

### Get carried away with Oceans of Opportunity



Darby Allen



Zita Cobb



Stéphane Grenier

#### **W**elcome to St. John's and the 2018 RIMS Canada Conference taking place September 23-26 at the St. John's Convention Centre.

The host committee has been busy putting together an educational lineup that provides hours of risk management expertise, as well as inspiring plenary speakers. First you'll hear from Darby Allen, the retired Fire Chief for Fort McMurray and hero during the Alberta wildfires, who will offer guidance on how to be a stoic, quick-thinking leader in tough situations. Tuesday morning starts with Zita Cobb, the Founder and CEO of the innovative social charity Shorefast that supports numerous endeavors on Fogo Island, Newfoundland. Lastly, Stéphane Grenier, a retired Lieutenant Colonel and Mental Health Innovator who has spent much of his career redefining how workplaces and individuals should care for, and support, those affected by mental health problems, will discuss how organizations can start down the path of systemic wellness and re-humanized workplaces where mental health stigma is no longer a barrier to recovery.

St. John's itself is a feature of the conference. The easternmost point

in North America, St. John's occupies a spectacular site on one of the finest natural harbors in the world. Entered through "the Narrows," a 200-meter-wide passage flanked by cliffs, the harbor widens out into a protected basin. With jelly-bean-colored row houses lining the hilly streets, the city begs comparisons to San Francisco – though in miniature. It is also home to artists, musicians and cutting-edge eateries, yet the vibe of Newfoundland's largest city and capital remains refreshingly small-town.

Risk management takes on a whole new meaning when you join us at Sunday night's Welcome Party. Whether you're here to dance, since, eat or drink—you can enjoy it all on this lively adventure through the heart of St. John's entertainment district. Come one, come all as we take over George Street to enjoy some fun, traditional foods with local wines, beer and spirits. Plus, there will be a live performance by Alan Doyle, one of Newfoundland's favorite entertainers.

Head to [www.rimscanadainformation.ca](http://www.rimscanadainformation.ca) to access the program and additional information. We look forward to seeing you there. ■

# PRIVACY BREACH BY YOUR ROGUE EMPLOYEE: ARE YOU LIABLE?

by Karen Zimmer

**C**ollecting, storing, and using personal information is often the key to developing and delivering individualized products and services in our current economy. As consumers, businesses, and service providers alike become increasingly comfortable using electronic platforms to exchange or store personal information, reports of privacy breaches seem to be on the rise. It is not only the outside hackers that are contributing to these increasing reports, but also employees who have clearly gone rogue.

So what happens if your organization or business gets hacked, or worse yet your employee goes rogue and breaches privacy while in your employ? Can you get sued for breach of privacy where the breach occurs as a result of the unauthorized acts by your employee? How would the Office of the Information and Privacy Commissioner (“OIPC”) respond to such an unfortunate situation, and what are the potential ramifications for your business or organization?

## CONSEQUENCES FOR BREACH OF PRIVACY WHEN BEFORE THE COURT AND PRIVACY COMMISSIONER IN BRITISH COLUMBIA

In British Columbia, the *Privacy Act*, RSBC 1996, c. 373, establishes a statutory cause of action for a breach of privacy. The British Columbia Court of Appeal has confirmed that there is no co-existing common law tort of breach of privacy in British Columbia.<sup>1</sup>

What this means is that a person whose privacy is breached in British Columbia, either by someone they know or by a stranger, has a right to sue only if the breach meets the elements of the statutory tort set out in the Privacy Act. While persons will not have to prove that they have suffered harm as a result of the breach, they will have to prove that the breach was wilful, without claim or right, and violated their reasonable privacy expectations.

This limited statutory cause of action differs from what may be available in other provinces. Some other provinces have introduced the common law tort of intrusion upon seclusion, which was recognized by the Ontario Court of Appeal in *Jones v. Tsige*, 2012 ONCA 32. This common law cause of action for breach of privacy is more inclusive as it covers acts that are not only intentional, but acts that are reckless.

