

# SUMMARY OF SPECIAL CONSULTATIONS AND PUBLIC HEARINGS ON QUÉBEC'S BILL 64



This document is a summary of special consultations and public hearings of the Committee on Institutions regarding [Bill 64, An Act to modernize legislative provisions as regards the protection of personal information](#) (Bill 64), which were held in September 2020. The schedule of these hearings are found on the [National Assembly website](#). Our summary aims to provide a high-level overview of key themes and topics discussed during the hearings, as well as questions asked by members of the Committee. For a more detailed discussion of the issues raised by the various speakers, a copy of their briefs are also found on the [National Assembly website](#).

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Maître Éloïse Gratton, Borden Ladner Gervais [\[Video\]](#)

	Themes and Issues Discussed	Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>An overreliance on consent creates a false sense of protection. Consent should be tool of last resort that signals to the consumer the importance of a specific activity. It is also important to only use consent when offering a real choice to consumers.</li> <li>Bill 64 should recognize multiple legal bases for processing, other than consent. For example, the GDPR recognizes the necessity to execute a contract and a legitimate business interest.</li> <li>Overreliance on consent is especially an issue in employer and employee relationships. It is hard to qualify consent in these situations as “free” because consent is contingent on employment. Employers should be allowed to collect the information they need to manage their employees without asking for consent.</li> </ul>	<p>Can you tell us more about why we should not systematically ask for consent? (Simon Jolin-Barrette)</p> <p>Are there aspects from other privacy laws that you would like to see included in the Bill? (Mathieu Lévesque)</p>	<p>Having individuals continuously give their consent is unrealistic. In Europe, they have recognized that asking for consent in an employer-employee relationship has no value. The Bill should also recognize that constantly asking for consent does not guarantee protection. Consent should only be required when the consumer has a real choice, and in other situations, transparency should be favoured, while making sure that companies do not collect more information than they need to provide a service or product.</p> <p>We suggest that Bill 64 inspire itself more from the GDPR by including additional legal bases for data treatment.</p>
<b>Definition of Personal Information</b>	<ul style="list-style-type: none"> <li>Definition of “personal information” and “sensitive information” is flexible.</li> <li>While this flexibility is beneficial in certain respects, it highlights the importance of providing the Commission d’accès à l’information (CAI) with adequate resources to publish guidelines.</li> </ul>	<p>What do you think of the Bill’s definition of personal information? (Mathieu Lévesque)</p> <p>What do you think about the definition of sensitive information? (Marc Tanguay)</p> <p>Can you further explain your opinion on the management of derived information? (Marc Tanguay)</p>	<p>The definition is very broad and it is not always clear when information is personal, pseudonymized or anonymized. However, it is acceptable to keep a certain level of flexibility.</p> <p>I like the definition because it is flexible. However, when a definition is more flexible it is less predictable and highlights the important of the CAI’s role as a guide. The CAI must be given adequate resources to publish guidelines.</p> <p>I believe that a document was published that specified that derived information would not be included in the right to the portability of data. It would be important to add this detail to the law.</p>
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>Bill 64 would make the CAI the first Canadian privacy authority with the capacity to impose important administrative monetary penalties, but significant monetary penalties could have a chilling effect on innovation.</li> </ul>	<p>Can you explain your position on the severity of the penalties? (Simon Jolin-Barrette)</p>	<p>You should keep in mind that companies could receive penalties from regulatory bodies across the world. They may decide not to do business in Québec if they see that penalties are very high, especially if the Québec market represents a small portion of their activities.</p>

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<ul style="list-style-type: none"> <li>The process by which these fines may be imposed should be more flexible. For instance, it should take into account the gravity of the harm caused by a violation.</li> </ul>	<p>Can you explain what monetary penalties should be imposed? (Simon Jolin-Barrette)</p>	<p>It is important to have flexibility in the law. When it comes to monetary penalties, we could include some contextual factors to guide the CAI in determining the amount that should be imposed. The law could specify that the penalty will be proportional to local revenues (as opposed to global revenues) and to the harm caused by the violation. You could also think about giving out a warning before any penalties.</p>	
<p><b>Privacy Regulator (Role of)</b></p>	<ul style="list-style-type: none"> <li>Supports having the CAI issue guidelines in English and French to help businesses understand and comply with their obligations.</li> </ul>	<p>Do you think that we should include a provision explicitly giving the CAI the mandate of publishing guidelines? (Marc Tanguay)</p>	<p>To the extent this is not already clear in the Bill, yes. However, the guidelines produced by the CAI should be published in English and French.</p>
<p><b>Privacy Impact Assessments</b></p>	<ul style="list-style-type: none"> <li>Concerned that the obligation to conduct privacy impact assessments are too burdensome, as they require businesses to systematically conduct these types of assessments, no matter how trivial their information processing initiative may be (including any changes thereto).</li> </ul>	<p>What do you think about the privacy impact assessments? (Marc Tanguay)</p>	<p>It is a good exercise for companies to do, but we are concerned that it may be too broadly worded, as there is no “materiality threshold” limiting the situations in which an organization is required to conduct such an assessment. This means that companies will have to constantly perform these assessments, which is very burdensome for businesses.</p>
<p><b>Cross-Border Requirements</b></p>	<ul style="list-style-type: none"> <li>Bill 64’s cross-border data transfer requirements are burdensome for businesses, as it asks them to perform an equivalency assessment of foreign laws – an assessment that is complex and costly. Moreover, these requirements unnecessarily extend to inter-provincial data transfers, further impeding the activities of businesses operating in Québec.</li> </ul>	<p>N/A</p>	<p>N/A</p>

