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# Dentons' privacy and cybersecurity expertise

June 2019

# Privacy and cybersecurity

Canada has one of the most comprehensive cybersecurity and privacy regimes in the world.

## Privacy

In addition to having national and provincial private and public sector privacy legislation in place, Canada has one of the most restrictive anti-spam regimes in the world. Moreover, regulated entities in regulated sectors, such as transportation and telecommunications, must adhere to additional privacy and data security rules or principles.

Organizations collecting, using, disclosing or storing personal data are finding that privacy regulators are increasingly technically savvy and demand mature accountability and governance programs. Our privacy teams understand innovative and new technologies and have deep relationships with privacy commissioners, foreign data protection authorities and sector-specific regulators. Our knowledge and relationships allow us to assist companies respond to complex privacy challenges with practical solutions.

Data privacy is also frequently international in scope. For example, we have helped Canadian and international businesses comply with their obligations under the GDPR. Clients choose Dentons because, whether their issue is local or international, they have access to one of the world's leading teams of privacy lawyers.

## Cybersecurity

Cybersecurity forms part of privacy obligations to safeguard personal information. The law requires cybersecurity appropriate to the level of sensitivity of that information. As companies increase their use of sophisticated technologies, migrate to the cloud, and increasingly rely on third-party vendors that have access to their systems, digital resiliency becomes increasingly important—and increasingly challenging. Cybersecurity is an aspect of digital resilience; companies must protect critical information and personal information and implement strong cyber defenses and effective plans for responding to cyberattacks and internal threats.

Dentons' multi-disciplinary data teams have deep expertise in all aspects of cybersecurity and our scalable, phased, end-to-end suite of cybersecurity readiness and response services provide a one-stop solution for companies.

We work with companies to understand their specific challenges, including their unique threat profile, cybersecurity procedures and practices, technical, contractual, legal and governance obligations, and capacity to manage and respond to cybersecurity incidents. Based on this assessment, we help companies protect against and prepare for cybersecurity incidents by developing and implementing data security programs, policies and training and creating effective response plans.

When an incident occurs, our dedicated response teams help companies respond in a coordinated fashion by simultaneously managing breach notification requirements, communications demands, law enforcement interactions, vendor and supplier inquiries and obligations, insurer notifications and the onboarding and deployment of forensic experts. We also have experience managing regulatory investigations, enforcement actions and litigation, including high-stakes class action litigation.

We have defended companies in some of the largest North American and global data breaches and have proven expertise in managing data incidents across borders.

# Privacy and cybersecurity

## Knowledgeable team

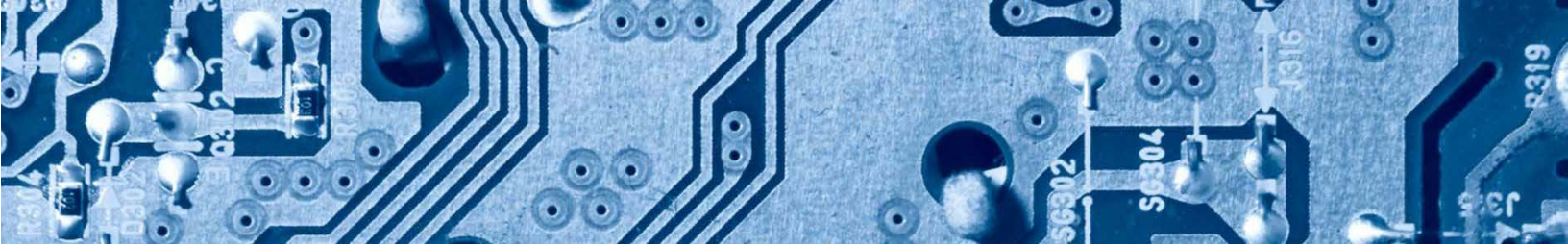
Our team includes Chantal Bernier, a former federal regulator who oversaw the most important privacy investigations in Canada for over five years, including the review of Privacy Impact Assessment of Body Scanners at Airports in 2009, Google Streetview in 2011 and Apple transparency of privacy policy in 2014. She has strong ongoing ties to her international counterparts. As part of our commitment to provide our clients with the highest quality of service, our team is set to challenge the fragmented approach to compliance advice with integrated solutions and programs. Our global footprint and excellent relationships with regulators enable us to provide you with integrated and comprehensive advice and assist you in working with regulators across jurisdictions and effectively responding to cybersecurity incidents, wherever these occur in the world.

