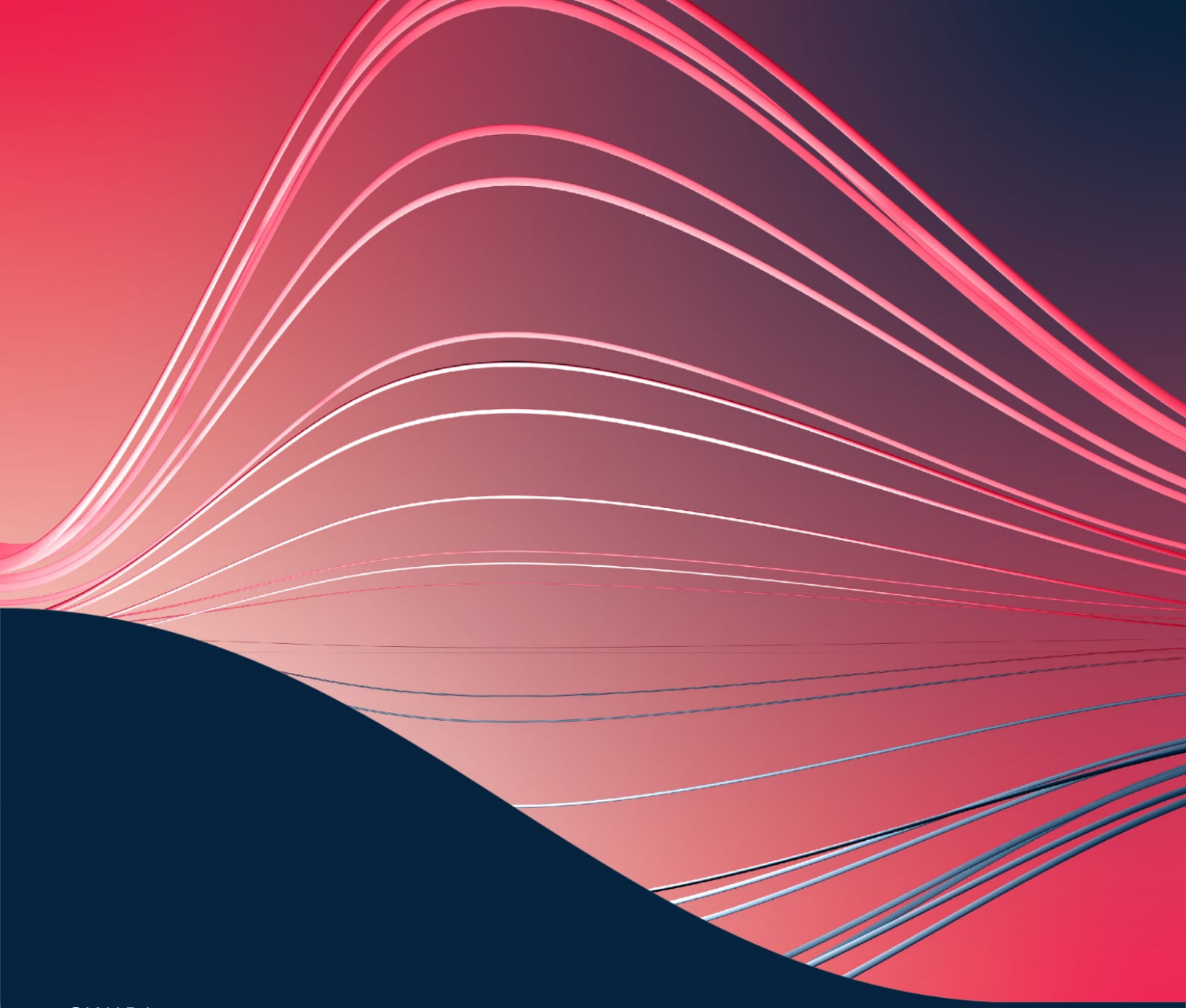

CANADA

Data Protection Laws of the World

DLA PIPER

Introduction

Welcome to the 2025 edition of DLA Piper's Data Protection Laws of the World Handbook. Since the launch of our first edition in 2012, this comprehensive guide has been a trusted resource for navigating the complex landscape of privacy and data protection laws worldwide. Now in its fourteenth edition, the Handbook has grown to provide an extensive overview of key privacy and data protection regulations across more than 160 jurisdictions. As we step into 2025, the global landscape of data protection and privacy law continues to evolve at an unprecedented pace. With new legislation emerging in jurisdictions around the world, businesses face a growing need to stay informed and agile in adapting to these changes. This year promises to bring new developments and challenges, making the Handbook an invaluable tool for staying ahead in this ever-changing field.