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**Élections Québec (Pierre Reid and Catherine Lagacé) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Material Scope</b>	<ul style="list-style-type: none"> <li>• Bill 64 only regulates provincial political parties, but it should also regulate municipal political parties, given that they process the same types of personal information.</li> <li>• Political parties should be subject to the same sets of obligations as those imposed on private organizations. These include consent requirements, retention limitation, etc.</li> </ul>	<p>What are your comments about regulating municipal political parties and the protection of personal information? (Simon Jolin-Barrette)</p> <p>Do you think that the changes you are asking for will create a burden on political parties and harm smaller political parties? (Martin Ouellet)</p>	<p>Municipal political parties should be subjected to the same regulations as provincial political parties, as they use the information in the same way.</p> <p>Bill 64 does not distinguish between big or small organizations; they must all comply with the same obligations. The same can work for political parties.</p>
<b>Electoral Laws and List of Electors</b>	<ul style="list-style-type: none"> <li>• Recommends limiting the amount of information to which political parties may have access. For instance, recommends limiting access to information about an elector’s gender, date of birth, etc.</li> </ul>	<p>Can you further explain your comments about excluding information about an elector’s gender and date of birth from the list of electors? (Simon Jolin-Barrette)</p> <p>Do you differentiate information about an individual’s political beliefs from their date of birth, and other personal information? (Marc Tanguay)</p>	<p>We are the only jurisdiction in Canada where political parties receive both the birth date and gender of electors. The communication of such information should require express consent from electors. Oral consent may be sufficient.</p> <p>As soon as we request for personal information, we should ask for their consent and tell them how we are going to use it and for what purposes.</p>

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**Fédération canadienne de l’entreprise indépendante (François Vincent) [Video]**

Themes and Issues Discussed		Questions	Response
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>• Recommends giving warnings to businesses before imposing any fines.</li> </ul>	<p>Would you support the introduction of smaller monetary penalties for SMEs? (Kathleen Weil)</p> <p>Are you against the use of administrative monetary penalties? (Gabriel Nadeau-Dubois)</p>	<p>The amounts provided in the Bill are very high when considering the reality faced by SMEs. These amounts could have a significant impact on SMEs who may have been trying, in good faith, to comply with the legal requirements.</p> <p>The use of monetary penalties can have an impact on the survival of SMEs. We recommend having a grace period for businesses. Offering support to SMEs should be a priority over giving out penalties.</p>
<b>Transitional Provisions</b>	<ul style="list-style-type: none"> <li>• Recommends having a transition period of 36 months for most provisions. With respect to fines, this period should be 48 months.</li> </ul>	N/A	N/A
<b>Small- and Medium-Sized Enterprises</b>	<ul style="list-style-type: none"> <li>• Recommends that legislators take into consideration the realities of SMEs and create a specific framework adapted to their needs.</li> <li>• Recommends that the legislators exclude the enterprises of ten individuals or less from the administrative formalities required by Bill 64.</li> </ul>	<p>Can you tell us more about the burden placed on SMEs? (Simon Jolin-Barrette)</p>	<p>Current studies estimate that the Bill will impose significant costs on enterprises. We would like there to be an exemption, not necessarily from the law, but from formality requirements such as the implementation of an internal policy for SMEs.</p> <p>We would also like to see the development of guidelines that could be implemented in SMEs, a privacy awareness campaign for SMEs, and overall support for them with respect to the implementation of the Bill.</p>
<b>Interoperability</b>	<ul style="list-style-type: none"> <li>• Recommends co-ordinating with the federal government in order to ensure that Bill 64 aligns with <a href="#">future changes to PIPEDA</a>. The harmonization of both levels of government would avoid the multiplication of administrative requirements imposed on SMEs</li> </ul>	<p>Do you think that if Québec just waits for the federal government to enact legislation, nothing will change for the protection of personal information? (Simon Jolin-Barrette)</p>	<p>We will not wait very long for the federal government because they are currently working on revamping the law. The enterprises we represent have mentioned that regulatory harmonization was important to them. The European Union has one law to regulate the protection of personal information in all its member states. It is favorable to SMEs to have one overarching regulation, especially during the difficult economic situation they are facing due to COVID-19.</p>

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**Fédération des chambres de commerce du Québec (Charles Milliard & Alain Lavoie) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>Bill 64 requires that companies ask for consent every time they use personal information, which creates a burdensome and impractical system for companies.</li> <li>Recommends allowing enterprises to obtain “consentement en bloc” (i.e., “blanket consent,” whereby an individual consents to more than one purpose at a time).</li> </ul>	Can you tell us more about your position on blanket consent? (Simon Jolin-Barrette)	We suggest that where possible, users may give a broad consent that allows for the use of personal information for multiple purposes. The idea is to avoid overwhelming consumers with consent requests, as this may lead to consent fatigue.
<b>Enforcement Mechanisms</b>	N/A	<p>What do you think about the administrative monetary penalties? (Simon Jolin-Barrette)</p> <p>How do we decide in which country the company can receive a sanction? (Martin Ouellet)</p>	<p>We are more concerned about the number of penalties an organization may receive rather about the amount of those penalties.</p> <p>It should be where the omission was first noticed.</p>
<b>Small- and Medium-Sized Enterprises</b>	<ul style="list-style-type: none"> <li>Given the limited resources of SMEs, recommends creating a support program for SMEs and providing a transition period to help them adjust.</li> </ul>	<p>Should we apply the Bill to companies with ten employees or less? How can we support SMEs? (Lucie Lecours)</p> <p>Do you think that the law provides enough information for businesses to govern themselves and respect the law? (Marc Tanguay)</p>	<p>Favours supporting SMEs and introducing a transition period. It is better to have a disciplinary approach based on continuous improvement rather than strict penalties.</p> <p>It is difficult for SMEs to respect the law because they do not have the necessary expertise. It is important that the Bill provide SMEs with support.</p> <p>This question highlights the need to provide continuous support. It is increasingly difficult to do business around the world because of privacy requirements, as well as the funding needed to implement robust cybersecurity measures. The legislators must avoid creating too many obstacles for businesses.</p>

