

BACKGROUND

Information and Privacy Commissioner of Ontario's comments on key areas for reform in a made-in-Ontario private sector privacy law

The government's [white paper](#) outlines seven key areas for reform in the development of a private sector privacy law for Ontario. Additional commentary on these reforms and other aspects of the proposed legislation is available in the [IPC's submission](#) to the Ontario government.

Summary of the IPC's comments on key areas for reform:

1. Rights-based approach

The IPC applauds the government's proposal to affirm privacy as a fundamental right in the preamble of an eventual provincial privacy law. This would anchor human rights values into the very foundation of the law and significantly impact its interpretation and application. We also strongly support the overarching fair and appropriate purpose clause that would set principles-based boundaries around permissible activities.

2. Safe use of automated decision-making

The use of automated decision-making that significantly impacts individuals requires strong governance to manage the heightened risks associated with AI. Organizations should be subject to higher accountability requirements to enhance transparency and explainability of decisions made by automated means, to identify, assess and mitigate potential bias, and to ensure that the potential benefits of making decisions by automated means are not outweighed by negative impacts on individuals or groups.

3. Enhanced consent

An updated consent framework would enable individuals to focus their attention on the most actionable and impactful information influencing their decisions while at the same time providing greater flexibility for organizations. On the whole, we are supportive of the various information elements that must be provided in plain language at or before the time of processing for consent to be considered valid. We recommend several improvements to the proposed alternate grounds for processing, including business activities, data transfers to service providers, disclosures to law enforcement, investigations and legal proceedings, publicly available information, research in the public interest, and employee personal information.

4. Data transparency for Ontarians

Transparency and accountability must play a central role in any modern privacy legislation that shifts away from a fully consent-based model. Enhanced transparency and accountability requirements serve as a critical counterpoint to the increased flexibility organizations are granted to collect, use or disclose personal information without consent in a data-driven economy.

Enhanced accountability measures should require that privacy impact assessments are conducted above a defined risk threshold and that responsibilities are clearly apportioned

between organizations and their service providers. Stronger transparency measures should include public reporting requirements for disclosures to law enforcement.

5. Protecting children and youth

We applaud the government's proposal to address important issues such as substitute decision-makers and the minimum age thresholds for valid online consent in an Ontario private sector privacy law. We recommend several further enhancements, including the right for youth to have information they posted about themselves deindexed, removed or deleted altogether, subject to narrow exceptions, and the right for mature minors to object to their parents' consent, access or take-down requests.

6. A fair, proportionate, and supportive regulatory regime

The IPC is broadly supportive of the compliance framework being considered by the government for a made-in-Ontario private sector privacy law. In particular, the agile and flexible tools being proposed to support compliance, with the possible escalation of enforcement options available when necessary, address some of the most significant weaknesses in *PIPEDA* and Bill C-11 and respond to many of the recommendations made by the IPC in its previous [submission](#) on private sector privacy legislation in Ontario.

7. Support for Ontario innovators

We strongly support bringing de-identified information within the scope of a private sector privacy law generally. We recommend fine-tuning key definitions, building in incentives for organizations to de-identify information as a safeguarding measure, and clarifying that key obligations of organizational accountability, fair and appropriate purposes, safeguards, transparency, and challenging compliance continue to apply to de-identified information.

Finally, with respect to promoting more equitable data-sharing, we believe such efforts are certainly laudable and should continue to be encouraged. We recommend, however, that appropriate governance models, with effective, independent oversight mechanisms, be seriously considered, designed, and implemented at the earliest possible time, given all of the important privacy, security, fairness, and equity implications at play.

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