Europe

Established data protection laws in Europe continue to evolve through active regulatory guidance and enforcement action. In the United Kingdom, the UK government has proposed reforms to data protection and e-privacy laws through the new Data (Use and Access) Bill ("**DUAB**"). The DUAB follows the previous government's unsuccessful attempts to reform these laws post-Brexit, which led to the abandonment of the Data Protection and Digital Information (No.2) Bill ("**DPDI Bill**"), in the run-up to the general election. Although the DUAB comes with some bold statements from the government that it will *"unlock the power of data to grow the economy and improve people's lives"*, the proposals represent incremental reform, rather than radical change.

United States

In the United States, legislation on the federal and in particular state level continues to evolve at a rapid pace. Currently, the US has fourteen states with comprehensive data privacy laws in effect and six state laws will take effect in 2025 and early 2026. Additionally, at the federal level, the new administration has signaled a shift in enforcement priorities concerning data privacy. Notably, there is a renewed focus on the regulation of artificial intelligence (AI), with an emphasis on steering away from regulation and promoting innovation. This includes the revocation of previous executive orders related to AI and the implementation of new directives to guide AI development and use.

In the realm of children's privacy, many of the new administration's supporters in Congress have indicated a desire to make the protection of children on social media a top priority, and new leadership at the Federal Trade Commission (FTC) appears aligned on this goal, albeit with a willingness to take another look at the recently adopted amendments to the Children's Online Privacy Protection Act (COPPA) Rule. Health data

privacy remains a critical concern, with a handful of states following Washington state's lead in enhancing or adopting health data privacy laws. On the international data transfer front, Executive Order (E.O.) 14117 " Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern" as supplemented by the DOJ's final Rule will impact companies transferring data into certain jurisdictions, such as China, Iran and Russia. Another area of focus for companies with an EU presence will be the Trump administration's approach to the Privacy and Civil Liberties Oversight Board, as it is a critical pillar of the EU/UK/Swiss-US Data Privacy Framework.

Asia, the Middle East, and Africa

Nowhere is the data protection landscape changing faster – and more fundamentally – than in Asia, with new laws in India, Indonesia, Australia and Saudi Arabia, as well continued new data laws and regulations in China and Vietnam. The ever-evolving data laws, as well as the trend towards regulating broader data categories (beyond personal data), in these regions continue to raise compliance challenges for multi-national businesses.

Emerging trends in data governance

Unlocking data, regulating the relentless advance of AI, creating fairer digital markets and safeguarding critical infrastructure against the ever growing cyber threat, continue to impact and overlap with the world of data protection and privacy. Perhaps most notably, the EU have introduced a raft of new laws forming part of its ambitious digital decade, which will bring huge change to businesses operating within the EU. With the rapid adoption of artificial intelligence enabled solutions and functionality, data protection supervisory authorities have been closely scrutinising the operation of AI technologies and their alignment with privacy and data protection laws. For businesses, this highlights the need to integrate date protection compliance into the core design and functionality of their AI systems. In the midst of this, the privacy community found itself at the centre of an emerging debate about the concept of 'AI governance'. This is not a surprising development – AI systems are creatures of data and the principle-based framework for the lawful use of personal data that sits at the heart of data protection law offers a strong starting point for considering how to approach the safe and ethical use of AI. As AI technologies advance, so will regulatory expectations. It is expected that regulatory scrutiny and activity will continue to escalate and accelerate in tandem with the increase in integration of powerful AI models into existing services to enrich data. Whilst privacy professionals cannot tackle the AI challenge alone, expect them to continue to be on the front lines throughout 2025 and beyond.

Disclaimer

This handbook is not a substitute for legal advice. Nor does it cover all aspects of the legal regimes surveyed, such as specific sectorial requirements. Enforcement climates and legal requirements in this area continue to evolve. Most fundamentally, knowing high-level principles of law is just one of the components required to shape and to implement a successful global data protection compliance program.