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Themes and Issues Discussed		Questions	Response
<b>Interoperability</b>	<ul style="list-style-type: none"> <li>Ideally, Québec and Canada should work together and create similar legislation. If Québec’s legislation differs significantly from Canada’s, it may harm Québec businesses.</li> </ul>	How can we avoid harming the development of an artificial intelligence hub in Québec? (Simon Jolin-Barrette)	If we make data less accessible in Québec than it is in other jurisdictions, companies and researchers may go elsewhere. Companies and researchers need data to feed their algorithms. As such, we recommend focusing on harmonizing our laws, rather than going at it alone.
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>Bill 64 requires businesses to conduct a comparative legal analysis of the laws of a foreign jurisdiction. This assessment is complex and burdensome, and businesses may not be in a position to comply with this requirement.</li> </ul>	N/A	N/A

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Ligue des droits et libertés (Anne Pineau and Dominique Peschard) [[Video](#)]

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>Rejection of the implicit consent model in favour of the opt-in consent model. Legislation should clearly state that any unnecessary information may not be collected, even with the consent.</li> <li>Issue is taken with the flexibility introduced with respect to the use and disclosure of personal information without obtaining consent, as this contradicts the stated purpose of Bill 64.</li> </ul>	You wish for individualized consent; however, others have advocated for “blanket consent” ( <i>i.e.</i> , consent for more than one purpose at a time). What are your thoughts on that position? (Simon Jolin-Barrette)	The League proposes a reversal of the blanket consent paradigm, whereby consent will be obtained for the collection of all data instead of allowing the collection of data freely until consent is required.
<b>Research Exception</b>	<ul style="list-style-type: none"> <li>The league opposes the amendment whereby Bill 64 will no longer require the CAI to approve disclosure for research purposes. Under the amendment, any enterprise or public organization will be able to disclose personal information without consent for the purposes of studies, research or statistics after conducting a privacy impact assessment. The League wishes to see the CAI’s role reinforced.</li> </ul>	Should the CAI limit the access of commercial enterprises to the data? (Marc Tanguay)	We support open source research based on a common good rather than research based on the pursuit of profit in the commercial sense. Our issue is that Bill 64 does not provide a framework to encourage open source research ethically framed by peers and researchers.
<b>Anonymization</b>	<ul style="list-style-type: none"> <li>Opposition to Bill 64’s substantial alteration of the principle that consent is tied to a specific purpose by allowing the retention of personal information indefinitely by anonymizing it. This change will lead to potential re-identification of supposedly secure information.</li> </ul>	N/A	N/A
<b>Breach Notification Requirements</b>	<ul style="list-style-type: none"> <li>League welcomes the addition of these notice obligations; however, takes issue with the exception that a person affected by the incident does not have to be notified if it would likely hinder an investigation for the purpose of detecting or suppressing crime.</li> <li>Proposal of a public compensation scheme for victims of identity theft and other frauds funded by the proceeds of the fines related to Bill 64 violations.</li> </ul>	Do you see any justifiable caveats to the mandatory notice obligation in the event of data breaches? (Marc Tanguay)	The caveat that there may be no notice if it is seen to hinder an investigation is very vague and can be too easily invoked to delay notifying individuals. There are conceivably specific cases where delays are needed, but this must be the exception. The way it is formulated in the Bill does not reassure us that abuses will not happen.



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Themes and Issues Discussed		Questions	Response
<b>Right to Be Forgotten</b>	<ul style="list-style-type: none"> <li>The format of this commission does not allow for thorough investigation of this complex issue.</li> <li>The League reserves judgement on this issue, except that it agrees to some form of right to be forgotten for children.</li> </ul>	<p>With respect to large search engines, how should the right to be forgotten be framed? (Simon Jolin-Barrette)</p> <p>Regarding adults, do you not think that there should also be a de facto right to be forgotten, given that adults also suffer from being haunted from past actions? (Ian Lafrenière)</p> <p>With respect to your position on the right to be forgotten, is it correct to assume that you wish to strike a balance between protecting freedom of expression and protecting the right to privacy? If so, do you question the role of private companies as judges of what to remove? (Gabriel Nadeau-Dubois)</p>	<p>Situations involving children, where this right would be recognized de facto, must be distinguished from those involving adults. For adults, no comprehensive position yet. However, we oppose giving private companies the discretion to decide what data should be removed following an individual’s request, as this would be subject to their own interests, rather than the individual’s.</p> <p>You are highlighting the complexity of the issue, which requires an in-depth debate where all perspectives and issues are considered. The broad nature of Bill 64 does not lend itself to the issue at hand.</p> <p>This is exactly our position. We oppose the idea that private companies will be the judge of what should be removed. There are perhaps other bodies/actors in society better placed to make these decisions.</p>
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>Of particular concern is the use of foreign service providers to store personal information on behalf of public sector organisations. If American or foreign companies are granted such contracts, then potentially sensitive Québec data would be at the mercy of American legislation (e.g., the <i>Patriot Act</i> and the <i>Cloud Act</i>).</li> </ul>	<p>What are the tangible dangers we face if our data is stored with companies subject to American laws (notably, the <i>Cloud Act</i>, the <i>Patriot Act</i> and the <i>Foreign Intelligence Surveillance Act</i>)? (Marc Tanguay)</p>	<p>The American government may seize “any tangible thing” held by an American company. Thus, for individuals and institutions this represents a real privacy problem. The Québec government should act appropriately to protect data from foreign seizure.</p>
<b>Prohibited Practices (“No-go zones”)</b>	<ul style="list-style-type: none"> <li>Requests a moratorium on the use of facial recognition technology, as it is an abusive technology with respect to which there is currently little control in terms of privacy rights.</li> </ul>	N/A	N/A

