

“Examining proposals for data transfers outside of Canada”

Session: Hypothetical and Resources



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Examining Proposals for Data Transfers Outside of Canada: Hypothetical and Resources

In this session, the dialogue leaders will examine Canada's newly released Digital Charter and related reform proposals under The Personal Information Protection and Electronic Documents Act (PIPEDA) as they relate to companies' ability to transfer data out of Canada, focusing on law firms and legal service providers in particular. The panel will discuss the reasons for Canada's reevaluation of its data transfer scheme and how companies may handle different mechanisms for transfer, including consent. Dialogue leaders will evaluate whether consent and other suggestions for transfer adequately address the privacy concerns meant to be addressed by reform proposals.

Hypothetical Fact Pattern for Discussion

The law firm of Promislow, Reynolds and Whitt (PRW LLP) is located in Windsor, Ontario. It's a relatively small firm with 12 attorneys and a support staff of 20. It prides itself on being technologically forward-looking and millennial-friendly in its workplace culture. One of its largest clients is eBespoke, an online tailor. eBespoke sells high-end attire, with each item custom-fit individually for its customers, based on measurements derived from digital images and data that customers upload using the eBespoke app. eBespoke is considering outsourcing much of its IT infrastructure to a Detroit startup, and has come to PRW LLP for advice on whether such an outsourcing arrangement may have any legal consequences, and if so, what legal considerations are most significant for them to consider in negotiating the contract.

eBespoke is also entertaining offers to spin off its children's apparel division to a German clothing conglomerate. The most valuable asset of this division is its huge database of childrens' measurements, which the Germans are interested in using to perform data analytics to develop new lines of precisely-fitting ready-made school and sports uniforms. They seek advice on the potential legal consequences of selling such an asset.

PRW LLP recently hired a newly-minted associate attorney with extensive experience in Internet commerce, and he will be part of the team advising eBespoke. However, he doesn't work in the office in downtown Windsor, preferring to work

primarily in the new University of Windsor Law Faculty Library. He is rather possessive of his Samsung phone and laptop, on which he has installed several work-related apps, and proposes that he set up a collaboration site for the team, using a new Ukrainian app that he recently downloaded. Is this a good idea?

Required reading

- The Sedona Canada Commentary on Privacy and Information Security for Legal Service Providers, Member Comment Draft:
<https://thesedonaconference.org/wgs/wg7> (Sedona member log-in required)
- Strengthening Privacy for the Digital Age: Proposals to modernize the Personal Information Protection and Electronic Documents Act (21 May 2019): https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00107.html
- Consultation on transfers for processing – Reframed discussion document (11 June 2019): <https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/consultation-on-transfers-for-processing/>

Recommended reading

- PIPEDA in brief (May 2019): https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/
- Canada's Digital Charter in Action: A Plan by Canadians, for Canadians (21 May 2019): https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00109.html
- Canada's Digital Charter: Trust in a digital world (25 June 2019): https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html
- Daniel Therrien, Privacy Commissioner of Canada, "Reforming Canada's privacy laws: Shifting from the whether to the how" (23 May 2019): https://www.priv.gc.ca/en/opc-news/speeches/2019/sp-d_20190523/
- Investigation into Equifax Inc. and Equifax Canada Co.'s compliance with PIPEDA in light of the 2017 breach of personal information (9 April 2019): <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-001/>
- Joint investigation of Facebook, Inc. by the Privacy Commissioner of Canada and the Information and Privacy Commissioner for British Columbia (25 April 2019): <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2019/pipeda-2019-002/>