

April 27 - 28, 2021 • Virtual Conference

Bill C-11: Privacy, Personal Information & Data Protection

Preparing for massive change to Canadian regulation!

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Eloise Gratton
Borden Ladner
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Molly Reynolds
Torys



Imran Ahmad
Norton Rose
Fulbright Canada
LLP



Wendy Wagner
Gowling

... and more



Professional Development

- Acquire an in-depth understanding of what's changing and what it means for you
- Learn about OPC's new and expanded compliance and enforcement powers
- Understand the extent of the new Data Tribunal's power to impose substantial fines for breach of certain obligations
- Learn how, where and why your organization can make more use of its data
- Understand new transparency requirements for automated decision-making systems using algorithms and AI
- Consider how Bill C-11 opens the door to new commercial uses of personal information without consent
- The new reformed consent regime
- Straightforward and controversial exceptions to the requirements for individual knowledge or consent in relation to "business activities"
- Challenges inherent to de-identifying personal information without the individual's knowledge or consent, and then using it for internal research and development purposes
- Understand Third party Codes of Practice and Certification, data mobility, the right to erasure and more

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Bill C-11: Privacy, Personal Information & Data Protection

April 27 - 28, 2021 • Virtual Conference

DAY ONE PROGRAM AGENDA: TUESDAY, APRIL 27, 2021

10:00 - 10:15 EDT



Welcome and Opening Remarks from the Chairs

Imran Ahmad, Partner, Norton Rose Fulbright Canada LLP

Saba Samanian, Associate, Norton Rose Fulbright



10:15 - 11:15 EDT



The New Legislation: Expectations, Highlights and Hot Spots

Moderator: Imran Ahmad, Partner, Norton Rose Fulbright Canada LLP

Catherine Stephen, Assistant General Counsel, RBC Law Group, Royal Bank of Canada



Molly Reynolds, Counsel, Torys

- *Digital Charter Implementation Act, 2020*
- *Repeal of part of PIPEDA*
- Enacting the new *Consumer Privacy Protection Act (CPPA or Act)* and the new *Personal Information and Data Protection Tribunal Act (PIDPTA)*,
- Enactment of new Tribunal to hear appeals of certain decisions made by the Privacy Commissioner of Canada under the CPPA
- Power of the Tribunal to impose penalties for contravention of certain provisions
- Creation of new and enhanced obligations for private sector organizations including:
 - Inclusion of the much criticized Schedule of Privacy Principles into substantive provisions in the body of the Act
 - New scope - who does the Act apply to?
 - New definition of "commercial activity"
- Governor in Council may exempt organizations where "substantially similar" provincial privacy legislation applies, exemption applies only to that province
- CPPA will apply to personal information that is collected, used or disclosed interprovincially or internationally

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11:15 - 12:15 EDT



The New Reformed Consent Regime

Eloise Gratton, Partner and National Co-leader, Privacy and Data Protection Group, Borden Ladner Gervais LLP

- Review of current privacy framework which regulates consent and the type of challenges for businesses dealing with the “notice and choice” approach, which is the legal basis for collecting, using and sharing personal information in the private sector
- C-11 changes to the consent requirements impacting the notion of “valid consent” and new consent exemptions that allow personal information to be collected, used and disclosed including “plain language” and transparency requirements.
- Risks triggered from recent proposed changes, including ones relating to the notion of “de-identified” data and prospective business transactions
- Opportunities for innovation triggered by recent proposed changes to the notion of “consent” in the context of research and development and the sharing information for socially beneficial purposes
- A review of recent 2020 OPC findings relating to consent and whether these findings would be impacted by C-11
- Differences between C-11 and Quebec Bill 64 on the issue of consent

12:15 - 13:00 EDT Break

13:00 - 14:00 EDT



New Transparency Requirements for Automated Decision-making Systems - Requiring Businesses to Explain How Algorithms, Artificial Intelligence Are Utilized

Carole Piovesan, Managing Partner, INQ Law



Noel Corriveau, Senior Counsel, INQ Law

- The growing use of artificial intelligence (AI) in profiling, facial recognition technologies, and in automated decision-making
- Questions raised about the rights of individuals to know how their personal information is being used, to understand how it impacts them, and to have recourse against abuse
- Organizations required to provide upfront a “general account” of their use of “any automated decision system to make predictions, recommendations or decisions about individuals that could have significant impacts on them.” (s. 62(1)(c))
- The individual right of access to one’s personal information will also include a right to an explanation of any prediction, recommendation or decision made using an automated decision system.

