

SEPTEMBER 22, 2023: THE DAY PRIVACY LAW CHANGES FOREVER

BLUEHF
LEGAL



24 HOURS...

SEPTEMBER 2023

SUN	MON	TUE	WED	THU	FRI	SAT
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21		23
24	25	26	27	28	29	30

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PROJET DE LOI 64 / LOI 25

INTRO & BACKGROUND

BILLS AND LAWS, OH MY!



Bill 64 – *An Act to modernize legislative provisions as regards the protection of personal information*

→ Updates the existing *Loi sur la protection des renseignements personnels dans le secteur privé* (« Loi sur le privé »)- *Act respecting the protection of personal information in the private sector* (the “Private Sector Act”)

→ Compare with federal Bill C-27: *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*

LOI 25 FUN (?) FACTS



- ~~projet de loi 64~~ → **Loi 25**: *Loi modernisant des dispositions législatives en matière de protection des renseignements personnels*, LQ 2021, c. 25
- Actually amends 21 different laws, not just the 1 we care about
- On Sept. 21, 2021, the Québec National Assembly adopted Bill 64
- **Entrée en vigueur le 22 septembre**: p.l. 64 devient Loi 25
- Adopted unanimously (116 votes for, 0 against, 0 abstentions)

MORE INTRO CRAP:

WHERE DOES LAW 25 APPLY?

LA LOI S'APPLIQUE À UN CLIENT ONTARIEN?

PROVINCIAL BORDERS? HA!

Section 1 application unchanged:

“...rules with respect to personal information relating to other persons which a person collects, holds, uses or communicates to third persons in the course of carrying on an **enterprise**...”

→ *Commission d'accès à l'information (CAI)* very broad interpretation, collecting PI from Quebecers enough



BY IMPLICATION?

New section 17:

Before communicating personal information outside Québec, a person carrying on an enterprise must conduct an “assessment of privacy-related factors” [ed.: “PIA”, Évaluation des facteurs relatifs à la vie privée]...

The same applies where the person carrying on an enterprise entrusts a person or body outside Québec with the task of collecting, using, communicating or keeping such information on its behalf.



**C'MON ALLEN, STOP STALLING AND
GET TO THE MEAT OF THOSE SEPTEMBER 22,
2023 CHANGES ALREADY**

**OK, OK, SHUT UP
I AM GETTING TO IT**

THE BIG DATES

Law 25 into force in stages:

Sept. 22, 2022 → A few basic things

Sept. 22, 2023 → Most of the meat

Sept. 22, 2024 → The rest of it, but there's just some scraps left at this point

SEPTEMBER 22, 2022

➤ **Appointment of a Privacy Officer (3.1)**

- CEO (“the person exercising the highest authority”) by default, can be delegated (in writing)
- Title and contact information must be published on website
- “shall see to ensuring that this Act is implemented and complied with”

➤ **Mandatory data breach reporting (3.5 – 3.8)**

- Must inform the CAI and the affected individuals when a “**confidentiality incident**” (*incident de confidentialité*) presents a “risk of serious injury” to the individuals
- “Risk of serious injury” factors ≈ RROSH factors under PIPEDA

➤ **Exception for commercial transactions (18.4)**

LE 22 SEPTEMBRE 2023 : SOMMAIRE DE LA COMMISSION



<https://www.cai.gouv.qc.ca/espace-evolutif-modernisation-lois/principales-modifications/septembre-2023/>

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➤ **Obligation to inform in clear and simple language (8, 8.1 and 8.2) → Privacy Policies to update!**

- Purposes, means, rights of access, right to withdraw consent
- Names of the third person or categories of third persons to whom PI is communicated, and noting if it is outside Quebec
- 8.1 → If technology allows a person to be “identified, located or profiled” you must inform individual and the means to ~~deactivate~~ activate [ed. ???] such functions → COOKIES and other tracking tech
- 8.2 → If collecting PI “through technological means” must publish on website “confidentiality policy drafted in clear and simple language”

➤ **Privacy (“highest level of confidentiality”) by Default (9.1)**

→ But only when offering a “technological product or service”

SEPTEMBER 22, 2023

➤ **Establish and implement governance policies and practices regarding PI (3.2)**

- framework for the keeping and destruction of the PI
- roles and responsibilities of the members of its personnel throughout the life cycle of the PI
- process for dealing with complaints
- “information about these policies” must be on enterprise website in clear and simple terms (Bill 64 first draft → the policies themselves)