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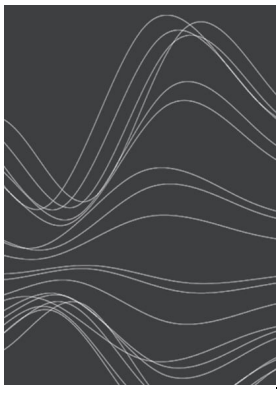

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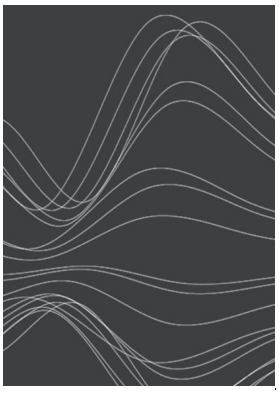

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Canada

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Data protection laws

In Canada there are at least 29 federal, provincial and territorial privacy statutes (excluding statutory torts, privacy requirements under other legislation, federal anti-spam legislation, criminal code provisions etc.) that govern the protection of personal information in the private, public and health sectors. Although each statute varies in scope, substantive requirements, remedies and enforcement provisions, they all set out a comprehensive regime for the collection, use and disclosure of personal information.

The summary below focuses on Canada's private sector privacy statutes:

- Personal Information Protection and Electronic Documents Act ('PIPEDA')
- Personal Information Protection Act (Alberta) ('PIPA Alberta')
- Personal Information Protection Act (British Columbia) ('PIPA BC')
- Act Respecting the Protection of Personal Information in the Private Sector ('Quebec Private Sector Act'), (collectively, 'Canadian Privacy Statutes')

On June 16, 2022, the federal Government introduced Bill C-27, a wide-reaching piece of legislation intended to modernize and strengthen privacy protection for Canadian consumers and provide clear rules for private-sector organizations. It was the second attempt to modernize federal private-sector privacy legislation, after a previous proposal died on the order paper in 2021. On January 6, 2025, Parliament was prorogued and, as a result, Bill C-27 died on the order paper. Bill C-27 would have replaced PIPEDA with legislation specific to consumer privacy rights and electronic documents. Bill C-27 would have also introduced the Artificial Intelligence and Data Act, which aimed to create rules around the deployment of AI technologies. This means that Canada's federal privacy regime will remain as-is for the foreseeable future without the modernizations or improvements to PIPEDA that were anticipated in 2025 or the anticipated broad-based federal AI regulation. Parliament is now prorogued until March 24, 2025 and it is unclear what legislative agenda will be implemented when Parliament resumes.

PIPEDA applies to all of the following:

- Consumer and employee personal information practices of organizations that are deemed to be a 'federal work, undertaking or business' (*eg*, banks, telecommunications companies, airlines, railways, and other interprovincial undertakings)
- Organizations who collect, use and disclose personal information in the course of a commercial activity which takes place within a province, unless the province has enacted 'substantially similar' legislation (PIPA BC, PIPA Alberta and the Quebec Private Sector Act have been deemed 'substantially similar')
- Inter provincial and international collection, use and disclosure of personal information in connection with commercial activity

PIPA BC, PIPA Alberta and the Quebec Private Sector Act apply to both consumer and employee personal information practices of organizations within BC, Alberta and Quebec, respectively, that are not otherwise governed by PIPEDA. In Ontario, amendments have been made to the Ontario Employment Standards Act, 2000 that impose notice obligations related to employee monitoring, although the full range of privacy rights and obligations available in Canadian Privacy Statutes have not been imported into the Employment Standards Act.

Quebec recently enacted a major reform of its privacy legislation with the adoption of Bill 64 on September 22, 2021, which resulted in the coming into force of several key modifications over the course of several years, with the final amendments having come into effect on September 22, 2024. With Bill 64's changes, Quebec now has in place a sophisticated legal framework for privacy and data protection that resembles the European GDPR in several key areas.

Definitions

Definition of personal data

'Personal information' includes any information about an identifiable individual (business contact information is expressly "carved out" of the definition of 'personal information' in some Canadian privacy statutes).

The Quebec Private Sector Act, as modified by Bill 64, has broadened the definition of " personal information" to include any information that allows an individual to be identified indirectly as well as directly. In Quebec, business contact information is included in the definition of "personal information", however it is considered a less sensitive form of data to which many of the requirements of the Quebec Private Sector Act do not apply.