## Key service areas

- Compliance gap analysis, policies and programs governing the collection, use, and disclosure of personal information
- Cybersecurity preparedness and governance programs
- Data breach and litigation preparedness evaluation and expert guidance when breaches occur
- Compliance programs for Canada's Anti-Spam Legislation and Telemarketing Rules
- Evaluation of risks in online behavioural advertising and the use of digital markers
- Privacy Impact Assessments (PIAs) for new or ongoing initiatives
- Cloud computing agreements and risk analysis
- Data transfer agreements, including cross-border and outsourcing
- Personal health information processing standards and agreements
- Access to information / freedom of information requests
- Payment Card Industry Data Security Standards (PCI-DSS) and other certification standards
- Multijurisdictional litigation or regulatory investigations for data breaches or misuse of personal information
- GDPR implementation and advice

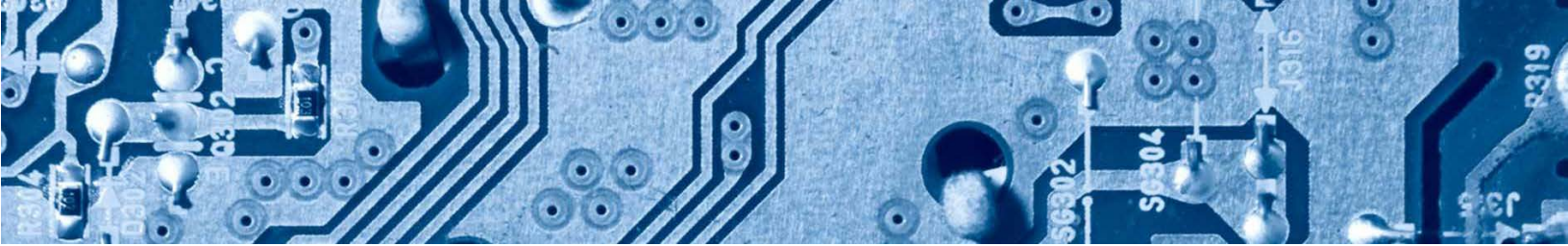






## Select representative matters

- **Waterfront Toronto:** Advising stakeholders on the creation of systems to protect privacy while allowing for deployment of advanced technologies, including frameworks and protocols for data gathering and use.
- **Canadian bank:** Advising the Bank on (a) the effect of the Office of the Privacy Commissioner of Canada's ("OPC") recent finding and guidance on targeted advertising, as well as the new amendments to Canada's privacy laws that introduced specific requirements for valid consent on the ability of the Bank to share bank-specific co-branded cardmember personal information with LoyaltyCo; and (b) the permissibility of using an opt-out regime when extending the data share to cobranded cardmembers who were enrolled in existing co-branded cards and, therefore, were not advised of the sharing of the Bank specific co-branded cardmember personal information at the time of applying for the Co-branded Card.
- **Equifax:** Advising the company, one of the three largest credit reporting agencies in the world, before the Office of the Privacy Commissioner of Canada with respect to the cyber-attack in the US in the spring and summer of 2017 that saw 140+ million consumers affected (largely in the US, UK and Canada).
- **Pharmapod:** Advising in connection to a competitive tender to implement a medication error reporting system across more than 4,300 pharmacies in Ontario in what is the largest safety program of its kind established in Canada.
- **Mercedes-Benz Canada:** Advising on vehicle telematics matters as Mercedes-Benz rolls out each model year of connected and semi-autonomous vehicles.
- **CARE International:** Advising on the collection and sharing of personal information for a this large multinational NGO.
- **Confidential client, foreign nation:** Advising on key areas in respect of the possible negotiation of a trade agreement with Canada.
- **UK Finance (formerly British Bankers Association):** Advising with regard to the production of a widely-reported Brexit position paper in relation to international transfers and UK adequacy.
- **Confidential clients of (law firm) Reed Smith LLP UK's Entertainment and Media Industry Group:** Advising this UK law firm's confidential clients in respect of anti-spam and privacy compliance to ensure a successful launch of their clients' online services in Canada.
- **The Sampler App:** Providing detailed advice to Sampler regarding CASL compliance and best practices for its very successful consumer marketing programs.
- **Publically traded technology company:** Assisting in connection with data governance matters with respect to its acquisition of a Canadian-based global analytics company.
- **Confidential client:** Advising a leading online company in relation to Canadian privacy matters, including online privacy terms and responding to complaints and access requests. The nature of this client company means it is under intense scrutiny with respect to its data practices including data collection associated with online behavioral advertising.
- **Mead Johnson & Company LLC:** Advising on all aspects of the company's privacy programs.
- **Mylo Financial Technologies:** Advising the client with the development of comprehensive consumer facing disclosures and agreements.
- **Confidential client, management consulting:** Advising on export controls on encryption technology.
- **SITA:** Advising regarding the review of the company's agreement with a major Canadian airline to assess compliance with Canadian privacy laws and negotiations.