In addition to the risk of being sued for breach of privacy in the courts, there is the risk of being subjected to investigation by the OIPC. The OIPC is responsible for providing independent oversight and enforcement of BC’s privacy laws, including the *Personal Information Protection Act*, SBC 2003 c. 63 (“**PIPA**”), which protects and governs personal information in the



private sector. When *PIPA* was introduced in British Columbia, the legislature recognized that individuals have a right to protect their information; however, many organizations have a simultaneous need to collect, use, and disclose information in the normal course of business. *PIPA* is designed to balance those interests and to reassure the public that their information will be protected by those to whom it is given.

The OIPC is also responsible for overseeing and enforcing BC’s *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), which performs a similar function as *PIPA* but in the public sector.

Section 30 of *FIPPA* requires public bodies in British Columbia to protect personal information that is in their custody or control by making reasonable security arrangements against risks such as unauthorized access, collection, use, disclosure, or disposal. Public bodies are required to report unauthorized disclosures, which include situations where a person, known or unknown, accesses personal information that is stored electronically without authorization. *PIPA* has similar provisions. In enforcing these requirements, the OIPC may conduct a full inquiry and impose remedial orders if it finds that an organization or business has failed to take appropriate measures to protect the personal information it holds.

While an adverse OIPC decision will typically not impose serious fines, adverse decisions often result in valuable time having to be invested, and significant expert expenses being incurred, to comply with insisting that your organization impose additional security safeguards. OIPC findings that your organization did not adequately safeguard personal information will also result in significant reputational harm, particularly where the decision attracts media attention.

<sup>1</sup> Mohl v. University of British Columbia, 2009 BCCA 249; Ari v. Insurance Corporation of British Columbia, 2015 BCCA 468.

## CAN YOUR BUSINESS OR ORGANIZATION BE HELD ACCOUNTABLE FOR YOUR ROGUE EMPLOYEE'S BREACH OF PRIVACY?

Of increasing concern is the potential risk of wide scale privacy breaches, including by rogue employees, resulting in court certified class actions.

As discussed above, thanks to the *Privacy Act*, liability for breach of privacy in British Columbia will only be found against someone who acted wilfully. Further, if you are governed by *FIPPA*, there is jurisprudence protecting your organization from being sued for failing to keep its information secure in compliance with section 30 of your governing privacy legislation.

In *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468 an ICBC employee accessed the personal information of Ufuk Ari and 65 other ICBC clients without an apparent business purpose. Mr. Ari commenced a class action against ICBC on behalf of himself and the 65 other clients. He attempted to rely on the common law tort of breach of privacy, but this was rejected due to British Columbia not recognizing such a common law tort. He also tried to argue, unsuccessfully, that ICBC was negligent in the implementation and supervision of its statutory mandate under section 30 of *FIPPA* to keep its personal information secure. The BC Court of Appeal agreed with ICBC that a failure to meet the obligations set out in section 30 does not on its own give rise to a claim in negligence.

The Court then went on to consider whether ICBC could be vicariously liable for the rogue employee's breach of the personal privacy of Ufuk Ari and the 65 other ICBC clients. Although the Court recognized that the statutory breach of privacy under the *Privacy Act* requires wilful conduct, the Court recognized that the intentional aspect of the tort was not necessarily incompatible with the imposition of vicarious liability. The Court ultimately found that it was necessary for it to receive evidence in order to fairly address whether ICBC could be vicariously liable. The Court, as a result, declined to strike the vicarious liability claim, without trial, and the appellate Court upheld this finding.

The long established principle of vicarious liability holds that an employer can be held vicariously liable for the tort of an employee where the act was either authorized, or unauthorized but so connected with the authorized acts of the employee that they may be regarded as modes, albeit improper modes, of doing an unauthorized act. Vicarious liability has been relied upon to impose liability on an employer for the intentional acts of its employees, including grave acts such as sexual assault.

*Ari* is the only Canadian decision which has considered the issue of whether an employer can be vicariously liable for a breach of the *Privacy Act*. *Ari* has not proceeded to trial, although the case is apparently still pending.

