

Securing Trust and Privacy in Canada's Electoral Process

Resolution of the Federal, Provincial and Territorial Information and Privacy Commissioners

September 11-13, 2018, Regina, Saskatchewan

CONTEXT

Recent high-profile investigations in the United Kingdom, the United States, New Zealand and elsewhere reveal that political parties are gathering significant amounts of personal information on voters as they adopt micro-targeting techniques.¹

Political parties also hold personal information on volunteers, employees and candidates.

These practices have the potential to significantly impact the privacy of citizens and undermine their trust in the democratic system.²

At present, British Columbia is the only jurisdiction in Canada where political parties are subject to privacy legislation. It is also the only province where voters can complain to an independent body about a political party's privacy practices.

The federal government tabled Bill C-76 (the *Elections Modernization Act*) earlier this year requiring registered federal political parties to develop privacy policies and publish them online.³

However, Bill C-76 does not establish standards for political parties to follow in the handling of personal information nor does it establish an independent body which would oversee how their privacy practices are implemented.

1 UK Information Commissioner's Office, "Findings, recommendations and actions from ICO investigation into data analytics in political campaigns" (July 10, 2018) - <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/07/findings-recommendations-and-actions-from-ico-investigation-into-data-analytics-in-political-campaigns/>

2 House of Commons, "Addressing Digital Privacy Vulnerabilities and Potential Threats to Canada's Democratic Electoral Process - Report of the Standing Committee on Access to Information, Privacy and Ethics" (June 2018) -

https://www.ourcommons.ca/content/Committee/421/ETHI/Reports/RP9932875/421_ETHI_Rpt16_PDF/421_ETHI_Rpt16-e.pdf

3 Government of Canada, "Empowering political parties to better protect Canadians' privacy" (April 2018) - <https://www.canada.ca/en/democratic-institutions/news/2018/04/empowering-political-parties-to-better-protect-canadians-privacy.html> The Quebec government tabled Bill 188, which would require the Chief Electoral Officer of Quebec to examine and evaluate the privacy practices of provincial political parties and to report back to the National Assembly by October 1, 2019.

However, the Bill died on the Order Paper when the provincial election was called.

3 Government of Canada, "Empowering political parties to better protect Canadians' privacy" (April 2018) - <https://www.canada.ca/en/democratic-institutions/news/2018/04/empowering-political-parties-to-better-protect-canadians-privacy.html> The Quebec government tabled Bill 188, which would require the Chief Electoral Officer of Quebec to examine and evaluate the privacy practices of provincial political parties and to report back to the National Assembly by October 1, 2019. However, the Bill died on the Order Paper when the provincial election was called.

WHEREAS

- Privacy is a fundamental human right that enables the freedom of association, thought and expression, including political affiliation, participation and debate.
- Canadian courts have consistently affirmed the importance of these fundamental rights.
- Much of the personal information gathered by political parties on electors, such as political views and voting intentions, is sensitive.
- Personal information on electors, employees, volunteers or candidates gathered by political parties should be subject to privacy protections.
- Political parties outside of British Columbia are not required by law to protect the personal information they collect, nor is their handling of Canadians' personal information subject to review by an independent body.
- Privacy Commissioners, Chief Electoral Officers, legislators, academic experts, non-governmental organizations and newspaper editorial boards have recommended oversight of the privacy practices of political parties.⁴
- Canadians have overwhelmingly stated they wish to see political parties made subject to privacy laws.⁵

THEREFORE

The Federal, Provincial and Territorial Privacy Commissioners of Canada urge their respective governments to ensure Canadian law at all levels carries meaningful privacy obligations for political parties by passing legislation:

1. Requiring political parties to comply with globally recognized privacy principles;
2. Empowering an independent body to verify and enforce privacy compliance by political parties through, among other means, investigation of individual complaints; and,
3. Ensuring that Canadians have a right to access their personal information in the custody or control of political parties.

4 Paul Thomas, A Code of Ethics or Code of Conduct for Political Parties as a Potential Tool to Strengthen Electoral Democracy in Canada (December 2014) - http://www.elections.ca/res/rec/tech/cod/pdf/code_of_ethics_e.pdf

5 Ekos Research Associates, "Public opinion survey – Canadians and Privacy" (March 2009) - https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2009/ekos_2009_01/#sec6_10