

**“The Swan” versus Orlan:  
Spectacle, Plastic Surgery, Violence, Women’s Bodies**  
– *AND* –  
**Does the Personal Information and Protection Act (2003)  
Obstruct the Freedom of Information and Protection of  
Privacy Act?**

by

Jewelless Anne-Merrie Smith  
Bachelor of Arts, Simon Fraser University 2003

EXTENDED ESSAYS SUBMITTED  
IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF ARTS

In the  
Department of Women’s Studies,  
In the Faculty of Arts and Social Sciences

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# APPROVAL

**Name:** Jewelles Anne-Merrie Smith

**Degree:** Master of Arts

**Title of Essays:** “The Swan” versus Orlan:  
Spectacle, Plastic Surgery, Violence, Women’s Bodies

– and –

**Does the Personal Information and Protection Act (2003) Obstruct  
the Freedom of Information and Protection of Privacy Act?**

**Examining Committee:**

**Chair: Dr. Marilyn MacDonald**  
Assistant Professor of Department of Women’s Studies

**Dr. Habiba Zaman**  
Senior Supervisor  
Assistant Professor of Department of Women’s Studies

---

**Dr. Lara Campbell**  
Supervisor  
Assistant Professor of Department of Women’s Studies

---

**Dr. Helen Hok-Sze Leung**  
**[Internal/External] Examiner**  
Assistant Professor of Department of Women’s Studies

---

**Date Defended/Approved:** April 5, 2007



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## ABSTRACT

**Essay 1:** In this paper I explore the concepts of transformation, pain and agency. How contestants of “The Swan” find their way through the reality show to gain what each is seeking from the experience. I compare this show to the artwork of Orlan and how she challenges traditional ideas of these concepts in her art. I weave my own story into these, as I too have experienced reconstructive surgery. Finally, I use the thread of mythology and draw on feminist frameworks to hold the experiences together.

**Key Words:** cosmetic surgery, reality TV, mythology, third wave feminism, post feminism, second wave feminism, feminism, beauty, body maintenance, Orlan, “The Swan”, personal narrative

**Essay 2:** In many aspects the writing and implementation of *Personal Information Protection Act* was hasty and has worked against already existing legislation. Three of the Acts that have been affected by this new legislation are: the *Access to Information Act*, the *Privacy Act*, and the *Freedom of Information and Protection of Privacy Act*. I examine how these Acts overlap, undermine and work together. As access to information is of great importance to researchers and to critics of government, the protection of, or the denial of pertinent information is a significant subject. In this paper I use my own narrative and personal documents to test the access to information process.

**Key Words:** *Personal Information and Protection Act*, *Freedom of Information and Protection of Privacy Act*, Freedom of Information request, Child in care, access to information, Office of the Information and Privacy Commissioner, PIPA, FIPPA, OIPC

## **DEDICATION**

This is dedicated to my two sons, Pierce and Aiden who have inspired me to stay on track and attain my academic goal of a Masters degree. I started university when my youngest son was six months old and still breast-feeding and here he is almost eight years old! My elder son is now in grade four and fast developing his own interest in research and human rights. Every struggle along the way they have been with me and as a family we have made it to this point so for as much as I wrote the essays, they are woven into my successful completion.

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**1:**

**“THE SWAN” VERSUS ORLAN:  
SPECTACLE, PLASTIC SURGERY,  
VIOLENCE, WOMEN’S BODIES**



## **Introduction:**

Beauty, myth, transformation and cosmetic surgery: the first three historical concepts are retold and refashioned with each generation; the fourth is a new addition to the beauty myth. Beauty seekers today are offered a scalpel and the possibility of permanent body transformation, something that was not imaginable a hundred years ago. Beauty has always been constructed through the stories and myths of a specific period of time. This is a fluid and ever-changing ideal that has changed with the fashion, health, wealth and influx of international influence over space and time. Today with travel possibilities, money, fame, credit, and reality-television, the possibilities of access to fashion and body ideals are more than ever before at the fingertips of the general population.

In this paper I will explore a recent reality television series, “The Swan” which uses television to retell myths of transformation to women and how women use these myths to justify extreme surgical alterations to their bodies on public television. I will compare this reality show to the work of Orlan, a French performance artist who has had numerous surgical operations as part of performances where she challenges the idea of beauty, cosmetic surgery and the hidden world of transformation (before/after) for women who choose surgery as a means to achieve impossible beauty ideals in Europe. After her performances, Orlan gave a series of lectures called “Carnal Art.” During this lecture series she explained the theory behind her performances. I will draw from these

and from her interviews to explain her perspective as a feminist academic and activist. As part of this paper, I will be discussing my personal experience with plastic surgery and how my own ideas of beauty have been challenged through feminist dialogue and the present day approach to shifting bodies through extreme surgical interventions.

I have become fascinated by the spectacle created by Orlan and reality TV: this new form of entertainment and body transformation. My first glimpse of this world of Orlan was the article, "Orlan: artist in the post-human age of mechanical reincarnation: body as ready (to be re-) made" by Michelle Hirschhorne. Orlan is a French performance artist/academic who has dedicated her body to dramatic surgical sculpting. She bases each of her surgeries on historical ideas of beauty contained in myths and paintings. More recently, I encountered promotions for a reality television show called "The Swan," where a number of women compete through plastic surgery, exercise, and counseling, and are transforming from "ugly ducklings." One woman wins a final beauty pageant, where she is crowned the "swan".

What strikes me about these examples is that each is about the quest for beauty, whatever the premise. Orlan, "The Swan" (and even my own stories) draw from myths or stories, and the former two chose to use television or film as their medium, creating real-time spectacle of the surgeries and healing and overall transformation stories. The more I mull it over the more I am frustrated about the media hype around beauty, transformation and the ease by which women can or should conform to the present norm of beauty, whatever the pain involved. Plastic surgery in the popular culture context, is in fact a life-threatening ordeal, but in the context of modern popular culture, it is undertaken for no

other reason than to conform to the present moment of fashion's whim or contemporary "self-help" ethos.

Orlan has attempted to open feminist and academic dialogue about the shifting idea of beauty by "writing" historical references of beauty on her body. This demonstrates that the concept of beauty is not static but shifting and beauty, when applied from multiple references is not beautiful at all. Conversely, "The Swan" seems to justify its spectacle through counseling the women. The show seems on one hand to accept that the women's bodies are in need of surgical alterations in order to be worthy while on the other hand explaining that part of the women's inferiority is related to some emotional or psychological lack that they can heal through counseling. The participants appear to be healthy, average women who have not suffered a physical trauma. They are dissatisfied with their bodies due to comparisons with societal norms of beauty.

I have had plastic surgery. In fact I have had several surgeries including several dental procedures. Why? The story is more than simply that I was unhappy with my appearance. When I was 17, my apartment was broken into and I was assaulted. Some of the damage done to me includes a broken nose and broken teeth. My nose was so broken that I could not breathe through it. Within months I had surgery so I could breathe. My broken teeth were fitted with caps to cover the nerves to reduce the excruciating pain. Let me mention here the surgical work was what could be done to correct pain and medical issues. It was by no means a return to the face that I knew. Nor was my new face attractive to me. When I looked in the mirror I saw over and over the slamming of a fist into my nose and the flying of a foot sideways into my mouth. Over and over. I could not sleep. I stopped smiling. I was ashamed of my teeth. I learned how to use make-up to

cover the scars on my nose but I could not cover the crookedness. I had repeated infections in my sinuses because of the damage inside. I was afraid all the time that someone could just suddenly decide to attack me without warning just because they could. There was a lot of trauma both inside and out that began with the violence one male took into hand upon my body.

I had more surgery. Later. For me. I cannot explain except to say that I could no longer live with the violence of one man's morning rage on my body. I don't think any woman should have to. But then what about being unhappy due to birth defects? Or with undesired family traits? Or simply being born with facial features or body shapes that are not the present ideal of beauty? I don't know how I feel about this as a source of affliction for women. I will certainly state that I will not advocate against the right of a woman to choose surgery. However, I do not know if the right to choose translates into the reality of being so unhappy with ourselves that we undergo surgery to change our body. Furthermore, I do not advocate that this transformation serve as a public spectacle for evening television entertainment. Both "The Swan" and Orlan's work are reminiscent of historical "Freak shows" and sideshows and even other public displays such as anatomical dissection. These female participants in the reality television genre are willing to undergo this public display of their private pain, surgery, and healing for this transformation.

### **Theoretical Framework and Methodology:**

Transformation of the body is the main focus of this essay. I will examine how pain, agency and naming are part of the transformations. Orlan in particular uses her body as art: malleable, transformable. I will examine contemporary views of the body and how

plastic surgery plays into this, including reality TV, and the retelling of mythology. In this essay I will use personal narrative to explore my own experience of a body transformed through trauma, and then through reconstructive surgery.

My approach to Orlan's work, rooted in contemporary feminist and psychological theory, is by far the most significant part of my writing. Orlan lives theory and I intend to establish how she has taken theory out of the textbooks to manifest it upon the surface of her body. Kate Ince, who has interviewed Orlan extensively writes in *Orlan: Millennial female* how the artist challenges boundaries and especially the importance of "the status of skin" as a significant cultural interface (31). She explains further:

The skin is the border or limit between the inner body and the outer body (the visible body). It is the container on which the distinction of the inside and the outside depends. The skin, it becomes apparent, is central to the underpinning of a metaphysical concept of the body (*ibid*).

Through these transformations, Orlan acts out the tradition of "Shapeshifting" that folklore and mythology have suggested. In this context, Orlan assumes the role of a powerful female who is able to shift her form and thereby control her self-presentation. Clarissa Estès explores this ability in many of the myths she recounts. Her interpretations differ from the projects of Orlan in that she strongly believes in the soul. However, her analysis of the body pertains to Orlan's bodywork. Estès writes:

Some say the soul informs the body. But what if we were to imagine for a moment that the body informs the soul, helps it adapt to mundane life, parses, translates, gives back the blank page, the ink, and the pen with which the soul can write upon our lives? Suppose as in the fairy tales of the shapechangers, the body is a god in its own right, a teacher, a mentor, a certified guide (221)?

Almost all cultures hold stories of shapechangers, whether they are the aboriginal coyotes who are tricksters sent to teach us lessons, or the fairy tales of the Brothers Grimm, where

brothers turn into swans and witches change into peddlers, or the latest creations of Walt Disney where the Ursula, the Sea witch transforms into a human.

As with Orlan, "The Swan" uses the concept of transformation as its main theme throughout the show. The women are transformed from their old "selves" into new and better selves who are revealed much like a fairytale at the mirror onstage. The finale winner is proclaimed "the swan." The original story of the Ugly Duckling was about finding one's place in the world. This new television version is about transformation. I intend to explore how this old fairytale is remade into a transformation story.

I will provide a comparison of Orlan's performances from the following sources: "This is My Body...This is my Software" (both the CD and the book) and images as posted on her website: "Self-hybridation." <http://www.orlan.net/>; with the TV reality show, "The Swan" (season 1). I will also refer to the bonus material included in the disc set of "The Swan". I will draw from secondary resources including journals, books on the subjects of plastic surgery, Orlan, and articles on both subjects including references to Orlan, reality TV, and "The Swan."

According to Elizabeth Haiken in *Venus Envy*, in the 1930s plastic surgeons were trying to organize and rid their numbers of the "quacks" or charlatans who were performing unfortunate and careless surgeries without appropriate training. There were those in the trade who were trying to inform the public of the professional skills of a good surgeon through various means including "public demonstrations of their work at beauty conventions and in department stores" (48). I would argue that this was the first of the public spectacle of plastic surgery, or reality makeover. More recent public

demonstrations of plastic surgery have been recorded on film and have produced massive amounts of literature and debate.

Banet-Weiser and Portwood-Stacer discuss post-feminism and the extreme makeover. They argue that “post-feminism is often individualized and constructed as personal choice or individual equality, and thus is figured quite differently from the historical feminist emphasis on social change and liberation” (257). Some Post-feminist theories argue that by seeking individual equality in a consumer age, what was once seen as man’s control of woman through dis-ease (Wolf 216-227) is now re-interpreted as woman’s right of choice. Banet-Weiser and Portwood-Stacer suggest this is “the ultimate expression of an individual transformation and a kind of empowerment” (261). Here is where the arguments surrounding plastic surgery have moved from second wave feminism to post-feminism. Whereas Orlan uses surgery for the purposes of her art—she is completely in control of her surgical productions, she is awake during the surgery, she is in control of managing the pain and her healing journey; I do not believe that the women of “The Swan,” demonstrate the same kind of agency. They feel their selection and participation in the television show constitutes agency, however, they do not have control over the surgical procedures they do have and they do not are not allowed to see their image throughout the transformation. The women are expected to completely “obey” the team of specialists in order to move forward to the pageant and to have a “successful” transformation. I will discuss this further in the essay.

The complication with “The Swan” is the dialogue used by the producers and “team” falls into what might be dubbed a post-feminist rhetoric. In the promotional material for the show, and within the dialogue of the show, women are encouraged to

believe that plastic surgery will allow them to reveal their “true” beauty and their “perfect” body. However, the women themselves would not fall into this framework.

Much of what second wave feminists have fought for has come to fruition in the present generation, however, I am still quite critical of the paternalistic manner in which the women of this show are treated. Women’s worth is weighed in comparison to their beauty and not other skills, even today. I do not believe we live in a society anywhere near the utopia of a “post-feminism” (i.e. a world where women have achieved full equality). Even when the surgeries are complete, there is further work to be done. The ever-changing concept of beauty combined with newer technologies and the effects of aging have generated a term now referred to as “body maintenance.” Third wave feminism offers a way to understand plastic surgery today. According to Rory Dicker and Alison Piepmeier in the introduction to their anthology, *Catching a Wave*:

One way that the third wave distinguishes itself from the second wave is through its emphasis on paradox, conflict, multiplicity, and messiness. This generation’s feminism is often informed by postmodern, poststructuralist theories of identity; as a result, we are able to see the constructed nature of identity as well as the ways in which gender may be a performance that can be manipulated and politically altered as it is performed. This contradiction and multiplicity of identities plays itself out especially in third wavers’ love/hate relationship with media and pop culture (16).

