

Global Technology Law and Policy Canadian Privacy May 5, 2021

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Canadian Privacy Law - The Start

- CSA Model Code negotiated in early 1990s as a model code for privacy
- Quebec only province with private sector privacy law
- EU Data Protection Directive creates pressure
- Canada hosts OECD Ministerial Conference on Electronic Commerce in 1998

Privacy Law - The Basics

- Bill introduced in 1998 to coincide with OECD meeting
- Took effect in 2001 (federally regulated orgs), 2004 (everyone else)
- Limited to commercial activity for constitutional reasons
- Shared responsibility with provinces - substantially similar
- Enforced by Privacy Commissioner of Canada in an ombuds+ role
- Complaints driven + audit power

Privacy Law - The Basics

Application - Subject matter

- **Personally identifiable information only** - includes information about employees
- Public domain exception
 - Telephone Directory
 - Professional or Business Directory
 - Registry Collected under Statutory Authority
 - Court Record
 - Information Appearing in the Media
Where the Individual has Provided the Information
- Federal Privacy Act exempt
- Name, Title, Business address or Telephone number of an employee exempt

Privacy Law - The Basics

10 PRINCIPLES --

1. Accountability

- organization is accountable for personal information
- Includes privacy point person, training staff

2. Identifying Purposes

- purpose of collection must be clear
- Identify any new purposes
- Grandfathering issue

3. Consent

- individual has to give consent to collection, use, disclosure
- “meaningful” consent -- will depend upon circumstances

Privacy Law - The Basics

10 PRINCIPLES (cont.) --

4. **Limiting Collection**

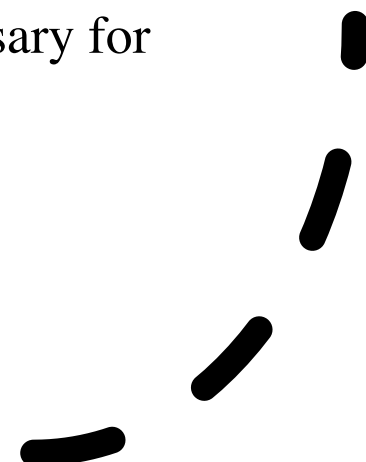
- collect only information required for identified purpose

5. **Limiting Use, Disclosure and Retention**

- consent required for other purposes
- Destroy or anonymize information once no longer needed

6. **Accuracy**

- keep as accurate as necessary for identified purpose



Privacy Law - The Basics

10 PRINCIPLES (cont.) --

7. **Safeguards**

- protection and security required

8. **Openness**

- policies should be available
- Clear language

9. **Individual Access**

- info available upon request,
inaccuracies corrected


10. **Challenging Compliance**

- ability to challenge all practices

Privacy Law - The Basics

Compromise statute -- Purpose clause
(s.3)

The purpose of this Part is to establish... rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.



An
Outdated
Law?

Enforcement

Penalties

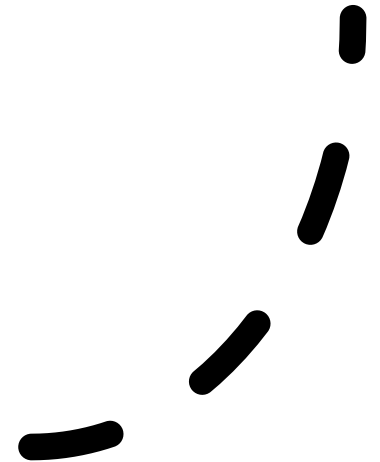
Consent?

Right to be Forgotten/De-
Index

Security Breaches

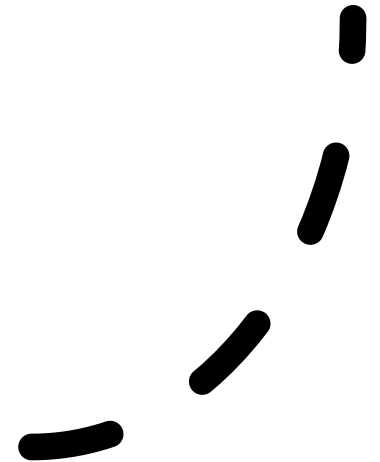
Algorithms

Data Localization



Canadian Privacy Law Reforms

- Identity theft
- CASL
- Digital Privacy Act
(security breach)



Bill C-11

- Consumer Privacy Protection Act
- Or Digital Charter Implementation Act
- Complete overhaul of PIPEDA – privacy provisions in the bill replaced by this legislation

Bill C-11

- Enforcement/Penalties
- Order making power for Privacy Commissioner
- Creation of Privacy Tribunal for penalties, appeal
- Significant new penalties – as high as 5% of global revenues
- Private right of action

Bill C-11

- New Privacy Rights
 - Data portability
 - De-identification
 - Algorithmic transparency
 - Cross-border data transparency
- Consent
 - Potential changes to standards
- Codes of Practice

Bill C-11

- De-identified data
 - Does it require consent?
 - Socially beneficial purposes?
- Human rights vs. commercial privacy
- Plain language requirements
- Regulations

