

# **Who me? Stimulating privacy awareness**

A contribution by

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## Introduction

*Note: The promotional activities referred to in the examples throughout this paper are illustrated in a separate document entitled 'Promoting Privacy in Victoria'. The author thanks the current Victorian Privacy Commissioner, Helen Versey, for permission to use the document in conjunction with this paper.*

In September 2006, after my five-year term as the first Privacy Commissioner of Victoria, Australia, ended, I was exiled to Canada.

I visited the offices of our joint hosts today, David Loukidelis and Frank Work, and other Canadian colleagues in this quintessentially globalised field of data protection in a technological, digitizing world.

Enough of what I said resonated sufficiently for the offices of the BC and Alberta commissioners to invite me back to speak to you today about techniques for instilling a culture of privacy awareness.

I begin with a caveat: culture matters, and I do not presume to suggest that all of what I will say will necessarily seem to you to be readily adaptable, nor perhaps even appropriate, in Canada. But not to worry, my experience in this and other fields is that whatever is lost in translation can be regained by the listener through its diverting strangeness.

To the extent that what I outline seems to you useful, I hope it helps you, your organizations, the commissioners and their staffs, in the worthwhile work of giving practical life in Canada to an idea which is basic to human dignity, respect for privacy.

If I have a theme it is this: Do not undervalue, but rather strive to refine, the 'dynamism of habit', and the 'energy of the everyday'.

Being the first to occupy a statutory office built around a freshly enacted statute with a distinguished international pedigree, I had to spend a significant portion of my term, especially in the early years, raising awareness and promoting understanding of the core ideas. More subtle and demanding still, Victoria's *Information Privacy Act* requires the commissioner to promote 'acceptance' of privacy. That is a big ask. For today's purposes, I have grouped examples of this part of the work under four headings: clarity; universality; complexity; and receptivity.

## I Clarity

Among the basic rights, privacy is a shy right. Privacy is best measured as it drains away. This is unhelpful in the context of today's topic, but it is also a feature of privacy that makes it a singularly interesting challenge for marketers.

No privacy law can succeed in being understood and accepted unless the law itself, and the people administering it, are clear about purposes. People reject or evade that which they do not find useful. People know that jargon and fads flare and fade. Where behavior changes are being urged upon them, people listen for reasons that pass sterner tests of legitimacy than mere law-reformer passion. I found it helpful to ground data protection notions in the fertile soil of more enduring values. I also found that reference to enduring values seems to act as a kind of balm to people for whom the pace of technological change is so fast, so bewildering, that they feel a debilitating helplessness, and respond by disengaging.

Condensing that vast and beautiful literature about privacy in philosophy, law and fiction, the laws we are here discussing can be supported on three basic grounds -

*Respect for privacy is essential to selfhood*

We have a conversation with ourselves in our heads, then we speak and act among others. By having space for an inner me, I know that I am, and that I am not you, and that you are not me. Could either of us function otherwise? Would either of us want to?

*Respect for privacy is essential to intimacy*

Leaving aside the self, alone, and turning to a human activity in which every person has a vital interest, we can see that respect for privacy is fundamental here to – relationships. We calibrate the 'closeness' of a relationship with another person partly by how much of our inner lives we expose to that person. I have hopes, worries, foolishnesses, 'thoughts out loud', that I share only with my wife or children or closest friends – and they with me - and in those risky acts of sharing we reinforce the trust that makes the relationships intimate and, in that intimacy, meaningful. You do too. None of this works if privacy is not respected.

*Respect for privacy is essential to liberty.*

Leaving aside the self and the intimate, we can make a case for respect for privacy in the biggest public arena of all, in the relationship between the individual and the state. A requirement under law that governments respect privacy is part of what comprises the notion of liberty for our times. It is not just hard and bitter experience with various governmental abuses from different eras in a range of countries that teaches this. When you think about it, several other basic elements of freedom can be exercised in practice only if privacy is respected. Without privacy, you cannot organize and in a practical way

enjoy freedom of association. Freedom of belief or conscience requires a degree of privacy. Even freedom of expression – so often narrowly presented as the antithesis of privacy – requires privacy for drafting, editing, re-drafting and other steps preparatory to, but also essential to, the final acts of expression and dissemination.

With purposes clear, it is time to turn to our advantage the fact that the human need for privacy is universal.