## CURRENT UK CASE OF CONCERN - MORRISONS SUPERMARKET

If you are an employer concerned about being held vicariously liable for the privacy breach of your employee, the below decision from the United Kingdom will sound like your worst nightmare. This UK decision is under appeal, with the appeal to be heard in the fall of 2018.

In December of 2017, a court in the United Kingdom issued a decision, namely *Various Claimants v WM Morrisons Supermarket Plc*, (Rev 1) [2017] EWHC 3113 (QB) ("Morrisons"), in which it found an employer vicariously liable for the intentional acts of its employee who blatantly violated UK's *Data Protection Act*.

*Morrisons* is a supermarket chain in the UK. One of its employees, clearly disgruntled and technically savvy, posted a file containing highly personal and sensitive information of 99,998 of Morrisons' employees on a website which then went viral. In particular, the leaked data contained the names, addresses, gender, dates of birth, phone numbers (home and/or mobile), national insurance numbers (akin to our SINs), bank codes, bank account numbers and the salaries of the 99,998 employees. The data came from a secure internal database that only a limited number of employees could access. Morrisons was quick to respond, taking down the website within hours and alerting the authorities. The employee ended up being sentenced to 8 years imprisonment.

Obviously upset, the various employees whose very personal and sensitive information had been published on the internet sued Morrisons. The Court found that there was a sufficient connection between the position in which the rogue employee was employed and his wrongful conduct. The rogue employee was put into the position of handling and disclosing highly sensitive data to Morrisons' external auditor (albeit he was to disclose it to the external auditor alone). He was appointed to his position on the basis that he could be trusted to deal with personal information safely; Morrisons took the risk that it might be wrong in placing its trust in him.

The Court held that in the circumstances that it was just, fair, and reasonable for Morrisons to be held vicariously liable. The Court gave regard to, among other things, the following:

- **the commission of the tort was entirely dependent upon the activities assigned to him by that employer;**
- **vicarious liability is appropriate in cases where an employee misused his position in a way which injured the claimant; the employer who selected the employee and put him in a position he could misuse, should be held responsible;**
- **Morrisons is more likely to have the means to compensate the victims than the rogue employee, and can be expected to have insured against that liability.**

The above findings were reached notwithstanding that Morrisons key arguments included highlighting the fact that:

- **the rogue employee's act of posting the personal information on the internet was temporally and physically disconnected from his work. He committed the privacy breach from his home and on the weekend;**
- **the rogue employee's conduct was designed to harm Morrisons, and therefore if the Court held Morrisons vicariously liable it would essentially be helping the rogue employee achieve what he set out to do – harm Morrisons financially.**

These arguments did not satisfy the Queen's Bench. We shall see if the Court of Appeal holds otherwise.

The UK's jurisprudence on vicarious liability is consistent with Canada's, and Canada draws upon UK precedents.

## MANAGE YOUR RISKS

What risk management steps can your organization take while the

(cont'd on page 6)

# Chapter Spotlight: Building a Successful Sponsorship Program

**A**fter many years of traditional fundraising, ORIMS (Ontario Risk and Insurance Management Society) embarked on a mission to enhance sponsor value and engagement. In 2016, a Sponsorship Committee was established to design and develop a new program. The Committee's efforts resulted in a program that provides sponsors with access to year-round visibility with a single, one-time-per-year commitment.

Building the program took time, and involved research into other programs used by non-profits, success rates, and obtaining feedback directly from industry partners/sponsors. ORIMS also compared their program options to other RIMS chapters' programs.

Once the program was designed, there was a second round of sponsor feedback during the transition between the previous format and the launch of the new program. The most challenging part of the transition gaining sponsor support to move them away from smaller, frequent sponsorship donations over to a one-time

larger donation. After highlighting the benefits of the new program, sponsors grew confident that their sponsorship money would continue to benefit ORIMS and result in greater visibility for their own brand.

Positive feedback from sponsors included:

- (a) being able to budget at the end of year for the following year's sponsorship;
- (b) not being approached 4 to 5 times a year for money;
- (c) that their brand/logo would have visibility year-round at all ORIMS events;
- (d) the new added program sponsor benefits; and
- (e) that their sponsorship donation was valued and provided tangible results.

