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Consent Under Bill 64

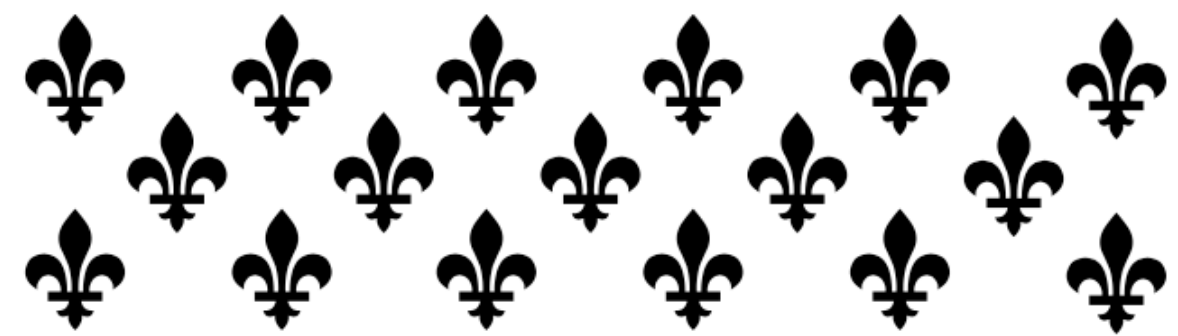
Quebec's New Data Protection Law

What We Will Cover

The Impact of Quebec Bill 64 on Canadian Organizations

1. Background and the impact on Canada
2. What is Bill 64 and what does it cover?
3. Protection Of Personal Information In The Private Sector (PPIPPS)
4. The Facebook Clause
5. Confidentiality and Security
6. Automated Decision Making
7. Minors
8. Q&A

An Act to modernize legislative provisions as regards the protection of personal information



**NATIONAL ASSEMBLY
OF QUÉBEC**

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 64

What is covered

*This bill modernizes the framework applicable to the protection of personal information in various Acts, including **the Act respecting Access to documents held by public bodies and the Protection of personal information and the Act respecting the protection of personal information in the private sector.***

*Rules are introduced in both of those Acts concerning how public bodies and enterprises **handle incidents affecting the confidentiality of personal information.** Under the bill, such bodies and enterprises **must publish governance rules regarding personal information, and those that collect personal information through technological means must publish and disseminate a confidentiality policy.** In addition, the bill introduces in those Acts a requirement to **conduct an assessment of the privacy-related factors in certain circumstances,** including regarding any information system project or electronic service delivery project involving the collection, use, release, keeping or destruction of personal information.*

*The bill clarifies **various requirements relating to the consent required before personal information is collected, used or released.** Public bodies and enterprises **must request the consent of the person concerned separately from any other information provided to the person.** The consent necessary for certain uses or releases of **sensitive personal information must be given expressly.** Furthermore, the consent of the person having parental authority must be obtained to collect, use and release personal information concerning a **minor under 14 years of age.***

*In addition, the bill requires public bodies and enterprises **to provide certain information to the person concerned when they collect personal information** using technology that includes functions allowing the person to be identified, located or profiled, or when they use personal information to render a decision based exclusively on an automated processing of such information. It establishes **a person's right to access** computerized personal information concerning him or her in **a structured, commonly used technological format** or to require such information to be released to a third person.*

Bill 64

What is covered

The bill amends the conditions on which public bodies and enterprises **may release personal information without the consent of the persons concerned to a person or body wishing to use the information** for study or research purposes or for the production of statistics. The bill also clarifies the conditions applicable to other releases of personal information for which the consent of the person concerned is not necessary, such as **a release of such information outside Québec**, or to the spouse or a close relative of a deceased person, or by one enterprise to another for the purpose of concluding a commercial transaction.

The bill clarifies the obligations of public bodies and enterprises regarding **the keeping of personal information**, and provides in particular for the possibility of anonymizing such information.

The bill updates the **functions and powers of the Commission d'accès à l'information**.

The bill amends the **penal provisions** applicable for a contravention of the law, in particular by raising the amount of the fines.

More specifically, the bill **amends the Act respecting Access to documents held by public bodies** and the Protection of personal information to set out rules regarding the establishment within public bodies of a committee on access to information and the protection of personal information. The bill also establishes **the function of personal information manager**, and sets out the terms for designating such a manager, and the functions and powers attached to that function.

