



Review of the Personal Information Protection Act

Jill Clayton, Information and Privacy Commissioner

**Presentation to the Standing Committee on Alberta's Economic Future
September 7, 2016 | Edmonton, Alberta**

Global Considerations for PIPA Review

Thank you for the opportunity to speak with you today. I'm joined today by my colleagues Kim Kreutzer-Work, Director of Knowledge Management, and Amanda Swanek, who is an Adjudicator with my office. I would like to mention that Kim, Amanda and I were all at the table and involved in the first review of PIPA in 2007 – we've been working with this legislation for quite a number of years now.

Since I last spoke to this committee in October last year, my office and numerous stakeholders from across the province have had a chance to share our thoughts on how to improve this important piece of legislation. The diversity of submissions and opinions was very interesting, and reinforced for me that, by and large, stakeholders recognize the value of this legislation.

I know you've received my submission which sets out some ideas, suggestions and recommendations to strengthen PIPA and ensure Alberta remains a leader in private-sector privacy legislation across Canada and internationally. I don't intend today to speak to the specific recommendations made in that submission. But I do want to provide some context that may be helpful to you as you deliberate possible amendments.

To start, I want to say a few words about PIPA's "substantially similar" designation. I know you are likely already familiar with this concept, but I think it's important to remind ourselves of this important principle and keep it front and centre when reviewing PIPA.

As you know, PIPA is a made-in-Alberta approach to balancing the privacy interests of Albertans with business' legitimate need to collect, use and disclose personal information to provide goods and services. PIPA was purposefully designed to make privacy compliance as simple as possible for small- and medium-sized organizations.

It's important to remember, however, that PIPA was not created in a vacuum. There are other global and national forces and principles that shaped how PIPA was drafted and how it must function in order to be recognized within Canada and by other nations. And this should be kept in mind when considering possible amendments to the legislation.

As you may be aware, federal private sector privacy legislation – Canada's *Personal Information Protection and Electronic Documents Act*, or PIPEDA – came into force on January 1, 2001 with respect to federally-regulated businesses.

PIPEDA gave the provinces and territories the option of enacting their own private-sector privacy legislation by January 1, 2004. If the provincial law was "substantially similar" to the federal law, the provincial law would operate in that province. Otherwise the federal legislation would apply to that province's private sector. Quebec had already passed a private-sector privacy law, which was deemed to be substantially similar. Alberta and British Columbia were the only additional provinces to introduce private-sector privacy legislation by January 1, 2004.

In October of that year, PIPA was deemed substantially similar to the federal PIPEDA. This effectively exempted provincially-regulated Alberta organizations from PIPEDA and ensured local oversight by the provincial privacy commissioner.

Canada's federal privacy legislation, PIPEDA, is deemed to have "adequacy" status as it relates to European privacy law. This means that European law recognizes PIPEDA and, by extension, "substantially similar" laws, such as Alberta's PIPA. Therefore, Canadian businesses have adequate protections for the transfer of Europeans' personal information within our borders. Without adequacy status, the transfer of personal information would be uncertain for Canadian- and Alberta-based businesses when participating in the global knowledge economy.

Recently, the European Union overhauled its privacy law in the form of the *General Data Protection Regulation*, or GDPR, which was approved by the European Parliament in April of this year. The GDPR takes the place of the earlier *Data Protection Directive*, which was passed in 1995 and required each member state to implement its own privacy law. The GDPR is expected to come into force in May 2018 and will apply to all member states and their citizens.

The GDPR has made privacy law across Europe stricter and enhanced the protections for Europeans' personal information in many areas, including around consent, accountability and privacy management frameworks, breach notification, and privacy impact assessments.

So, why does this matter?

With the global reach of Canadian- and Alberta-based businesses, not to mention the ubiquity of online activities generally, it goes without saying that the GDPR will affect how we do business here at home – and it must be taken seriously in light of any discussion about amendments to our laws governing the collection, use and disclosure of personal information.

With the new stricter provisions of the GDPR, the adequacy status of Canadian privacy law is under scrutiny. Former Interim Privacy Commissioner of Canada Chantal Bernier has asked, “Will adequacy survive the coming into force of the new GDPR... and how should governments or business prepare in that regard?”¹

No one knows at this time what might come of Canada's “adequacy” status, nor am I suggesting that PIPEDA and, by extension, PIPA will be deemed inadequate by the European Union. I am, however, noting that in contemplating amendments to our own law, we should at the same time be mindful of these global and national considerations.

I have kept this in mind in making my recommendations to this Committee. We should be proud of the fact that in Alberta we are already ahead of the curve. For example, the new GDPR mandates breach notification, which we have had in Alberta for six years now – in fact, we are

¹ Retrieved Aug. 16, 2016 from <http://www.privacyandcybersecuritylaw.com/impact-of-the-european-general-data-protection-regulation-gdpr-on-adequacy-and-5-tips-to-weather-the-changes>

the only private sector jurisdiction in Canada that have these provisions and the others – Canada and British Columbia – are working diligently to catch up.

In addition, my office's work with the Privacy Commissioner of Canada and the Information and Privacy Commissioner of British Columbia to publish *Getting Accountability Right with a Privacy Management Program* in 2012 anticipated and is aligned with the new legal requirements in the GDPR around privacy management frameworks. This document provides guidance to businesses for how they can manifest the principle of accountability within their own organizations. In harmony with legislative reform that is taking place in other jurisdictions, I have recommended that this Committee consider legislating the requirements of a privacy management framework in PIPA.

Just a quick anecdote that when our three Canadian jurisdictions released our *Getting Accountability Right* guidance, we received international accolades, including from the Chief Privacy Officer of a multinational corporation who called it the "gold standard" for the world to follow. And, it appears, the world, or at least the European Union, has indeed followed by legislating privacy management frameworks in the GDPR.

In a global economy where private sector privacy law needs to be "substantially similar" and "adequate", and where private sector businesses are looking for certainty and consistency to the extent possible in the many jurisdictions in which they operate, I'm suggesting we need to be mindful when contemplating amendments that might weaken the legislation, or that would be out of step with global and national considerations. And it's important to remember that, although legislative requirements and regulations may sometimes seem to be burdensome, they also help to provide the public and business and service partners with stability and reassurance, both of which are necessary to win customers and facilitate business and information sharing.

I will end my comments here so as to be able to respond to any questions you may have. But I would like to thank you for the opportunity to be here today, and I look forward to being of assistance to the Committee as you continue this important work.