

Outdated privacy legislation goes to bureaucrats for review

By Ken Rubin, Hill Times online, July 8, 2019

Kicker: Governments have been unwilling to really change Canada's outdated public sector Privacy Act, or improve it alongside the private-sector Personal Information Protection and Electronic Documents Act, writes privacy expert Ken Rubin.

Privacy always tops the list of Canadians' concerns. Yet, governments have been unwilling to really change Canada's outdated public-sector Privacy Act and improve it alongside the private-sector privacy legislation, better known as PIPEDA.

Now, under Justice Canada's assistant deputy minister, a bureaucrat-run team charged with reforming the Privacy Act wants unidentified experts' feedback within a short, pre-election deadline of Aug. 30, 2019. Officials are considering five regional private meetings through July and August, during which the unnamed privacy experts can comment on the five discussion papers it has prepared.

Targeting so-called experts for quick, closed-door technical discussions misses the importance of public education. This simply is an ill-conceived approach and needs to be withdrawn and rethought.

Any policy discussions should be initiated directly by the justice minister and should include citizens and Parliament.

In typical bureaucratic style, joining their private dialogue means filling in a personal consent form and following their process.

Canadians already have the disastrous results of bureaucrats controlling the process of the now-passed Bill C-58 that gives bureaucrats more power and more secrecy, putting the public's right to know back by 50 years.

More than 35 years ago, the National Capital Civil Liberties Association and others took part in reviewing the proposed 1982 Privacy Act and did so through what was then the Justice and Solicitor General Committee. Now, bureaucrats want your views if you are on a secret list of experts.

The secret discussion papers offer up bureaucrats' ideas of accountability, manageable consent, trust, and limited compliance for privacy protection, among other things. Topics raised include giving the privacy commissioner's powers to reject complaints as frivolous and vexatious, which are best left for public discussion. So is the subject on recognizing that Indigenous peoples have differing privacy needs.

The effect of metadata and privacy invasion and breaches in the digital

age, including how government intervenes, is superficially treated.

While the government has recognized new privacy principles in the digital age are needed, it put forward a vague business-driven “digital charter”; very little is said about how it is living up to the new information realities. With more and more mass surveillance activities underway by internal and external actors, there is an indifference to wanting those actions effectively regulated and protected.

Last week, the Friends of Canadian Broadcasting took out a full-page newspaper ad decrying the lack of regulation of Facebook and what it calls the pollution of democracy. The group wants Facebook advertising taxed and for Canadians to sign a petition addressed to all party leaders.

Meanwhile, Justice Canada bureaucrats are limiting their discussion papers to the feedback they want, which would amount to minor modernization patchwork adjustments to Canada’s privacy acts.

So topics, like effectively covering political parties under privacy legislation, or discussing the necessity for and types of hundreds of government personal data collection and sharing arrangements or getting rid of many exemptions or extending coverage to ministers’ offices are off the table. So is ending the treatment of bureaucrats’ special benefits and extra bonuses as privileged and protected personal information.

The proposed ADM justice summer 2019 process comes with no draft Privacy Act bill for general discussion and puts the past House Ethics Committee hearings and submissions on the back burner.

This whole effort comes right before an election and does not seek a public discussion of the privacy issues so much on the minds of Canadians, nor does it squarely deal with privacy intrusions happening so often and account for their own inadequacies.

Ken Rubin monitors transparency and privacy issues and is reachable at kenrubin.ca.