The new sponsorship program has been a good fit for ORIMS and its sponsors. It includes four sponsorship levels designed to provide benefits throughout the year. Examples of perks include free ads in the ORIMS quarterly PULSE newsletter, company logo on event publications

and ORIMS websites, and all Platinum sponsors also receive a table for 10 at the annual ORIMS Christmas Luncheon, a premiere industry event with over 700 attendees. The new Sponsorship Program has been a great success with the number of sponsors increasing and consecutive years of raising over \$30,000.

Some lessons learned:

- **Having a plan is critical. While planning and research take time, they are well worth it.**
- **Feedback from all stakeholders is critical.**
- **This industry is a very supportive group.**
- **Anything can be achieved through hard work and a dose of passion! ■**

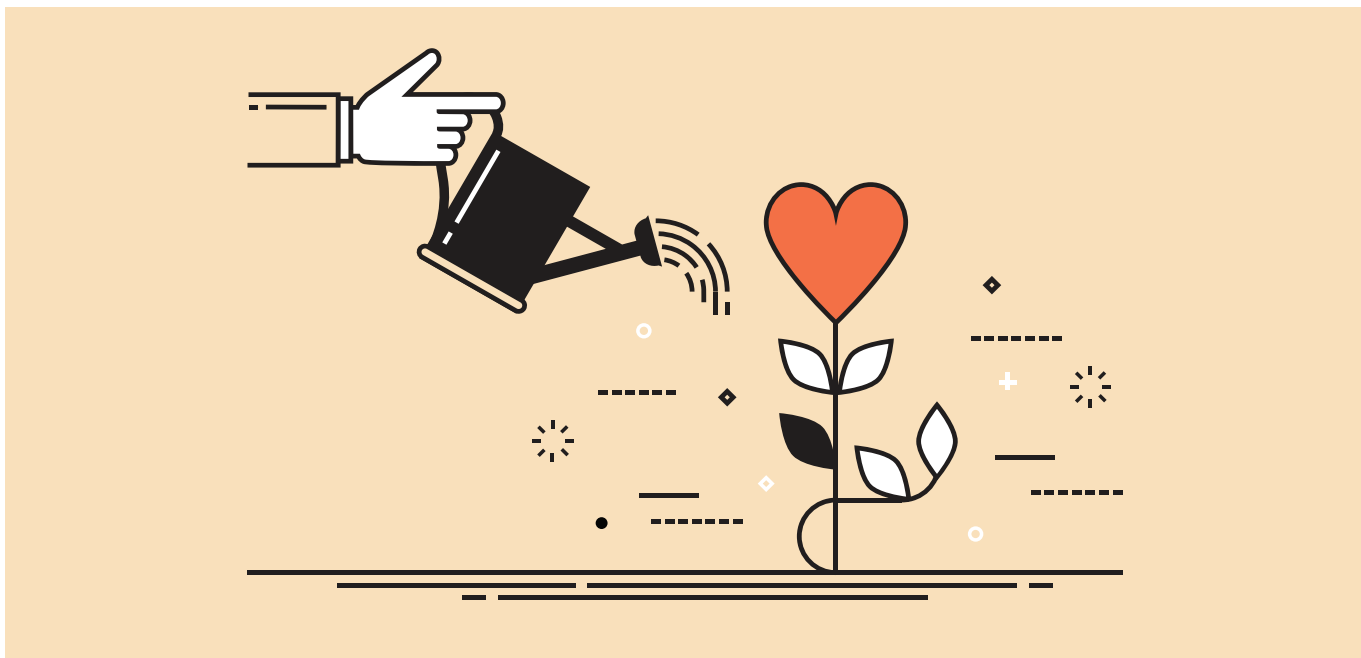
*Courtesy of ORIMS*

For more information on our program, please contact:

**Cindy Chan**

*Director, Industry Relations*

Email: [Cindy.Chan1@telus.com](mailto:Cindy.Chan1@telus.com)





# SEE YOU NEXT YEAR IN EDMONTON!

THE NORTHERN ALBERTA RISK & INSURANCE MANAGEMENT SOCIETY (NARIMS) is thrilled to host the RIMS Canada Conference September 8-11, 2019 at the Shaw Conference Centre in Edmonton.

