OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

CHECK AGAINST DELIVERY

SPEECH TO THE STANDING COMMITTEE ON RESOURCE STEWARDSHIP, LEGISLATIVE ASSEMBLY OF ALBERTA

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Michael Harvey
Information and Privacy Commissioner

Good morning Chair, Deputy Chair, and Members of the Committee.

I would first like to acknowledge and respect that we are meeting this morning on traditional Treaty 6 Territory, and within the Métis homelands and Métis Nation of Alberta Region 4. I am honoured to present to you on this land today.

Thank you for inviting me to appear today as part of your review of the Personal Information Protection Act. Like our own legislation in BC of the same name, PIPA protects the privacy of individuals while enabling the use of personal information for business to prosper.

I will focus the majority of my remarks this morning on two specific areas where British Columbia's Act differs from the Alberta legislation – specifically oversight of political parties and of non-profits.

Harmonization between the two jurisdictions in these sectors would be beneficial, especially to those organizations that operate in multiple jurisdictions – and for those they serve. While the two Acts are very

similar, we look to the strengths of each other's laws – for example, we have used Alberta as a case study for the need to implement mandatory breach notification for the private sector in BC. And I hope that the additional protections British Columbians receive are valuable for your discussions and deliberations.

But first, I will speak to the importance of strengthening the act – specifically with a mind to children - by providing the Information and Privacy Commissioner with stronger enforcement mechanisms, such as monetary penalties, for more effective oversight.

The matter of protecting and promoting the information and privacy rights of young people in the digital world is a matter that this office has advocated for – both in British Columbia and at the federal level – and has seen numerous calls from other regulators around the world.

Children's privacy

Our children are particularly vulnerable to overcollection of their personal information online. We know that our kids spend much of their day online – whether interacting with their friends, playing games, or completing their schoolwork.

We also know that children are often the target of deceptive design patterns used by websites and apps, that manipulate our kids into revealing their private information or by causing other harms. In a recent review conducted by privacy regulators around the world, we found a higher incidence of these manipulation tactics in Canada than in other countries – yet we still don't have adequate protections in this country that address the specific challenges and unique harms our youth face when they engage online.

And it isn't only parents and regulators that have voiced concerns. We know, both from conversations at a youth forum this office held in 2023 and through the research of others that youth care about their information and privacy rights online. And, they put considerable effort into protecting their rights by using various privacy-protective strategies, such as limiting who can view their social media posts and talking about consent in digital spaces online.

But it's not enough. As legislators, there is an urgent need to address the shortfalls by enhancing the enforcement mechanisms available to regulators for greater oversight over organizations that provide products and services to children. We have recommended to the government and legislature here in BC, that the Commissioner be given the authority to issue stronger fines for organizations that don't honour their obligations under the law – we call these administrative monetary penalties or AMPs and while they are an important tool across the board, they would be the most important enforcement authority that we could use to help protect children and youth.

As a regulator we have always emphasized an educational, remedial approach to compliance. We work with organizations to achieve compliance through recommendations and findings whenever possible. And this approach works much of the time. But the reality is that there are some entities that just don't follow the rules. Introducing monetary penalties would introduce an appropriate level of deterrence, with penalties reserved for the most serious violations of the law. And the range of penalties should be proportionate based on the offence.

I can inform this dynamic from the other hat I wear – in BC, as Commissioner I am designated the Registrar of

Lobbyists. In that role, I have the authority to levy penalties when a contravention of that statute has occurred. We lead with education; it is the best way to support compliance with the Act and therefore it's overall purpose. However, the ability to levy penalties plays an important role in incentivizing the willingness to comply, particularly in cases where there is, let's say, little interest in following the rules set out under the law.

Other shortfalls that should be addressed when it comes to children and youth include strengthening protections around consent requirements and making sure privacy policies are clear and plain language. This could include containing language suited to the age of the child.

We recommended these measures to our own review committee in 2021 – and the special committee agreed, by including the recommendations in their report to the BC Legislature.

Taken together, these measures provide a path for holding organizations to account in putting the best interests of the child as a primary consideration when designing and developing online products and services children are likely to use.

