

Speaking Notes for Commissioner Therrien  
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**PUBLIC INTEREST ADVOCACY CENTRE DINNER**

**National Arts Centre, Ottawa, ON**

**NOVEMBER 28, 2019**

Good evening.

Thank you for that introduction and thank you to John Lawford and the Public Interest Advocacy Centre for inviting me to be with you here tonight.

The Office of the Privacy Commissioner of Canada has had a positive relationship with PIAC dating back many years.

I appreciate the important role PIAC has played in championing the consumer interest, not just on privacy, but a wide range of issues.

Given my role as Privacy Commissioner, I am particularly grateful to PIAC for its advocacy work on an issue I hold dear: The need to modernize Canada's federal private sector law to provide for better protection of the privacy rights of Canadians.

John and I are not the only ones calling for law reform. Several examples from Big Tech have also added their voices in seeking reform, including Apple's Tim Cook last year in Brussels at the annual global conference of privacy and data protection commissioner, where he made the link between privacy and the protection of human rights and equated the stockpiling of data by companies to surveillance.

At this year's conference, Microsoft's Brad Smith also spoke of privacy as a fundamental right, framing its protection as the biggest challenge of next decade. Beyond privacy as a human right, is the private sector's interest in establishing and maintaining trust.

Our poll of Canadians shows that 90% are concerned about the protection of their privacy and only 38% think companies respect their rights.

Due to concerns with privacy and an interest in safe trade practices, Europe adopted GDPR, as well as other measures including via trade agreements with Japan and South Korea. In South America, several countries have passed privacy and data protection legislation, including Brazil, Argentina and Chile. Even in the US, California's Consumer Privacy Act will come into force in the New Year and Congress has moved closer to adopting federal privacy legislation.

In Canada, the House of Commons ETHI committee has unanimously passed a report with detailed suggestions on how to reform PIPEDA, while other Committees such as those on banking, transportation and commerce, have looked at issues such as open banking and connected vehicles from a privacy protective lens.

In May, the government published its Digital charter along with its White Paper with consultations to reform PIPEDA. In parallel, the Department of Justice has held consultations with experts on reforming the Privacy Act. During the election, privacy featured in the parties' platforms.

So the question is no longer whether but how to reform federal privacy law.

The solution is not to get people to turn off their computers or to stop using social media, search engines or other digital services. Many of these services meet real needs.

Rather, the ultimate goal is to allow individuals to benefit from digital services – to socialize, learn, and generally develop as persons – while remaining safe and confident that their privacy rights will be respected.

And right now, most Canadians don't have that confidence.

These are challenging times for privacy. For good and bad, data-driven technologies are a disruptive force. They are key to innovation and economic growth, but they have been shown to be harmful to rights, including privacy and democracy as we have seen in the Facebook/Cambridge Analytica/Aggregate IQ matter.

Because privacy is a fundamental right and a necessary precondition for the exercise of other fundamental rights, including freedom, equality and democracy, the starting point should be to give the law a rights-based foundation.

In other words, new privacy laws should reflect fundamental Canadian values.

We should continue to have a law that is technology neutral and principles-based. These elements will enable the law to continue to endure over time and provide a level playing field.

But we also need a rights-based statute, meaning a law that confers enforceable rights to individuals, while also allowing for responsible innovation.

So, what does it mean to have a rights based law?

1. Define the right in its broadest and truest sense, not only through process rights like consent (ticking a box) but as a fundamental right and an essential element to the exercise of other rights.
2. Recognize the quasi-constitutional nature of the law.
3. End self-regulation: draft the statute not as a code of conduct (with recommendations and best practices) but with enforceable rights and obligations.

This does not mean that codes of conduct should not exist. But they should not be confused with law.

This also does not mean we do not support accountability. But accountability should be demonstrable to the regulator.

4. Quick and effective remedies when rights are not respected and ongoing compliance:

- Order making and fines.
- Proactive inspections.
- Circumscribed order-making with referrals to the Attorney General is anything but quick and effective.

Before closing, I want to emphasize that a rights-based law is not an impediment to innovation. To the contrary, good privacy laws are key to promoting trust in both government and commercial activities.

Without that trust, innovation, growth and social acceptance of government programs can be severely affected.

As mentioned, a rights-based law means a law that is not overly focused on consent. Consent is important, but its is not always effective for privacy protection, for instance in AI. That is why we have been open to new grounds of processing. This is another sign that the OPC is not against innovation.

But an opening to other grounds for processing does not mean irresponsible innovation. It means finding more effective means of protection.

Modern legislation should also recognize the need for better cooperation between different regulators: privacy, consumer protection, antitrust, elections, others. Recently, we worked with CEO on guidance for federal parties. We are also meeting more frequently with Competition Bureau. The law should break down existing barriers to cooperation.

In its early years, the Internet was seen and promoted as an instrument for freedom. Now we see more clearly that it brings very important benefits, but also very grave risks to our values. It is time to put values and rights at the centre of legislative reform.