerned that high-tech surveillance devices are being used as a quick reaction to social problems. They have evolved since the days of fuzzy traffic cameras and CCTV to those that collect high resolution video, audio and other biometric data and assess it with artificial intelligence. They can capture extremely sensitive personal information from every law-abiding adult and child going about their lives. There are, of course, cases where use of surveillance is appropriate, to achieve a clearly defined purpose. But it is important for all public bodies and private sector organizations to remember, first, that our privacy laws require legal authority for the use of

surveillance systems. And any surveillance system should be demonstrably necessary, proportional, and limited.

To assist public bodies with understanding how FIPPA applies to the use of surveillance systems, my team updated and refreshed our *Public sector surveillance guidelines*, as part of the release of the report. The document gives guidance on how public bodies should approach emerging technologies that often accompany modern surveillance systems, such as AI and facial recognition technology, and aim to help them determine whether proposed or existing surveillance systems are lawful and operating in a privacy-protective manner. We will be continuing our work on surveillance in the public and private sector in the months to come.

In February, we released the second investigation that I would like to highlight – into privacy breaches following the Lapu Lapu Day Festival last year. We took a trauma-informed approach to the investigation, which included consulting with a clinician as to how to be transparent about what happened while respecting those impacted. Those affected were front of mind for myself and my staff throughout the investigation, and we took great care to ensure the report focused solely on what happened after the event, at the health authorities that served those needing care.

The report describes how 36 people that worked in healthcare did not respect the privacy of patients in the aftermath of a terrible experience.

By doing this investigation, I wanted to better understand why and how these privacy breaches occurred, and how to better protect patient information from snooping in the future. I also thought it was important to be transparent about what happened, so we can course-correct when we identify any failings in how the healthcare system protects our personal information – especially in times of crisis.

Through the investigation, we found 71 instances of snooping on 16 individuals, and across three different health authorities. I will re-emphasize here my central point in the report: snooping is illegal, unethical, and an egregious and intentional invasion of our privacy. These actions lead to negative outcomes for all involved. It is an affront to our dignity and autonomy in terms of being able to keep our health information private, and it breaks trust with those in healthcare that are serving us in time of need. I cannot put it any simpler: providing care for individuals also means respecting their privacy.

Protecting our most sensitive information should be a priority now more than ever. Digitization can increase the quality and effectiveness of health services and can also give individuals greater control of their health information – all critical objectives. As we move towards a system where more information is collected and accessible through the use of multiple information systems, it is essential for public bodies, and those that work for them, to uphold their obligations to protect personal information. This is an issue that my office will continue to focus on. Supporting entities in adopting privacy-aware approaches to digital health tools is a key priority in our strategic plan.

To the credit of the health authorities involved, we did find that they had reasonable safeguards in place to try to prevent future breaches from occurring, and they quickly realized the privacy risks of these patients and took steps to mitigate those risks.

On the private sector side, we recently released guidance to help healthcare organizations navigate privacy

requirements when using AI scribes in clinical settings. For a bit of context, AI scribes use generative AI to transcribe and summarize conversations between healthcare providers and patients and produce notes for patients' medical records.

The guide applies to healthcare organizations subject to the *Personal Information Protection Act,* such as healthcare providers running their own practices and most primary clinics. As you can imagine, there are a number of privacy concerns with this sort of technology, especially due to the sensitive nature of the personal information it would collect. For example, these tools could be used to collect personal biometric data, such as voice recordings, and patients and practitioners may not be aware of what happens to their personal information once it's collected and how AI vendors may be using that data.

It is also important to be aware of commonly reported errors with the technology, such as hallucinations, omissions, and misspellings, that could have catastrophic consequences in healthcare settings, such as recording the wrong medication for a patient.

I appreciate the valuable input from interested parties, including representatives from the health sector and experts in the fields of privacy law and regulation, that we consulted with during the development of this guide.

For the Office of the Registrar of Lobbyists, requests for information to our staff and the office's compliance reviews remain steady. We have continued to evaluate our outreach efforts, and are developing ways to reach unregistered lobbyists and educate lobbyists about their reporting obligations to further transparency.

