ENFORCEMENT LESSONS FROM THE CANADIAN EXPERIENCE

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EFFECTIVENESS:

To be effective, at any size or budget, a data protection agency has to be:

1. Credible
2. Visible
3. Efficient
MY EXPERIENCE

• Quebec Lawyer
• Quebec Commissioner
• Federal Commissioner
CANADA BACKGROUND

• Federal System
  • Enforcement delegate to Provinces that have comparable laws
  • Alberta, British Columbia and Quebec have their own commissioners

• Officer of the Parliament
  • Independent of the government in power
FEDERAL COMMISSIONER POWERS

• Both private sector as well as public sector oversight authority
• Provide advice to Parliament on matters related to privacy
• Provide guidance and education
  • Data controllers
  • Individuals
• Investigate complaints against controllers
• Make recommendations to controllers based on investigations
• Recommend prosecution for violations of privacy laws
TYPE OF ENFORCEMENT AGENCY

• Ombudsman
  • Provide guidance not regulations
  • Could not levy fines directly
1. CREDIBLE MEANS:

• Having a process for nominating a head which is non-partisan and allows for the input of experts and various interests

• Having a law which gives clear powers for the head to make decisions and lead

• Avoiding a structure where group decisions are needed
1. CREDIBLE MEANS: (CONT’D)

• Head can have an advisory committee which only gives advice

• Having a dedicated and even source of annual funding (Are there ways of self funding? Licencing of data processors and controllers)

• Ensure the funding process is open and public to protect the agency’s budget from controversy
2. VISIBLE MEANS:

• Emphasizing communication and education as a means of enforcing the rule of law

• Recognizing the need to tailor messaging to various publics (youth, local business, consumers, multinational corporations)
2. VISIBLE MEANS: (CONT’D)

• Give guidance that is understandable and practical to minimize surprises

• Pay attention to your international profile

• Set out comprehensive privacy programs for companies (borrow from Colombia or Canada)
3. BE EFFICIENT:

• Agency needs a whole range of powers (mediation, audit, communication, share and make personal information public, etc.)

• No obligation to investigate/redress every complaint

• Need discretion to choose the circumstances, the fact situation and the means for action
3. BE EFFICIENT: (CONT’D)

• Form alliances - within Brazil and internationally
• Join networks for enforcement and communication tools
• Avoid the over-legalization of issues
• Emphasize a multi-disciplinary approach to problems
• Make sure staff have world class expertise