The complexities of body identity, and especially body transformation are evident in the dialogue surrounding plastic surgery. In as much as second wave feminists were critical of plastic surgery and beauty regiments as these were seen to be male ideals prescribed for and on women’s bodies, third wave feminists are far more playful in their approach to beauty while maintaining a political critique of the power imbalances at play that influence women’s choices regarding their body. Arriving between these two



frameworks is the so-called “post-feminist” movement; a term that has much to do with the “backlash” movement and media. The post feminist period has created an illusion that there is no need for political action and that women now that they have reached equality are free to do with their bodies what they wish. This form of thought is deceiving in that it negates critical analysis of shows such as “The Swan” and encourages women (and men) to follow through with extreme body modification in the name of beauty to maintain a societal norm of maintenance.

The term “body maintenance” permeates Mike Featherstone’s chapter “The Body in Consumer Culture.” He writes: “the tendency with consumer culture is for ascribed bodily qualities to become regarded as plastic—with effort and ‘bodywork’ individuals are persuaded that they can achieve a certain desired appearance” (178). Featherstone’s description of how consumer culture and the plasticity of the body dominates ideals of image is reminiscent of “The Swan”, especially where the Life Coach discusses the goal making in the bonus features. The coach explains that maintenance is essential, just like doctor’s appointments. People need to make body maintenance “to do” lists such as botox, teeth whitening, liposuction, tummy tuck, etcetera. The comparison between the life coach and Featherstone’s version of “body maintenance” is eerily similar. Featherstone writes of this phenomenon, “body maintenance,” as a cultural theory, “The Swan,” and their team of specialists has put the idea of a “to do” list into practice as if this were the reality of living in the 21st century.

According to Haiken,

Americans have come to view their faces and bodies as entities that may be altered for social advantage or economic benefit, cosmetic surgery has become simply a realistic response to life in this most Darwinian of worlds. Most Americans probably would not go so far as to deem the

decision not to have plastic surgery antisocial, but they are more ready than ever to concede that it may be impractical (298).

The implications for women that plastic surgery is the Darwinian norm or the new survivor of the future is the individual who will choose surgery raises a number of flags for me. It is no wonder that women are willing to undergo drastic surgery. For the theorists whether they are critiquing the practicing or quietly supporting the right of women to choose their lifestyle, the reality is that many women are going under the knife to achieve beauty and competitive edge in a consumer driven world. Whether a Darwinian theory could support this or not I cannot say as the surgical operation are not reproducible at this point; however, it is for certain that surgery does give many women a certain status in their environment.

In the conclusion to their article “I want to be me again!” Banet-Weiser and Portwood-Stacer sum up the general consumerist post-feminist cosmetic surgery genre:

[T]he untempered enthusiasm with which makeover subjects embark upon a project of self-actualization almost wholly within the consumer market differentiates and marks the new genre as part of a post-feminist media culture. Building upon the traditional liberal trope of the disciplined self in search of fulfillment against all odds, the new feminine subject transcends even the limitations of her own body...[t]he message of the reality makeover programming is that nothing , and certainly not your own body, should stand between you and what you want to become” (270).

The consensus of the second wave feminists about the supposed “post-feminists” is that their framework body plasticity and consumerism are part of the fallout of the movement. There is little overt criticism of the women who choose surgery because this would take from the hard fought for freedom of choice that was won by the women before.

Kathy Davis was one of the first to advocate for the agency of women who chose surgery for personal empowerment not for movie star looks but rather to feel normal

(455). This brought her into the crosshairs of those who still did not support cosmetic surgery but rather felt it a frivolous violence against women's bodies (Wolf).

Unlike reality TV shows, Orlan disrupts the commercial and western concept of "beauty". Instead of undergoing surgery to assume a white male ideal of female beauty, she chooses instead to recreate herself with specific facial "parts" of famous paintings and myths. Orlan's explicit manipulation of her face as the means to challenge norms, social restrictions and the use of technology interested me immediately because she does not do this to advocate for appropriate surgery, rather to create an opportunity for choice. She uses her artistic prerogative to open a dialogue on an often closed and defensive subject. Orlan is discussing the idea of choice and beauty. In a conference in 1994, she observed, "[m]y work and its ideas incarnated in my flesh pose questions about the status of the body in our society and its evolution in future generations via new technologies and upcoming genetic manipulations" (7). For Orlan, the possibilities that surgery opens up are endless; she criticizes the restrictions of western beauty norms and the hidden subject of surgical pain and healing for this beauty.

From male control of female bodies to personal control and transformation of one's own body—her is where I find my own experiences and those of the feminist movement colliding. How is what Orlan did different than the surgeries Wolf criticized? How did the public return to spectacle as an appropriate venue of personal transformation? Where does the work of Orlan come into this? How does reality television and the beauty pageant tradition play in this? Does the private reconstruction work that I had done differ from the work done on the women of "The Swan"?

### **Plastic Surgery, Entertainment, and Dialogue**

Jane Ganahl wrote in her article “Clipping the Wings of the Swan,” about her daughter’s response to “The Swan” after arriving home one Monday evening:

I was home on a recent Monday night when my daughter called me. “‘Turn on Fox,’ she said. ‘You won’t believe this... This is the sickest, most evil thing I’ve ever seen on TV,’ she said. ‘Hilarious’” (F6).

Ganahl was equally sickened by the reality show but unlike her daughter she missed the “hilarity”. The viewers of the surgical shows may be equally horrified by the actual surgeries; it is in the reading or point of view of the surgery that viewers interpret the graphic display.

Learning to exert power or will over ones body and mind has become a multi-million dollar industry today. The shelves of self-help sections in bookstores today are cluttered with promises of healing journeys, perfect diets, fabulous bodies and great relationships. For some the journey to mastery over the body and mind includes counseling, exercise and diet: When these methods of disciplining the body and mind fail, there is always cosmetic, or plastic surgery to transform the unruly body.

The Reality TV genre, itself a recent money making industry, has recently cashed in on this million dollar industry with the extreme body makeover shows such as “Extreme Makeover”, “I Want a Famous Face”, and “The Swan”. This form of mastery is the premise of the reality show, “The Swan” (2004). Contestants on this show are selected from American applicants who are self-proclaimed “ugly ducklings” seeking to participate in an arduous exercise plan, surgeries, life plan counseling, competition elimination round, and if selected, a final beauty pageant contest. In the 1990s, French performance artist, Orlan, underwent a series of live cosmetic surgeries to challenge western idealized beauty and the lengths to which women will go to achieve the fantasy.

When Orlan began her surgeries in the 90s, the shock of seeing a speaking corpse, that is, an awake, animated person speaking while doctors operate on her flesh, her mouth, her face was the foremost spectacle reported on by journalists. She reads, she answers questions—audience members interact or react. The viewing public of past “freak shows”, carnival events, public anatomy theatres, Orlan’s “Interventions” and Reality TV shows such as “The Swan,” want to see what is inside—there is entertainment in the so-called “grotesque”.

Mary Russo, in her discussion of carnival and theory states that:

[T]he grotesque body is the open, protruding, extended, secreting body, the body of becoming, process and change. The grotesque body is opposed to the classical body, which is monumental, static, closed, and sleek, corresponding to the aspirations of bourgeois individualism; the grotesque body is connected to the rest of the world (325).

For Orlan, the quest is about the display and the surgery itself; for “The Swan”, the transformation is the story. For the producers, the editors, and the team, the grotesque bodies are the bodies before surgery; even the surgical bodies are glossed over. The main display for the viewer is the before and the after, at the mirror. We see the woman, in gray underwear, body displayed bodily “faults” highlighted, and then we are shown the transition to a pageant show “beauty—one child called her mother a “Barbie doll”. The surgeries of Orlan and of “The Swan” highlight open bodies, bodies displayed from the inside, bodies transforming.

Surgical spectatorship began long before Orlan and Reality TV. The opening of bodies for the purpose of entertainment dates back to the 16<sup>th</sup> century, “...the anatomy theatres, as they developed during the 16<sup>th</sup> century, became public spectacles which attracted a range of audience members, from physicians to nobility to state officials”

(Thacker 319-20). Similar to reality TV and Orlan's performances, "the main attraction of the anatomy theatres lay in a certain type of voyeurism associated with a sense of real-time discovery before one's very eyes, a universal glimpse into one's own interior" (ibid). In fact, within the mind there is a sense of horror and an acknowledgment of the splendor.

As observed by Julia Clarke:

Orlan's most recent performance aesthetic is dissection, recalling the spectacle of autopsy theatres in Europe during the Renaissance. She is an *echorcée*, reminiscent of Enlightenment anatomical studies, in which the flayed body, looking very much alive, displays the splendor of internal body viscera... This is true today, for to witness an operation on a human body is an experience like no other. No dramatization of war or horror can surpass the knowledge that what is being observed in the operating theatre is a body that while simultaneously alive, expresses the stasis and bodily mutilation associated with traumatic death (187).

According to Kate Ince, discussing Orlan's manifest (Carnal Art) statement on Lacan's theories of the mirror for opening the body is a sort of 'negation of the mirror stage':

Looking into the entrails reveals an irremediably fragmented body composed of organs, tissue and muscle; it is as if the act of cutting open the body—the gesture of surgery *par excellence*—instantly punctures and deflates the ballon-like 'imaginary body' or 'skin ego' to which the infant subject starts to attach so much importance in the mirror stage, and which underpins subsequent development of the ego (52)

While Orlan sought to challenge the beauty norms and the hidden world of cosmetic transformation with her live surgical performances and her self-determined living sculpture, "The Swan's" surface goal is exactly the opposite. For the women of "The Swan" seek the status quo—they wish to fit into a world where they have felt like outcasts for most of their lives.

### **Agency:**

Agency is a term that has been used by feminists to discuss the power dynamics of women as they struggle for power in situations of “sex”, “gender”, “class”, or “race.” For Orlan, agency and personal power or control of her project is the basis of all her projects: no person dictates her work or its direction. In the case of “The Swan,” agency is not so clear. As I stated previously, I see the participants of the show as women who may have a limited form of agency in that they sought out a placement in the show to achieve what they see as freedom from bodies they find restrictive. I see the entire set of the show, with its restrictions on the women and the paternalistic “team of specialists,” as a dominant patriarchal control and infantilization of women’s bodies and minds.

“The Swan” has raised the question of medical ethics. While on the one hand using a genre of entertainment for profit (reality TV), on the other hand, the producers are taking into its hands the very lives of the women who are participating in the show.

Jane Goodall addresses the issues of ethics:

In the late 20<sup>th</sup> century, the ancient theme of free will versus determinism has found a new crisis, in which it can no longer take its bearings from value systems appealing to the ultimate authorities of God or Nature or Fate. Ethics comes to the fore as the only means by which we can steer a course through ‘an order of pure decision’ as François Ewald has labeled the human predicament in an era of advanced technology (150-51).

As technology becomes more advanced and new possibilities for surgery arise, the question is not so much about what we can do but rather what we do. For example, ethically, who has the right to decide what should be or can be done in the case of cosmetic surgery? With regard to Orlan, a Dr. O. Relandt wrote a psychiatric report on

the artist and her “condition” which was published in the French medical journal *VST*. Kate Ince provides a translation of this article by Patrice Desmons and the “diagnosis” in her footnote:

The main diagnosis made is of ‘artistic monomania’, with secondary observations of extreme narcissism, depressive tendencies, and a ‘pathology of freedom’ (freedom from identity—name and image—conferred upon her by her family and upbringing). To treat Orlan’s ‘monomania’ would be equivalent to trying to cure her of her profession as an artist and her ‘condition is quite compatible with the exercising of a profession, and not a source of danger to anyone except herself (134).

For Orlan, the psychiatric community and viewing public might have an interest in her as a subject of interest, however, from the above, it would seem clear that with her status as artist, she has leverage to be creative with her body modifications. However, with regard to the participants of the Swan, each woman must undergo psychological assessment prior to the show and care while going through the program. Still, many critics question both Orlan’s videos and performances, and “The Swan” series—what are the ethics of cosmetic surgery where there is, in most cases, no physical condition requiring the surgeries. Goodall continues:

Every decision involves judgement, and where decisions will have social or material consequences, judgement involves ethical analysis of what is at stake. The convention of equating freedom with choice breaks down in a situation where there is no freedom *from* choice. As advances in medical technology are continuously expanding the domain of human decision-making, choice itself is becoming an inescapable obligation in areas from which it was previously excluded” (Goodall 150-51).

The producers of “The Swan” choose to frame the show within a discourse of choice and empowerment. They choose to cut the footage in such a way as to omit the life-threatening aspect of surgery. In this, they are negligent in their participation of the



ethical part of the surgery. The women who chose to participate in the show are desperate for a change in their life, and the producers of the show are willing to use these women for a season or two of financial gain through public entertainment. These women applied to participate in this reality show in part due to the alienation they felt from their bodies. An example of this alienation is Cindy, a contestant, who says: “we had a Halloween costume party at school and I was the witch of course, because of my nose.” Later, after multiple procedures including where the surgeons state they will “fix that nose that has *haunted* (italics mine) her all her life,” Cindy is displayed before the mirror for her reveal where the host announces: “here is Cindy, from a self-proclaimed witch to an elegant beauty” (episode 3).

