

Canada Proposes PIPEDA Amendments and Anti-Spam Law

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On May 25, the Canadian Parliament introduced two bills on privacy: Bill C-29, *Safeguarding Canadians' Personal Information Act* and Bill C-28, *Fighting Internet and Wireless Spam Act*. According to Industry Canada, the two bills are intended to "enhance the safety and security of the online marketplace." The proposed changes also serve to modernize the requirements for handling personal information, taking into account changes in technology as well as the limitations of the current legislation in the face of certain business realities.

Proposed Amendments

Bill C-29 introduces numerous amendments to the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

Of particular significance is the proposed exception for use and disclosure of personal information without the knowledge or consent of the individual for the purpose of a prospective business transaction. Generally, the exception would permit the use and disclosure of personal information without consent when

- the information is necessary for the parties to decide whether to proceed with the transaction and, if they have decided to do so, it is necessary in order to complete the transaction; and
- the parties have entered into a confidentiality agreement that requires the recipient to (i) use and disclose the personal information only for purposes related to the transaction; (ii) use appropriate security safeguards to protect the personal information; and (iii) return or destroy the personal information if the transaction is not concluded.

Similar confidentiality restrictions apply as well once the transaction is completed, including a requirement to notify the affected individuals of the disclosure of their personal information.

The business transaction exception also imposes further requirements upon the completion of the transaction, including restrictions on use and disclosure, and notification to individuals of the disclosure. The exception does not apply to transactions whose primary purpose is to acquire personal information.

Another significant change is the introduction of notification requirements for security breaches. The Privacy Commissioner must be notified of "material breaches." The bill provides some guidance on the factors that are relevant to determining materiality, which include the sensitivity of the information, the number of individuals affected

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and the organization's assessment of whether the breach indicates systematic problems. Further, the bill introduces a requirement to notify individuals if it is reasonable to believe that the breach creates a "real risk of significant harm to the individual," considering the sensitivity of the information and the probability that the information has been or will be misused. Further notification requirements are also set out in the bill.

Anti-Spam Legislation

Bill C-28 reintroduces anti-spam measures regulating unsolicited electronic communications, including email and text messages. The bill introduces shared enforcement powers of the CRTC, the Competition Bureau and the Privacy Commissioner, including the CRTC's authority to impose administrative monetary penalties reaching \$1 million for an individual's violation and \$10 million for a business's violation. Significantly, the bill includes a private right of action, which would allow an individual or an organization to apply to a court for damages for being affected by a breach of certain provisions of Bill C-28, the *Competition Act* or PIPEDA. **1**