Definition of sensitive personal data

Not specifically defined in Canadian Privacy Statutes, except for the Quebec Private Sector Act.

The Quebec Private Sector Act, as modified by Bill 64, defines "sensitive personal information" as any information that, by virtue of its nature (e.g. biometric or medical), or because of the context in which it is used or communicated, warrants a high expectation of privacy. The Quebec Privacy Act has stricter consent requirements in

certain situations for the use and communication of personal information qualified as sensitive.

Definition of anonymized information

The Quebec Private Sector Act, as modified by Bill 64, defines "anonymized information" as information concerning an individual which irreversibly no longer allows such individual to be identified, whether directly or indirectly. Quebec recently adopted a regulation which prescribes certain criteria and procedures which must be followed when anonymizing data.

Definition of de-identified information

The Quebec Private Sector Act, as modified by Bill 64, defines "de-identified information " as any information which no longer allows the concerned individual to be identified directly. "De-identified" information is still considered to be a form of personal information, to which most of the protections set out in the Quebec Private Sector Act continue to apply.

Definition of biometric information

The Quebec privacy regulator, the *Commission d'accès à l'information* (CAI), defines " biometric information" as information measured from a person's unique physical, behavioural or biological characteristics. Biometric information is, by definition, sensitive information.

National data protection authority

Office of the Privacy Commissioner of Canada ('PIPEDA')

Office of the Information and Privacy Commissioner of Alberta ('PIPA Alberta')

Office of the Information and Privacy Commissioner for British Columbia ('PIPA BC'), and

Commission d'accès à l'information du Québec (the "CAI") ('Quebec Private Sector Act')

Other jurisdictions have their own privacy regulators that oversee provincial public-sector privacy and access to information regimes.

Registration

There is no general registration requirement under Canadian Privacy Statutes.

Some registration requirements exist under Quebec privacy laws:

- Personal information agents, defined as "any person who, on a commercial basis, personally or through a representative, establishes files on other persons and prepares and communicates to third parties credit reports", must be registered with the CAI

- The use of certain biometric systems and the creation of databases of biometric information must be disclosed to and registered with the CAI

Data protection officers

PIPEDA, PIPA Alberta, and PIPA BC expressly require organizations to appoint an individual responsible for compliance with the obligations under the respective statutes.

The Quebec Private Sector Act, as modified by Bill 64, requires organizations to appoint a person responsible for the protection of personal information, who is in charge of ensuring compliance with privacy laws within the organization. By default, the person with the highest authority within the organization will be the person responsible for the protection of personal information, however this function can be delegated to any person, including a person outside of the organization.

This person's responsibilities are broadly defined in the law and include:

- Approval of the organization's privacy policy and practices
- Mandatory privacy impact assessments
- Responding to and reporting security breaches, and
- Responding to and enacting access and rectification rights

The contact information of the person responsible for the protection of personal information must be published online on the website of the organization. The delegation must be done in writing.

Collection and processing

Canadian Privacy Statutes set out the overriding obligation that organizations only collect, use and disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Subject to exceptions prescribed in Canadian Privacy Statutes, meaningful and informed consent is generally required for the collection, use and disclosure of personal information. Depending on the sensitivity of the personal information, consent may need to be presented as opt-in or opt-out. Under the Quebec Private Sector Act, consent must be "clear, free and informed and be given for specific purposes": this is generally interpreted as requiring opt-in consent in most situations, however depending on the context and sensitivity of the information, opt-out or implicit consent may, in certain specific situations, be considered valid. Organizations must limit the collection of personal information to that which is necessary to fulfil the identified purposes and only retain such personal information for as long as necessary to fulfil the purposes for which it was collected or as otherwise required by law.

Each of the Canadian Privacy Statutes have both notice and openness/transparency requirements. With respect to notice, organizations are generally required to identify the purposes for which personal information is collected at or before the time the information is collected. With respect to openness/transparency, generally Canadian

Privacy Statutes require organizations make information about their personal information practices readily available.

All Canadian Privacy Statutes contain obligations on organizations to ensure personal information in their records is accurate and complete, particularly where the information is used to make a decision about the individual to whom the information relates or if the information is likely to be disclosed to another organization.

Each of the Canadian Privacy Statutes also provides individuals with the following:

- A right of access to personal information held by an organization, subject to limited exceptions;
- A right to correct inaccuracies in/update their personal information records; and
- A right to withdraw consent to the use or communication of personal information.

