

## Canada's data privacy overhaul: federal changes

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*Canada's federal and provincial governments are modernising their data privacy frameworks – meaning virtually every private sector privacy statute is being rewritten. In the first of a two-article series, Dentons partner **Kirsten Thompson** maps the changes at the federal level.*

There are four private sector privacy statutes that govern the collection, use, and disclosure of personal information in Canada: the Federal Personal Information Protection and Electronic Documents Act (PIPEDA); Alberta's Personal Information Protection Act; British Columbia's *Personal Information Protection Act* (BC PIPA); and (iv) Quebec's *An Act Respecting the Protection of Personal Information in the*

Private Sector (the Quebec Privacy Act). The federal, British Columbia and Quebec frameworks are under review, and a new privacy law has been proposed for Ontario.

Canada's privacy modernisation efforts are being significantly influenced by the GDPR as it is representative of global trends in personal information regulation, and permits transfers of EU personal information to jurisdictions with privacy legislation determined by the EU to be adequate. PIPEDA has long enjoyed adequacy status, but the GDPR requires periodic review of such adequacy decisions; such a review is expected to begin this year. In the absence of amendments, it is likely that the adequacy status of PIPEDA would be at risk, jeopardising transfers of personal information from the EU.

As part of its Digital Charter initiative, Canada's federal government [released](#) its *Strengthening Privacy for the Digital Age* Discussion Paper on 21 May 2019, which outlines proposals to modernise PIPEDA. It is expected that the proposed amendments to PIPEDA will closely track the discussion paper closely.

## **1: Enhancing individuals' control**

The government proposes to provide individuals more meaningful control, increased transparency and to promote consumer choice by:

**Requiring plain language information and prohibiting the bundling of consent:** Organisations would be required to provide individuals with specific, standardised, plain-language information on the intended use of information and third parties with which it will be shared. In addition, bundling consent into contracts would be prohibited.

**Creating alternatives to consent:** This would facilitate the use of personal information by businesses under specific circumstances, including a "standard business activities" basis similar to the GDPR's legitimate interest basis.

**Introducing the right to data mobility:** Individuals would have an explicit right to direct that their personal information be moved from one organisation to another in a standardised digital format.

### **Requiring enhanced transparency of information-handling**

**practices:** Organisations would be required to demonstrate their accountability, including in the context of transborder data flows. In other words, such information flows are likely to have to be proactively disclosed.

**Requiring algorithmic transparency:** Individuals would need to be informed about the use of automated decision-making, the factors involved in the decision and, where the decision is impactful, information about the logic upon which the decision is based.

### **Adding a definition of de-identified (and potentially pseudonymised)**

**information:** Such information would be subject to an exception to consent for its use and disclosure for certain prescribed purposes.

**Addressing some aspects of online reputation:** This would include introducing the right to request deletion of personal information and mandating defined retention periods.

## **2: Enabling responsible innovation**

The government proposes, among other things, creating codes of practice, accreditation/certification schemes and standards with the potential for validation and oversight (including periodic review) being given to the Office of the Privacy Commissioner of Canada (OPC).

## **3: Enhancing enforcement**

The proposed reforms also aim to enhance the enforcement and oversight abilities of the OPC.

**Providing the OPC with order-making power:** The OPC would, in the context of its investigation and audit functions, have circumscribed order-making power in the form of cessation and records preservation orders.

**Expanding the scope of fines:** The existing regime for fines would be extended to other key provisions of PIPEDA, including consent requirements, data safeguard

requirements, limiting use, disclosure, and retention requirements. New obligations pertaining to deletion and data mobility would also be considered key provisions and subject to fines.

**Substantially increasing the range of fines:** This would include providing for a scheme that identifies the mitigating and aggravating factors that should be considered, including adherence to codes, certification or standards.

**Further empowering the Federal Court to order statutory damages:** PIPEDA could be amended to prescribe a range of damage awards for certain contraventions, setting out minimum and maximum amounts for contraventions of specific provisions.

#### **4: Clarifying PIPEDA**

The proposed reforms could also expand PIPEDA's scope by extending its application to certain non-commercial data collection activities.