

# Navigating the Privacy Landscape: Harmonizing Legislative and Public Sector Approaches in the Canadian Context

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This paper, presented at the National Bureau of Economic Research's conference on Data Privacy Protection and the Conduct of Applied Research: Methods, Approaches and their Consequences, Spring 2024, articulates a Canadian analysis of evolving privacy protection frameworks in response to technological advances and changing societal values. It contextualizes the analysis within the Canadian framework using Bergeron's structuro-functionalist state theory. It explores Statistics Canada's use of financial data, highlighting public concerns about data access and governance, and emphasizes the need for adaptable privacy protection models. It advocates for policies that balance data accessibility, privacy, and public trust.

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Decision-makers and policy practitioners have long sought access to data for insights into policy development and to inform decision-making. The pivotal role of administrative data and statistical information comes to the fore, as evidenced by various studies and reports (OECD, 2019a; United Nations, 2023). The deficiency or underutilization of administrative data significantly impacts the capacities of governments in making timely decisions, overseeing and reporting on complex social issues, and delivering programs effectively to Canadians (Desrochers, 2022; Government of Canada, 2023a, 2023b). Moreover, the evolving paradigms of privacy protection regimes across governmental entities, private sectors, and transnational frameworks necessitate the ethical utilization and rigorous safeguarding of data to engender public trust.

The paper presented at the conference articulates the complexities surrounding public sector access to and utilization of personal data held by the private sector, focusing on the evolving paradigms of confidentiality and privacy frameworks. Specifically, the presentation addresses how Personal Identifying Information (PII) and proprietary business information are balanced against their accessibility for statistical, study, or research purposes by public bodies, as examined in recent scholarly works (Caron et al., 2023; Hulin et al., 2023). The analysis is contextualized within the Canadian framework and is informed by Bergeron's structuro-functionalist analysis of the state, emphasizing the growing discourse on citizen-state engagement and emerging policy development in data access. The conference paper examines Statistics Canada's (StatCan) intended use of data from credit monitoring companies and financial institutions for generating economic statistics. This scenario has sparked substantial public concern, highlighting the interplay between Bergeron's State Theory regime and governance in the context of data access (Bergeron, 1965, 1993).

*Bergeron's structuro-functionalist analysis of the state*

Bergeron’s functionalist theory of the state conceptualizes the state as a hierarchy of superfunctions, functions, and infrafunctions, corresponding to the state's regime, governance, and polity (see Figure 1). Succinctly, the threshold of enablement is crucial in the interplay between the regime and governance, where the regime confers operational authority to governance, which in turn enhances the regime's essential functions of legitimization and securitization of the State. Governance, comprising of legislation, government, administration, and jurisdiction, sets and implements rules and executes them. The activation threshold mediates interaction between governance and the polity, facilitating dynamic exchanges where polity communicates its aspirations to governance, and governance galvanizes polity into specific actions (Bergeron, 1993, p. 41).

