

Tensions Between Human Rights and Data Protection Conceptions of Privacy




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“When human rights inform the language in which the discussion among you and the general public and Parliament takes place, you speak then rightfully about citizens and all that comes with that - rights, obligations and the relationship between groups and power...”

Ursula Franklin, 1996



“... If the emphasis is primarily on the protection of data, it is the language of the market that informs your discussion. Those who are in the market language speak primarily about stakeholders and binding contracts.”

Ursula Franklin, 1996



“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.”

Universal Declaration of Human Rights



- ✓ Identification of purpose
- ✓ Knowledge or consent
- ✓ Relevance
- ✓ Limitation of use
- ✓ Accuracy
- ✓ Security
- ✓ Retention
- ✓ Access and correction
- ✓ Openness
- ✓ Accountability

Data Protection Interests



- ✓ Protection of privacy in a computer age
- ✓ Protection of national sovereignty
- ✓ Resolution of conflicts over distribution of power between federal and state governments
- ✓ Promotion of efficiency

Data Protection Interests



- ✓ Legitimization of public and private sector information practices
- ✓ Promotion of trade
- ✓ Promotion of technological development and innovation
- ✓ Economic and political integration


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- ✓ There is a disconnect between the current legislative framework and citizen concerns about privacy.
 - ✓ Data protection alone cannot protect the social meaning of privacy as it is experienced by real people living in community.

Human rights language allows us to:

- ✓ Look behind procedural rules and come to public judgment about the purposes for surveillance
- ✓ Address questions of power

The Canadian Experience

- ✓ 1982 - *Privacy Act* (R.S.C. 1985, c. P-21)
- ✓ 2001 - Longitudinal Labour Force File controversy




“There has never been a known breach of security with regard to this databank, and HRDC has been acting within the existing *Privacy Act*.”

Honourable Jane Stewart, former Minister of HRDC




“Canadians expect programs that are well designed, continually improved, and responsive to their changing needs.”

Honourable Jane Stewart, former Minister of HRDC



The LLFF was dismantled “given public concerns about privacy issues in this era of advanced and constantly changing technology.”

Honourable Jane Stewart, former Minister of HRDC




“The *Privacy Act* ... is insufficient to prevent these kinds of informational collections. The Canadian public believes, for eg., that when they send their tax information, it doesn’t go out of the tax department. Well, in fact, it does, many times and to many places.”

Bruce Phillips, former Privacy Commissioner of Canada

The Canadian Experience




- ✓ 2000 - *Personal Information Protection and Electronic Documents Act* (R.S.C. 2000, c. 5)
- ✓ 2001 - *Privacy Rights Charter* (Bill S-21)



“The ability to provide effective protection for personal information may be crucial to Canada’s ability to remain competitive in the global information economy.”

Building Canada’s Information Economy and Society,
Industry Canada and the Department of Justice




“... strike the right balance between the *business need to gather, store and use* personal information and the *consumer’s need to be informed* about how that information will be used.”

Building Canada’s Information Economy and Society,
Industry Canada and the Department of Justice




“... building the consumer trust and the market certainty needed to make Canada a world leader in electronic commerce.”

Building Canada's Information Economy and Society,
Industry Canada and the Department of Justice




“Canadians see privacy not just as an individual right but as part of our social value system... It is an essential part of the consensus that enables us not only to define what we do in our own space, but also to determine how we interact with others...”

Parliamentary Standing Committee on Human Rights




“Ultimately, [the Privacy Charter] is about taking privacy seriously as a human right. To do that, we must invoke recent history and remind ourselves *why* the right to privacy was entrenched in the UDHR. Otherwise, we may be seduced into believing that privacy is simply a consumer rights issue...”

Parliamentary Standing Committee on Human Rights



“The purpose of the Act is to establish ... rules to govern ... personal information in a manner that recognizes the right of privacy of individuals and the need of organizations to collect, use and disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.”

PIPEDA



“Bill S-21 would potentially require [the government] to defend its information gathering and sharing activities in court... while S-21 can be praised as intending to enhance the privacy of Canadians...changes could come at the expense of certainty, public safety, operational efficiency and fiscal responsibility.”

Department of Justice

To Create a Global Culture of Cybersecurity:

- ✓ Go beyond data protection
- ✓ Create infrastructures that protect the social value of privacy as a fundamental human right by building it in at the beginning
- ✓ Critically question the purposes for surveillance
- ✓ Choose the least invasive alternative



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