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**Mr. Steve Waterhouse, cybersecurity expert** [\[Video\]](#)

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	N/A	<p>Would you suggest “blanket consent” (<i>i.e.</i>, consent for more than one purpose at a time) or individualized consent? (Simon Jolin-Barrette)</p> <p>Will the law ever be able to help consumers protect themselves from their tendency to consent to policies without informing themselves as to what they are consenting to? (Louis Lemieux)</p>	<p>People will not read privacy policies before consenting. However, it is the individual’s responsibility to inform themselves.</p> <p>Unfortunately, no. However, this is why it is so important to impart upon both sides how significant their roles are in providing and obtaining clear and enlightened consent.</p>
<b>Security Safeguards</b>	<ul style="list-style-type: none"> <li>• Bill 64 should motivate the private sector to perform tech upgrades in order to prevent data leaks.</li> <li>• In order to avoid breaches, it is suggested that public and private entities develop and adopt a culture of information security, which consists of a combination of developing knowledge about information security and daily monitoring.</li> <li>• Companies and public organizations with a large amount of personal information should be required to log access and data transfers on data storage systems, as proposed in the ISO 270016 standard.</li> <li>• In recognition of the significant impact of cyber crime, police forces must train a strong contingent of cyber investigators and patrol officers.</li> </ul>	<p>What are the concrete consequences for individuals following a breach? (Simon Jolin-Barrette)</p>	<p>Breaches occur without the holder of the information knowing they have been infiltrated. Information is extracted and, potentially, brought onto the black market for resale for fraudulent purposes. For individuals this generally means identity theft.</p>
<b>Small- and Medium-Sized Enterprises</b>	<ul style="list-style-type: none"> <li>• The general approach under Bill 64 is more accessible to large companies and governments that have the necessary resources. As such, SMEs must either hire external consultants or remain vulnerable.</li> </ul>	<p>How should the law balance the burden placed on businesses to comply with the law against the importance of the protection of personal information for individuals? (Simon Jolin-Barrette)</p>	<p>The legislation should simultaneously reinforce protections for personal information and not be too burdensome for companies to comply. It is a collective and individual responsibility. Individuals always have the choice to consent to giving information and businesses must only ask for a minimum amount of information. Large companies use the collected information for marketing purposes and individuals should be aware of the</p>

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Themes and Issues Discussed		Questions	Response
	<ul style="list-style-type: none"> <li>Bill 64’s requirements present significant challenges for SMEs, as they will be limited regarding how much they will be able to spend, especially considering the absence of any perceived benefit.</li> </ul>		consequences thereof and that loyalty programs are meant to track consumer behaviour.
		It has been suggested that in order to ensure compliance, SMEs will need support. Are you aware of any support or resource-sharing models? (Kathleen Weil)	There are Québec companies that will be able to assist SMEs in compliance. In fact, there is a need for more companies in order to respond to the demand. It is a service-advice model, but it must be affordable to SMEs without sacrificing quality of protection.
<b>Interoperability</b>	N/A	It has been suggested that Québec should wait for the federal government to amend its legislation to avoid a patchwork of incompatible laws across Canada. What are your thoughts on this? (Kathleen Weil)	We should not wait because we cannot afford the delays that would entail.
<b>Cross-Border Requirements</b>	N/A	Why are you favourable to foreign cloud-based storage? Other groups have expressed concern regarding these companies being subject to American laws, such as the <i>Patriot Act</i> . What is your position on this? (Ian Lafrenière)	<p>The norms and standards to which storage providers are held assure a secure storage of information. The risk occurs at the user end, where organizations fail to encrypt their most sensitive information prior to sending it to storage. Organizations must perform impact assessments and measure the level of sensitivity of the information.</p> <p>While the <i>Patriot Act</i> facilitates foreign access to information, it does not mean unfettered access. Those seeking to rely on the <i>Patriot Act</i> must provide notice and a valid reason for accessing the information.</p>

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**Office de la protection du consommateur (Marie-Claude Champoux and Marjorie Théberge) [Video]**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>While Bill 64 requires that consumers be given information at the time of consenting to a private organization’s collection of their data, the Office proposes that the consumer receive such information prior to consent. This will ensure free and enlightened consent.</li> <li>Bill 64 requires that consumers be advised if their information is collected by means of novel technologies. However, the Bill is unclear on whether the consumer will be advised as to exactly what information will be targeted by the collection.</li> </ul>	<p>Do you agree that a consumer’s consent to sharing their personal data (clicking on “accept”) is akin to consent in an adhesion contract? According to the Office, how is valid consent expressed? (Simon Jolin-Barrette)</p> <p>What are your thoughts on the burden placed on consumers in giving enlightened consent? How can we frame commercial practices in order to lighten this burden? (Gabriel Nadeau-Dubois)</p>	<p>While a legal framework is necessary, proper information and consumer education remains the most essential tool for protecting consumers. At the time of the execution of the contract everything must be explained. Consent cannot be inferred, it must be clear and enlightened consent.</p> <p>We are concerned about this because consumers are facing a deluge of information. As such, emphasis must be placed on the pertinence of the information presented to consumers.</p>
<b>Consent Exceptions</b>	<ul style="list-style-type: none"> <li>Organizations will be able to use data for purposes other than for which they were collected if they believe it would be in the best interest of the consumer. The Office questions this exception to consent, as this leaves too large of a discretion to organizations.</li> <li>The Office welcomes the proposal to eliminate the possibility for businesses to use a nominative list for commercial prospecting purposes or sharing this list with third parties without obtaining consent.</li> </ul>	N/A	N/A
<b>Data Limitation</b>	N/A	How can we distinguish between information that is necessary to be collected and that which is superfluous? (Gabriel Nadeau-Dubois)	In the past, we have clearly and simply listed what is necessary in legislation. For example, organizations are limited to requesting information about a person’s asset (house, salary and property) in the context of a credit agreement. Information that is pertinent to the transaction is necessary.
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>Amendments to the fines and sanctions are welcomed, as these effectively deter offenders.</li> </ul>	How would you qualify the fines and sanctions under the Bill? (Louis Lemieux)	Without qualifying them, sanctions are important, as we have found them effective under the <i>Consumer Protection Act</i> .