## Select representative matters

- **Avis Budget Group:** Advising as global privacy and security counsel on numerous projects, including providing privacy advice on the company's app, privacy policy and advising on the negotiation with OEMs in relation to their 'connected car' ensuring that the collection, use and disclosure of personal information is compliant with Canadian laws.
- **Shopify Inc.:** Advising this Canadian provider of an e-commerce platform for online sales and Shopify Payments, which allows merchants to accept credit cards without requiring a third-party payment gateway, in respect of data protection compliance.
- **Confidential client:** Advising SaaS provider of box office ticketing solutions in connection with criminally motivated data breach.
- **Confidential client, oil industry contractor:** Advising in respect of criminally motivated hack of employee computers.
- **Confidential client, internet company:** Advising with respect to two major high profile data breaches of user account data to hackers.
- **Home Depot:** Lead Canadian counsel on some of the largest North American data breaches including a significant decision denying the full costs claimed by plaintiffs' counsel in the settlements of a data breach class action (*Lozanski v The Home Depot, Inc.*, 2016 ONSC 5447).
- **Confidential client, transportation:** Advised global provider of transportation services in its global coordination and management of the Canadian response to a breach involving the information of over 50 million users. This included management of the privacy regulatory response, and associated class actions. As well, advised the Client on its application for judicial review of the regulator's interpretation of "real risk of significant harm".
- **Panera Bread:** Advising on anti-spam telemarketing compliance in online and mobile marketing applications.
- **Universal Music Group:** Advising client on commercial electronic marketing in Canada.
- **Cisco Canada:** Canadian counsel advising on regulation of installation of computer programs and anti-spam laws.
- **Confidential client, mobile app provider:** Advising in the first ever joint Canada/Europe investigation.
- **Confidential client, consumer electronics vendor:** Advising regarding compliance with transparency and access requests.
- **Confidential client:** Advising high profile company in respect of access to information requests made by investigative reporters.
- **23andMe:** Canadian counsel advising on privacy and regulatory matters.
- **Confidential client, technology:** Advised a global provider of technology products regarding a significant breach originating from employee theft of customer information from its call centres in India. This included managing and opposing disproportional production demands from the privacy regulator.
- **Confidential client, housing services:** Assisted a provider of residential housing services when it suffered it a breach of its tenant management system containing sensitive personal information.
- **Confidential client, global data broker:** Counsel regarding a significant breach from discovery throughout regulator investigation.
- **Confidential client, financial services:** Advising financial services provider in connection with criminally motivated hack of employee computers.



## Team leader

### Chantal Bernier

Partner, Ottawa

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Chantal leads Dentons Privacy and Cybersecurity practice. She joined the Firm on October 6, 2014. She comes to Dentons after nearly 6 years leading the Office of the Privacy Commissioner of Canada (OPC) as Interim Privacy Commissioner and as Assistant Commissioner. She oversaw the operations of the OPC, including national and international privacy investigations in the public and private sectors, privacy audits, privacy impact assessment reviews as well as technological analysis, privacy policy development and research.