Another common concern the women come to the show with the hope of “fixing” is the marks left on their bodies from childbirth and breastfeeding. The manner in which postpartum bodies are medicalized into and the way the women and doctors refer to these bodies is very similar to beauty definitions as written in Naomi Wolf’s 1991 *The Beauty Myth; How Images of Beauty are used Against Women*:

Today’s beauty surgeons define as illness all evidence on the body of it’s reproductive activity—stretch marks, sagging breasts, breasts that have nursed, and the postpartum weight that accumulates, in every culture, at about ten pounds per pregnancy...just as maternal breasts lose no feeling, [n]or are they dysfunctional; to the contrary, they have fulfilled a primary function of the breast, lactation. But cosmetic surgeons described postpartum breasts...as “atrophied,” a term...to describe the wasted dysfunctional muscles of paralysis. Before 1973, it [cellulite] was normal female flesh (226-7).

For example, there is Cristina, “I want to be a better...a better Cristina. After the birth of my son, my belly was left with saggy skin and stretch marks...I do not want to belly dance for my husband”. Cristina explains that with her body as it is all she sees for her

future is a divorce (episode 2). Beth, “after having a child, left with a disgusting stomach with an abnormal belly button” (episode 4) As well, each woman who has had children is given breast implants to “plump up those deflated breasts” and this procedure often includes nipple lifts. Another example that stirred anger for me is what the doctors referred to as the “cankle” problem. Often in earlier episodes it was discretely referred to as liposuction of the lower calves, however, in the case of Beth (episode 4), the doctors shared her surgery working together on her as she had such extensive work to be done. If you were to see Beth outside of this context, she is a striking girl, maybe a little sad but quite pretty. In the operating room, the term “cankle” came up as the term the doctors use to refer to ankles where the calves are “thick” and come down into the ankles. Apparently I have “cankles” and what they meant when I was a long distance runner was that I could run very fast and that I was less prone to injury. And in times when I needed them, my strong “cankles” have saved my life. Many of the women of “The Swan” had this surgery. I find it disturbing that this is clearly a very attractive attribute for women these days. Drs. Haworth and Dubrow referred to Beth, who gives herself completely to the process of the swan and the specialists, at the “reveal” as: “Our Masterpiece!”

Every woman accepted to the show has cosmetic “flaws”: and the doctors, coaches, dentists, and team “specialists” sat ready and eager around the table prepared to dissect and “repair” each woman as she entered the contest. Whether their bodily alienation is caused by childhood bullying/name-calling; or from maternal bodies—stretched belly skin, weight-gain, breast loss, gain or gravity-effects; or from bodies out of control—“cankles,” too slim, too voluptuous, cellulite, soft, large nose, cheek

bones not prominent enough/too prominent, smile too thin, breasts too small, breasts lopsided, chin too large, too small, teeth crooked, rotten or not bright—it seems, the critiques against these women’s bodies are endless.

Do the women of “The Swan” demonstrate agency in this contest? The doctors and team of specialists have almost absolute control over the women’s journey in the months that are in seclusion. However, some interesting interruptions happen in a few cases. For example, Tawnya, (episode 3) refuses to follow all of the doctors suggested surgeries. When Tawnya visits the Dr. Dubrow on her consult visit, he has the list of procedures he believes she requires. Tawnya is 40, and probably the oldest swan and she refuses the facelift, stating that she really likes her cheekbones as they are. “The Swan narrator comments that there is some concern that she will not proceed due to Tawnya’s “reluctance to follow the doctor’s advice”. When Tawnya went to have surgery, she informed the surgeon that she did not want to have the bump removed from her nose as it reminds her of her daughters who all have it. The doctors and team are very disappointed that she is once again backing out of a surgical procedure. After her surgery is complete the Life Coach, Nely Galan, visits her in her room and asks if Tawnya to reconsider and go back in for more surgery. Tawnya refuses. Tawnya’s actions result in a general narrative during the episode: It is implied that she may be unsuccessful in her transformation: in effect, she is a “naughty” patient, and has taken matters into her own hands, and therefore her results are out of the hands of the doctors. By naughty, I mean that the doctors and team have infantilized these women during their stay, and any sign of personal agency or conflict with choice of procedures results in a visit from the “Life Coach” who redirects the participant toward the goals

of the team. When a participant such as Tawnya proceeds with her own agenda, the team shakes their head as one would do with a wayward child that you cannot control. In the end Tawnya does not move on to the pageant, despite working on herself within her own accepted boundaries. The team and judges see her as having resisted their authority and therefore, they see her transformation as incomplete. This translates that agency or personal power outside the accepted program is not seen as successful. In this reality environment success equals conformity and obedience<sup>1</sup>.

Another example of narrative disrupt is when Tanya, who was to compete in episode 8, sneaks a mirror into her room, thereby violating the rules of the game. She walks off the show instead of facing the consequences of her actions. Tanya behaves with threatening and angry behaviour towards the team and camera. She also demonstrates “disobedience” to the doctors and life coach thereby disrupting the “perfect” outcome narrative. As well, the behaviour of this particular woman questions the screening of the psychologists: how do they screen who gets in, did this woman apply for the free surgery with no intention of subjecting herself to the pageantry. As she was leaving the show Tanya stated that she knew all along that she was not going to win.

Kathy Davis, well known feminist theorist on the body and cosmetic surgery, writes in her article “ ‘My body is my Art’: Cosmetic Surgery as Feminist Utopia?” ‘Like many feminists, I was deeply troubled by the fact that so many women willing

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<sup>1</sup> Foucault discusses the concept of power and the medicalization of women’s bodies in *the History of Sexuality volume 1 and volume 3, particularly in “the*

*Care of the Self.” Although his references are made in regard to family, sex and childbirth, it is important to note the historical importance of this focus on the control of women’s bodies.*

and enthusiastically have their bodies altered despite considerable hardship and risk to themselves” (455). Davis writes of her research on women who had cosmetic surgery in the Netherlands where cosmetic surgery is covered under medical insurance. In this particular article she compares the surgery of her participants to the performance surgeries of Orlan. She alleges there are very few similarities. Although she is hesitant to support the practice of cosmetic surgery Davis writes further on the subject, “[w]hile I share the commonly held feminist view that cosmetic surgery represented one of the more pernicious horrors inflicted by the medical system upon women’s bodies, I disliked the concomitant tendency to treat recipients as nothing more than misguided or deluded victims” (ibid). Here I find again the contemporary stance of feminists on cosmetic surgery: they don’t really like it, they think it still illustrates a violent act on women’s bodies, but they are hesitant to speak against any act that may infringe on women’s agency or power.

Orlan has continued her quest to remake herself even now past her surgeries through computer morphing technology. This draws on specific cultural markers which she applies to her already made face (“Self-hybridation”). However, in discussion of Orlan’s surgeries, Goodall states:

The idea that the body is fully achieved through the act of making or re-making one’s own body according to one’s own will is deeply heretical and is powerfully expressed in another of Orlan’s favourite texts: Artaud’s late poem *To Have Done with the Judgement of God* (first published in 1948). Artaud proposes that in order to restore human being to its proper and free condition, it is necessary to put the body on an autopsy table for a complete anatomical reconstruction (157).

There can be no doubt as to the goals and drive behind Orlan’s work. She has absolute control over her work, her body: her sculpture. Her face “reveals a self colonized by

technological invasion, and a physical body being displaced by image. Her deviant face, with high forehead and small horns is the mutant offspring of surgical intervention, enabling Orlan to embrace images of the carnival and of the grotesque” (Clarke 189).

### **Pain:**

Suffering or pain is part of the life’s journey in Judeo-Christian traditions. As with many stories and myths, the process to enlightenment, involves endurance, soul-searching and suffering—the reward: *transformation*, great love or the proverbial “happy ending”. However, the experience of pain is very different with the women of “The Swan” and Orlan. In many episodes of the TV reality show, the women ‘almost quit’ due to their pain. On the other hand, Orlan stresses in interviews that she experiences no pain. She, unlike the women of “The Swan,” is awake for her procedures, she answers questions, she photographs her recovery, and ensures that she personally experiences no pain. On her experience with pain, she remarks to Robert Ayers:

In my work, the first deal I have with the surgeons is, ‘no pain’. I wanted to show this body, opened up, and to produce it with lots of photographs of me there, laughing, playing, reading, etcetera, while the body is opened up...I want to remain serene and happy and distant. I don’t want it to be something suicidal or difficult, beyond the level that I’ve already set myself for these operations. Of course, for these operations there is a price to be paid: I don’t suffer but I am aware that my body suffers, which are two different things (183).

This is by far a different experience than the women of the reality TV show, for the pain they experience, as captured by the camera, is significant. In several episodes, participants remark that they are uncertain if they are able to continue with the

competition. Their uncertainty is supported by their “coaches” and by the narrator. Is this part of the drama of the reality genre or are these women in fact suffering to that degree? And if they are suffering so much that they are considering quitting the show, the question begs: are they being denied medication to vamp the ratings or to support the idea that for beauty one must suffer? Orlan, who has endured many surgeries, has never been in such pain, in fact, she claims to suffer little or no pain, choosing to use pain killers or sedatives instead.

Orlan’s goal is not to critique plastic surgery as a choice for women or men; she opposes the colonized internalization of the patriarchal control of a *woman’s* image.

Jasmine Rault explains Orlan’s relationship to plastic surgery:

[T]o criticize an aesthetic system that naturalizes the always-being-made body, to demystify all the processes that go into producing fashionable, beautiful bodies, of which plastic surgery is simply the most overt. Her performance reminds us that bodies are always being forcibly produced, but the force is always being hidden, obscured, forgotten (6).

Orlan ensures that the audience does not forget this violence because she insistently displays each stage of *intervention*. While Orlan feels no pain as during the surgery and uses painkillers after, the viewer experiences pain in watching. Many of her critics comment on this reversal of the “suffering artist” with “suffering audience.” Some critics like Michelle Hirschhorn have focused on Orlan’s concept of cutting the face:

Another speculation pertaining to the origin of power within Orlan’s imagery to instill unmitigated horror, lies precisely in the fact that she chooses to cut open her face. In our culture, the face is deemed the most precious characteristic of human identification, and therefore enjoys a privileged status to the rest of the body (128).

Implicitly within Orlan’s work then, with its metamorphosing of her facial features and all the codes that are culturally embedded within the concept of face and identity then she

is pushing the bounded-ness of sanity. Is sanity perhaps another hegemonic myth that constrains the boundaries of the body? The audience might be more relieved if told that Orlan is mad, that her repeated surgeries and public performances are the antics and manifestations of a mad person/woman. Orlan comments on the implication of insanity:, “Like a sportsman who makes a solitary crossing of the Atlantic, we often do crazy things without necessarily being *crazy*” (Conference 14). Orlan’s writings and a study of her performances reveal a brilliant physically active challenge to hegemony, to patriarchy and to patriarchal institutions such as religion. Academics write about these challenges but the ability to actively go against social constructions using one’s own body is perhaps far more “real” than any theoretical *raving*.

My own experience with surgery and pain is that during the first few days the hospital and doctors were more than willing to anesthetized and sedate me so that I experienced little pain. However, I had to request the injections as soon as I was awake and then I underwent scrutiny regarding how much time had passed since the last injection. After discharge, I was prescribed a limited number of painkillers and I found that these (codeine) were not useful in managing my pain. After one surgery, it took two visits to the emergency room for me to receive serious attention to the amount of pain I was in. When I did receive attention, it was discovered that I was in fact having a reaction to the painkiller that had been prescribed and only then was a more appropriate and effective painkiller prescribed (a form of morphine). My very first reconstructive surgery on my nose resulted in several complications and extreme infections and pain. These were completely ignored until I could see the original surgeon who was unavailable for a two-week gap of time from my first hospital emergency visit (a few



weeks after the surgery). I ended up unable to return to work on time and temporarily homeless. When I did get an appointment to see the surgeon, he discovered that a number of the internal stitches had not dissolved and I had developed an infection in my sinuses that had spread to my lungs. All of my pleas: “I am in severe pain,” to hospital and clinic staff were ignored until the specialist could confirm this to be true. I was eighteen by the time he saw me: homeless, severely traumatized and unable to understand why I was being put through more pain. Medical professionals do not take women seriously when they are in pain. More often than not, women are encouraged to try and hold out a little longer before receiving pain relief. In an institution that infantilizes women and controls their medical progress, is it any wonder that relief from the agony of healing would be held out drop by drop? Is the pain a significant part of the process for women—Is pain perceived as part of the process of the transformation journey? For the doctors in charge of the journey in “The Swan,” it would seem that pain is indeed part of their perceived process.

**Transformation: “The Swan”: Ugly Ducklings Transform through Surgery:**

In a leaflet entitled “Carnal Art,” Orlan describes how her performances (interventions) parallel the production of language, of voice. She writes, “[c]arnal art transforms the body into language. Revising the biblical idea of the word made flesh, the flesh is made word. Only the voice of the artist remains unchanged. The artist works on representation”(1). With reference to the use of the word “interventions” Orlan explains, “[I]n French, *intervention* also means ‘operation’” (Conference 2). According to Deleuze

and Guattari, when one does not recognize the face, the possibility of disconnect is greater in that the face is the site of recognition. In the Lacanian concept of the “mirror stages” I explore how these can be related to participants of “The Swan” who have been denied access to their image during the transformation of their physical image and also during their personal therapy. By not having access to their image for three months, the women who have transformed so drastically are literally unable to recognize themselves when faced with their own mirror image.

Not only are Orlan’s actions dangerous to her own self-identity, they are dangerous to the hegemonic system that they challenge. Where identity is static, Orlan challenges not only her body’s permanency and her name but the very containment of her identity. According to Deleuze and Guattari,

If the face is a politics, dismantling...the face is the same as breaking through the wall of the signifier and getting out of the black hole of subjectivity. Here, the program, the slogan, of schizoanalysis is: Find your black holes and white walls, know them, know your faces; it is the only way you will be able to dismantle them and draw your lines of flight (188).

