

Social networking and Canadian jurisdiction: With which privacy laws do SNSs think they need to comply?

Colin J. Bennett
Department of Political Science
University of Victoria
BC, Canada
www.colinbennett.ca
cjb@uvic.ca

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FEDERAL PUBLIC SECTOR

FEDERAL PRIVATE SECTOR



PROVINCIAL PUBLIC SECTOR

PROVINCIAL PRIVATE SECTOR

Federal Public Sector

- **The Privacy Act of 1982**
 - Overseen by the Office of the Privacy Commissioner of Canada
- **The Access to Information Act of 1982**
 - Overseen by the Office of the Information Commissioner of Canada

Provincial Public Sectors

PROVINCIAL INFORMATION AND PRIVACY LEGISLATION

- **Overseen by Information and Privacy Commissioners (BC, Alberta, Saskatchewan, Ontario), Commission d'Accès à l'Information (Quebec) and Ombudsmen elsewhere.**

SEPARATE HEALTH PRIVACY LEGISLATION: ALBERTA, ONTARIO, SASKATCHEWAN, MANITOBA, NEWFOUNDLAND

- **Overseen by Provincial Information and Privacy Commissioners**

Federally Regulated Private Sector

- **The Protection of Personal Information and Electronic Documents Act (PIPEDA) 2000**
 - Applies to federally regulated businesses (communications, transportation, banking) and any enterprise that transmits personal data across provincial or international boundaries for a commercial purpose
 - Overseen by the Office of the Privacy Commissioner of Canada
 - Also applies to provinces where no “substantially similar legislation”

Provincially Regulated Private Sector

- **“Substantially similar ” private sector data protection legislation in Alberta, British Columbia and Quebec, overseen by Information and Privacy Commissioners of Alberta and BC, and Commission d’Accès in Quebec**
- **Older consumer credit legislation in most provinces**
- **Older and little used “privacy tort” statutes in several provinces**

Distinct Profile of Canadian Privacy Protection Regime

- **A hybrid privacy regime**
- **Bi-lingualism**
- **Bi-jurism**
- **Multi-culturalism**
- **A Network of Independent Commissioners**



Extra-territorial impacts

- Section 4.1.3 of Schedule One of *PIPEDA*:
“An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.”

The “Real and Substantial Connection to Canada” Test

- **Acusearch Decision – www.abika.com (2009)**
- **Facebook Investigations (2009-2012)**
- **Cloud-Computing Applications**

Analysis of Social Networking Services

- **23 top SNSs in terms of usage in Canada**
- **Content Analysis of Privacy Policies**
- **Tests of Subject Access to PII by researchers**
- **Building Website**

Funded by SSHRC, and Office of Privacy Commissioner

Assertions of Compliance

- **No mention of any law (10)**
- **EU-US Safe Harbor (9)**
- **Child Online Protection Act (1)**
- **California Law (1)**
- **Only one explicitly recognized European jurisdiction**
- **Only one explicitly recognized Canadian law**

Responses to Subject Access Requests

- **PII provided: Facebook, Twitter, Google+**

But no Metadata



Complaint against Twitter

- **Responses received but no PII (yet): LinkedIn, Instagram**
- **PII refused: Tumblr**
- **All others: No responses**

Lessons?

- 1. For Regulators – (Global Privacy Enforcement Network)**
- 2. For Researchers**
- 3. For Privacy Advocates**

THE PRIVACY ADVOCATES

RESISTING THE SPREAD OF SURVEILLANCE



COLIN J. BENNETT

Conclusion.....

***“YOUR PRIVACY IS IMPORTANT TO
US.....sometimes”***

THANK YOU VERY MUCH
どうもありがとうございました

WWW.COLINBENNETT.CA