Prior to leading the OPC, Chantal worked at senior levels of the Government of Canada, including as Assistant Deputy Minister responsible for Socio-Economic Development at Aboriginal and Northern Affairs Canada, as Assistant Deputy Minister responsible for Community Safety and Partnerships at Public Safety Canada, and as Director of Operations for the Machinery of Government Secretariat of the Privy Council Office. Chantal also negotiated international conventions for Canada as part of the International and Constitutional Law Section of the Department of Justice.

Chantal brings to Dentons the unique insight of a former privacy regulator, as well as the unique mix of knowledge of both the public safety context and privacy law. Her experience as a senior executive also uniquely positions her to understand corporate management challenges and find solutions to both serve corporate interests and comply with the law.

At the Office of the Privacy Commissioner, Chantal led the development of concrete frameworks and tools to bring solutions to privacy challenges.

## Team members

### Kirsten Thompson

Partner, Toronto

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Kirsten is a key member of the Privacy and Cybersecurity group and leads our Transformative Technologies and Data Strategy group. She has both an advisory and advocacy practice, and provides privacy, data security and data management advice to clients in a wide variety of industries.

Kirsten's practice has a particular concentration in data-driven industries and disruptive technologies, and she is a leading practitioner in areas such as Fintech (including blockchain and "smart contracts"), digital identity, Open Data/Open Banking and PSD2 implementation, vehicle telematics and connected infrastructure, Big Data/data analytics applications and enterprise data strategy. She also helps clients prepare for and manage information crises, such as data breaches, investigations and class actions, and has advised financial institutions, insurers, health care providers and providers of critical infrastructure on cybersecurity preparedness and response planning. She has been lead Canadian counsel on some of the largest North American data breaches and has been selected as preferred cybersecurity counsel by a number of Canada's leading financial institutions and insurance providers.

In her advisory role, Kirsten assists clients in navigating the legal and privacy requirements of new products and technologies, and provides compliance advice both within and across jurisdiction.

She counsels clients on issues raised by social media, surveillance, identification and authentication (including biometrics and electronic signatures), vehicle and device telematics (including unmanned vehicles, both aerial and land-based), online behavioural advertising, big data and data analytics, data monetization, and FinTech and open banking. She advises clients on the increasingly significant informational elements of business transactions.

Kirsten has also advised on enterprise-wide "Big Data" projects, from the initial collection, use, defensible destruction, digitization and data cleaning through to the development of legal and ethical frameworks to guide the use of data analytics (including predictive analytics). She is working with her colleagues on developing a similar framework for the uses of data in artificial intelligence applications.

Kirsten was an early supporter of blockchain, and has been engaged in a number of consultations and pilot projects involving the application of blockchain to identity and authentication issues (including sovereign identity), business licencing processes, and tracking goods/food/drugs through global distribution chains. She has worked with several organizations on "smart contract" projects, and is interested in the possibilities of blockchain for payment security and commercial data security.

## Team members

### Tom Sides

Partner, Edmonton

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Tom is the chair of the National Technology Transactions Law Group, and a Canadian representative on Dentons' Global TMT leadership team. His practice focuses on technology, intellectual property, privacy, anti-spam and related commercial legal issues for clients in many vertical sectors of the Canadian economy, including energy, financial institutions, forestry, information technology and telecommunications, and in the health, advanced education and other public sectors.

Tom has significant experience negotiating complex national and international technology transactions involving cloud computing, machine learning and artificial intelligence, software development, co-development, research and development, joint venture, distribution, alliance and technology transfer agreements. His experience extends to leading or advising on merger and acquisition transactions involving technology, intellectual property, privacy and commercial legal issues.

Tom has given many presentations in Canada, the US and UK in the privacy and data security area on recent technological innovations that have been testing the privacy law framework. Topics include autonomous vehicles, machine learning and artificial intelligence and cloud computing, as well as more traditional privacy law presentations involving the Personal Information Protection Act (Alberta), Freedom of Information and Protection of Privacy (Alberta), Health Information Act (Alberta), Personal Information Protection and Electronic Documents Act (Canada) and the General Directive Privacy Regulation (EU).