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<b>Privacy Regulator (Role of)</b>	<ul style="list-style-type: none"> <li>While the Office does not regulate privacy protection legislation, many consumers look to the Office for guidance on such issues, and we take it upon ourselves to do so given the interconnectedness between privacy issues and consumer activity.</li> <li>Bill 53, addressing, among other things, consumer credit, complements Bill 64. The former aims to safeguard consumers from the damaging effects of identity theft on consumer credit while the latter aims to prevent breaches that lead to identity theft. The Office, in its consultation on Bill 53, proposed that consumers be able to freely access their credit file and be notified to any changes made therein.</li> </ul>	<p>As consumers look to the Office for guidance in the event of a breach, should the relationship between the Office and the CAI be reinforced? (Simon Jolin-Barrette)</p> <p>How do you see the role of the Office evolve with respect to the protection of privacy? (Kathleen Weil)</p>	<p>Yes, information tools developed by the CAI can be promoted by the Office.</p> <p>We see our role in educating consumers and prevention.</p>
<b>Automated Decision-Making</b>	<ul style="list-style-type: none"> <li>Bill 64 foresees that businesses must inform individuals when decisions are based exclusively on the automated processing of personal information. The Office questions why this notification obligation is limited to decisions exclusively based on atomization when consumers should be advised every time their information is used in making decisions.</li> </ul>	N/A	N/A
<b>Access Rights</b>	<ul style="list-style-type: none"> <li>The Office proposes that any fees relative to consumer access to information be waived as a consumer’s access to their own information should be available at not cost and at all times.</li> </ul>	N/A	N/A
<b>Outsourcing Requirements</b>	<ul style="list-style-type: none"> <li>The Office questions whether the subcontractor would be subject to sanctions in the event of a breach of the data outsourcing agreement.</li> </ul>	<p>What should the legislator do to ensure that subcontractors (<i>i.e.</i>, service providers) respect privacy regulations? (Gabriel Nadeau-Dubois)</p>	<p>It has to do with the concept of consent. There should be the least amount of exceptions to consent as possible.</p>

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**Professor Vincent Gautrais, University of Montréal** [\[Video\]](#)

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>• Consent is a bad tool for protection. There are doubts as to whether individuals have the capacity to truly take control of their data because the provisions on consent presume that individuals are informed and interested.</li> <li>• Too high a burden is placed on consumers, as consent implies that the state is putting the responsibility on the individual.</li> <li>• Recommends that we create and even extend exceptions where consent is difficult to obtain, such as the ones introduced under Bill 64 regarding matters of research and cross border transfers of data.</li> </ul>	<p>How can we ensure individuals give full and informed consent? How can the framework change so that a clear line is drawn between individual consent and the unnecessary collection of data? (Simon Jolin-Barrette)</p> <p>Does Bill 64 strike a balance between what is required of businesses to comply in the face of sanctions and what individuals must provide to give consent? (Louis Lemieux)</p> <p>How do we ensure informed consent without over-burdening individuals? What has Europe done to cultivate a collective interest in protection? (Kathleen Weil)</p> <p>How do we frame consent for online platforms where there is no commercial transaction? (Gabriel Nadeau-Dubois)</p>	<p>There is no universal solution. In healthcare, individuals have a particular interest in understanding what they are consenting to, but on online platforms, consent is illusory. The Bill’s proposal of continual consent wherein consent is required with every change in purpose is taxing to individuals.</p> <p>Our approach will require flexibility, and we can expand the notion of “purpose.” We must reassess and expand the situations in which consent is not required because, as they are now, they are too narrow.</p> <p>This Bill takes privacy seriously and even though it borrows from the GDPR with respect to sanctions, these sanctions are reasonable. Some doubts are raised regarding the two to four per cent ceiling.</p> <p>Education is key, but I have noted a growing concern for protection. Every actor has a role to play and distribution of that responsibility must be established. Legislators have a role in innovating. We must move to unique identifiers that are more robust as a defensive tactic against identity theft.</p> <p>While Facebook is not selling anything, the relationship remains one of a consumer and, as such, the applicable law (<i>e.g.</i>, Civil Code) will apply. Thus, we can frame this relationship through law, but the best option is to operate through negotiation with these multinationals.</p>
<b>Privacy Regulator (Role of)</b>	<ul style="list-style-type: none"> <li>• The state (the CAI), in its dual role as a guide and sanctioner, must be granted additional resources given its enhanced obligations under Bill 64</li> </ul>	<p>Does Bill 64 favour the state’s role as guide or as sanctioner? (Simon Jolin-Barrette)</p>	<p>The state’s role as guide could be enhanced. They should identify the applicable norms and best practices operating in this domain.</p>