In addition to these rights, the Quebec Private Sector Act, as modified by Bill 64, gives individuals the right to have their personal information deindexed if the dissemination of the information contravenes the law or a court order. Quebec individuals also have a right to data portability, meaning that individuals can request that their personal information be communicated to them in a structured, commonly used technological format or that it be communicated to any person or body authorized by law to collect such information.

Finally, organizations must have policies and practices in place that give effect to the requirements of the legislation and organizations must ensure that their employees are made aware of and trained with respect to such policies.

Transfer

When an organization transfers personal information to a third-party service provider (*ie*, who acts on behalf of the transferring organization -- although Canadian legislation does not use these terms, the transferring organization would be the "controller" in GDPR parlance, and the service provider would be a "processor"), the transferring organization remains accountable for the protection of that personal information and ensuring compliance with the applicable legislation, using contractual or other means. In particular, the transferring organization is responsible for ensuring (again, using contractual or other means) that the third party service provider appropriately safeguards the data and only uses it for the specified purposes, and would also be required under the notice and openness/transparency provisions to reference the use of third-party service providers in and outside of Canada in their privacy policies and procedures.

These concepts apply whether the party receiving the personal information is inside or outside Canada. Transferring personal information outside of Canada for storage or processing is generally permitted so long as the requirements discussed above are addressed, and the transferring party notifies individuals that their information may be transferred outside of Canada (or outside of Québec, as applicable) and may be

subject to access by foreign governments, courts, law enforcement or regulatory agencies. This notice is typically provided through the transferring party's privacy policies.

With respect to the use of foreign service providers, PIPA Alberta specifically requires a transferring organization to include the following information in its privacy policies and procedures:

- The countries outside Canada in which the collection, use, disclosure or storage is occurring or may occur, and
- The purposes for which the third party service provider outside Canada has been authorized to collect, use or disclose personal information for or on behalf of the organization

Under PIPA Alberta, specific notice must also be provided at the time of collection or transfer of the personal information and must specify:

- The way in which the individual may obtain access to written information about the organization's policies and practices with respect to service providers outside Canada, and
- The name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection, use, disclosure or storage of personal information by service providers outside Canada for or on behalf of the organization.

The Quebec Private Sector Act, as modified by Bill 64, requires all organizations to inform persons that their personal information may be transferred outside of Québec: this is typically done at the time the information is collected. Additionally, before transferring personal information outside of the province of Quebec, organizations must conduct data privacy assessments and enact appropriate contractual safeguards to ensure that the information will benefit from adequate protection in the jurisdiction of transfer. These assessments must take into account the sensitivity of the information, the purposes, the level of protection (contractual or otherwise) and the applicable privacy regime of the jurisdiction of transfer. Cross-border transfers may only occur if the organization is satisfied that the information would receive an adequate level of protection. Quebec has decided not to implement a system of adequacy decisions, and therefore assessments are required on a case-by-case basis prior to any cross-jurisdiction transfer.

Security

Each of the Canadian Privacy Statutes contains safeguarding provisions designed to protect personal information. Organizations must take reasonable technical, physical and administrative measures to protect personal information against loss or theft, unauthorized access, disclosure, copying, use, modification or destruction. These laws do not generally mandate specific technical requirements for the safeguarding of personal information.

Breach notification

Currently, PIPEDA, PIPA Alberta, and the Quebec Private Sector Act are the only Canadian Privacy Statutes with breach notification requirements.

In Alberta, an organization having personal information under its control must, without unreasonable delay, provide notice to the Commissioner of any incident involving the loss of or unauthorized access to or disclosure of personal information where a reasonable person would consider that there exists a real risk of significant harm to an individual as a result.

