



**BY EMAIL**

March 5, 2024

Honourable Brian Francis, Senator  
Chair  
Standing Senate Committee on Indigenous Peoples  
The Senate of Canada  
Ottawa ON K1A 0A4

Dear Mr. Chair:

I am writing further to my appearance of February 27, 2024, before the Standing Senate Committee on Indigenous Peoples (the “Committee”) in relation to its examination of the constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Métis peoples. During my appearance, I was asked to provide the Committee in writing with my specific recommendations on potential legislative changes that could be made to the *Privacy Act* in order to address any barriers to the disclosure of information. I am pleased to provide the following information, which I hope will assist the Committee in its important work.

### **Recommendations to Improve the *Privacy Act***

As I noted during my testimony, there are several legislative changes that could be considered, some of which are included in the Department of Justice report *Privacy Act Modernization: Report on 2022 Engagement with Indigenous Partners*.<sup>1</sup> For example, I would recommend that the *Privacy Act* be amended to:

1. Include a purpose clause in the Act to emphasize reconciliation with Indigenous peoples, which would serve as an important interpretive guide on the Act’s implementation;
2. Update the terminology and provisions for disclosure in the context of regulating what personal information is shared, with whom and for what purposes. This could include allowing broader disclosure of personal information to Indigenous governments and acknowledging the various legal regimes under which they operate;

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<sup>1</sup> [https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/wwh4-cqnae4/pdf/WWLR\\_Indigenous\\_Engagement\\_ENG.pdf](https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/wwh4-cqnae4/pdf/WWLR_Indigenous_Engagement_ENG.pdf)

3. Encourage proactive engagements with my Office, and make the preparation of Privacy Impact Assessments (PIAs) for privacy-impactful programs or activities a legal obligation;
4. Add necessity and proportionality requirements to the Act, to frame the balance between the protection of individual rights and the public interest in an appropriate way;
5. Grant order-making powers to the Privacy Commissioner to help ensure and incentivize compliance with the Act, as is the case for the Information Commissioner under the *Access to Information Act*; and
6. Consider the potential to recognize both the individual and the collective rights of Indigenous peoples.

## Conclusion

I hope that this information is of assistance to the Committee and look forward to reviewing the Committee's report. Please do not hesitate to contact me should you have any questions or require further information.

Sincerely,



Philippe Dufresne  
Commissioner

c.c.: Andrea Mugny  
Clerk of the Committee