



Privacy Act Modernization

Presentation for the annual National Claims Workshop

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Department of Justice
Canada

Ministère de la Justice
Canada

Canada

What is the *Privacy Act*?

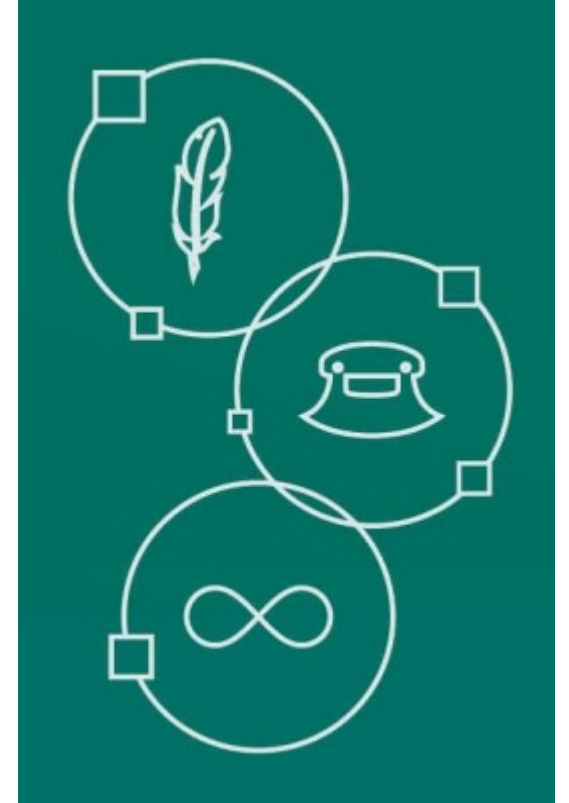
- The *Privacy Act* governs the collection, use, disclosure, retention, disposal and protection of **personal information** by **federal public bodies**.
- It also sets out an individual's **right to access** their own **personal information** held by federal public bodies.
- The *Privacy Act* only applies to personal information, not all data – for instance, it does not apply to all Indigenous data (data about Indigenous peoples collectively, about their land, their cultures, traditions, etc.).
- The *Access to Information Act* is a separate act, with a different purpose
 - It provides a right of access to **records** under the control of **federal public bodies** that contains information that is not of a personal nature, subject to applicable exemptions.



The *Privacy Act* and Indigenous Peoples in Canada

The *Privacy Act* has specific impacts on Indigenous peoples in Canada.

- It has definitions that are unique to Indigenous peoples (“aboriginal government”, “Indian band”).
- It has provisions setting out the Indigenous governments/organizations that federal public bodies are allowed to disclose personal information to and for which purposes.
- Federal public bodies tend to hold more, and more sensitive, personal information about Indigenous individuals than they do about most Canadians.



Major Milestones for *Privacy Act* Modernization

In 2016, the Minister of Justice announced that Justice Canada would be leading the modernization of the *Privacy Act*.

Since then, 3 major external engagement efforts to seek input on how the *Privacy Act* should be modernized were conducted:

1

**Targeted Technical
Engagement
(2019)**

2

**Online Public
Consultation
(2020-2021)**

3

**Initial Indigenous
Engagement
(2020-2021)**



Targeted Technical Engagement (2019)

- In 2019, Justice Canada engaged privacy and data experts for a preliminary targeted technical engagement.
- Experts with knowledge of Indigenous data issues provided input which highlighted a number of themes of specific importance to Indigenous peoples.
- Justice Canada built on the issues raised during this targeted technical engagement for its initial Indigenous engagement in 2020-2021.