The bill also amends the Act respecting the protection of personal information in **the private sector to create the function of person in charge of the protection of personal information** within enterprises and to require enterprises to ensure that the parameters of the technological products or services they use to collect personal information provide the highest level of **confidentiality by default**, without any intervention by the person concerned.

Bill 64

What is covered

The bill **withdraws the possibility for enterprises to communicate nominative lists without the consent of the persons concerned**, and updates **the rules governing the use of personal information for commercial or philanthropic prospection purposes**.

The bill grants rights to a person to whom personal information relates, including the right to require that such **information cease to be disseminated** or that any hyperlink attached to the person's name providing access to the information by a technological means be de-indexed or re-indexed.

The bill updates the obligations imposed on personal information agents, provides for the possibility for the Commission d'accès à l'information to impose **monetary administrative penalties**, and sets out the terms for recovering and claiming the amounts owing.

The bill also **amends the Election Act** to make the entities authorized under that Act subject to the provisions of the Act respecting the protection of personal information in the private sector, while providing for certain exceptions.

Lastly, the bill contains amending, **transitional and final provisions**.

What is PPIPPS

Bill 64 impacts 21 separate laws in Quebec.

The primary one we are addressing today is the
PROTECTION OF PERSONAL INFORMATION
IN THE PRIVATE SECTOR (PPIPPS)



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PPIPPS

What has Changed

- ☑ Data Minimization (PIAs)
- ☑ Must have a good reason (Sec 4)
- ☑ Purpose Limitations
- ☑ Transparency of the source
- ☑ Offer real choices for use of data
- ☑ Inform of the right to withdraw
- ☑ Inform of right to access and correct
- ☑ Name those you share this data with
- ☑ Allow opt-out of profiling or sharing
- ☑ Secure the data you collect
- ☑ Rules for Automated Decision Making
- ☑ Minors (under the age of 14)

Quebec Bill 64 Roadmap to Compliance



Build (Program & Team)	Identify Stakeholders & Define Objectives	Allocate Resources & Budgets	Appoint DPO	Implement Breach Incident Reporting
Assess Risk	Conduct Data Analysis & Map Data	Risk Assessment & Gap Reports	Create Project List	Determine Process to Track & Record Consent
Design & Implement Operational Controls	Document Policies and Procedures	Data Transfers & 3rd Party Management	Individual Data Protection Rights	Safeguards - Physical, Technical, Admin
Manage & Enhance Controls	Conduct DPIAs	Data Necessity - Retention & Disposal	Data Integrity & Quality	Train Staff
Demonstrate Ongoing Compliance	Audit Control Effectiveness	Internal and External Reporting	Privacy Notice & Dispute Resolution	Certification

Operationalizing Consent Management

What a Company Will Have to PROVE

- ☑ Categories of Consent
- ☑ Date of Consent
- ☑ Purpose Limitations
- ☑ Sharing Policies - specifics
- ☑ Change of Consents
- ☑ Historical log
- ☑ Transparency of Consents
- ☑ Clarity of Language & Jurisdiction
- ☑ Link to the source of consent
- ☑ Ability to easily change Consent
- ☑ Consent offered in multiple languages
- ☑ Staff training

“**Zero-Party Data** is data that a customer intentionally and proactively shares with a brand, which can include preference center data, purchase intentions, personal context, and how the individual wants the brand to recognize them”

defined by Forrester

1 New requirements to the Private Sector Act

The following requirements will come into force in one year

Requirement	Description
Appointment of a Privacy Officer (s. 3.1)	<ul style="list-style-type: none">• By default, the CEO of every organization will be the “person in charge of the protection of personal information”.• The Privacy Officer must ensure that the organization implements and complies with the Act.• The Privacy Officer role can be delegated in writing to any person.• The Privacy Officer’s contact information must be published on the organization’s website.
Breach reporting (ss. 3.5 – 3.8)	<ul style="list-style-type: none">• Organizations must notify the Commission d’accès à l’information (CAI) and the affected individuals when a “confidentiality incident” presents a “risk of serious injury” to the individuals.• The “risk of serious injury” threshold is assessed using factors similar to the “real risk of significant harm” under PIPEDA, namely the sensitivity of the information concerned, the anticipated consequences of its use and the likelihood that such information will be used for injurious purposes.• Organizations must keep a register of breaches that they would be required to provide to the CAI upon request.

CASSIE by Syrenis

david.McInerney@syrenis.com



Newport Thomson

dlackey@newportthomson.com