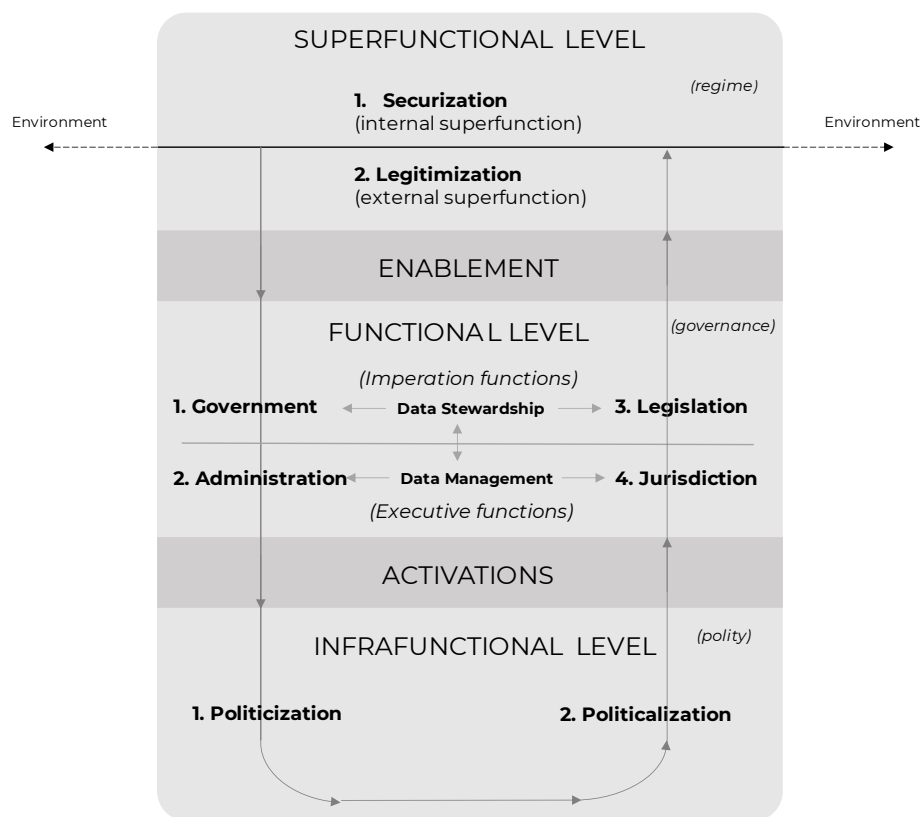


Figure 1 Data Access Ecosystem on an abridged synthesis of Bergeron's theoretical framework (Inspired by Bergeron, 1993, p.32; Bergeron, 2017, p. 82)

### Canadian framework of Privacy Protection Models

Within the Canadian landscape, there is a growing demand for heightened citizen engagement and inclusive, participatory public policy discussions concerning privacy protection, especially within the National Statistical System (Ramos et al., 2021). This section focuses on a spectrum of privacy protection models examined through the perspective of StatCan, exploring frameworks designed to address privacy challenges and models for data collection and access.

StatCan's 2019 Framework of Necessity and Proportionality safeguards privacy by balancing data collection with precision and response burden, aligning with the *Statistics Act* and *Privacy Act*. It employs a four-part test—necessity, effectiveness, proportionality, and alternatives—to

ensure essential, effective, and proportionate data collection, promoting less intrusive methods if possible (Government of Canada & Statistics Canada, 2022b, 2023b). The Five Safes framework, adopted from the UK's Office for National Statistics, manages data access risks in research and statistical analysis, integrating privacy principles to balance data accessibility and protection (Government of Canada & Statistics Canada, 2021a). Additionally, StatCan's Privacy Management Program (PMP) aligns the bureau's mandate with privacy requirements, addressing changing expectations through risk assessments, Privacy Impact Assessments, policies, governance, breach management, and privacy education (Government of Canada & Statistics Canada, 2023d, 2023b, 2020b, 2023a). StatCan's Virtual Data Lab (VDL) facilitates remote access to anonymized microdata through a secure interface, employing advanced anonymization techniques. Rigorous access controls and data use agreements mitigate unauthorized access risks. The Real Time Remote Access (RTRA) system allows real-time program execution without direct microdata access, ensuring privacy, confidentiality, and security. These frameworks and programs collectively ensure that StatCan maintains ethical, responsible data utilization while safeguarding privacy and meeting the needs for data accessibility in research and statistical analysis (Government of Canada & Statistics Canada, 2022a, 2023c, 2020a).

#### *Case Study: Statistics Canada's Use of Financial Data*

In 2018, StatCan aimed to gather individual financial data from private sector entities, such as TransUnion and other financial institutions, to enhance economic statistics. This practice, sanctioned under the Statistics Act, triggered public concern and an investigation by the Office of the Privacy Commissioner (OPC). The OPC concluded that StatCan did not contravene the *Privacy Act* but emphasized the need for strategic communication with financial sector entities to establish trust and understanding about StatCan's data collection authorities (Office of the Privacy Commissioner of Canada, 2021).

Using Bergeron's State Theory to explore Statistics Canada's use of financial data highlights the interaction between governance and polity, involving special interest groups, political parties, and advisory organizations advocating for privacy protections. Moreover, this aligns with recent academic literature that explores normative approaches to sharing health information data, emphasizing trust, communication, and the role of public opinion in data sharing practices (Caron et al., 2023). Caron's research underscores the importance of clear, frequent, and transparent communication in building and maintaining public trust in data sharing initiatives (Caron et al., 2023, pp. 7–8).

#### *Conclusion*

Bergeron's State Theory provides an analytical framework to understand the evolution of legal and social norms related to data access and privacy protection. StatCan's implementation of the Framework of Necessity and Proportionality, the Five Safes framework, and the PMP exemplifies a normative approach to harmonizing legal mandates with societal norms. The case of StatCan's data acquisition underscores the importance of public trust, transparent practices, and continuous engagement with stakeholders.

In terms of policy implications, there is a need for continuous adaptation and refinement of privacy protection models and public policy frameworks. This involves balancing data accessibility with privacy protection, fostering public trust, and ensuring transparent, accountable,

and participatory practices. Future research should focus on legislative frameworks, value-based ethical concerns, establishing clear rules for data access, and ensuring transparency to balance the interests of data subjects, data users, and the public. These approaches are vital for shaping robust policies that respond to the challenges and opportunities of our digitally transforming society.

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