Orlan is not the mad scientist of *Frankenstein* who produces experiments on the bodies of others. She asks the questions of theoretical boundaries on the surface of her own skin. If anything she is her own Victor Frankenstein, manipulating and transforming her own skin as she challenges technology and the notions of beauty and theory. How far can one person push her/his body? What will happen when a computer image is applied to the face, how real will this image “become”? Orlan’s face speaks, literally through the operation and further in a language that is not verbal as we, the audience, witness her healing/transformation through the images of her face. Goodall explains further the motivation of Orlan and the Christian mythology behind her project:

As [Orlan's] career progresses, she insists that beauty is no longer a goal, merely a stage she has been passing through. The true project is self-determination to her embodiment. There is a deeper blasphemy in the parodic assumption of sainthood together with the refusal of a social identity bestowed, along with the patronym, at Christening. Orlan's determination to interfere with her given identity provides the sustaining motivation for her whole oeuvre (155).

Much of the debate around Orlan's work has been around the meaning of her transformation. "Misrepresentations lead to hostility, and Orlan has been called a publicity freak and a surgery junkie, and had her mental equilibrium repeatedly called into question" (Ince 45).

It may be that the production of identities in factual television is now so widespread and so diffuse, with so many particularities and differences that the model of the confessional no longer completely appropriate—that Foucault's 'spiral of power and pleasure' is conflated with a spiral of naming and resistance in the double helix of an identity politics that is challenging and reformulating power relations" (Dovey 107).

### **The Mirror and transformation: If I cannot see myself in the mirror, Do I exist?**

Reality television" has become a normalized evening spectacle, much like theatre, or carnival was historically<sup>2</sup>. The boundaries of acceptable public viewing have been pushed by each new season of television. As part of the mythology of transformation, both "The Swan" and Orlan have used mirrors. In "The Swan" mirrors are banned during the transformation period and only allowed at the end when the

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<sup>2</sup> Leathem, Karen Trahan. "Women on display: The gendered Meanings Of Carnival in New Orleans, 1870-1900". *Locus* 1992 5(1): 1-18.

Dovey, Jon. *Freakshow: First Person Media and Factual Television*. Sterling, VA: Pluto Press, 2000.  
Russo, Mary. "Female Grotesque: Carnival and Theory." K. Conboy, M. Medine and S. Stanbury (eds) *Writing on the body*. New York: Columbia University Press. 1997: 318-36).

women are revealed to themselves. For Orlan, mirrors are used to mischievously at times to engage the public in their own reaction, as well; she uses mirrors as she challenges mythology.

The 'mirror' has long figured in fairy tales and myths including in "Snow White" where the evil queen obsessively asked the mirror who was the fairest in the land; Narcissus, of Ovid, who became entrapped by his reflection in a pond; Medusa and the mirror Perseus used to kill her using it to see her reflection and therefore avoid looking directly at her. These are only three examples of mirrors in fairy tales and myth but they illustrate some very fundamental ideas of mirrors and what power they hold over the user.

There is a long mythological history of mirrors. I cannot possibly cover it all but I will discuss several myths that are used by Orlan and by "The Swan" and draw out the ways that these myths or fairy tales are reinterpreted for contemporary viewers. Another key component of Orlan's work has been the renaming work that she has done. Similarly, "The Swan" participants, go from self-proclaimed "ugly duckling" to "swan," Orlan becomes "St. Orlan" in the 1960s. Naming has always been part of her transformation work.

In "The Swan," Dr. Randal Digby Haworth (Cosmetic Surgeon) "reveals" his plastic surgery patients to the viewing audience and to the mirror. Much like in the fairy tale, "Snow White," where the "evil" queen repeatedly confronts the mirror to find out who the fairest in the kingdom is, so too, the participants of "The Swan" confront their transformed selves at the mirror. After months of surgery and life-coaching, "The Swan" participants, who have been restricted from viewing their images since entering

the competition, are escorted out in front of the “team” of specialists who look on like a multi-gendered team sprung directly from the “Men’s Association” and its leader Dale “Diz” Coba of the 1975 film, “The Stepford Wives.” The specialists look on while the women are led to see their image for the first time. The doctors beam with pride at their creations, whispering among themselves and nodding with pride.

In “The Swan”, the women are restricted from seeing themselves in the mirror during the three months that they are having surgery and transforming into the new “swan” versions of themselves. This is a very strict part of the process of the TV show and the one woman who did not obey this agreement, Tanya (episode 8), left the show. All reflective surfaces were treated to prevent the women from catching a glimpse of their new image (such as CDs).

“The Swan’s control of the mirror can be understood in relation to Lacan’s theories of “The Mirror Stages.” According to Lacan, children pass through a stage somewhere around 18 months, where they recognize themselves in a mirror as whole and complete, the language used most often in translations is “jubilation”. Kate Ince writes in discussing Orlan and Lacan’s theory:

Lacan’s concept places upon the idea a complete, whole external body image perceived by the child—this wholeness is illusionary, but persuades the infant for the first time that its body is unified and coordinated. The child’s pleasure in perceiving its body as a clean, smooth unpunctured entity is a momentous event in the process of ego-formation” (50).

Orlan has used this theory in the “negatation” referred to previously. However, if we apply this theory to “The Swan,” when analyzing the women at “the reveal” where each woman is presented with her new body for the first time at the mirror, we can see how each woman is presented with her body as if at that first stage of recognition. Except for

two women, each of the women have nearly the same reaction, that is to cover her face as if to hide from the image, then usually, they cry or scream, then touch themselves while studying the mirror or actually touch the mirror to reinforce that they are in fact seeing their own reflection. The two women who did not cover their face reacted as if frozen for a moment, in disbelief. Tawnya did not cover her face; she is the participant who did not agree to the extensive surgery because she wanted to recognize herself (episode 3) and Andrea was repeatedly narrated as argumentative and as emotionally unstable; she did not cover her face at the mirror either (episode 5).

Being that both of these women did not completely “give themselves over” to the process of transformation under the team of specialists, especially Tawnya, who maintained that she did not want specific facial procedures because she wanted to be able to recognize herself afterward. I would theorize that part of the reason that the other participants had completely become disconnected with their physical bodies during the transformation was their complete disassociation from their physical image while they underwent surgery and body toning in the gym. At the mirror, they could not recognize their reflection thus they reacted as Lacan suggested in the “mirror stage”. Bringing grown women through this transformation and to this stage of infantilized mirror stage is significant in a feminist context. Given that feminism critiques the power dynamics of male oppression of women by men and persons in power situations, the “team of specialists” holds significant power over the female participants of “The Swan”. By denying them access to their own image during such an extreme procedure, the team deliberately infantilizes them and therefore repeats the Lacanian “mirror phase. The women’s disconnect from their own image supports the

frightening separation that has occurred. The fact that one of the only participants who did not experience complete disconnect from her image was the participant who refused the most extreme parts of the surgical operations in order to “recognize herself” (Tawnya, episode 5) supports this theory.

Mythology plays a role in Orlan’s art. She challenges Judeo-Christian and Greek myths, as well as newer myths of the cyborg. One of her more disruptive installations is her 1978 Documentary Study: The Head of Medusa in which she evokes Freud’s essay of 1922, “Medusa’s Head” as well as the Roman myth to which the essays refers. Kate Ince cites Orlan’s description of the project:

This involved showing my sex (of which half of my pubic hair was painted blue) through a large magnifying glass—and this during my period. Video monitors showed the heads of those arriving, those viewing, and those leaving. Freud’s text...was handed out at the exit, stating: “At the sight of the vulva even the devil runs away” (Ince quoting Orlan, 67).

Here Orlan specifically challenged Freud’s reduction of women to “less than male” and challenged “the gaze” (Laura Mulvey) in viewing and objectifying women’s bodies. Freud wrote in “Medusa’s Head,” [t]he terror of Medusa is thus a terror of castration that is linked to the sight of something...it occurs when a boy, who has hitherto been unwilling to believe the threat of castration, catches sight of the female genitals” (212). Freud then compares the female genitals to Medusa’s head of snakes and suggests that what she turns to stone is in fact the penis, which becomes “stiff” proving to the boy that “he is still in possession of his penis” (ibid). In the Greek myth, the horror of Medusa’s returned gaze turns men to stone (*Ovid*, 110-115). In *Documentary Study: The Head of Medusa* Orlan displays “the female” in a state that patriarchy has restricted to invisibility and unseemliness. She returns the gaze of her audience by reproducing on video both the

“look” and the retreat. Within this project Orlan takes hold of a myth and the legacy patriarchal psychologists have placed upon it for her own artistic means.

In her recent computer transformations “Self-Hybridation,” and in previous performance work (1960s to 1980s) to that on her surgical performances, Orlan has continued to expose the structures of such mythology.

Orlan does not simply remake her Self; she continuously re-creates her image to demonstrate the prevalent instability of identity for women. In particular, she challenges the form of *woman* according to the dictates of religion and patriarchy. This image is continual in its transformation as are the public concept of beauty and acceptability. The idea of a product so “perfect” that science’s hand in its production is invisible is part of the act of surgical intervention. In the western reproduction of “beauty” the actual steps necessary to reproduce this imaginary ideal are staged outside of public display and only the final “perfect” product is to be displayed and then not acknowledged. That is, the final face is to be so “natural” that the surgical intervention is not *seen*. [or perceived] What Orlan does in her work is to expose the in-between and bring it into the public discourse. She graphically displays the “stages” of transformation and incites discussion about how intervention occurs on the many stages to recovery that an individual must go through before the final product is revealed, and finally, how western ideals of beauty are both constructed and “unnatural”.

By restructuring her face, Orlan creates a woman that is obtainable only by technological intervention, and who is continually constructed through media images. By assaulting the vision of the spectator through the abject, she not only shocks the viewer, but also challenges their perceptions of beauty, for she is not beautiful; her new face is too smooth, controlled and expressionless. By engaging with and embracing notions of the grotesque, she transgresses standards set by the beauty industry (Clarke 189-90).



Orlan disrupts the commercial and western concept of “beauty”. Instead of undergoing surgery to assume a white male ideal of beauty, she chooses instead to recreate herself with specific facial “parts” of famous paintings. I believe Orlan has similarly over-coded the physical appearance of her own face with historical signifiers to such an extent that she diffuses the very construct of beauty. Orlan takes facial ideals that alone hold significance but which when combined with others become *monstrous* and lose the impact that they each held alone (the mouth of Venus, the chin of Dianna, the forehead of the Mona Lisa, etcetera.). The disruption of “beauty” that occurs by forming multiple artistic renderings of beauty on one face is one way in which Orlan disrupts the contemporary interpretation and control of beauty and cosmetic surgery.

As a living artist and breathing sculpture Orlan has a voice that I believe is imperative to research. “Objectively” analyzing her images alone would not be reasonable considering how strongly she works to portray a multi-faceted, multi-medium, open-dialogue with her art. This art is both her body and her voice. Orlan has used plastic surgery as a medium with which to sculpt her body. Drawing from paintings, mythology, cultural ideals, Orlan has had numerous operations reconstructing her face into a collage of beauty ideals. When her work began, plastic surgery was a quiet “behind doors” event. Orlan meant to challenge two things: the ideals of beauty contemporary and traditional, and the reality of the ordeal surgery takes on the body; specifically, the surgery, the healing time and the final reveal.

For most individuals a similar discomfort is not present as they watch the news and part of the process of participating in Orlan’s work is to reflect on that discomfort.

What is there about observing a woman under-go surgery to transform her appearance that prompts the viewer to rush out (when watching live in the operating theatre) or to refuse to “look” when the photographs are displayed? The violence of the process is one of the factors that divert the gaze, however, if one chooses to “look,” he or she chooses to question why Orlan’s self-transformation extends to the viewer. When an individual chooses to transform her identity into a social norm, there is little disruption. But Orlan is not only challenging how technology can recreate *woman*, but the social restriction of that same technology to produce an alternate or more “individual” creation of Self.

### **Transforming through the Act of Naming oneself:**

Therapy plays a large part of the journey of the women in “The Swan” for the viewing audience. We watch as the women meet with a therapist and with a life coach on a regular basis. For the participants, it seems that much of their transformation from ugly duckling to swan lies in an internal transition. As the women confess to the therapist the traumas of childhood and marriage, they face the past while the television audience has the visual cues of watching their bodies heal from the surgical traumas. Jon Dovey has written on the phenomenon of the reality TV confessional and how this has replaced private therapy for some. He writes:

The confession is an enclosed, private process, crucially secret and therefore immune from any of the democratizing possibilities of an open speech in the ‘public sphere’ model. Now we have confession as an open discourse, de-ritualized one in which intimate speaking is validated as part of the quest for psychic health, as part of our ‘right’ to selfhood. The closed confessional and the therapists consulting room are historical tributaries to a great torrent of self-speaking on television, the Internet and the mobile phone” (Dovey 107).

For the women of “The Swan,” the therapy and confession segments are part of their journey of transformation. They let go of the old “ugly duckling” narrative in their confession room with their therapists as much as in the operating room where they allow doctors to cut away the parts of their bodies they feel detached from.

Orlan’s transformation into the character of her own naming: Saint Orlan is a declaration of her power of image and self-identity. She uses the power of religious iconology to challenge the meaning this holds for women. In referring to the title “Image-New Image” which followed her performance of “The reincarnation of Saint Orlan” she says,

The second title...winks at the Hindu gods and goddesses who change appearances to carry out new deeds and exploits—(for me it is about shifting referents, passing from Judeo-Christian religious iconography to Greek Mythology)—something that I do after all my operations. On the other hand, this title eludes to the said images—i.e. new technologies—because I make myself into a new image in order to produce new images (Orlan Conference transcript, 5).

Orlan does not simply remake her Self; she continuously re-creates her image to demonstrate the prevalent instability of identity for women. In particular, she challenges the form of *woman* according to the dictates of religion and patriarchy. This image is continual in its transformation as is the public concept of beauty and acceptability. For Orlan the act of naming herself is a grandiose act of sacrilege both “post-Christian and post-patriarchal” (Ince 136).