Additionally, Tom has acted as Associate General Counsel at TELUS Corporation and General Counsel for Intuit Inc. (Canada and UK) in the telecommunications and software industries.

### David Wotherspoon

Partner, Vancouver

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David is a partner in and lead of our Litigation and Dispute Resolution group in Vancouver.

With a focus on corporate and commercial disputes, David's practice encompasses all areas of litigation and dispute resolution. He has extensive experience in matters that relate to injunctions and Anton Piller orders, defamation and free speech, intellectual property and software disputes, crisis management, professional liability, shareholder disputes and fraud investigations.

David brings more than 25 years of experience and has acted for large institutional clients in a broad range of industry sectors, as well as many early-stage companies and individuals, with particular experience in areas such as technology and intellectual property. David's experience in commercial litigation is guided by the understanding that litigation must first serve the client's business purposes.

David is extensively engaged in pro bono cases, taking on several opportunities to represent those who would otherwise have limited access to the justice system. Many of his cases have involved protecting businesses that have been targeted in a way that requires intense and swift action and often injunctions to safeguard clients' rights.

David was named one of Canada's Top 25 Most Influential Lawyers in the Corporate Commercial category by *Canadian Lawyer* for 2018.



## Team members

### Adam Allouba

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Adam is a partner in our Corporate group. He advises public companies, in particularly those listed on the TSX Venture Exchange, with respect to both transactional and regulatory matters, including private placements, prospectus offerings, mergers and acquisitions, restructuring transactions, privatizations and shareholder meetings.

He has extensive experience with mining and technology issuers. Adam completed a six-month secondment with the TSXV's Montreal office in 2008/09, and is currently a member of their local advisory committee in Quebec. He is also a member of the securities committee of the Prospectors & Developers Association of Canada (PDAC).

Adam advises clients on matters in relation to the Competition Act (in connection with pre-merger notifications, business practices and investigations by the Competition Bureau). In addition, Adam advises both established and startup businesses on compliance with Québec's consumer protection and privacy legislation.

Adam is a member of the Technical Advisory Board of Global UAV Solutions Ltd., a publicly-traded leader in the unmanned aerial vehicle industry.

### Kelly Osaka

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Kelly is a member of the Litigation and Dispute Resolution group. Her practice focuses on civil litigation, arbitration and regulatory law.

Kelly has experience in a range of commercial litigation matters with particular capability in securities litigation, class actions, energy disputes and privacy law. She has advised clients with respect to a variety of matters including shareholder disputes, oppression remedy claims, market manipulation, securities related investigations, joint venture interests, operating agreements, royalty agreements and compliance with federal and provincial privacy law.

Kelly has appeared as counsel before all levels of court in Alberta, British Columbia and Ontario. She has advocated on behalf of clients in international and domestic arbitrations involving complex commercial disputes. She has also represented clients in various regulatory proceedings before the Alberta Securities Commission, the Alberta Utilities Commission and the Office of the Information and Privacy Commissioner.

Kelly regularly speaks and teaches on issues central to civil litigation. She has been a tutor in civil procedure at the University of Calgary Law School and she was recently appointed to the Alberta Rules of Court Committee.

## Team members

### Jawaid Panjwani

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Jawaid is an associate in Dentons' Ottawa office, and practices regulatory and corporate law with a strong focus on the technology, digital media and communications sectors.

In his regulatory practice, he assists and advises clients on federal and provincial regulatory compliance matters in a number of areas including, privacy; data security; lawful access and access to information; financial technology (fintech) and financial services; consumer product regulation; advertising, marketing and promotions; Canada's anti-money laundering and foreign investment regime; and transportation.

Jawaid has represented clients in regulatory matters before the Canadian-Radio Television and Telecommunications Commission (CRTC), Innovation, Science and Economic Development Canada (ISED), the Department of Finance Canada, the Information and Privacy Commissioner of Ontario, and various other federal and provincial departments, agencies and tribunals.