14:00 - 14:15 EDT Break

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14:15 - 15:15 EDT



Third-party Codes of Practice and Certification Programs

Sylvia Kingsmill, Partner, KPMG

Kenzie Gregory, Senior Consultant, Privacy, Regulatory & Information Management, KPMG

- Any entity may apply to the Privacy Commissioner of Canada for approval of a Code of Practice
- The Code of Practice must provide for substantially the same or greater protection of personal information as some or all of the protections provided for by the CPPA
- Any entity may also apply to the Commissioner for approval of a certification program with specified requirements, including:
 - A code of practice
 - A mechanism to certify compliance with the code of practice
 - A mechanism for the entity to audit compliance with the code of practice
 - Disciplinary measures for non-compliance, including revocation of a certification, and
 - Any other requirements that may be provided for by regulation
- A certified entity can operate with an approved certification program and work with those with approved certification programs, including enforcement activities
- The Privacy By Design Certification Program

15:15 - 16:15 EDT

Creating a Privacy Management Program to Ensure Compliance

Elsbeth M. Williams, Associate General Counsel, City of Saint John; Former General Counsel, Global Compliance, McCain Foods Limited

- The obligation to create a privacy management program policies, practices and procedures to ensure compliance with CPPA
- Responding to access requests
- Staff training
- Data portability rights to give individuals greater control over the transfer of their personal information from one organization to another
- Creation of frameworks for “data portability” so an individual can “port” their data from one service provider to another
- The Canadian approach to data portability in C-11 is to enable data portability between companies in a particular sector or industry
- In certain instances, individuals will be able to request that their personal data be disclosed to other organizations
- The details of the data mobility scheme to be set out in regulation

16:15 EDT

End of Day One

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DAY TWO PROGRAM AGENDA: WEDNESDAY, APRIL 28, 2021

10:00 - 10:15 EDT



Welcome and Opening Remarks from the Chairs

Imran Ahmad, Partner, Norton Rose Fulbright Canada LLP

Saba Samanian, Associate, Norton Rose Fulbright



10:15 - 11:00 EDT



Stronger Enforcement Regime, Serious Penalties and Private Right of Action

Wendy Wagner, Partner, Gowling

Julie Himo, Partner, Norton Rose Fulbright LLP



- Currently, the Commissioner does not have the power to make orders after findings of non-compliance
- The CPPA would give the Commissioner the power to make orders requiring organizations to conform with and stop contravening the CPPA, comply with a compliance agreement or make public measures taken to correct privacy practices.
- If after completing an inquiry the Commissioner finds that an organization has contravened one or more specified provisions of the CPPA, the Commissioner would be able to recommend that a newly created Personal Information and Data Protection Tribunal impose a monetary penalty of up to C\$10-million or three per cent of the organization's total global revenues for the prior financial year.
- This Tribunal would be composed of three to six members appointed by the Governor in Council on the recommendation of the Minister of Innovation, Science and Industry.
- Greater fines are possible for various offences under the CPPA
- A private right of action would be available for an individual who suffered damages or injury caused by a contravention of the Act for which the organization has been the subject of an adverse finding by the Commissioner or Tribunal

11:00 - 11:45 EDT



Open Banking: the First Test of Mobility/ Portability Rights

Kirsten Thompson, Partner, National Lead of Transformative Technologies and Data Strategy Group, Dentons Canada LLP

- The right to data mobility is part of an international trend to give the individual more control over his or data and stimulate competition
- The right to transfer personal information from one organization to another
- Does an individual have a right to his or her own personal data?
- Will data portability be regulated in the future?
- Restrictions currently in place
- Which organizations will be subject to data mobility frameworks?
- What information is included?
- Does the disclosing organization have the right to keep the information?
- What will organizations subject to data mobility frameworks need to do the prepare?

11:45 - 12:30 EDT Break

12:30 - 13:15 EDT



The Right to Erasure: Duty to Allow Individuals to Request That the Organization Dispose of Their Personal Information

David Goodis, Partner, INQ Law; Former Assistant Commissioner, IPC Ontario

- Purpose/Importance of Right to Erasure
- Current Law Under PIPEDA
- New CCPA/Bill C-11 Right to Erasure
 - Scope of Right: Organization's Duty
 - Exceptions and Limitations to the Right

13:15 - 14:00 EDT



How Will the New Acts Interact With GDRP

Ollie Dent, Partner, Kennedys Law LLP

No matter the size of a business, it's possible to have an international client base. With this in mind, it's important for businesses to consider the implications of GDPR if they interact with or target European individuals.

Ollie will walk through how the new act interacts with the GDPR which is now approaching its 3rd anniversary. Ollie will also explore the similarities and differences and whether the new provisions will allow a more harmonious approach to data compliance to be adopted between Canada and Europe.

14:00 - 14:15 EDT Break

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14:15 - 15:00 EDT



How Will the New Act Interact With Other Canadian Acts

Stephen Burns, Partner, Bennett Jones LLP



Danielle Miller Olofsson, Chief Access to Information and Privacy, Hydro Quebec

15:00 - 15:45 EDT



The Tribunal - What will Tribunal proceedings look like?

Nicole Henderson, Partner, Blake Cassels & Graydon LLP

- How will the Tribunal work?
- How will the Tribunal process differ from current PIPEDA regime?
- What orders can the Tribunal make?
- The relationship between the Tribunal and the courts

15:45 - 16:00 EDT



Wrap Up and Take-Aways

Imran Ahmad, Partner, Norton Rose Fulbright Canada LLP

16:00 EDT

End of Day Two

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This program contains 2 hours and 15 minutes of Professionalism Content. Only Professionalism Hours must be accredited by the Law Society. Lawyers and paralegals must determine for themselves whether an activity is an eligible educational activity for CPD and qualifies for Substantive Hours. For more information about Substantive Hours, please see CPD Requirement.

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