Proposed Amendments to Canadian Privacy Law

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Canada has a growing array of federal and provincial privacy, cyber security and artificial intelligence statutes in both the private and public sectors, as well as growing protection over privacy rights throughout the common law.

Data breaches in Canada, as is the case globally, have grown to materially impact most businesses and are resulting in a developing area of law relating to prevention, response (governmental and private) and litigation. Class action lawsuits involving different categories of plaintiffs are a growing response to data breaches in Canada, and the damages awards have accordingly increased the exposure of businesses in Canada.

Canadian businesses are often subject to multiple pieces of legislation, at the federal and provincial levels, which protect the privacy rights of individuals and can impose differing levels of obligations and risks. For instance, the federal *Personal Information Protection and Electronic Documents Act* ("**PIPEDA**") regulates the collection, use and disclosure of personal information ("**Personal Information**") in the course of "commercial activities," as well as employee information for federally-regulated entities. Legislation substantially similar to PIPEDA exists in various provinces, including British Columbia's *Personal Information Protection Act*, S.B.C. 2003 c. 63, Alberta's *Personal Information Protection Act,* S.A. 2003, c. P-6.5 and Quebec's *Act Respecting the Protection of Personal Information in the Private Sector,* c. P-39.1. In addition, many Canadian provinces have privacy legislation specifically addressing health information, such as the *Personal Health Information Protection Act (Ontario).*

On September 22, 2021, the Quebec government adopted Bill 64, *An Act to modernize legislative provisions as regards the protection of personal information*, enacting significant changes to the requirements imposed on businesses who collect, use, disclose or otherwise process personal information of Quebec residents. The changes enacted by Bill 64 have come into force gradually, with the first set of changes coming into effect on September 22, 2022. The majority of the changes are set to come into force on September 22, 2023, with the final provisions effective on September 22, 2024.

The amendments to Quebec's privacy laws increase an individual's rights and control over their personal information and significantly increase the obligations of private sector entities that hold personal information of Quebec residents. Financial penalties for entities that fail to comply with the new requirements in Quebec range from $15,000 to $25,000,000, or an amount corresponding to four per cent of worldwide turnover for the preceding fiscal year, whichever is greater.

On June 16, 2022, the Canadian government continued previous efforts to overhaul PIPEDA by introducing Bill C-27. Bill C-27 includes new measures that increase an individual's rights and control over their personal information and significantly increase the obligations of private sector entities that hold personal information. The draft legislation further imposes heavy financial penalties for non-compliance. The proposed legislation would establish the Personal Information and Data Protection Tribunal, which would have the authority to impose administrative penalties up to the greater of $10,000,000 or three per cent of the organization's gross global revenue in its financial year prior to the one in which the penalty was imposed. Additionally, there are new offences, such as the failure to report to the Privacy Commissioner of Canada certain breaches of security safeguards involving personal information under its control, with fines up to the greater of $25,000,000 or five per cent of the organization's gross global revenue. Canada has also proposed new legislation surrounding the use of artificial intelligence ("**AI**"), creating obligations and additional risks for organizations that use AI.

Ontario, representing almost 40 per cent of the Canadian population, had previously shied away from enacting province-specific, private sector privacy laws. However, that has changed. The Ontario government has been in consultation with the public and industry players to enact its own private sector privacy law. The Ontario government has issued proposed legislative language for consideration, with such language reflecting many similarities to the amended Quebec privacy legislation, but with certain unique requirements, considerations and penalties.

Entities operating in Canada and that process personal information of Canadians may be subject to rapidly evolving privacy laws that increase obligations and risks to organizations. Aird & Berlis will continue to monitor the progress of the various privacy laws across Canada, and we are here to answer your questions and concerns.

We encourage you to reach out to your contacts at Aird & Berlis for more information.

Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada, The Canadian Legal Lexpert Directory* and *Benchmark Canada.*

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Felix is a dedicated corporate lawyer. He is committed to learning about the intricacies of his clients' businesses in order to help them reach their goals. Felix's clients appreciate his responsiveness and problem solving skills on a wide variety of corporate matters.

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