For myself, the act of renaming was in ways simpler, yet similar—not so grandiose or transgressive as Orlan but in my world, the ramifications were far reaching. My father selected my given name, at birth. The story is that he and my mother argued over my name and he took the documents and named me after a high school girlfriend. I

found this aggressive male authoritative behaviour offensive and one of many examples of male violence whether physical or otherwise. When I was 17, I chose to formally be called, Jewelles, a name decided on by my best friend and I. I informed friends and family of the change and no longer responded to persons who called me by my birth given name, and, as soon as I could, I paid to have my birth name legally changed. My father's name took me a few more years to shake off. The story of how I found the Smith name is curious and bold. I chose "Smith" for its anonymity and sense of erotic: somehow whenever I said the name I thought of hotel rooms and backroom exploits. I knew how much legally changing ones name costs, so I found a man named Smith and I married him after two weeks. This is how I fought patriarchy and challenged my father's authority over my identity. This is how I transformed my *Self* from the child who had endured abuse for so many years culminating in the assault of July 1988 into the woman I named: Jewelles Smith.

Orlan originally renamed herself in 1962, at the age of 15. Her name change to "Orlan" or Saint Orlan resonated well with her: "Reincarnation" work (Ince 135). Orlan chooses her name rather than respecting the name she was given and according to Ince:

The sacrilegious gesture of refusing the given name, as now becomes clear, exactly parallels the 'blasphemy' Orlan claims for carnal art. As she notes in her manifesto of this new type of body art...carnal art reverses the Christian and logocentric process by which the word becomes flesh, because in it, it is flesh that becomes word. Orlan's employment and reconstruction of her flesh, and the direct use of that flesh in works of art...is a resymbolization of the flesh (the body) that is both post-Christian and post-patriarchal—post-patriarchal because it is not just incidental that it is a woman's body that is being resymbolized in this way" (135-6).

As an artist, a feminist, and a teacher Orlan is inspiring. Not in that she causes spectators to run out and imitate her but in that she creates a space where certain questions can be

asked beyond the written discourse of academia. Orlan continues to break the boundaries of identity by relentlessly re-identifying her Self and her boundaries and in so doing re-identifies the boundaries of theory and discourse.

### **Conclusions:**

In this essay I have examined how two recent examples of entertainment have brought plastic surgery into public dialogue. One, Orlan, has been seen mostly by academics and art critics, especially in Europe and in the French community. The second, “The Swan,” is a popular American reality TV show that was first aired in 2004. By bringing cosmetic surgery into the public, there is an obligation to discuss the implications of surgery especially how the generally public will interpret the experience of the women and the possibilities of plastic surgery for the general public. What needs to be further explored is if the general public is inclined to have more surgery as a result of reality shows such as these and how they view the act of surgery itself.

Having experienced reconstructive surgery myself, I am surprised by “The Swan’s” negligence in discussing the real life and dangerous aspects of the dramatic surgeries the participants of this program undertake—and all for non-essential surgery. I have discussed aspects of agency, pain and transformation and how these affect the process of choice and overall experience for women who go through surgery whether for reasons such as mine, for artistic purposes or for other reasons, such as participation in reality TV.

Pain is a significant part of the process for most individuals who go through surgery; however, Orlan has challenged this by having an almost painless procedure and recovery time. By doing this she has challenged an age old tradition whereby doctors

have controlled the doling out of medication and pain management and she in fact controls her own pain management. The question begs, does this suggest that surgery can and/or should be without pain? And further, who decides? “The Swan” participants report varied degrees of pain. However, the editing of the show is done not by the women but by other persons, and therefore there is no way to know the reasons why one woman’s significant pain might be shown and another’s might be deleted. I do know and have shared that for most of my surgeries, I struggled with significant pain and had to struggle to receive pain medication. Depending on my age, understanding of medical jargon and education level at the time of the surgery, I have learned to negotiate the medical system to different degrees of success.

Both of these performances of surgery work to challenge and discuss beauty and surgery in our contemporary time. The mythological stories that inform our past are brought forward and used to retell stories of transformation today. As with all stories, it is the retelling and restaging that makes them modern and useful to a contemporary audience. Psychoanalysts have used stories of mirrors as cautionary tales and growth markers (in the case of Lacan). Both Orlan and “The Swan” used the Mirror in their performances, understanding the significance of its power in our psyche.

For me, “The Swan” is a cautionary tale where women desperate for change had the opportunity, as in fairy tales, to transform completely into someone new. And just like an all-powerful magician, they met a “team of specialists” who locked them away for three months. At the end of their time in seclusion, the women were presented two a night, one at time, in front of a mirror, where they no longer recognized their reflection. One woman snuck a mirror in so that she could break the spell and and ran from the

show, having transformed halfway. Another woman fought against the specialists, choosing to transform only as far as she wanted. But the tale does not end there. For after each reveal, one was selected to move on to the pageant, and in the end, one woman was selected as the most transformed. Out of 18 women, she won, the most changed woman of them all. The question is: How badly does the average woman really want to be another woman, completely unrecognizable? For the viewing audience, the story ends here at the beauty pageant, a presumed “happy ending” for each woman, especially the winner. However, for the women who participated in this television fairy tale, life continued ever after at home where they returned to life, as they knew it in newly transformed bodies.

The politics of transformation is ever muddled and conflicted. Personally, I have had surgery, I have stated I would never overtly work to prevent women from having the choice to have plastic surgery, but what I struggle with is the idea that women are undergoing life threaten interventions for the purpose of conforming their physical bodies into this society without knowing all the options and risks. Nikki Sullivan in her article “Transmogrification” has also discussed the struggle to find ways to support choice and yet be critical of the patriarchal framework that practices of surgery are being performed and being written about in/ She writes:

In much of the recent work on transsexual/transgender bodies, and in many of the accounts of cosmetic surgery they do not wish to simply banish such practice and procedures on the grounds that they are inherently hetero-patriarchal, the claim is that access to modificatory procedures is a matter of justice. Justice here becomes a matter of tolerating differences, of being liberal minded of allowing the other to claim and to exercise his/her rights, in particular, if s/he is suffering. But as I have demonstrated throughout the paper there are a plethora of problems with this sort

of approach, founded, as it is, on the kind of humanist logic that I, like Shildrick, am critical of (563)

I too have written on the issue of justice or right to access for women and I too struggle with this as a reason to justify my arguments. I do not want to say that Orlan's work is more "right" because she is outrageous and in control of her "art" and that the participants of "The Swan" are less worthy of surgery or that they have less agency because they are in a reality television show. My concern is primarily the trend I see where women are seeking surgery as a fix for their entire life much like we read in our faerie tale books as children. Cosmetic surgery is a serious undertaking with long-term complications and healing involved. It is not the same as having a tattoo or a piercing, surgery results cannot be guaranteed and reactions to medications and anesthetics vary from body to body. I find myself torn in my concern for the casual way that surgical options are approached and I struggle in the mire of theory to find a way to express this.



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**2: DOES THE PERSONAL INFORMATION  
AND PROTECTION ACT (2003) OBSTRUCT THE  
FREEDOM OF INFORMATION AND PROTECTION  
OF PRIVACY ACT?**

## Introduction

In the past five years, British Columbia's access to information process has become increasingly complicated. The provincial government has introduced numerous new pieces of privacy legislation and amendments to existing Acts, including *The Freedom of Information and Protection of Privacy Act (FIPPA)*, *Personal Information Protection Act (PIPA)*, *The Access to Information Act*, and *The Privacy Act*. With this restructuring it has become difficult for the public to make requests for information and the time it takes to receive information is now longer than ever before. Further, federal legislation now exists providing a clause documents can be omitted or severed from a request without providing a statement for the reasoning or even accounting for their very existence. These government changes are legislated in name of state security and personal privacy; however, I would argue that in many ways they are in fact created to protect government error and create a government that is not accountable for its actions.

Within this paper I will be discussing my own documents that I have received through two separate requests from the Ministry of Children and Families. I spent three periods of my childhood living with non-related families, that is, foster care homes. As well, I lived with various family members and moved between parents and cities until I turned sixteen. At that time I made the decision to move out on my own and support myself and end the abuse that I had been living with. In time, my anger regarding my childhood led me to request from the government my documents. I felt that somewhere in those documents, I would find answers to the many moves, the court decisions, the

abuse and the abandonment. I was grievously disappointed by the file I received in 1995. I had hoped to find information that supported my memories and that could answer questions I had no one else to query from. The stack of papers did answer some questions, it gave me dates and locations, but most of the important names were vetted, and any information that was incriminating was vetted. I believe that even if there was nothing in the file that could have been used in litigation against the government, there still would be a lack of transparency because there has been such a history of abuse and lawsuits that now, the government seeks first to protect itself and last to give answers to the former child that was its ward.

By making the access to information process so difficult, the government is denying former wards their personal narratives. When a child is removed from their home and taken into the custody of the government, the government sets up a trust between that child and the Ministry. This should include storing documents for when the child has grown. If that child had never entered care, they would have been able to access documents from their family. If this were an adult, they would have rights to information as an adult. I believe that it is imperative that policy be set up to ensure the rights of children for their future access.

*The Freedom of Information and Protection of Privacy Act* guarantees public access to personal information. Sometimes files that possess third party information also hold the key to the primary individual's information. Therefore, I am interested in exploring the following question: how does the primary individual have the right of access? This paper analyzes how the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Personal Information Protection Act* (PIPA) affect British

Columbians who are applying to access information whether of a personal, political or business in nature.

The British Columbia government has consistently been reprimanded for its treatment of children in the care of its Ministry. According to the Hughes report in April 2006:

Child welfare practice itself has been subject to cyclical patterns. Looking at statistics over the years on children being taken from their families and into care, we see the numbers decline for several years and then begin to climb, sometimes quite suddenly. For example, there was a spike in the number of apprehensions during and after the Gove Inquiry in 1995 when child safety concerns were brought to the fore. More recently, the numbers have gone down as social workers are asked to use alternative arrangements where possible, rather than bringing children into care (4-5).

When a former youth in care makes a request for their documents from the period in which they were wards of the state they can expect some omissions. What they should not experience, and what I did experience, are errors and a disregard for the legislation.

On January 1, 2004, The British Columbia government transferred duties to the Office of the Information and Privacy Commissioners (OIPC). Some of these include monitoring private sector complaints. According to its website, the OIPC:

...is independent from government and monitors and enforces British Columbia's Freedom of Information and Protection of Privacy Act (FIPPA) and Personal Information Protection Act (PIPA). FIPPA allows access to information held by public bodies (such as ministries, universities and hospitals) and determines how public bodies may collect, use and disclose personal information. PIPA sets out how private organizations (including businesses, charities, associations and labour organizations) may collect, use and disclose personal information (<http://www.oipcbc.org/>).

As I will discuss later in the paper, prior to recent legislation, the OIPC once had more staff and was responsible for public sector information responsibilities only. The recent

changes have made the duties of the commissioner more demanding and have made it easier for the provincial government to restrict access to information and extend wait times for time sensitive information. Accountability is a key issue in our government and the restrictions set out by our Privacy Acts allow information to be sifted, omitted, vetted and diluted to the point where the job of scholars, watchdog organizations, journalists or concerned citizens have a very difficult time getting to the story behind the scenes of the government practice. In my own research I have noted an impact of the PIPA on research in the following areas:

- Organizations seeking data that might be critical of the government actions/policy
- Student researchers seeking information relevant to thesis work;
- Private individuals seeking access to their own information and government files.

Historically, Canada has been a leader in access to information freedoms. When the federal government enacted the Access to Information Act on July 1, 1983, this country was one of the first to demonstrate what the potential of transparency in what access to government information could look like. Recent world events such as the terrorist attacks on the American World Trade Centers as well as new information storage methods on the Internet have meant changes to the way that organizations and individuals think about who should access what information. New conservative federal and provincial acts have been legislated to address these concerns.

What happens at a federal level often follows on a provincial level. Recent changes to the Acts that affect privacy and access to information have been reformed and new Acts that govern private organizations have been drawn up and now, in British



Columbia, the Information and Privacy Commissioner has become responsible for overseeing the private sector.

I will discuss how *The Freedom of Information and Protection of Privacy Act* (FIPPA) works with the existing provincial (*PIPA*) and federal acts: *The Privacy Act*; *The Access to Information Act*. When a Freedom of Information Request is made (FOI) it is controlled by one of several Acts depending on what Ministry or sector the request is made from.

I became aware of these Acts, in particular the *FIPPA* in 1995, when I was informed that I could request my personal files from when I was a foster child by making a Freedom of Information request under this Act. I received a bundled package of miscellaneous pages—they were not numbered, many of the photocopies were of very poor quality, many third party names were vetted and a number of pages were omitted, but I had my files. Later, when I was a graduate student, after several family members were deceased and legislation had changed, I made the decision to re-apply for my files, hoping to receive something new, maybe some of the missing information. Instead, I received less information and more of what I received was vetted.

As a result of my own experiences, I will be focusing on the provincial Acts rather than the federal. My reasons for this are mainly because I am affected by provincial Acts both as a student and in the personal requests that I have made. Therefore I will restrict this paper to the provincial Acts and only generally refer to how these operate under the federal guidelines. The objective of this paper is to explore the impact of “protection of privacy” on the existing provincial and federal “Privacy” and “Access” Acts. In theory, the *PIPA*, is not to govern the access or restriction to information that is

collected and stored by government bodies, however, the *Act* has certainly had an affect on these bodies and the manner in which they process their FOI requests.