Notification to the Commissioner must be in writing and include:

- A description of the circumstances of the loss or unauthorized access or disclosure
- The date or time period during which the loss or unauthorized access or disclosure occurred
- A description of the personal information involved in the loss or unauthorized access or disclosure
- An assessment of the risk of harm to individuals as a result of the loss or unauthorized access or disclosure
- An estimate of the number of individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure
- A description of any steps the organization has taken to reduce the risk of harm to individuals
- A description of any steps the organization has taken to notify individuals of the loss or unauthorized access or disclosure, and
- The name and contact information for a person who can answer, on behalf of the organization, the Commissioner's questions about the loss of unauthorized access or disclosure

Where an organization suffers a loss of or unauthorized access to or disclosure of personal information as to which the organization is required to provide notice to the Commissioner, the Commissioner may require the organization to notify the individuals to whom there is a real risk of significant harm. This notification must be given directly to the individual (unless specified otherwise by the Commissioner) and include:

- A description of the circumstances of the loss or unauthorized access or disclosure
- The date on which or time period during which the loss or unauthorized access or disclosure occurred
- A description of the personal information involved in the loss or unauthorized access or disclosure
- A description of any steps the organization has taken to reduce the risk of harm, and
- Contact information for a person who can answer, on behalf of the organization, questions about the loss or unauthorized access or disclosure

The Commissioner has recently changed its practices to recognize that most organizations who report a breach have already issued notice to the affected individual. The Commissioner will now generally only issue direction if the notice to the affected individual is deemed insufficient or if there is another material issue arising from the breach report.

The breach notification provisions under PIPEDA are very similar to the breach notification provisions under PIPA Alberta. PIPEDA requires organizations to notify both the affected individuals and the federal regulator if the breach creates a real risk of significant harm to the individuals. Further, under PIPEDA, organizations must also keep a record of ALL information security incidents, even those which do not meet the risk threshold of a 'real risk of significant harm.'

The Quebec Private Sector Act, as modified by Bill 64, introduced a number of new obligations in connection with 'confidentiality incidents,' which are defined as unauthorized access, use, or communication of personal information, or the loss of such information, which were previously absent in Quebec privacy law. These include:

- A general obligation to prevent, mitigate and remedy security incidents
- The obligation to notify the CAI and the person affected whenever the incident presents a risk of 'serious injury.' Factors to consider when evaluating the risk of serious injury include the sensitivity of the information concerned, the anticipated consequences of the use of the information and the likelihood that the information will be used for harmful purposes. Although the Quebec Private Sector Act requires organizations to act 'promptly' and 'with diligence' in response to confidentiality breaches, it does not provide specific timeframes within which such notifications must be made, and
- The obligation on to keep a register of confidentiality incidents, with the CAI having extensive audit rights. The obligation to record confidentiality incidents in the register applies even if the organization has established that the 'serious injury' threshold has not been met.

Where an organization suffers a confidentiality incident and it is determined that disclosure to the CAI is required on the basis that there is a risk of “serious injury”, the written breach report must include:

- The name of the body affected and any Québec business number assigned to such body
- The name and contact information of the person to be contacted in that body with regard to the incident
- A description of the personal information covered by the incident or, if that information is not known, the reasons why it is impossible to provide such a description
- A brief description of the circumstances of the incident and what caused it, if known
- The date or time period when the incident occurred or, if that is not known, the approximate time period

- The date or time period when the body became aware of the incident
- The number of persons concerned by the incident and the number of those who reside in Québec or, if that is not known, the approximate numbers
- A description of the elements that led the body to conclude that there is a risk of serious injury to the persons concerned, such as the sensitivity of the personal information concerned, any possible ill-intentioned uses of such information, the anticipated consequences of its use and the likelihood that such information will be used for injurious purposes;
- The measures the body has taken or intends to take to notify the persons whose personal information is concerned by the incident, and the date on which such persons were notified, or the expected time limit for the notification
- The measures the body has taken or intends to take after the incident occurred, including those aimed at reducing the risk of injury or mitigating any such injury and those aimed at preventing new incidents of the same nature, and the date or time period on which the measures were taken or the expected time limit for taking the measures, and
- If applicable, an indication that a person or body outside Québec that exercises similar functions to those of the CAI with respect to overseeing the protection of personal information has been notified of the incident.

Where the risk of 'serious injury' has been established, affected individuals must also be notified. This notice must be provided directly to affected individuals, subject to certain limited exceptions, and include:

- A description of the personal information covered by the incident or, if that information is not known, the reasons why it is impossible to provide such a description
- A brief description of the circumstances of the incident
- The date or time period when the incident occurred or, if that is not known, the approximate time period
- A brief description of the measures the body has taken or intends to take after the incident occurred in order to reduce the risks of injury
- The measures that the body suggests the person concerned take in order to reduce the risk of injury or mitigate any such injury, and
- The contact information where the person concerned may obtain more information about the incident

Enforcement

Canadian privacy regulatory authorities have an obligation to investigate complaints, as well as the authority to initiate complaints.