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Themes and Issues Discussed		Questions	Response
	in order to respond to demands and reduce delays. In its role as guide, the state must clarify to all actors what the best practices might be ( <i>e.g.</i> , regarding anonymization).	It has been suggested that an accompaniment model should be adopted for SMEs to better shoulder compliance costs and potential sanctions. What are your thoughts on this? (Kathleen Weil)	This points to the CAI lacking in its role as guide. The CAI could properly identify norms and propose standard contracts and policies. We must not shy away from clearly identifying proper norms for these actors to follow.
<b>Right to Be Forgotten</b>	<ul style="list-style-type: none"> <li>As this is an imported concept, there is question as to whether this is feasible within the Québec context.</li> </ul>	N/A	N/A
<b>Data Portability</b>	<ul style="list-style-type: none"> <li>Doubts concerning its feasibility and wonders if its adoption is based more on comfort rather than protection.</li> </ul>	N/A	N/A
<b>Interoperability</b>	N/A	It has been suggested that instead of borrowing from European legislation, we should take into account the North American context. Should we be less ambitious than what is proposed under the Bill or should we look to be precursors in North America? (Simon Jolin-Barrett)	We should not lower our ambitions; however, we must ensure that the law conforms to the Québec context. Privacy is prominently cultural, so it will be important to integrate these distinctions and specificities adequately. Our relationship to privacy is different and this influences the manner in which rights and legislation are interpreted by courts and treated by bodies, such as the CAI.

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**Conseil du patronat du Québec (Karl Blackburn and Karolyn Gagnon) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>• Bill 64’s specific consent requirements under article 14 over burdens and complicates the process, notably for the commercial and finance sectors. Further, this notion of specific consent is non-existent in European and Canadian law.</li> <li>• We recommend the blanket consent model.</li> </ul>	How do we frame consent in the form of online adhesion contracts? (Simon Jolin-Barrett)	The state must guide and educate consumers. Additionally, it must guide businesses by providing best practices and standard from contracts. We must be given tools to protect personal information and fulfill the objective of the Bill.
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>• The fact that a company incurs and assumes significant penalties in the event of data theft will in no way resolve the situation of the individual whose personal information is being used by fraudsters.</li> <li>• Recognition of the need for penalties for “delinquent” organizations.</li> <li>• The state must take on the role of guide to encourage and establish best practices with the view towards ensuring public confidence.</li> <li>• Rather than imposing penalties, we recommend exploring solutions and best practices to counter cyber attacks (e.g., methods to anonymize data when thefts occur) and that the legislation is limited to what is necessary to ensure the protection of personal information.</li> <li>• Additionally, we recommend providing greater flexibility for businesses by giving them time to adapt to the new legislation before significant penalties are imposed and that businesses be subject to only one fine in the jurisdiction where the offence was committed.</li> </ul>	N/A	N/A
<b>Interoperability</b>	<ul style="list-style-type: none"> <li>• With the view of promoting innovation, our recommendations are to ensure concerted action with the provincial and the federal governments before the adoption of the Bill and to ensure that the management of personal data and their cross-border transmission be harmonized with Québec’s main trading partners.</li> </ul>	We hear reticence from most merchant and commercial groups about going ahead with the adoption of this Bill before being able to co-ordinate with other provinces. How do you see us striking a balance between providing timely protection to	The commercial sector supports an improved protection framework; however, we are preoccupied with the adoption of certain measures. If we position ourselves correctly from the outset, we can both be better protected and encourage innovation and economic prosperity.



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Themes and Issues Discussed		Questions	Response
		<p>citizens and co-ordinating with other provinces? (Simon Jolin-Barrett)</p> <p>Regarding the necessity of coordinating with other provinces and the federal government, how do you view harmonization and how should it be achieved? (Mathieu Lévesque)</p>	<p>Argues that, commercially speaking, borders are illusory in the data-driven economy. Thus, there is a responsibility to ensure that what is put in place achieves the objective of data protection and also conforms to the objective of economic growth.</p>
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>• Bill 64 requires individual assessment of the equivalence of data protection laws in all jurisdictions to which the business may need to transmit data. This is a complex and costly process.</li> <li>• We recommend carrying out a reassessment of the concept of “degree of equivalency,” and that the cross-border data transfer provision be consistent with the legislative provisions of other Canadian jurisdictions in a manner that preserves the competitiveness of Québec businesses.</li> </ul>	<p>How do you see the retention of personal information by third parties? (Simon Jolin-Barrett)</p> <p>Can you explain why allowing contractual relationships to govern data protection is a more efficient and flexible solution? (Marc Tanguay)</p>	<p>Opposed to the “equivalency” of foreign laws requirement proposed by Bill 64 (as it is too burdensome), and prefers to maintain existing requirements, which only require having a contract in place with the service provider containing adequate data security measures.</p> <p>Argues that we can require that parties outside of Québec respect the protection provisions of Québec via contract.</p>