I am interested in understanding how recent changes to the management of the Information and Privacy Commissioner's Office has affected how information is accessed or denied, specifically, how the addition of the *PIPA*, which is a private sector (business and labour) Act, has influenced the budget and the allocation of duties where access and privacy are concerned. *PIPA* has jurisdiction over personal information and the public sector. The office of the Information and Privacy Commissioner has jurisdiction over the *PIPA* in its entirety and in my dealings with the Ministries involved in my files, I have discovered that the language used when I ask questions about my files are similar to the language in *PIPA*. Therefore, I believe that workers are becoming confused by the language in these Acts to the point where they do not know which Act is governing their decisions.

### **Methodology and Framework:**

In the past five years, both the provincial and federal governments have amended and added Acts and legislation to restrict access to information and to protect personal privacy. Many of these new Acts are initiated under the guise of protecting the public from terrorism, unwanted sharing of personal information and better management of personal information by government, institutions and private organizations, especially as more information is collected and stored through online internet systems. The new Acts and legislation do not so much protect private information as prevent access to

documents that are of use to individuals and institutions. The government seems to be able to bend the privacy and protection Acts to protect themselves, while denying access to parties of interest.

Much of the work of this paper began over the past decade or so with my FOI requests. At times I went to the offices personally to make requests and I found when I did go in person, I received better “service” and more information about my file. An example I will give is when I first visited the Crown Council, they informed me that they could not let me access the files that they had as they were not “theirs”, they belonged the City Police. When I went to the Police Station, I got into a conversation with the Officer on duty about my situation, my studies, my case file, and my dilemma. He informed me that there was a way around the situation in that I could request from the City Police to put in an FOI to the Crown Council for the files on my behalf as the original ones at the Police Station had been destroyed when they were upgrading their system. We also had a general discussion about storage issues, access issues, and victim/perpetrator rights. The files were vetted by the police officer and I believe that had Crown council vetted them, I would have received far less information. I consider the information to be personal for myself but very important, and am pleased to have received it.

A large part of this paper will be a discussion of my personal case history from when I was under state care and how several examples from the documents I received in my two requests demonstrate the difficulties with the privacy protection aspects of the Acts. As well, I will explore the problems with errors in files and the overall challenges with file storage and organization of files.

As a feminist and activist in women's rights, I am framing my viewpoint from that position. I believe that knowledge is power—without knowledge, without information—change cannot happen. When the government restricts access to its former wards, it effectively cuts off the right of those former children to know their past. Many mistakes were made in the decision making process of the apprehension and court proceedings of the children in the care of children under state management. We have only to look at recent numbers of deaths of children in foster homes to know the horror of what happens to children in care.

Being that the Commissioner who once handled only public sector complaints now handles private sector complaints as well, I consider the significance of language is important. Where Acts are similar, I think it can be argued that individuals involved in vetting information are crossing lines and swapping rules between Acts as I will demonstrate later. I believe this is done due to confusion in some cases and in others perhaps due to sloppiness or in the case of the severing of documents there are more serious possibilities (as I will discuss later). Following this, a discussion of relevant situations where the disparities may affect researchers, especially those working on case studies, alternative policy or other sensitive archives.

## **Review of Documents**

This section will consist of a review of four Acts: The Freedom of Information and Protection of Privacy Act (FIPPA), Personal Information Protection Act (PIPA), The Access to Information Act, and The Privacy Act.

*The Freedom of Information and Protection of Privacy Act* (FIPPA) legislation became part of legislation in 1993. It is a provincial Act and functions to make public

bodies accountable for personal privacy and access. It is this Act that I first used to access my own documents from when I was in care under the Ministry of Children and Families. In its original form, this Act opened up the records for individuals to access their medical or personal records. It is this particular Act that is cited for adopted individuals who are seeking their biological information. This Act also restricts unauthorized access to records and provides information regarding how to appeal decisions:

- 2 (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
- (a) giving the public a right of access to records,
  - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
  - (c) specifying limited exceptions to the rights of access,
  - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
  - (e) providing for an independent review of decisions made under this Act.

According to the FIPPA, the Freedom of Information request process is quite simple. The Act states:

- 5 (1) To obtain access to a record, the applicant must make a written request that
- (a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought,
  - (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and
  - (c) is submitted to the public body that the applicant believes has custody or control of the record.
- The applicant may ask for a copy of the record or ask to examine the record.

On the website of the Office of the Information and Privacy Commissioner (OIPC), “The OIPC’s Role and Mandate”, describes the purpose of the *FIPPA* as seen from the point of view of the OIPC:

gives citizens a right of access to records held by more than 2,000 public agencies, including provincial government ministries, Crown corporations, local governments, school boards, colleges, universities, municipal police forces, hospitals, health authorities and self-governing professions. FIPPA creates a set of rules by which public bodies must abide when responding to a request for records. Those rules include timelines within which public bodies must respond to an access request and the circumstances in which public bodies may withhold information (1).

Further to the roles of the OIPC is the management of the *PIPA*, which is British Columbian, provincial legislation that came into effect in 2003. The primary purpose of this Act is to control and protect personal information as it is collected and stored by organizations. By organizations, the Act is not meant to control or dictate the movements of government bodies (3)(2).

The *PIPA* is a direct result of legislation in federal government that required all provincial governments to legislate how private and public organizations store, protect and release personal information. In a report on the Commonwealth Centre for electronic Governance and a roundtable lunch, David Brown wrote:

As of January 1, 2004, the Act [*Personal Information Protection and Electronic Documents Act (PIEDA)*] applies to all private sector organizations, whether they are federally regulated or not. The government of Canada may choose, however, to delegate its regulating authority to a province if similar legislation has been adopted (7).

The province of British Columbia was one of many provinces to that chose to implement its own privacy Act in response to the federal *PIPEDA*. As stated in the introductory remarks of the Act, the following are its primary roles:

The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances (*PIPA*: Part 1.2).

*The Access to Information Act* is a federal Act that became legislation in July 1983. At this time and date it was one of the first of its kind in the world. The purpose of the Act was to allow reasonable access to records held by the government. This Act was written to ensure access to records while restricting records that were sensitive in nature (S 2(1)).

The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government (S 2(1)).

Section 6 of the *Privacy Act* refers to the request for records process (federal). Again the wording is very similar to the other Acts. Following section 6 and 7 (definition of the process), the Act then defines the boundaries wherein a government agency can transfer a request to another agency or institute (8) (1). Section 10 discusses when access can be refused:

(1) Where the head of a government institution refuses to give access to a record requested under this Act or a part thereof, the head of the institution shall state in the notice given under paragraph 7(a)

(a) that the record does not exist, or

(b) the specific provision of this Act on which the refusal was based or, where the head of the institution does not indicate whether a record exists, the provision on which a refusal could reasonably be expected to be based if the record existed,

and shall state in the notice that the person who made the request has a right to make a complaint to the Information Commissioner about the refusal.

Finally, in this Act, the government has the right to refuse access and refuse to grant the

very knowledge of the information:

**10(2) Existence of a record not required to be disclosed**

The head of a government institution may but is not required to indicate under subsection (1) whether a record exists.

This is not part of the provincial legislation. I confirmed this by calling the Office of the Information and Privacy Commissioner of March 12, 2007 to be certain. It is significant to note because the provincial government does not hold the authority to deny access to information by severing it from the record. They can deny it only through one of the previously mentioned sections of the appropriate Act.

*The Privacy Act*, a federal Act, of 1985, was written to ensure that individuals privacy was being protected while at the same time allowing that these same individuals would have access to their own personal information (introduction, Privacy Act R.S.C. 1985, c. P-21).

An Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves (introduction, Privacy Act R.S.C. 1985, c. P

This Act clearly defines how personal information is stored, accessed and how it can be accessed either by the person about whom the information exists or by another person (such as a researcher or other person of interest). In Section 8 of the Privacy Act, the reasons for disclosure/exclusions from the rules of personal information are discussed.

Some of these are as follows:

**8(1) Disclosure of personal information**

Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

**8(2) Where personal information may be disclosed**



Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

When I made my second request for documents, I did make an argument in my request that some of the persons mentioned in my file were now deceased and that their information was no longer in need of “protecting.” However, this request was not even addressed in the letter I received when my documents arrived. I know that in the federal Act, some information is protected regarding private information of deceased persons, however, the information in my personal records would not seem to fall under this. In my records, what seems to be missing is information including interviews regarding my health and welfare at the time of my apprehension into care and my play habits while in the care of certain relatives, their views on me and general opinions; nothing that would seem inflammatory to their personal dignity (such as crime scene photos) (Cotler 17). When vetting this information, it would seem worth questioning: is the omission of this information in the interest of the government, the perpetrator, or the victim?

Section 12 of the Privacy Act covers the right to access and the right to request that errors in private information be corrected or when refused, requests for corrections be noted (s (12) (a) to (c)). Section 13 covers the request process. In many ways this

section repeats parts of the PIPA and parts of FOIPPA<sup>3</sup>. Sections of 13 of the Privacy Act read:

**13(1) Request for access under paragraph 12(1)(a)** A request for access to personal information under paragraph 12(1)(a) shall be made in writing to the government institution that has control of the personal information bank that contains the information and shall identify the bank.

**13(2) Request for access under 12(1)(b)** A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

This again is repetitive of the *FIPPA*, the *PIPA* and any Act that covers privacy information and access. This being the Federal Act, the other Acts would have been developed out of it: The *FIPPA* to govern the public bodies and the *PIPA* to govern the private bodies.

### **Case History:**

In 1995, I set out to find my own personal documents from when I was a child in care under the Ministry of Child and Families. There exists records about my case in several ministries, under my other names, including the Ministry of Children and Families, BC Ministry of Employment and Income Assistance (Welfare), BC Ministry of Children and Family Development, The Nelson City Police, The Provincial Court (Nelson, BC), Provincial British Columbia Crown Counsel (Nelson, BC). I requested general documents for the first time in 1995, but in 2005, I took a trip to Nelson, BC and

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<sup>3</sup> This Act is regularly referred to as *FIPPA*

began a more thorough search requesting documents through many of the above named Ministries using various strategies I have learned through my graduate and undergraduate studies in university.

I made a request for my personal documents under *The Freedom of Information and Protection of Privacy Act* (FIPPA), in 1995 and in 2005. The first request I made was due to my knowledge that there was this new legislation that made it possible for me to have access to my files from when I was a foster child. I made the request to the Ministry of Child and Families (and various other names it has held). I felt at the time that it was imperative that I have access to my files. A number of incidents occurred while I was in care and I wanted to find out answers that I was unable to get from foster parents, family acquaintances and relatives. My second document request came after I was a graduate student at Simon Fraser University. During the process of my studies, I discovered that there were many changes restricting access to files kept in the archives of government and other organizations. Having already access my files when the *FIPPA* originally was written, I felt I had a base to compare my new request against.

The following is my own account of some key moments when the Ministry of Children and Families was involved in my life. I have inserted the dates where I have been able to access them from my files as found in the documents I received from my FOI requests. As you can imagine I would not be able to recall most of these and my family has not been forthcoming with information and many of the parties involved are no longer in contact with me personally (e.g. foster families, friends of family or babysitters, neighbours, teachers).

On June 13<sup>th</sup> 1975<sup>4</sup>, my mother voluntarily gave me into the custody of the British Columbia government. I know this because I have the documents from a freedom of information request made in 1995. When I made the same request in 2005, I did not receive this same information. In my 1995, FOI request, I received 34 pages of information pertaining to my foster care years in the 1970s, in the 2005 request I received none of this particular information. What was included in this file were forms that described my condition when I was in care in 1975 and 1976, information that my mother had voluntarily put me into care prior to this privately. As well, it included information that I had been later apprehended from my mother and replaced with the family that had been caring for me for more than 14 months already. My mother had signed papers in effect agreeing to give my foster parents full custody of me and finally ending the back and forth that had been occurring “officially” and unofficially for over three years since my parent’s separation when I was two years old. The government set a court date for May 11, 1976, at which time I was immediately given into the care of my “natural” father who I had not lived with for more than three years. He arrived at my foster home and moved me to the interior of British Columbia thereby effectively ending the small bit of stability that my foster parents had been attempting to build for me.<sup>5</sup>

To demonstrate the manner in which the *FIPPA* and the Child Family and Community Services Act including amendments made after these pieces of legislation were enacted can affect the personal documents released to an individual, I am using one

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<sup>4</sup> Depending on the summary or page I examined this date is either the 13<sup>th</sup> or the 16<sup>th</sup> of June. It should be noted that I was already in the care of this foster family sporadically on a voluntary and private basis for over a year already

<sup>5</sup> According to the child in care record (1995 request only) in care 16.6.75 to 28.11.75; 26.2.76 to 19.5.76; 15.4.82 to 7.6.84

example that I was able to reconstruct only between the two files. I have changed the names of the key “parties”. Being that I changed families so many times as a child and that I have also legally changed my own name and married, I believe this is sufficient to protect the identity of the persons I was in the care of at the time of the named incident. With regard to the names of the officials involved, I have footnoted particulars when appropriate. This incident involved whether or not I was to have a child advocate represent me in court. The following is the account that I reconstructed by searching for the name of the child advocate throughout the two files then placing the documents in order.

On January 20<sup>th</sup>, 1982, the male caregiver I was living with was arrested and charged with sexual abuse. He moved out of the home I was residing in. When his partner decided she would rather have her husband reside with her than continue to maintain custody of me, the outcome was that I was apprehended from the custody of that family March 25<sup>th</sup> 1982. During the May 6<sup>th</sup>, 1982 court hearing for 6 month custody, the document stated: child “is/are in need of protection by reason of being abused or neglected or that his [*sic*] safety or well being is endangered” (page 185, 2005). The family moved out of city where we had been living days after I was apprehended and I was moved from my school to another community into a new foster home for a few months until the end of the school year. August 15<sup>th</sup>, Year X I went to live in the home of a relative where I resided until May 1<sup>st</sup> 1983 when I moved into another home of a relative. On December 3, 1982, I was in court for the first time to testify as a witness. The male abuser was acquitted of the charges by the end of the court session. Herein lies the story that I am seeking from the pages of the documents: It is not there fully. What I do

know is that the family I lived with “present well and appear to be cooperative” (from 1995 file), had issues with drugs and/or alcohol. The social worker wrote, “it is difficult for the child to believe that her evidence will be believed, as [NAME] works in the court system” (1995 file).