As part of this work, we recently announced a new six-month initiative to temporarily pause fines for certain violations of the *Lobbyists Transparency Act*. The initiative is connected to our greater educational campaign to help unregistered organizations and consultant lobbyists understand their legal obligations under the LTA without risk of a fine.

There are certain exceptions, and the temporary pause does not remove any of the LTA's requirements. And I still maintain my authority to investigate and impose a prohibition in truly egregious and exceptional circumstances. Rather, the temporary pause serves as an on-ramp to increasing transparency by helping get lobbyists that may not be aware of their obligations under the Act registered, without fear of repercussion.

BC's lobbying law is viewed as one of the leading laws, in Canada and globally, that supports transparency in lobbying and integrity in governance. Just last week I appeared before the House of Commons Standing Committee on Access to Information, Privacy, and Ethics, the review of the federal *Lobbying Act*. The Committee was interested in many aspects of our lobbying law in BC, as they consider updates to the federal legislation.

Finally, I would like to update on areas where we have received funding in the past. We have moved forward and hired the Director of Information and Privacy technologies, and they are scheduled to start on Monday. We are excited to get this position up and running, as the files before my office continue to increase in technological complexity. We anticipate this position, paired with the senior investigator and senior policy analyst, will not only lead the work we are doing to support public bodies and organizations taking a privacy-

aware approach to new technologies, but will also help identify opportunities to implement efficiencies for the work we do every day.

For the 2025/26 fiscal year, although the books have not fully closed, we are anticipating a surplus of 2%. A portion of the surplus we anticipate relates to the IT modernization projects, which I am pleased to report are substantially complete and under budget.

The Committee also requested any criteria used to award grants. My office has not participated in any grant programs.

I will now turn to any anticipated changes to our budget or service plans, and changes to corporate shared services agreements.

The biggest impact on our budget is the wage inflation gap. This gap arises from the difference between, on the one hand, the guidance from the Public Sector Employers' Council to implement a 2.5% wage lift for 2025/26 for excluded staff and, on the other, the funding recommended by the Committee for only a 2% increase for wage inflation. This gap created a deficit in the salary line of our budget and we were able to absorb it only with funding from our professional services line. We are still assessing the impact on 2026/27. As I mentioned last fall, even if we can absorb the difference in one year, the cumulative effects of partially funded wage increases over multiple years means that even small shortfalls erode our operational budget and impinge on my ability to deliver on our legislative mandates. While I do not have a supplemental request to address this today, I will be monitoring this matter closely to determine if I need to come back to this Committee later in the year.

I will note that, for our contribution and agreement to our Corporate Shared Services model, or CSS, there will be an impact with the removal of the Merit Commissioner from that agreement. While that agreement will continue with the remaining offices, the ultimate financial impact is still being assessed. What we do know, is that the shared costs covered by the Merit Commissioner's office will need to be re-distributed to the other offices left in the CSS model, and will lead to costs being shared across a smaller number of offices – which means our contribution will increase. We have reached out to one other independent officer, the Conflict of Interest Commissioner who has a sub-lease in the building, about joining the CSS model. These discussions are in early stages, and I expect I will have more to share regarding the financial impact when I next present to this Committee in the fall.

Regarding our office space, our lease is set to November 2036, and includes 9,594 square feet of office space. The space supports 30 percent of employees who work solely in the office, fourteen percent who are hybrid employees who split their time between remote and in-office work, and just over half of employees who work remotely across BC. This composition allows us to bring in knowledge from across the province, for the specific expertise we provide. In addition, our hybrid model supports the efficient use of our space – as we would otherwise need to find office space to support a much higher office count.

Finally, as requested we have provided an org chart for the OIPC and ORL. I would like to offer a comment about it to assist the members of the Committee. I recognize the Committee asked to identify front-line vs management positions. I would like to be clear that the nature of our structure, and work, means that most directors serve both functions. While they do have supervisory duties that they must carry out as managers,

such as HR and administrative functions, they also carry caseloads and engage with the public. In many instances they make administrative decisions and in some cases reconsiderations. And they are part of the front-line interface that members of the public interact with, either through speaking engagements, through specific files, or as part of investigations.

With that Chair, I thank you and the Committee for your care and attention to these matters. My team and I would now be pleased to answer any questions you may have.