

Privacy Law in Canada: Obligations and Risks in the Cyber Age

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Overview

- Private Sector Privacy Laws
- Privacy Breaches & Breach Response

Why should you care about privacy?

“ If concerns about users privacy mean slowing down our growth then **screw privacy** *”*

- facebook

Private Sector Laws

Personal Information Protection and Electronic Documents Act - PIPEDA

- Collection, use, disclosure of personal information (PI)
- by private-sector organizations
- engaged in commercial activity

Private Sector Laws

PIPEDA

1. Accountability
2. Identifying Purpose
3. Consent
4. Limiting Collection
5. Limiting Use, Disclosure and Retention

Private Sector Laws

PIPEDA

6. Accuracy
7. Safeguards
8. Openness
9. Individual Access
10. Challenging Compliance

Private Sector Laws

PIPEDA

- Does not apply within a province if it has “substantially similar legislation”
- Alberta, British Columbia, and Quebec all passed substantially similar legislation
- Ontario has too - but only with respect to personal health info

Private Sector Laws

- *Personal Health Information Protection Act, 2004 - PHIPA*
- Only personal health information that is collected, used, or disclosed by health information custodians
- Custodians provide health care services directly to an individual

Private Sector Laws

Canada's Anti-Spam Legislation - CASL

- In force since July 1, 2014
- Applies to all forms of electronic communication (including emails, texts) that promote or encourage commercial activity

Private Sector Laws CASL

Three main criteria:

1. Consent

2. Identity of sender

3. Unsubscribe

Private Sector Laws CASL

Enforcement

- Administrative penalty - \$1 million per violation (individual) and \$10 million per violation (any other “person”)
- Private right of action - damages up to \$200 per violation up to \$1 million per day

Private Sector Laws CASL



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Private Sector Laws

What if I don't comply?

Investigations by the Privacy
Commissioner

Potential lawsuits

Embarrassment / loss of
reputation

Privacy Breaches

- Unauthorized access to, or collection, use, or disclosure of, personal information
- Could occur when personal information is stolen, lost or mistakenly disclosed
- Could result from internal or external forces

Breach Response

1. Containment and preliminary assessment
2. Evaluate the risks
3. Notify affected individuals
4. Prevention

Questions? Concerns? We can help!

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Thank you!

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**Called to the Bar of
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**J.D., University of Toronto,
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**Member, The Advocates'
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Association of Black
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Association of Ontario**

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Dina Maxwell is an associate in the Insurance Litigation Group at Blaney McMurtry. Her practice includes insurance defence, with a focus on professional negligence, privacy law and investigations, and insurance coverage.

Called to the Ontario Bar in 2010, Dina received her J.D. from the University of Toronto, Faculty of Law in 2009. Prior to law school, Dina received a Bachelor of Arts from Harvard University in English and American Literature and Language, with a citation in French Language and Literature.

Dina is a member of the International Association of Privacy Professionals and is a certified Information Privacy Professional (CIPP) in Canada and the United States.

Dina has appeared as counsel on applications, motions and interlocutory proceedings before the Ontario Superior Court of Justice.

Dina serves as a co-chair of the Harvard Club of Toronto Schools Committee and is a member at large of the Ontario Bar Association Insurance Law Executive Committee.

PRESENTATIONS

- Speaker, "Canada's Anti-Spam Legislation ("CASL")," Toronto Business Development Centre, Toronto, August 19, 2014
- Speaker, "Canada's Anti-Spam Legislation ("CASL")," Centre for Social Innovation, Toronto, June 24, 2014
- Speaker, "Canada's Anti-Spam Legislation ("CASL")," Blaney McMurtry LLP, Toronto, June 4, 2014