➤ **“Évaluation des facteurs relatifs à la vie privée” (Privacy Impact Assessments, PIAs) (3.3 – 3.4)**

- “...of any project of acquisition, development and redesign of an information system or electronic service delivery involving the collection, use, communication, keeping or destruction of PI”

➤ **Cross-border PIAs of section 17 previously mentioned**

PIA “GUIDANCE” FROM THOSE IN CHARGE



Guide d'accompagnement

Réaliser une évaluation des facteurs relatifs à la vie privée

« Les informations incluses dans ce guide reflètent les lois **avant leur modification par la Loi 25**. Il sera révisé ultérieurement... »

(Document mis à jour le 10 mars 2021)

(checked **this morning**. 23 days left. Tick tock, motherf***ers...)

SEPTEMBER 22, 2023 (STILL MORE!)

New consent rules:

- 8.3 “Any person who provides his personal information in accordance with section 8 [ed. “provided to the person”] consents to its use and its communication for the purposes referred in subparagraph 1 of the first paragraph of that section” → **Presumed** consent?
- 12 → don’t even ask me to summarize this one. Basically only use the PI for the purposes it was collected for unless you get more consent, but exceptions up the wazoo (e.g. “used for purposes consistent with the purposes for which it was collected”)
- 14 “Consent under this Act must be clear, free and informed and be given for specific purposes. It must be requested for each such purpose, in clear and simple language”
- 4.1 PI of a minor under 14 years of age “may not be collected from him without the consent of the person having parental authority or the tutor”

SEPTEMBER 22, 2023 (NO SRSLY, STILL MORE)

➤ **Right to de-indexation of “any hyperlink attached to his name” (28.1) and to cease disseminating PI**

→ Kind of like the RTBF of the GDPR

→ Not absolute at all, lots of conditions

→ **Destruction or anonymization (23)**

“Where the purposes for which personal information was collected or used are achieved, the person carrying on an enterprise must destroy or anonymize the information in order to use it for a serious and legitimate purpose”

Anonymize → “generally accepted best practices”; “irreversibly no longer allows the person to be identified directly or indirectly”

→ **Written agreements with service providers aka DPAs (18.3)**

“entrust the mandate or contract in writing” when sending PI to “to any person or body if the information is necessary for carrying out a mandate or performing a contract of enterprise or for services”

SEPTEMBER 22, 2023 (YOU BET THERE'S MORE)

➤ ALL THE NEW ENFORCEMENT MECHANISMS

→ You need to check out: 90.1 ff. (AMPs, - **sanctions administratives pécuniaires**, SAP), 91 (penal provisions, including the “**greater of \$25,000,000 or 4% of annual worldwide turnover**” you may have heard about, and the “private right of action” in 93.1 for punitive damages) (see next slide summary)

→ And penal fines **doubled** for subsequent offences

→ And to really scare you, don't forget 93! “Where an offence under this Act is committed by a legal person, the administrator, director or representative of the legal person who ordered or authorized the act or omission constituting the offence, or who consented thereto, is a party to the offence and is liable to the prescribed penalty”

ENFORCEMENT MECHANISMS

Violation		Infraction pénale	SAP	Droit privé d'action
Collecte, utilisation, communication ou destruction de renseignements personnels en contravention à la loi	→	X	X	X
Conservation de renseignements personnels en contravention à la loi	→		X	X
Défaut de fournir aux personnes concernées les informations requises pour procéder à la collecte des renseignements personnels	→		X	X
Défaut d'aviser la CAI ou les personnes concernées d'un incident de confidentialité qui présente un risque de préjudice sérieux	→	X	X	X
Défaut d'informer la personne visée par une décision automatisée ou ne pas lui donner l'occasion de présenter ses observations	→		X	X
Refuser ou négliger de se conformer, dans le délai fixé, à une demande de production de documents émise par la CAI	→	X		
Contrevenir à une ordonnance de la CAI	→	X		
Sanction (Montant maximal)		25 M\$ ou 4 % du chiffre d'affaires mondial	10 M\$ ou 2 % du chiffre d'affaires mondial	Montant des dommages octroyés

Image source – BLG <https://www.blg.com/en/insights/2021/09/quebec-adopts-bill-64-key-requirements-for-businesses>

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➤ **Data Portability right + (s.27). Upon request, you must:**

- Confirm existence of PI
- Computerized PI “must be communicated in the form of a written and intelligible transcript”

MERCI ! THANKS!

QUESTIONS?