## **II Universality**

I found it useful, as a privacy commissioner, to lay stress on how deeply felt was every person's need to have their privacy respected. This goes beyond the prosaic, such as a reliable lock on the bathroom door. (Although that basic need proved useful too; I sponsored the port-a-loos at the biggest rock music festival in order to place our messages on the inside of the doors in each cubicle, where the audience was a captive one. The response to this simple and relatively inexpensive initiative produced a lot of helpful feedback from a traditionally difficult age-group to reach with the privacy message. They also responded well to receiving free tubes of specially labelled sunscreen with the message 'cover yourself'. Being young, many had forgotten this essential accompaniment to an outdoor festival at high summer in Australia. This is one example of 'the dynamism of habit'.)

A large part of the value of stressing the universality of privacy is the way it can be equated with common decency. Privacy is not new or radical or strange, even if the laws built on the OECD principles may seem to some to be so. Privacy is embedded in very old and well-understood social conventions. If you give people sufficiently vivid and simple illustrations, they make a lasting connection.

This is part of what I mean by the 'energy of the everyday'.

## **III Complexity**

Privacy is in some ways complex. It is subjective and abstract. It presents, often, tensions between two or more competing goods (not a relatively simple choice between good and bad, or even between good and better.) My experience is that people can cope with these complexities if you give the lead. In a world of marketing and media messages that stress how everything has a 'simple' solution, a straight-forward acknowledgement that some things are hard to resolve and require compromise and follow-up can be a relief. People appreciate being given permission to be puzzled, consent to be confused. I found that when the Privacy Commissioner's Office ran competitions to raise privacy awareness, some of the most interesting and effective entries were from privacy skeptics. Entrants asked, in cartoons and photography and fiction writing and design, whether privacy law was an acceptable element of a world increasingly lubricated by personal information. These skeptical entries won prizes on their merits, but I noticed that it was helpful for doubt to be acknowledged, in effect, on

its own terms. It reduced the usual, and less constructive, polarizing of the discussion that tends to occur in more conventional settings.

Part of the complexity of privacy is the apparent paradox that you cannot protect privacy without insisting on transparency. There is a lot of necessary and justifiable openness in a good privacy protection scheme. For example, the requirement that collection be disclosed, that purposes be enumerated, that data be corrected or amended, that Privacy Impact Assessments be conducted and published, that reasons be given for allowing another public interest to override the public interest in respect for privacy in any given public policy debate, and that the efficacy of safeguards be audited and reported.

I found that it helped to contrast all this human untidiness with the sometimes overwhelming efficiency, sometimes overstated efficiency, of the information and communications technologies with which so much privacy work is intertwined. The benefits of these technologies can and should be acknowledged when they are demonstrated on reasonable grounds. This is not an incitement to Luddites. My points is just that humans understand what the machines do not – and what some purveyors of mere technological solutions will not. People understand about ambiguity, inference, hope, forgiveness, disdain, carelessness, prejudice, loyalty, disingenuousness and mercy. They know this affects the collection, quality, uses and security of information. So, while it may seem odd, I think the articulation and frank acknowledgement of human frailty is a strength when it comes to creating a culture of respect for privacy.

## **IV Receptivity**

If you can associate the idea of respect for privacy with activities or places that people already enjoy and value, you can convey your messages more easily, and tackle complexities in a more relaxed environment. Love and pleasure make people receptive. At leisure, people listen better and seem to be more open-minded, more willing to re-assess a 'set position' that they may have 'set' in their minds in a more conventional environment such as watching TV current affairs or listening to talk radio.

Through unusual sponsorships of apparently unconnected partners in sports and culture, I tried to link the Office of the Privacy Commissioner and the statutory duty to promote and to educate the community about privacy with organizations and activities that people had already welcomed into their lives and found useful and rewarding. In effect, I invested in, and also earned a dividend from, pre-existing social capital.

It was a financially modest investment. A small state statutory office cannot compete on price with the large governmental and corporate sponsors in the high-profile sports and cultural arenas. I operated at the grassroots, not among the taller poppies of the governmental and media landscape. In choosing events and organizations for reasons of demography or geographic range rather than sheer profile, I was building for the future, trying to begin relationships that could endure with community organizations that endure. I had a more subtle and slow-working message to spread than most marketing or advertising contemplates. (Examples are given in the accompanying document.)

In doing this work, I found that age groups differ in their responses to privacy. There are variations among ethnic groups too. It is necessary always to be willing to experiment and fail, to plan for follow-up, and to adapt.

The experience helped me to understand better the 'energy of the everyday'.

I thank the host commissioners and their staff for the invitation to participate today.

Thank you for your attention.