In his corporate practice, Jawaid assists clients in the structuring and drafting of technology and Internet-related commercial agreements. He also provides investors with strategic regulatory and business advice with respect to investments in novel and complex products and services.

### Anca Sattler

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Anca is a member of Dentons' Litigation and Dispute Resolution and the Privacy and Cybersecurity groups.

Prior to joining Dentons, she gained in-house counsel experience with an international not-for-profit organization, and litigation experience with a top-tier law firm, where she focused on international trade and investment, commercial litigation and copyright law.

Anca has experience in commercial litigation, international trade and employment matters.

In her litigation practice, she has represented clients in various commercial litigation matters, international investment arbitrations, before the International Trade Tribunal, the Copyright Board of Canada, and before all levels of provincial and federal courts.

Anca is a Certified International Privacy Professional in Canada by the International Association of Privacy Professionals and advises clients on privacy compliance, cybersecurity and data protection issues.

## Team members

### Karl Schober

Associate, Toronto

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Karl is an Associate in Dentons' Corporate Group. His practice focuses on privacy and cybersecurity, marketing and advertising, and general consumer protection laws and regulations.

He regularly provides advice to clients in a wide range of industry sectors on issues such as privacy and data governance compliance including data breaches, big data management for strategic marketing programs, general advertising review of traditional and digital media, advertising of regulated and controlled products such as automotive, food and alcohol, anti-spam and telemarketing compliance under Canada's Anti-Spam Legislation (CASL), e-signature integration into B2B and B2C programs, contest development under gaming and advertising laws including contest registration and reporting, as well as rebates, rewards programs and other promotional events.

Karl also practices in our Competition and Antitrust group where he assists clients in a number of areas, including ordinary selling price advice, disputes regarding misleading advertising, disputes regarding adequate and proper testing in relation to performance claims, and securing regulatory approvals for mergers from the Competition Bureau.

Prior to joining Dentons, he worked for the Competition Bureau and assisted in the investigation of price-fixing, mass marketing fraud, misleading advertising and other deceptive business practices. Karl is also a former officer with the Office of the Privacy Commissioner of Canada, where he investigated complaints and ensured compliance under the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

He writes on developments and tips on privacy and anti-spam issues on Dentons' Privacy and Cybersecurity Law blog.



# Dentons. A global firm.

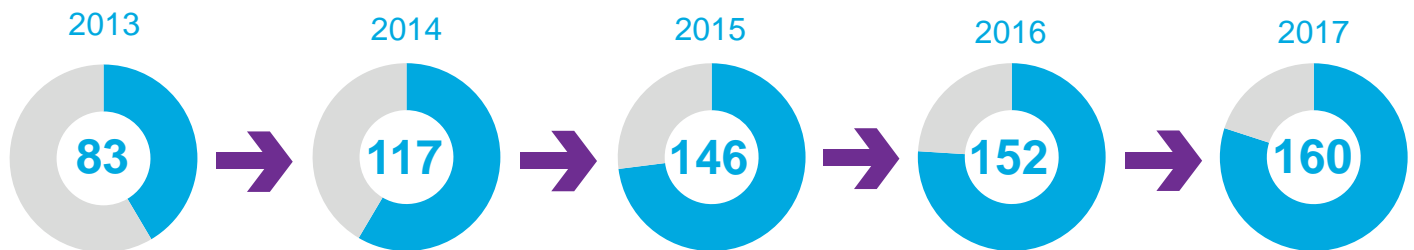
## What makes us different?

- We are polycentric. Dentons has no headquarters nor dominant national culture. We proudly offer clients talent from diverse backgrounds and countries with deep experience in every legal tradition.
- We offer effective business solutions. Rather than focus on theoretical legal analysis, we provide specific, dynamic advice that gets a dispute resolved or a deal done.
- We measure success by the service we provide. Regardless of the scale or scope of an organization's business needs, they get the individual attention they need and deserve. Whether the matter is big or small, if it is important to them, it is important to us.



## The world's largest companies choose Dentons

Of the 200 largest companies in the world, Dentons represented:



Named number two Top  
Governmental Affairs firm by  
*James Magazine*