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**Maître Karl Delwaide and Maître Antoine Aylwin, Fasken [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>• Recommends being more specific about when consent may be considered implicit.</li> <li>• Recommends taking a more balanced approach with respect to the notion of consent itself, as it may be burdensome to systematically require consent for every purpose separately.</li> </ul>	<p>What do you mean by “implicit consent”? (Simon Jolin-Barrette)</p> <p>What do you think of “consentement en bloc” (<i>i.e.</i>, consent for more than one purpose at a time) or not asking for consent systematically? (Simon Jolin-Barrette)</p>	<p>The Bill indirectly recognizes that there is a notion of “implied consent,” although this is not expressly stated. We recommend that the legislator be more explicit about when to use express or implicit consent.</p> <p>Asking for consent at every step creates practical difficulties. It may be appropriate to ask for specific consent in certain limited types of situations. It could be beneficial to have blanket consent for information that is not sensitive.</p>
<b>Consent Exceptions</b>	<ul style="list-style-type: none"> <li>• We would like to see a broader definition of what is considered as a commercial transaction. Exception to consent requirements should not only apply in cases of changes of control.</li> <li>• Recommends having a consent exception in the employment context (in line with other provinces).</li> </ul>	<p>Can you give us a specific example of when the exception of consent can be applied in the context of a commercial transaction? (Kathleen Weil)</p> <p>What is your position on the notion of consent in the context of employment? (Kathleen Weil)</p> <p>What is your position on the availability of health data for researchers? (Kathleen Weil)</p>	<p>When companies want to get financing, they will have to share some information about their officers. The companies should not have to have to ask for the officers’ consent in such a situation. However, the Bill limits the exception to a transaction involving a transfer of ownership.</p> <p>The Bill should focus on transparency and not require consent for this type of situation. This has been done in other provinces.</p> <p>The authorization process for research purposes is burdensome and suffers from considerable delays, as the CAI lacks resources. As such, Bill 64’s approach is an improvement, as it no longer requires the CAI’s authorization. However, it is difficult for researchers to explain how they will use the information and what information they need because they are in the process of discovering it. The law should allow for more flexible use of information for researchers.</p>
<b>Sensitive Information</b>	<ul style="list-style-type: none"> <li>• We suggest that the legislators use the information protected by the Charter to make up the sensitive information category (<i>i.e.</i>, information that could be the basis of discrimination).</li> </ul>	N/A	N/A

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	Themes and Issues Discussed	Questions	Response
	<ul style="list-style-type: none"> <li>The current definition is too flexible and circumstantial. It is difficult to apply.</li> </ul>		
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>Concerned that the administrative monetary penalties does not provide sufficient safeguards. Concerned about the fact that those penalties may be imposed by a “person designated by the [CAI], but who is not a member of any of its divisions,” as it is not clear who this “designated person” will be or how they will make the determination to impose such penalties.</li> <li>Recommends limiting those administrative penalties to certain types of technical violations and reducing the maximum that may be imposed. For serious violations, warranting large sums, a penal regime should be applied.</li> </ul>	<p>Can you confirm that you believe that the penalties should be part of the penal system and not in the administrative monetary penalty system? (Simon Jolin-Barrette)</p> <p>What do you think about the administrative system convincing companies to respect the law? (Simon Jolin-Barrette)</p> <p>What do you think of the introduction of a private right action? (Kathleen Weil)</p>	<p>Yes. The penal system offers guarantees that are more in line with the foundations of our judicial system. Considering that there are penal provisions currently available under the private sector act, but these have never been applied, we cannot say that the penal system does not work.</p> <p>The CAI should keep its power to give out penalties for technical defaults. However, we recommend that there be a better balance between the administrative and penal system. The penal system could be used for individuals that voluntarily avoided protecting personal information.</p> <p>The penalties should also not be so high. A gradual system could be introduced. For example, first a name and shame process, second an administrative penalty and finally a penal sanction.</p> <p>Questions the necessity of including punitive damages, as these types of damages are very rare under Québec law. By including an amount of \$1,000 in punitive damages under Bill 64, this opens the door to class actions. This is a form of privatization of enforcement.</p>
<b>Policies and Procedures</b>	<ul style="list-style-type: none"> <li>Recommends removing the obligation to publish internal policies and procedures, as this may create cybersecurity risks depending on the level of detail required in these documents.</li> </ul>	<p>Why do you claim that publishing internal policies and procedures would harm the protection of data? (Simon Jolin-Barrette)</p> <p>How can explaining to consumers what measures are taken to protect their personal information be “privileged</p>	<p>This depends on how much detail the legislator wants to see in the published privacy policies. If you provide too much information, you are helping hackers avoid cybersecurity protections. On the other hand, if you do not require details, all the policies will look like the same skeletons and will not be very informative.</p> <p>This does not apply to security measures but it can apply to the way companies are using the personal information. Companies can reveal how they use the information, how they make deductions from the information they have, how they feed their algorithms based on the company’s</p>

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Themes and Issues Discussed		Questions	Response
		commercial information”? (Gabriel Nadeau-Dubois)	research. The Bill does not limit or provide a framework about what it would like to see published, it should specify the level of detail required.
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>Concerned that cross-border transfer requirements would apply to inter-provincial transfers. Recommends clarifying the definition of “State.” The Minister, Simon Jolin-Barrette, confirmed that “State” includes another province, and as such, cross-border data transfer requirements would apply to inter-provincial transfers. He also confirmed that this will be clarified in the future.</li> <li>Argues that the obligation to conduct a comparative legal assessment (of a foreign jurisdiction’s laws) and to enter into a contract before transferring data “outside Québec” is too burdensome. As such, recommends removing the comparative legal assessment requirement entirely.</li> </ul>	Can you explain your opinion on the comparative analysis requirement? (Mathieu Lévesque)	<p>The contractual agreement process is enough. Comparative analysis is complicated and burdensome, and should not be required. It is preferable to have a harmonized system with the rest of North America.</p> <p>Recommends recognizing alternative mechanisms for data transfers, including binding corporate rules.</p> <p>Recommends clarifying expectations in terms of conducting a privacy impact assessment.</p>