Under PIPEDA, a complaint must be investigated by the Commissioner and a report will be prepared that includes the Commissioner's findings and recommendations. A complainant (but not the organization subject to the complaint) may apply to the Federal Court for a review of the findings and the court has authority to, among other

things, order an organization to correct its practices and award damages to the complainant, including damages for any humiliation that the complainant has suffered.

Under PIPA Alberta and PIPA BC, an investigation may be elevated to a formal inquiry by the Commissioner resulting in an order. Organizations are required to comply with the order within a prescribed time period, or apply for judicial review. In both BC and Alberta, once an order is final, an affected individual has a cause of action against the organization for damages for loss or injury that the individual has suffered as a result of the breach.

In Alberta and BC, a person that commits an offence may be subject to a fine of not more than CA$100,000. Offences include, among other things, collecting, using and disclosing personal information in contravention of the Act (in Alberta only), disposing of personal information to evade an access request, obstructing the commissioner, and failing to comply with an order.

Similarly, under the Quebec Private Sector Act, an order from the CAI must be complied with within a prescribed time period. An individual may appeal to the judge of the Court of Quebec on questions of law or jurisdiction with respect to a final decision.

The Quebec Private Sector Act, as modified by Bill 64, introduced a regime of steep fines and administrative penalties in case of non-compliance. The maximum penalties range between CA$5,000 and CA$100,000 in the case of individuals, and up to between CA$15,000$ and CA$25 million or 4% of worldwide turnover for the preceding fiscal year for organizations. This new penalty regime represents a significant change with the previous Quebec regime, under which the maximum penalties were limited to CA $20,000. While enforcement action by the CAI has been limited since the adoption of Bill 64, enforcement action is expected to increase, with the CAI progressively showing signs of increased enforcement action in recent months.

There are also statutory privacy torts in various provinces under separate legislation, and Ontario courts have recognized a common-law cause of action for certain privacy torts. In Quebec, a general right to privacy also exists under the *Civil Code of Quebec* and the *Charter of Human Rights and Freedoms*. Organizations may face litigation (including class action litigation) under these statutory and common-law torts, as well as under the general regime of civil liability in Quebec, in addition to any enforcement or claims under Canadian Privacy Statutes.

Electronic marketing

Electronic marketing is governed by both Canadian Privacy Statutes (as discussed above), as well as Canada's Anti-Spam Legislation (CASL).

CASL is a federal statute which prohibits sending, or causing or permitting to be sent, a commercial electronic message (defined broadly to include text, sound, voice, or image messages aimed at encouraging participation in a commercial activity) unless the recipient has provided express or implied consent and the message complies with the prescribed content and unsubscribe requirements (subject to limited exceptions).

What constitutes both permissible express and implied consent is defined in CASL and its regulations. For example, an organization may be able to rely on implied consent when there is an "existing business relationship" with the recipient of the message, based on:

- A purchase by the recipient within the past two years, or
- A contract between the organization and the recipient currently in existence or which expired within the past two years

CASL also prohibits the installation of a computer program on any other person's computer system, or having installed such a computer program to cause any electronic messages to be sent from that computer system, without express consent, if the relevant system or sender is located in Canada. In addition, the Act contains anti phishing provisions that prohibit (without express consent) the alteration of transmission data in an electronic message such that the message is delivered to a destination other than (or in addition to) that specified by the sender.

CASL also introduced amendments to PIPEDA that restrict 'address harvesting', or the unauthorized collection of email addresses through automated means (i.e., using a computer program designed to generate or search for, and collect, email addresses) without consent. The use of an individual's email address collected through address harvesting also is restricted.

The Canada's Competition Act was also amended to make it an offence to provide false or misleading representations in the sender information, subject matter information, or content of an electronic message.

CASL contains potentially stiff penalties, including administrative penalties of up to CA$1 million per violation for individuals and CA$10 million for corporations (subject to a due diligence defense). CASL also sets forth a private right of action permitting individuals to bring a civil action for alleged violations of CASL (CA$200 for each contravention up to a maximum of CA$1 million each day for a violation of the provisions addressing unsolicited electronic messages). However, the private right of action is not yet in force, and there is currently little expectation that it will ever come into force.