A child advocate was appointed to my file then denied. This was appealed, however, from the 1995 file, I would not know if she were rehired or not. What I was able to do through combining the two files, seeking the name of the family or child advocate who I will refer to as D.P., is reconstruct some of the story. I have a series of letters and running record extracts from which I will quote. The first is dated May 17<sup>th</sup>, 1982:

As you know, the Family Law Unit has adopted new guidelines for the appointment of Family Advocate. In general, it is refusing to appoint Family Advocates in Family and Child Services Act matters unless the circumstances are “exceptional”.

I have been informed by the family Law unit that I have not been appointed to act on this matter. I will therefore be taking no further action with respect to this (excerpt from 2005 request page 228).

This letter was forwarded to the Ministry of Human Resources and two law offices. A second correspondence, dated May 26<sup>th</sup>, 1982, is in the file, this includes a copy of the letter above a brief statement from one of the lawyers stating that she wished to forward this directly to the social worker for her information (227). Third, there is a lengthy letter, dated June 8, 1982, addressed to the Human Resources Regional Manager, in both files I received this particular letter, but different parts were vetted. In the letter, there are 6 arguments listed as to why a child advocate would be necessary. I am able to reconstruct most of the letter between the two. The introduction is the same in both requests with no omissions:

I am writing to request your assistance in obtaining a review of the decision by the Attorney-General that a child advocate is not essential in this Family and Child Service Matter” (2005 request page 223).

Further in the letter, at times names and specific allegations are vetted, in the 1995 documents; all references regarding non “natural” parents are vetted but even inflammatory information about “natural” parents is left intact, including reason 3 which is not vetted at all in request 1995 but is partially vetted in 2005. In the 2005 document, the 5<sup>th</sup> reason is vetted but not in the 1995 one; the reason given in 2005 is section 14 and 22 of *FIPPA*:

14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

22 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

As I quoted above from argument 6, in request 1995, part of the statement was vetted so that it read, “It is difficult for the child to believe that her evidence will be believed, [here 8 words were deleted]” (this same letter is found on page 224, 2005). This information was not vetted in 2005. I believe the information here is far more useful to me than the information vetted from reason 5. Overall, I can completely reconstruct this letter between the two versions.

In the 2005 file, there is one more piece of information regarding this matter and then there is no other mention of the child or family advocate. On page 214, a letter addressed to the Registrar of the Provincial Court, dated June 29, 1982 reads:

I wish to advise that [D.P.] of the Law firm [M.C.P. and CITY] has been retained to act as Family Advocate in the above noted case. A court hearing has not yet been arranged.

Yours Truly,  
 [J.M.]  
 Director  
 Family Law Section.

The next page of the file is omitted per sections 14 and 22 of the *FIPPA*. There is no other mention of this court case or of the matter of the advocate. In the 1995 request there is no mention of the period when the child advocate was not working, that is the flurry of letters: there are a number of “omitted pages and the file is out of order therefore this could account for this absence; however, there is another mention of the matter, in a “running record” dated June 29, 1982:

[Name] Regional Manager, region...phoned to express concern that the family advocate had been taken off this case—[VETTED<sup>6</sup>]...They feel sure complaint valid...would be most concerned at returning this child home, Feel family advocate essential. I checked with Family Law who advised that Family Advocate approved again following special plea from Superintendent’s lawyer (S.P.M.).

Finally, there is a letter written from the lawyer to the advocate discussing a Court Appearance on August 12, 1982, dated August 19, 1982. This too is in the 1995 version but not in the 2005 records.

This example is a key example of two things. First, the vetting system changes over time and it is worth the effort to make more than one request, second, the reasons why information is omitted do not necessarily make sense to the child *from* care. I am not sure whose privacy or counsel was to be protected here. I can say that between the two

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<sup>6</sup> In the case of names of persons with titles, I have placed their titles in and omitted their names. Where a name was not omitted in the file given to me but for privacy I have either placed an initial. If the record I received was vetted or omitted I indicate this otherwise I suggest where I deleted private information with either (ellipsis) ... or [square brackets].



files I am able to construct more of this particular struggle. Neither set of files told the story fully. And neither set was in order either. I believe the reason of order or organization is that pieces are held in different places or files. I am not sure that someone less inclined would be able to put together the story of this or any other foster child experience. Which brings me to a crucial part of my criticism: The number of errors in the file are incredible, so numerous that I would need assistance to count them! The information is out of order, the information I received is at times withheld or severed, and this is in violation of the *FIPPA*. If in the future these sorts of documents are used in any way to do research or to be made use of to make decisions, how will that be done considering the amount of error that exist within them?

One short anecdote I will share to illustrate how the files can be used in different ways depending on memory and information is the following incident that occurred while I was in my third foster home. I had gone out with an older child in the home (another foster child). We hitch hiked down the road a way and rode a horse that ended up bucking me off. I injured my back and had the wind knocked out of me, but we were both too scared to inform anyone because we were not to be on that particular farm. I swore I would not tell what had happened and we got ourselves home. Over the next days I reported that my back was sore and my wrist was sore. I asked to see a doctor or chiropractor (I had previously been injured so I blamed the pain on that). In the 1995 file request, it states: “psychosomatic illnesses ears, back, wrist” in the running notes at the time of that incident. In the 2005 request, there is a record of an actual doctors visit where I have an unexplained back injury and have a referral to chiropractor. I am in a unique situation in that I have inside information about this story and I wonder how an academic

would read this same file in the future without my input.

Several pages of the file are omitted in this later section. According to the files I received in my request, the ministry closed the file they had open on me May 23<sup>rd</sup>, 1984, however, my memory is that once after arriving at the last home I lived in before I decided to live independently, a male social worker came to visit to see if everything was okay. In the closing summary (found in the first request file not in the second) it states:

23.05.84—Closing summary

Informed by...Family Court Services that [RELATIVE] has been granted legal custody of [CHILD]...has been living...for the last twelve months. This arrangement has worked well for all family members...There does not appear to be any reason to maintain contact with this family. Therefore this file will be closed as of this date (S.W. C.M.<sup>7</sup>).

I was interviewed in front of [the family], I believe it was on the date mentioned in file request 1 (but not 2) that is March 10, 1983 (S.W. L.A. Back). Things were not well but I was not able to tell this stranger anything. I spent 4 years living with [this family]. I could take no more of foster homes, interrupted homes and repeated abuse. I left this home on my 16<sup>th</sup> birthday.

I spent years on my own, married, had a child, held her in my arms as she passed away in the hospital from a bacterial infection and watched my own marriage crumble afterwards. In 1995, I needed to know answers about my own childhood, and a recent Act, The Freedom of Information and Protection of Privacy Act, made it possible for me to access my government files from when I was in care, at least. At the time I was making my request, I was considering legal action against the government because they had

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<sup>7</sup> S.W. indicate social worker and is signed at the closing of most entries made by social workers.

apprehended me from one home, followed my care for a series of court cases, allowed unstable living situations and saw fit to place me in the care of another abusive relative and not follow through to ensure my safety. Much like in 1976, the placement was made after cautionary statements by social workers who felt the home might need to be observed for awhile before placing me. Yet this time also, without attention to the cautious social workers, ministry officials placed me in a home care and shortly thereafter closed the file. I was seriously abused in this home. The Ministry of Children and Families did not follow up as was recommended by letters written prior to my placement. With this placement I was moved from the interior of British Columbia to Northern British Columbia. In part this placement was similar to the other time when a relative gained rapid custody of me and then moved me from a reasonably safe home and area out of the district of the social workers who had initiated state apprehension and custody, to an unfamiliar environment.

When I requested my files in 1995, the documents I received supported my case to litigate. However, I chose at the time not to pursue legal action because, first, I was dealing with my divorce and the death of my daughter and second a very pertinent piece of the case was still not available to me and I felt that in time it might be. Due to privacy issues I cannot reveal the nature of that document but suffice to say I still do not have it. In 2005, when I was beginning my graduate study work I decided to test the new privacy legislation by reapplying for my Ministry of Children and Family files. As well, I went to the City where I had been apprehended the last time and went to the, Crown Council Office, The Provincial Court Office, and the City Police Office in person. I made request for records from their offices to see if I could get information from them that might not

be in Ministry of Children files. What I learned from the Court House was that my files were stored in Victoria and that I had to make a request to access them and then I may or may not see them due to nature of the files and the fact that I was a minor at the time. I was told that I could not request to access them in another city. It took too long for them to arrive and I was unable to access those files. As for the police files, I was told that they had been shredded. When I went to the Crown Office, I was told that the files were archived and that although the Crown had them in the archive they were the property of the City police. I then went back to the police station and met with the Sergeant. I asked him if I could make a Freedom of Information Request to his office for all the files that Crown had stored on my file that were “correspondence between Crown and the City Police”. He agreed that this was how I could access said files. I made the request and that is how I was able to access 24 pages of correspondence. I would never have thought to seek out information this way if not for my graduate studies in university.

My first request contained 388 pages. There were 33 pages omitted under “Ministry of Social Services Information & Privacy Division Severance Notice”. This equals a total of 421 pages in my file. These severance pages allow the individual who is vetting the document to select or check off a standard explanation, however, in the case of my first request, this was not done: the sheet was inserted but no specific reason for that page being disallowed was offered. In the cover letter of my file, dated March 7, 1995, it is stated that the only two reason that information is omitted is for sections 15(1)(d) and 22(1) of FIPPA:

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(d) reveal the identity of a confidential source of law enforcement information,

- 23 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

Within the file, there are numerous places where names are vetted, especially, names of non family members (step-parents, step-grandparents), as well, individuals charged with crimes related to my file, and their identifying information are vetted from my file, however, all information around that person in the first requested file was left intact.

My File request "2" contained 225 pages with 25 pages omitted for reason given: FIPPA sections 22 (third party information); sections 14, 22; and "Not Relevant" (Police documents). Therefore according to this request, my file contains a total of 250 pages. Throughout the file, large sections of the document are vetted for any of the sections given in the cover letter, dated July 25, 2005:

Enclosed is the information to which you are entitled. Please note that the records are reviewed and information excepted from disclosure under sections 14, 15 and 22 of FOIPPA and 77(1) of CFSA, has been removed. Pages on which information has been withheld are stamped at the bottom of that page with that corresponding section stamp (personal letter pp1).

So new to this file are omissions on the grounds of section 14:

The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

As well as including this new section, the Child, Family and Community Service Act (CFSA) is also now included in this vetting process.

77 (1) A director must refuse to disclose information in a record to a person who has a right of access to the record under the Freedom of Information and Protection of Privacy Act if the disclosure could reasonably be expected to reveal the identity of a person who has made a

report under section 14 of this Act and who has not consented to the disclosure.

(2) A director may refuse to disclose information in a record to a person who has a right of access to the record under the Freedom of Information and Protection of Privacy Act if

(a) the disclosure could reasonably be expected to jeopardize an investigation under section 16 or a criminal investigation that is under way or contemplated, or

(b) the information was supplied in confidence, during an investigation under section 16, by a person who was not acting on behalf of or under the direction of a director.

(3) Section 22(2) to (4) of the *Freedom of Information and Protection of Privacy Act* applies for the purpose of determining whether a disclosure of information is an unreasonable invasion of third party's personal privacy

Section 3 of this quote, taken from an attachment to the letter sent to me in 2005, is no longer on the CFCSA website of the Act. I am not sure of the relevance or of the time when it was deleted from the Act.

In reading through the files, I found that there are 171 unaccounted for pages in the second set of files. I find this to be a more deplorable finding than simply to discover that there is more vetted information. The fact that the Ministry of Children and families is now vetting files without accounting for the information (my first set of files there were 8 more pages completely deleted, yet a page was inserted saying one was missing) is a serious problem. This means that not only is the government becoming more secretive with its files and calling more information "private" but also it is now hiding files. Had I not made requests for these files earlier when the 1996 *FIPPA* came out, I would never have known that the information that is missing *had* existed. In the federal *Privacy Act*, there is a stipulation that the government is not required to disclose

information (16)(2), there is no such stipulation in the *FIPPA* or for that matter in any provincial Act.

The Acts do not truly work in the way they seem to be constructed, rather, they work in favour of the government by keeping secrets the government wishes kept under the umbrella of personal privacy. Another serious change to the *FIPPA* is the extension of the response period. The government as of April 27, 2006 has the ability to extend the period of time in some circumstances it has to reply to FOI requests (Reynolds 8-9). Although this may seem trivial in some cases, time sensitive material for reports or for personal cases may require information in a limited time frame and for the government to have power to postpone access on various instances is not reflective of an open and transparent operation.

While the *PIPA* was becoming legislation, and then falling under the jurisdiction of the OIPC; the provincial government was producing wide sweeping budget cuts. In the two years between when *PIPA* became legislation and when I made my FOI, trouble was brewing in the Ministry of Children and Families. There were a number of deaths and injuries of children under the care of the Ministry and this eventually lead to a review by the Honourable Ted Hughes, which was published April 7, 2006<sup>8</sup>. While I was making my request, behind the scenes some very serious accusations were made including: “172 child deaths [that] were recorded by the Office for Children and Youth in the Children’s Commission’s database between October 1, 2002 and March 21, 2003, when the final entry was made” (129). Further, in the report, Hughes discusses the misplacement of 73

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<sup>8</sup> BC Children and Youth Review: An Independent Review of BC’s Child Protection System

open files during the transition stage of the cases from the Children and Youth office to the Coroners Service:

Of the ...639 active investigation files 466 were sent to off-site storage in Victoria by the Office for Children and Youth in March, 2003, and 73 were inadvertently left in the Children and Youth Office...The 73 Children's Commission files...were located at that office in November, 2005, and were also accounted for by the Information and Privacy Branch and forwarded to the Coroners Service. Before the Commission closed, the parents and caregivers of 79 children and youth whose deaths were being investigated, had notified the Commission that they wanted a copy of the completed report (131).

