



Canadian Tax & Legal Alert

Enactment of Quebec's Bill 64

Major overhaul to the protection of personal information in Quebec

October 7, 2021

Executive summary

Bill 64 was tabled at Quebec's National Assembly on June 12, 2020, adopted on September 21, 2021, and received assent on September 22, 2021.¹ The requirements contained in this bill introduce significant operational changes for private and public sector organizations. Underlying these changes is a desire to increase individuals' control over their personal information and increase transparency about organizations' personal information practices.

Key considerations

Practical requirements and sanctions

The legislation introduces several practical requirements and sanctions for private and public sector organizations, such as:

- Provide, by default, the highest level of confidentiality for products and services
- Augment existing consent management and expand individual rights capabilities

¹ An Act to modernize legislative provisions as regards the protection of personal information, S.Q. 2021, c. 25.

- Define roles and responsibilities (e.g., appointing a data protection officer)
- Improve the incident response plan to account for notification and reporting obligations
- Publish internal and external privacy notices in plain language to ensure transparency
- Ensure appropriate safeguards for transfers of personal information outside of Quebec
- Perform a Data Privacy Impact Assessment for new projects and data transfers
- Penalties up to \$25M or 4% of global revenue and increased likelihood of class actions

Most requirements will come into force two years after the date of assent (*i.e.*, September 22, 2023). However, a few requirements will come into force in one year (*i.e.*, September 22, 2022), such as the appointment of a data privacy officer and notification of a confidentiality incident, while the data portability right provision will come into force in 2024.

Compliance challenges with the most impact

Here are some of the compliance challenges with the most impact for organizations:

Accountability – Ensure the highest authority within an organization is responsible for compliance with the Act(s). This responsibility can be delegated in writing to a designated data protection officer.

Consent – Obtain specific consent for each business purpose. Consent must be explicit for sensitive information and obtained from custodians for minors under the age of 14.

Transparency – Inform, prior to data collection, of the purpose, means of collection, individual rights and the right to withdraw consent in simple and clear language. Train staff to explain the scope of consent.

Privacy by design / default – Involve the data protection officer when launching new solutions offered to the public that collect or use personal information. Configure such solutions to offer the highest level of privacy by default, without additional user input.

Breach notification – Introduce processes to report data breaches to the *Commission d'accès à l'information*, to notify affected individuals and stakeholders in a timely manner, and to maintain records of breaches.

Privacy impact assessments – Perform a data privacy impact assessment to identify and manage privacy risks of any information system, project, and initiative involving the collection and use of personal information, as well as prior sharing personal information with third parties.

Out-of-Quebec data transfer – Perform a data privacy impact assessment to determine if the destination jurisdiction provides adequate protection measures and review data outsourcing agreements before disclosing personal information outside of Quebec.

Individual rights – Design mechanisms that allow individuals to access / rectify their information in a common tech format. Craft new systems with data portability in mind, as well as the right to de-index/re-index personal information.

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Automated decisions – Inform individuals of decisions made exclusively by automated processing of their personal information. Disclose the reasons and parameters that led to the decision and provide them with a right to appeal for human review.

How to stand ready

Although the provisions of Bill 64 will come into force gradually, public and private organizations should strongly consider reviewing their personal information practices immediately and leverage the opportunity to identify gaps between the new requirements and their current practices. Here are a few things you can do today to prepare your organization:

- Assess the state of personal information protection to identify regulatory strengths and gaps
- Design an enhanced internal privacy governance and operating model to embed accountability
- Perform data discovery and mapping exercises to help identify personal information and high-risk areas
- Deliver general and role-targeted privacy and data security training to your employees
- Build out your privacy program (*e.g.*, draft internal policies and procedures, draft external notices)
- Bolster your current data security posture with a cybersecurity maturity assessment
- Assess risk of specific data processing activities with Privacy Impact Assessment support
- Develop systems and processes to improve individual rights and consent management capabilities
- Review your business operations against your current privacy program or new legal requirements
- Review and refresh your privacy policies, notices, and third-party contracts
- Outsource information security management to a managed service
- Improve your incident response capabilities, including data classification and management

Deloitte's perspective on privacy

Data privacy is a business enabler, not a compliance afterthought. Deloitte's approach to data privacy is predicated on trust being the new currency and data being the new oil.

- When customers trust the organization, they are more likely to share their data, and less likely to leave the organization in the event of a data breach and other incidents
- Privacy is at the forefront of an organization's communication, and transparency will be key to enhancing public relations and ensuring consumer loyalty, and this will be truer than ever moving into hybrid and remote work
- Integrating data protection and privacy into company culture will allow for rapid deployment of new technologies and service lines that are increasingly data hungry and carry new risks

How can Deloitte help you?

Our multidisciplinary team of professionals from Deloitte Legal and Deloitte can help you understand how these new requirements and operational changes may impact your business.

If you have questions on any of the above, please reach out to your Deloitte advisor or any of the individuals noted on this alert.

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