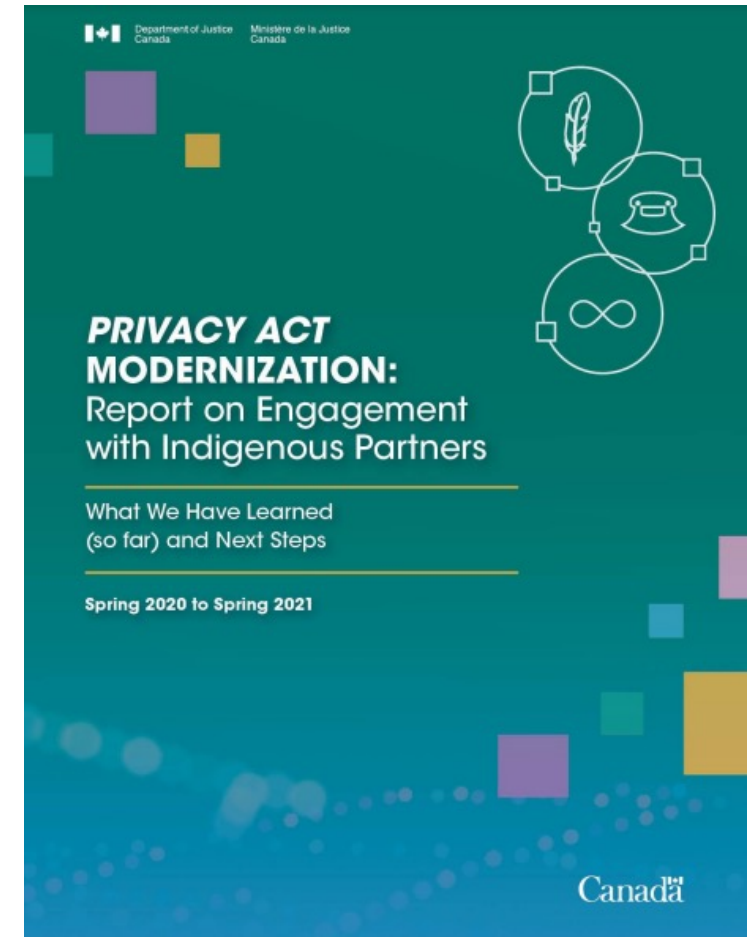
Online Public Consultation (2020-2021)

- From 2020-2021, Justice Canada held a broad online public consultation to obtain Canadians' views on how the *Privacy Act* can be updated.
- The online public consultation was supported by a [discussion paper](#) which set out a vision for *Privacy Act* modernization based on three principles: respect, accountability and adaptability.
- Justice Canada received 57 written submissions from stakeholders, including from federal public bodies, Canadian and international academics, private sector entities, non-governmental organizations, civil liberties advocates, and Indigenous partners.
- In addition, more than 1,100 individuals responded to the online survey, providing some additional written comments.



Initial Engagement with Indigenous Partners (2020-2021)

- From 2020-2021, Justice Canada held an initial engagement with Indigenous governments and organizations to:
 - Understand Indigenous partners' perspectives and experiences with the *Privacy Act*; and
 - Learn how it could be modernized to better reflect the respective needs and expectations of First Nations, Inuit and Métis.
- Justice Canada met with representatives of 14 Indigenous partners in bilateral engagement sessions.



What We Learned from Indigenous Partners



Ongoing Engagement with Indigenous Partners

- The engagement with Indigenous partners on the modernization of the *Privacy Act* is **ongoing**.
- In the current stage, Justice Canada is receiving input on some ideas for potential changes to the *Privacy Act*'s foundational-principles and rules, which play a significant role in governing information sharing between federal public bodies, and Indigenous governments and organizations.
- *The What We Have Learned (so far) and Next Steps Report* was shared with 64 indigenous partners to serve as a basis for continuing our engagement based on a multi-step approach.
- Indigenous partners have been invited to provide feedback in writing and/or through a bilateral engagement session before **December 16, 2022**.



Ongoing Engagement with Indigenous Partners: Ideas for Input

- Including a **purpose clause** which recognizes that one purpose of a modern *Privacy Act* is reconciliation with Indigenous peoples in Canada.
- Adding a **principle** recognizing that federal public bodies may disclose Indigenous individuals' personal information to Indigenous governments, organizations, or entities. This would include:
 - identifying **additional purposes** for which their personal information may be disclosed and how these purposes are framed.
 - Identifying which Indigenous entities should have access to their personal information without consent and how they should be identified as **authorized recipients** of that information.
- Updating **concepts** and **definitions** to recognize the diversity of First Nations, Inuit and Métis Nation governments.
- Exploring the potential **transfer** of Indigenous individuals' personal information.
- Exploring **mechanisms for privacy protection** (Information sharing agreements, baseline regulations, or Indigenous peoples' own legislation).



Looking Forward

- Aim is to publish another What We Learned Report in 2023.
- At a later stage, Justice Canada will engage Indigenous partners to discuss the more detailed rules and complex questions that need to be addressed to support any initial changes made to modernize the *Privacy Act*.



Questions or Comments?