Further in this report, Hughes discusses the confusion surrounding whether the caregivers and parents understood that the files were being transferred and where they were to be transferred. Considering the serious nature and the disorganized state of much of my personal file, in retrospect, on the one hand I can understand the length of time it took to receive and the number of pages that are missing.

I consider that access rights and third party privacy are being used to play against one the other when the government believes that (a) it might be in jeopardy of immediate public scrutiny for action being taken and not wish to reveal information through the FOI process; or (b) it might be financially or morally responsible for past decisions (e.g. poor management of a child in care); or (c) it might be mismanaging personal information and files of individuals presently and seek to cover up discovery.

### **Protecting Whose Privacy—Paternalism still at Play even After Care?**

#### **Timeline of Acts:**

- Access to Information Act [July 1, 1983] last amendments [2006] Federal Statutes
- Privacy Act [1985] last amendments [2006] Federal Statute



- Freedom of Information and Protection of Privacy Act [1996] British Columbia
- Child Family and Community Service Act [1996] British Columbia
- Personal Information Protection and Electronic Documents Act [April 13<sup>th</sup>, 2000]  
Federal
- Personal Information Protection Act [2003] British Columbia statute last  
amendments [2006]

Recent changes in the Office of the Information and Privacy Commissioner (OIPC), including staffing changes and responsibilities have affected the FOI process in British Columbia. As well, due to budget cuts and changes to the *FIPPA* and the addition of the *PIPA*; privacy and access have become hot topics in this province (and for that matter in this continent). Included here will be timelines of these Acts and government justification of them. Further I will bring in the debates of these Acts and the difficulties they create for researchers and private parties. Who requests information and why is just as important as what the information is for. In a political climate where allegations of government mishandling of children in their care and the loss of sensitive and private files, *who* grants access of the files is just as important as *what* is granted in the end. If the information is incomplete, disorganized, questionable, inflammatory or otherwise questionable, is it easier to just make it go away?

Having an open and accountable government had been the mandate of many of this country's leaders. Terrorism and fear lead the evening news discussions now and in the past few years, and pressure has been placed upon Canada by the United States to tighten security. In light of government philosophical change, from a more open

government to a less accountable government: changes have been swift and policy has followed. In a few short years funding to the Information and Privacy Commissioner of British Columbia faced cuts of 35% in 2002/3 (Reynolds 7). This was the year in which the newly elected provincial government began its budget cuts under the provincial government. Further cuts to funding and staff have been made, as well as additions to the duties of the Commissioner (ibid): The office has taken on the responsibilities of the *PIPA*, and the Lobbyist Registration Act, while gaining these responsibilities the office has continued to lose funding and has lost a total of 16 staff members since the 2002/3 budget (ibid). The reason these cuts are significant is because the Information and Privacy Commissioner is responsible for complaints about the way in privacy issues are managed. That includes when access is denied. Further to the increase in duties, the increase that includes the *PIPA* is conflicting in that this Act actually governs the private sector, not the government or public sector. Yet while the government is offloading private sector management of information to the OIPC, the actual work of managing government body private information is being hired out to private organizations. According to Keith Reynolds, an example of this would be “the BC Ferry Corporation [that] had been put beyond the reach of the Freedom of Information and that outsourcing and offloading of services had raised questions about BC Hydro” (ibid). Dan Hilborn wrote about another example of the private management of public sector information in his article in *Burnaby Now*: “Critics of the provincial government are livid after Health Services Minister Colin Hansen signed a 10-year deal Thursday afternoon to contract out the information services program for the B.C. Medical Services Plan and Pharmacare” (12).

However, I will argue further in my paper that the timing of this Act, and the political climate at this time have meant that privacy has become a critical issue and despite assurances from government, I consider that FOI Requests from government organizations have been vetted excessively due to the impact of this Act and the way in which documents are collected, stored, shared and accessed. The importance of information to women and to disenfranchised groups, especially former youth in care, is paramount to individuals climbing out of the system that has pulled them away from their family. Understanding what happened and how it happened is the right of every “victim” of a crime. However, when you are a child, especially a child in the care of the state, there is no one to hold memory for you until you are an adult and ready to seek answers. By barring access to documents that hold the key to this information on the grounds that it is protecting the rights of third parties or that it is advice of council, or that it might be used as evidence against the government, the very state that designed to protect the child is re-victimizing the person now an adult. The FOI process is paternalistic in that the government does not deem the individual as able to manage or understand the evidence, therefore, the government continues to act as the “parent” holding the documents in its archives, only releasing what it sees as safe for the individual to read/hold. In the instance of that same person being separate from the state, they would have their own lawyer, they would hold the documents and evidence in their own files and they would know the names and dates and places of all the incidences as they occurred. Further, the government, much like a guilty parent, does not reveal too much for fear of the ramifications for its actions after apprehending the child. The importance of knowledge, especially when it is documented knowledge, even with its errors is crucial for healing

and transformation. The government speaks of transparency and accountability all the while hiding behind omission, vetting, severance, withheld evidence, misguided paternalistic notions of what is “good for the public”. In the meanwhile, the third party privacy that is protected in the case of the former youth in care files is most often perpetrators of abuse, or the Ministry of Families itself.

According to David Brown in “Security and Privacy Laws: Striking the Balance,” “with the passage of the new security passages statutes in 2001, Canada for the first time had comprehensive legislation in both privacy and security fields” (6). Further in his discussion, Brown acknowledges several balances as he sees with the inter-relationship between law and public policy:

A third balance is the one between measures in Canada and those taken internationally, in particular by the United States. It was noted that Canada and the United States have different formulas for solving security-related problems, each in their own political context. It will take some time to determine which approach is more appropriate and effective (ibid).

Acknowledging that Canada is indeed looking to the United States for leadership or at least for ideas is in part the issue here. Whereas Canada has for a long time held a more open and democratic view of privacy and transparency of government, the United States has not. For Canada to now be tightening up its access to information and considering the United States as a possible role model is indeed a sign of a closed and unaccountable government.

The importance of access to information has been a standard of Canadian law since 1985. Having the ability to request files on government activities, and then, to question government actions through an impartial committee has been a long held right of Canadian peoples. By restricting access to information and then effectively cutting off

the standing committee (OIPC) wherein members of the public and private sectors can go and make complaints, the present government has shut down an important part of the democratic process in our government. Under the guise of protecting privacy and security, the present Acts are now restricting access to information.

The *PIPA* came into effect in 2003. Trying to access files has become more difficult since the *PIPA* was enacted in British Columbia. Other privacy laws have evolved and become more restrictive as well. I have some proof of this as I began my search for my personal records in 1995, prior to this Act (2003) and at that time, was privy to less censor and more documents. I repeated the same request after the *PIPA* was effective. As well, the *FIPPA* was amended and the OIPC received multiple funding and staff cuts (Reynolds 2006). My request was made in 2005 and I had far more information vetted. These searches on my part are what struck my interest in the legislation and what it is doing to access to information in our country/province.

One of the key critics/watchdogs of the Freedom of Information request (FOI) process is an organization called BC Freedom of Information and Privacy Association (FIPA). Their website is a key resource I have used in conducting my analysis. Not only do they have their own research articles online, but also they provide links to many other useful resources (<http://fipa.bc.ca/home/>). I was able to access their website when I was stalled on my FOI requests in 2005.

In January of 2007, Russ Frances wrote a series of articles detailing how the provincial government has repeatedly made the FOI process more complicated and expensive. One of the new initiatives instituted by the government was to stamp documents with copyright, thus preventing them from being recreated and published this

“along with other obstacles, make... one wonder if the provincial government has quietly changed the purpose of the FOI legislation to one of discouraging public access to government records” (“The Freedom Of Info Maze” 2006). Frances is a harsh critic of the provincial government’s resistance to open access.

The Canadian Justice Department also has a number of reports online, including an April 2005 discussion paper “A Comprehensive Framework for *Access to Information* Reform”. According to Irwin Cotler, Minister of Justice and Attorney General of Canada, in 2005:

The Supreme Court of Canada has described the *Access to Information Act*, which allows citizen access to government information, as a pillar of our democracy. At the same time, we must appreciate that certain limitations to the right of access to government information are reasonable and necessary—for example, protecting the privacy of individual Canadians and sensitive matters of national defence. (2)

Cotler uses words and phrases like: transparency, national defence, protecting privacy, reform, openness, and accountability. He uses these words so many times in one paragraph that they lose their meaning and then he slips in “national defence”. What does national defence have to do with personal privacy? According to Susan A. McDaniel, in “Families, Feminism, and The State: Canada in the Twenty-first Century”: “much of the social world, as we understand it is based on the experience of men and male ideologies” (258). She argues that how family policy is written and written about whom—and I would argue policy in general for that matter—is based on a male standpoint that

tend to be underemphasized because male dominated policy circles and social science have still not sanctioned their [women and children] legitimacy as social problems (ibid).

The family law is thus perpetuating a specific male standpoint that specifies laws and policies and Acts that do not take into account the entirety of the population that will be using them. The importance of privacy is relevant only in certain circles: when you have never had the right to privacy such as the case of a child growing up in care, the right to access files is even more important. Human dignity is a class issue. Women and children who deal with the Ministry of Children and Families or Human Resources or Welfare throughout their lives are not spared the right to privacy and third party protection. When they enter the office of any Ministry where they need to seek services, their files are open for scrutiny to staff behind the desk. Yet if they wish to seek out their files, they face a difficult process fraught with loopholes and changing policy.

**Recommendations:**

I recommend the OIPC return to the previous staffing levels to handle the *FIPPA* complaints and I would suggest that there be an end to private companies having any involvement in privacy management at all. I also believe that the staff that handles complaints in the OIPC should be divided between public and private sector so as not to confuse legislation.

Second I would recommend that legislation be created to protect the documents on behalf of children in care. What is stored, how it is collected and who manages it would have to be part of that legislation. When the government makes the decision to remove a child from the home of its parent, it has a duty to keep a record of the child's care, court appearances, medical documents and school records. The records of the time a child is in care should be kept in trust until such a time as the individual wishes to access the documents.

## **Conclusions:**

In the last six years, the federal government has begun the process of restricting access to information. “National Security” has become a hot topic and many Canadians have been easily persuaded to give up some freedoms that previously they would not have, such as access to information that might now be deemed to hold state secrets or issues of a protective nature. As well, many individuals have been willing to give their personal information to the government and other organizations in the name of protecting security.

Information that might have been easily accessed in 1995 is in 2005 considered a matter to be protected for law enforcement and state safety. Government documents that have no relevance to general public safety are now being denied to individuals seeking personal access. In light of evidence from the Hughes report, in some respects, the government may be acting in its own interest to protect poorly managed case files when denying some information. All the while, the government in British Columbia has been cutting money to its OIPC; causing this author to question, if security and privacy are such important matters to the state, why is the state not pouring money into the office that is charged foremost to overlook that issue? The Information and Privacy Commissioner:

is responsible for legislation that both protects individual privacy and gives citizens access to information about government policies and practices. Non-government organizations, journalists and the opposition in the legislature can also use the process to seek information. The right to information is a key factor in guaranteeing transparency in government decision-making (Reynolds 2).

If the government were to be open and transparent, what would the public discover? In the case of my own files, the omissions are not really obvious as I had access



to some of them in the past. I am uncertain what in general the government is trying to omit from child-in-care files, unless it is truly interested in protecting third party information about perpetrators and evidence of mishandling of children in the care of the state. Security is a “hot” topic and privacy of third party information is constantly being touted as paramount to government concern, even as the government hires out private sectors to handle government information. Yet when this author attempted to access her very own documents, the government denied that 171 pages of my file even existed in my second request for information and denied access to 25 full pages not to mention the multiple sections there are blacked out or vetted. In 1995, the parties who made choices about what was to be received are denied by an FOI request, at least would say there was *something* denied, then I had reference to make and appeal. Now it seems if the government does not wish for the material to be seen, it does not appear as *denied*. Further research or work could include carefully going through each page of the documents and discovering which pages were denied the second round and then making a claim to the OIPC as to why these do not even appear on the second request. As well, claimants, who had requested documents in the mid 1990’s, could make a series of requests to see if they, too, had discrepancies on their files.

As for the *PIPA* and the *FIPPA*, part of the issue as I understand it is that the OIPC is now managing the *PIPA* and handling complaints from the *FIPPA*. To some extent, the language of the Acts are similar and although they were constructed for different reasons, I believe that they are now being used for a similar purpose: to deny access to volatile and inflammatory information.

When government states that privacy legislation is being reinforced to protect Canadians where the Anti-terrorism and Security legislation seems onerous (Brown 7), the argument falls flat. The concern over *privacy protection* as the government gathers more personal information for *security* and yet able to *refuse access* or for that matter refuse to reveal what information it holds appears to be all smoke screen to hide something behind the scenes. I went on a quest to discover my personal files. I admit that I suspect that somewhere in my files there exists information with which I might have a case to pursue litigation against the government. Yet I also simply wanted answers about what happened between the ages of 2 and 13 of my childhood. Between requests I discovered some very strange pieces of legislation, some very unwilling public employees and even more questions about why I cannot access the information I am seeking.

For researchers in the future, the difficulty will be in challenging what you do not know exists. If the government bodies do not have to inform where they are omitting, or severing information from a file—where does the counter-argument or appeal begin? At least I can prove that some of my files existed. I am concerned for children who will grow up under this present foster care system: will the government even be required to retain files that might be damaging?

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