The importance of addressing children's rights in our privacy legislation is recognized across Canada, and I expect Commissioner Dufresne will provide you with more information about the developments happening at the federal level.

I will now shift my comments to two sectors that are not covered by Alberta's PIPA but are captured in British Columbia– political parties and the non-profit sector.

Political Parties

In January, we celebrated the 20th anniversary of BC's PIPA - a significant milestone for our private sector privacy law. Since its inception, political parties have been subject to the legislation. This means that, in BC, voters can expect the same privacy protections from political parties as other organizations, and have an independent body to which they can make a complaint if they have concerns about a political party's privacy practices.

BC PIPA applies to the collection, use, and disclosure of personal information by BC's political parties in the same way PIPA applies to other organizations. In other words, there aren't specific rules set out for political parties – rather they must follow the same requirements as any other organization in BC.

This mean that the rules of PIPA apply when political parties directly approach voters to collect personal information about them – such as door-to-door or telephone canvassing or when they indirectly collect personal information– such as on social media or from prescribed sources of public information. As well, PIPA requires parties to inform individuals about the party's privacy practices through privacy policies, and provide access to individuals' own personal information.

There are also rules on consent, notification, collection, and reasonable purpose.

I can state unequivocally that our political system hasn't collapsed as a result of PIPA applying to the practices of political parties.

Quite the opposite.

A functioning democracy is predicated on political parties understanding the aspirations of voters and communicating with the electorate…. communications that very often include personal information about voters. The application of privacy laws to political parties is essential if voters are to have confidence in how political parties process the vast amounts of personal information that they collect about individuals. Without a privacy framework in place, communications between candidates and the electorate can be frustrated – and nobody wins.

Provincial political parties in BC – I won't comment on federal parties as that is before the courts – have committed to upholding these protections for the citizens of British Columbia. In 2022, the parties that were represented in the Legislature at that time voluntarily signed a Code of Conduct that detailed how PIPA would be applied in their context. Our interaction with parties in the run up to this election has been positive and constructive. Privacy oversight is working, and working in the interests of the people of the province.

To echo the calls that Federal, Provincial and Territorial Canadian privacy commissioners have made now on multiple occasions: all Canadians deserve the protections British Columbians have enjoyed for the last two decades.

Nonprofits

Finally, I'll turn to the importance of capturing not-for-profit organizations under private sector privacy legislation.

Since its inception, our BC PIPA has also applied to non profit organizations , including trade unions, charities, foundations, trusts, clubs, churches, and amateur sports organizations. Like political parties, there aren't specific requirements directed at nonprofits – rather they are required to follow the same obligations as other organizations.

I can say that it is difficult to come up with a convincing justification for excluding nonprofits from the requirements of our privacy law.

Think, for just a minute, about the work that they do – and the vast amounts of personal information, sometimes sensitive, that nonprofits potentially hold. Information about donors, clients, volunteers, children, and many times dealing with vulnerable populations. We expect this information to be protected in the same way as with other organizations and that, should a breach occur or if individuals have concerns about how their personal information is handled, there is a process in place and an oversight body to report it to.

To give you an idea of the types of nonprofits we have dealt with under BC's PIPA, we often have consults with sports organizations and nonprofits that work with other public bodies, for example, to assist the unhoused and or help respond to the opioid crisis. PIPA is not a burden to their operations – rather it provides these organizations with the rules and guidance to follow to gain the trust of those they serve. It provides them with my office as a resource when needed, either for a consultation or to provide guidance when dealing with personal information. And it gives the people who volunteer, donate, or interact with nonprofits assurance that there are laws in place to protect the sometimes very sensitive personal information nonprofits can hold, and a mechanism when those rules aren't followed.

I can share from my experience in my previous role as Commissioner in Newfoundland and Labrador, where we did not have oversight of non-profits: we would regularly receive inquiries from them seeking our support and training, and we would regularly advise them on the privacy principles that inform our laws and best practices. Generally this sector was looking for the guidelines that our regulatory framework provides.

Thank you Chair, and Members of the Committee for your attention this morning, and I look forward to answering any questions you may have.