Information Accountability Foundation

Comments on Bill C-27 before the Canada Parliament House of Commons, Standing Committee on Industry and Technology

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November 28, 2023

Good afternoon, Chair. Good afternoon, committee members and Madam Clerk. Thank you for the invitation to appear before you today. Hopefully my input will benefit the committee's important work.

I speak from decades of experience as a privacy professional and from 15 years as an information rights regulator in four jurisdictions. My ongoing work takes place really on the international stage, but it's backed by long-standing familiarity with our own federal and provincial privacy laws.

When I became the information commissioner for the United Kingdom in 2016, that role really brought me into the EU's oversight board that administered the GDPR implementation. That brought me into direct collaboration with all EU member states, and that experience greatly expanded my view of data protection and privacy that was first cultivated at the federal level in Canada, in Alberta and British Columbia.

During my five years as the U.K. information commissioner, I also served three years as the chair of the Global Privacy Assembly. That position greatly expanded my horizons once again and enhanced my knowledge of other laws and other cultures, including the global south, the Middle East and the Asia-Pacific. To this day, the work I do spans continents.

The issues of pressing concern are largely the same, and those are children's privacy and safety and the regulation of artificial intelligence.

Looking first at Canada's CPPA from a global perspective, I see a big missing piece, and the legislation's language, in my view, needs adjusting so that it explicitly declares privacy as a fundamental right for Canadians. Its absence really puts us behind nations who lead the way in privacy and data protection.

The legislative package goes some way towards establishing expectations for AI governance, but it lacks specific and much-needed protections for children and youth. In a study I conducted through my work with an international law firm, Baker McKenzie, which surveyed 1,000 policy influencers across five jurisdictions, we found that all those surveyed came to a single point of agreement: The Internet was not created and not designed with children in mind.

All those policy influencers felt that we need to do better to protect children and youth online. Canada is a signatory to the United Nations Convention on the Rights of the Child, and I think Canada owes it to our young people to enshrine the right for them to learn and to play, to explore, to develop their agency and to be protected from harms online.

In the U.K., I oversaw the creation of a children's age-appropriate design code, which is a statutory enforceable code, and the design of that code has influenced laws, guidance and codes around the world. I'd be happy to answer more questions about that.

Additionally, I believe the legislature should go further than it does to provide the Privacy Commissioner with robust enforcement powers. I exported my career from Canada to the U.K. in large part because I wanted to gain hands-on experience administering laws with real powers and meaningful sanctions.

In Britain, privacy harms are treated as real harms ever since the GDPR came into effect. One result was the leap in the U.K. information commissioner's fining authority, but other enforcement powers were equally powerful: stop processing orders, orders to destroy data, streamlined search and seizure powers, mandatory audit powers and so on. These enforcement powers were mandated by a comprehensive law that covers all types of organizations, not just digital services but a business of any kind, a charity or a political party. By comparison with the GDPR, Bill C-27 lacks broad scope. It doesn't cover charitable organizations, which are not above misusing personal data in the name of their worthy causes. Neither does Bill C-27 cover political parties. It leaves data and data-driven campaigns off the table for regulatory oversight.

Serving as a privacy commissioner at the federal and provincial levels in Canada exposed me to towering figures in my field. I think of Jennifer Stoddart, the former federal privacy commissioner, and David Flaherty, the former B.C. information and privacy commissioner. Their names recall a time when Canadian regulators and Canadian law were deeply respected internationally, when our laws and our regulators really served the world as a bridge between the U.S. and Europe. Although commissioners who followed, Daniel Therrien and Philippe Dufresne, have continued to contribute internationally, Canada’s laws have fallen behind any global benchmark.

I think we can recover some ground by returning to fundamental Canadian values, by remembering that our laws once led the way for installing accountability as the cornerstone of the law. Enforceable accountability means companies taking responsibility and standing ready to demonstrate that the risks they are creating for others are being mitigated. That's increasingly part of reformed laws around the world, including AI regulation. The current draft of the CPPA does not have enforceable accountability. Neither does it require mandatory privacy impact assessments. That puts us alarmingly behind peer nations when it comes to governing emerging technologies like AI and quantum.

My last point is that Bill C-27 creates a tribunal that would review recommendations from the Privacy Commissioner, such as the amount of an administrative fine, and it inserts a new administrative layer between the commissioner and the courts. It limits the independence and the order-making powers of the commissioner. Many witnesses have spoken against this development, but a similar arrangement does function in the U.K.

Companies can appeal commissioner decisions, assessment notices and sanctions to what is called the first-tier tribunal. That tribunal is not there to mark the commissioner’s homework or to conduct *de novo* hearings. I would suggest that, if Parliament proceeds with a tribunal, it has to be structured

appropriately, according to the standard of review and with independence and political neutrality baked in.

As a witness before you today, I have a strong sense of what Canada can learn from other countries and what we can bring to the world. Today, Canada needs to do more to protect its citizens' data. Bill C-27 may bring us into the present, but it seems to me inadequate for limiting, controlling or making sure we have responsible emerging technologies.

Thank you for hearing my perspective this afternoon. I very much look forward to your questions.
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