

PIPEDA Discussion Paper

Background:

The House of Commons Standing Committee on Access to Information, Privacy and Ethics, also known as 'ETHI', has initiated a review of Canada's *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA is the privacy protection Act that applies to the private sector.

The Committee has started to meet with academics and privacy experts, including current and former privacy commissioners. It will continue to meet until the House rises in June. They will soon be calling upon government agencies and third-party stakeholders to appear, as Committee members see fit.

MRIA's policy position is that we've always supported a strong and robust policy framework in Canada. Although our industry has very high standards already, PIPEDA serves to raise the bar for other industries dealing with personal information, and creates a better environment to collect personal data for research purposes.

Key Issues:

The ETHI Committee has held eight meetings already and has heard testimony on a range of topics. The following is a brief synopsis of the key issues that have emerged to date and which MRIA may want to comment on:

- ***EU Data Protection Regulations:*** Likely one of the biggest drivers for modernizing the Act relates to new EU regulations which come into force on May 25, 2018. The regulations considerably change European legislation with respect to personal data protection. Canada is currently the only North American state to have the 'status of suitability' with Europe, which means that because of our privacy framework, Canadian companies can receive European data without any other form of authorization. Many experts have testified, however, that they don't believe PIPEDA will stand up to the 'suitability' requirements once the new regulations come into play and that we'll need to modernize PIPEDA or risk losing this competitive advantage. How important is this status to MRIA members?
- ***Valid Consent:*** Internet users want to share their views and search sensitive issues like health without fear that these activities will be tracked and shared with others with adverse interests. There has been a lot of debate as to whether PIPEDA's consent model is still adequate given today's digital, big data, and social media era. Some of the discussion involves whether Canadians are adequately protected from behavioural advertising, and how children and youth can provide consent through social media platforms. Is the current system of consent outlined in the Act adequate? Is it flexible enough to ensure that consent applies to the various applications that exist on the Internet? Should consent standards be changed in favour of a risk-based model, or implied consent?
- ***The Right to Erase:*** Many privacy advocates are lobbying for a new right to 'forget' or 'erase' as a tool to strengthen the protection of an individual's reputation online. As is the case in European law, a provision could be added to PIPEDA that enshrines the right to be forgotten. This would give individuals the right to have personal data erased and to prevent the processing of their data when,

for instance, the individual withdraws consent or objects to the processing and there is no overriding legitimate interest for continuing it. Do members believe MRIA should support this right, or would it create challenges for researchers?

- ***Enforcement Powers:*** Currently, the federal privacy commissioner functions as an ombudsman. Many privacy advocates are asking for Parliament to give the commissioner order-making powers, such as the power to fine or compensate victims. While the commissioner has argued in the past against being awarded such powers (he emphasizes compliance over enforcement), he has indicated that he would now welcome them, as this would bring Canada in line with many other provincial and international privacy protection laws. For example, new European regulations that come into force on May 25, 2018 will provide for fines of up to 4% of a company's global revenues. MRIA has, in past reviews, supported new order-making powers for the privacy commissioner. Do members feel we should continue to advocate for these?

For Discussion:

MRIA's Government Relations Committee is looking for input from members, and in particular Privacy Officers, on the following:

- Does PIPEDA need changing?
- Should MRIA take a position on any of the key issues listed above?
- Are there any other issues with PIPEDA that need to be raised as part of this review?
- Are there emerging issues that PIPEDA should address and that will require amendments to the Act?

More information on the review and the issues being discussed during the review hearings is available on the following [House of Commons webpage](#).

Members can send comments by Thursday, May 4 to MRIA CEO Kara Mitchelmore at kmitchelmore@mria-arim.ca.