Join us as we create an event experience that will connect people and ideas to help our community **TRANSFORM** as we continue into an age of rapid change.

We are framing the conversation around five subtopics along with some of their trends/drivers:

## TRANSFORM LEADERSHIP

- Decision quality, risk-informed decision making, women in leadership, diversity and inclusion, thought leadership, leading change in uncertainty

## TRANSFORM INDUSTRY

- Market disruptors, the future of insurance & risk management, insurtech, soft skills in a digital market, innovation hubs

## TRANSFORM COMMUNITIES

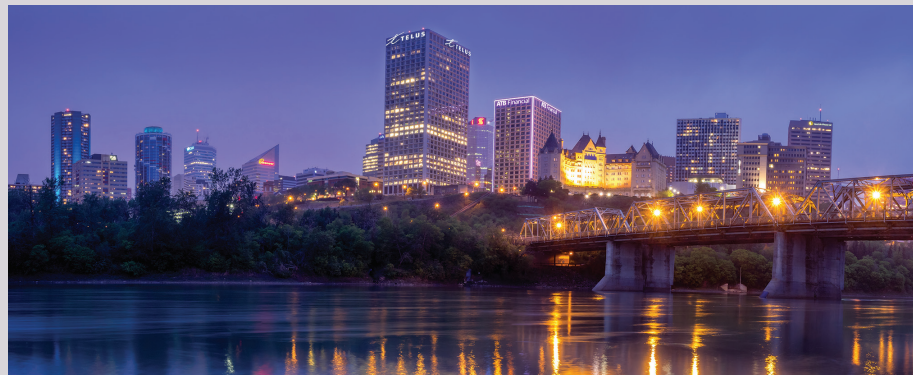
- Smart cities, health and wellness, resilience, the environment, mobility and mass transportation, changing demographics, how we design and build new communities

## TRANSFORM ECONOMY

- Cannabis, green economy, global trade and trade agreements, supply chain, evolution of illicit trade, the gig economy

## TRANSFORM TECHNOLOGY

- Innovation, AI, blockchain, nano, neuro, analytics, voice, renewables, cyber threats and opportunities, virtual reality, driverless and autonomous vehicles,



**SAVE THE DATE!** Add this educational opportunity into your 2019 budget for yourself and the rising stars on your team. If you plan on coming early or staying late to experience Edmonton in the fall, try using AI to help plan your trip! Edmonton is the first city in Canada to use big data grouped into presets for you to provide your interests and narrow down options for a great experience. Go to <https://mytrip.exploreedmonton.com/> to try it out!

We would also like to invite first time sponsor and exhibitors in emerging service provider groups such as cyber security/disaster recovery, breach coaching, privacy, automation, business intelligence, data analytics, bitcoin/alternative financing, and the like to join us. We are also open to discussing new opportunities for small

business or solo consultants, wellness providers, startups, and recruitment services, as well as forensic services.

Visit us at BOOTH 310 in St. John's! Contact us today if you would like to participate as a new sponsor or exhibitor. For more information on the 2019 RIMS Canada Conference, email Christine Maligec at [cmaligec@auma.ca](mailto:cmaligec@auma.ca) or the NARIMS general mailbox at [narimschapter@gmail.com](mailto:narimschapter@gmail.com).

Unfortunately, one of our conference co-chairs will not be available to greet you on the east coast. Nicole Cebuliak is expecting her first baby around this time. Nicole sends her best and will be ready to connect with our community when she returns from her maternity leave. Wishing Nicole, Greg and baby all the best! ■

# A Message from RCC Chair Ren Lips

**It is my pleasure to welcome everyone to St. John's and the RIMS Canada Conference. Let's explore our Oceans of Opportunity together! With a great lineup of speakers and sessions it promises to be a fantastic week.**

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The conference theme this year has a focus on assisting risk management professionals with their identification of the risk upside or opportunities. The conference will give all of us ideas and tools to take advantage of risk managements' positive side. For example, ways to challenge and improve existing processes at your place of employment, gain ideas on how to deal more effectively with difficult situations, and

expand your network.