Online privacy

Online privacy is governed by Canadian Privacy Statutes (discussed above). In general, Canadian privacy regulatory authorities have been active in addressing online privacy concerns.

For example, in the context of social media, the OPC has released numerous Reports of Findings addressing issues including:

- Default privacy settings
- Social plug-ins
- Identity authentication practices, including data scraping and voiceprint

- The collection, use and disclosure of personal information on social networking sites, including for marketing purposes
- The OPC has also released decisions and guidance on privacy in the context of Mobile Apps

In addition, the OPC has released findings and guidelines related to the use of cookies and online behavioral advertising, including findings indicating that information stored by temporary and persistent cookies is considered to be personal information and therefore subject to PIPEDA. The OPC has adopted the same position with respect to information collected in connection with online behavioral advertising.

In 'Privacy and Online Behavioral Advertising', the OPC stated that it may be permissible to use opt-out consent in the context of online behavioral advertising if the following conditions are met:

- Individuals are made aware of the purposes for the online behavioral advertising, at or before the time of collection, in a manner that is clear and understandable
- Individuals are informed of the various parties involved in the online behavioral advertising at or before the time of collection
- Individuals are able to opt-out of the practice and the opt-out takes effect immediately and is persistent
- The information collected is non-sensitive in nature (*ie*, not health or financial information), and
- The information is destroyed or made de-identifiable as soon as possible

The OPC has indicated that online behavioral advertising must not be a condition of service and, as a best practice, should not be used on websites directed at children.

Canadian privacy regulatory authorities also consider location data, whether tied to a static location or a mobile device, to be personal information. As such, any collection, use or disclosure of location data requires, among other things, appropriate notice, and consent. Most of the privacy regulatory authority decisions related to location data have arisen with respect to the use of GPS in the employment context.

The Canadian privacy regulatory authorities provide the following test that must be met for the collection of GPS data (and other types of monitoring and surveillance activities):

- Is the data demonstrably necessary to meet a specific need?
- Will the data likely be effective in meeting that need?
- Is the loss of privacy proportional to the benefit gained?
- Are there less privacy-intrusive alternatives to achieve the same objective?

Bill 64 introduced several changes to the Quebec Private Sector Act which significantly impact online privacy. Since September 22, 2023, organizations collecting personal information by offering a product or service with privacy parameters must ensure that the highest privacy settings are enabled by default, meaning that when visitors access

a website all cookies with the exception of necessary cookies, must be turned off by default. Additionally, organizations collecting personal information from persons using tracking, localization or profiling technology (including cookies, trackers, and similar technologies) have the obligation to inform the person in advance of the use of such technologies, and to inform the person of the method for activating such functions: the use of such technologies therefore requires opt-in consent. 'Profiling' is broadly defined as the collection and use of personal information in order to evaluate certain characteristics of a person such as workplace performance, economic or financial situation, health, personal preferences or interest, or behavior.

Artificial Intelligence

The OPC has also issued guidance on the appropriate use of generative AI systems and has stated that generative AI systems should be developed with the general principles of legality, appropriate purposes, necessity and proportionality, openness and accountability, and:

- In a manner that allows individuals to meaningfully exercise their rights to access their personal information, while
- limiting collection, use and disclosure to only what is needed to fulfill the identified purpose, and
- implementing appropriate safeguards

In addition, the OPC has stated that developers of generative AI models should take steps to ensure that outputs should be as accurate as possible.

In Quebec, Bill 64 introduced requirements about automated processing of personal information. An organization that uses personal information to render a decision based exclusively on the automated processing of that information must inform the individual of that activity (at or before the time the organization informs the individual of the decision). The organization must also, at the individual's request, inform the individual of:

- the personal information used to render the decision
- the reasons and the principal factors and parameters that led to the decision, and
- the individual's right to have the personal information used to render the decision corrected

The organization must also give the individual the opportunity to submit observations to a member of the organization who is in a position to review the decision.

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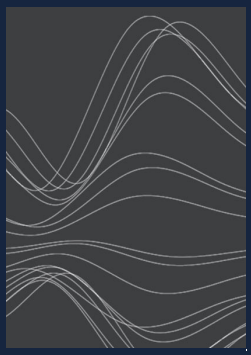

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