The conference also offers personal development opportunities. By now you've probably heard about the certification from RIMS, the RIMS-Certified Risk Management Professional (RIMS-CRMP). If you are thinking of obtaining your RIMS-CRMP, there will be an introductory session on Sunday afternoon to provide more information on the certification and some strategies to help you prepare.

Are you looking for opportunities? Other than our place of employment, what is available elsewhere? The RIMS organization is always looking for volunteers at the local chapter, national and



international level. My volunteer involvement with RIMS over the last 13 years has provided me with countless learning opportunities and a platform to hone my leadership skills. Keep an eye out for the RIMS call for volunteers this fall or reach out to your local chapter to see what opportunities are available there and give back to our community.

I look forward to connecting with you all and exploring the opportunities ahead of us.

**Rieneke (Ren) Lips,**  
CPA, CMA, CIP

## EDITORIAL POLICY

The RIMS Canada Newsletter is a publication of the RIMS Canada Council and is published periodically throughout the calendar year. The opinions expressed are those of the writers and volunteer members of the RIMS Canada Newsletter Editorial Committee. Articles submitted to the RIMS Canada Newsletter for publication are subject to the approval of the RIMS Canada Newsletter Editorial Committee. Approval of such articles is based on newsworthiness and perceived benefit to the readership. All decisions of the RIMS Canada Newsletter Editorial Committee are final and not subject to appeal. Individuals submitting articles to the RIMS Canada Newsletter hereby acknowledge their acceptance of the RIMS Canada Newsletter Editorial Policy.

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Thank you to all of our newsletter contributors! If you are interested in writing an article for the RIMS Canada Newsletter, please submit the article to a member of the Editorial Committee for review. Any questions about the production or distribution of this newsletter should be directed to the Editorial Committee.

The RIMS Canada Newsletter is produced on behalf of the RCC by RIMS.

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The RIMS Canada Council is here to serve our Canadian RIMS chapters and members, and we invite you to reach out to us as we are here to assist you.

Visit the RIMS Canada website at [rimscanada.ca](http://rimscanada.ca) or simply scan the QR code below on your smartphone for access to RIMS Canada risk management resources, including conference and education information.



Did you know that the RIMS Canada Newsletter is available on-line? Now you can read your favourite newsletter on the go at: [rimscanada.ca/newsletter](http://rimscanada.ca/newsletter)

As the world evolves and technology plays a more pivotal role in our daily lives, it is important keep informed about topics relating to risk management and the insurance industry. Use #RIMSCANADA and stay connected by following us on social media:

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## PRIVACY BREACH

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mentioned risks are on the forefront of your mind?

In brief, consider the following:

- **Review your security safeguards with an IT expert;**
- **Be careful in choosing the employee to whom you entrust with your organizations personal information;**
- **Ensure that only certain trusted employees have access to the personal information;**
- **Ensure that you do not expose your organization to other causes of actions. For instance, do not impose upon your organization unnecessary and additional obligations by way of policies, contracts or service agreements in which you undertake to keep personal information secure. You do not want to expose your organization to a breach of contract claim or duties of care if it**

**can be avoided. You may be faced after all with a claim in which a Plaintiff's counsel is seeking to find creative ways to bring a multifaceted class action for not only breach of privacy, but breach of contract and negligence. Consider whether you can get away with terms that your organization will abide by the applicable privacy legislation and be accountable to the OIPC for any resulting breach;**

- **Ensure that you have an adequate breach response plan in place so that if a breach occurs you are able to mitigate and contain the breach to the greatest extent possible. ■**

Karen Zimmer practices at Alexander Holburn Beaudin + Lang LLP in Vancouver and leads its Defamation and Publication Risk Management group and is a member of its Information and Privacy group.