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**Office of the Privacy commissioner of Canada (Daniel Therrien) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>The Office of the Privacy Commissioner of Canada (OPC) states that the protection of personal information can no longer rely exclusively on the notion of consent (neither realistic nor reasonable).</li> <li>OPC takes note that it may be important to consider using an approach similar to that taken by the GDPR, which recognizes other lawful basis for processing, including the legitimate interests of businesses and the public interest.</li> </ul>	What are your opinions on the notion of consent? (Louis Lemieux)	Although there is a place for consent within privacy laws, alternative bases should be considered, including one based on legitimate business interests.
<b>Consent Exceptions</b>	<ul style="list-style-type: none"> <li>OPC warns that the consent exception regarding uses of information for “compatible purposes” may be interpreted broadly by organizations and may enable all types of uses.</li> </ul>	What are the risks associated to the Bill’s proposed “compatible use” consent exception? (Marc Tanguay)	OPC notes the risk that this exception will be given a broad interpretation by organizations in order to justify all types of uses without consideration for the legitimate privacy interests of individuals.
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>OPC states that enforcement mechanisms (<i>i.e.</i>, fines and sanctions) should not seek to punish and should not prevent innovation. Rather, they must seek to ensure compliance. As such, the OPC recommends that fines and sanctions should be proportional to economic gains derived by an organization who ignores privacy requirements.</li> <li>That said, the OPC expressly support fines and sanctions proposed under Bill 64, calling them “excellent” and “important and primordial to retain.”</li> </ul>	N/A	N/A
<b>Privacy by Design</b>	<ul style="list-style-type: none"> <li>Although the OPC recognizes that Bill 64’s “privacy by design” provision (art. 9.1) goes further than the GDPR, the OPC supports this outcome and encourages the Québec legislature to go further than the GDPR model in this respect.</li> </ul>	N/A	N/A
<b>Interoperability</b>	<ul style="list-style-type: none"> <li>It is important to have laws that are interoperable, as this ensures equivalent protections for individuals and reduces costs for businesses.</li> </ul>	Should Québec wait for reforms to the federal privacy legislation before legislating? (Simon Jolin-Barrette)	No. Although interoperability is important, the OPC notes that there has been inaction on the part of the federal government for many years.

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Themes and Issues Discussed		Questions	Response
	<ul style="list-style-type: none"> <li>OPC recommends not going further than the GDPR, except where necessary (<i>e.g.</i>, see comments on privacy by design).</li> </ul>	Are we aligned to the European model too closely, given that we operate in the North American context? (Simon Jolin-Barrette)	Although the U.S. is an important economic partner, the European model fits well within the Québec legal framework, which is also based on a rights-based privacy model.
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>OPC states that cross-border requirements under Bill 64 go further than the GDPR, and recommends exploring alternative mechanisms to allow such transfers to occur (<i>e.g.</i>, standard contractual clauses and binding corporate rules).</li> </ul>	What is your opinion on the Bill’s cross-border requirements ( <i>i.e.</i> , conducting a comparative legal assessment of foreign privacy laws)? (Simon Jolin-Barrette)	Although the OPC supports requiring organizations to conduct a PIA, the obligation to engage in a comparative legal assessment goes further than the GDPR. The GDPR provides alternative mechanisms for cross-border data transfers ( <i>e.g.</i> , standard contractual clauses and binding corporate rules), which should be considered.
<b>Prohibited Practices (“No-go zones”)</b>	<ul style="list-style-type: none"> <li>OPC does not support a blanket prohibition on certain practices, as this must be assessed on a case-by-case basis.</li> <li>OPC recommends expressly stating within the preamble of privacy laws the importance of privacy and data protection as fundamental human right, as this will inform the interpretation of the provisions of the law.</li> </ul>	<p>Are there certain types of information that should be wholly excluded from the commercial context? (Marc Tanguay)</p> <p>Are there certain types of business practices that should be prohibited under the Bill? (Gabriel Nadeau-Dubois)</p> <p>Why is it important for you to include the right to privacy directly in the preamble of privacy laws? (Marc Tanguay)</p>	<p>This will depend on the context. Although biometric data is a good example of information that should be carefully regulated, the OPC does not recommend a blanket exclusion for these types of data.</p> <p>This will also depend on the context. For instance, the OPC notes that surveillance by private enterprises and facial recognition are more likely to be unreasonable business practices, but this will depend on the circumstances. The OPC is careful in stating that the Bill should not prohibit practices that benefit the common good (<i>e.g.</i>, medical research).</p> <p>Although Québec already recognizes the importance of privacy as a fundamental human right under the CCQ and QC Charter, the OPC recommends expressly stating within the preamble of privacy laws the importance of privacy and data protection as fundamental human right, as this will inform the interpretation of the provisions of the law.</p>

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Professor Pierre-Luc Déziel, Université Laval [\[Video\]](#)

Themes and Issues Discussed		Questions	Response
<b>Definition of Anonymization and Pseudonymization</b>	<ul style="list-style-type: none"> <li>• Recommends clarifying the scope of “anonymized” and “pseudonymized” (<i>i.e.</i>, de-identified) data, as the Bill 64’s definition is too vague. To this end, recommends using a risk-based approach (<i>i.e.</i>, risk of re-identification) to determine whether information is anonymized or pseudonymized.</li> </ul>	<p>What do you think about the definition of personal information provided in the Bill? (Mathieu Lévesque)</p>	<p>The Bill’s definition of “depersonalized information” is not precise enough. In Ontario, the health sector legislation provides for a specific threshold that can be used to evaluate when information becomes depersonalized. Looking at the probability of someone being able to identify an individual based on their personal information can help create a better definition.</p> <p>Researchers talk more about “pseudonymized” data than “anonymized data.” Researchers can often get the risk of identification very low but data that no longer has any risk of identification, anonymized data, does almost not exist. A solution could be to better define what anonymized data is. The definition could be that it consists of data that can no longer lead to identification and of data that allows for a small risk of identification.</p>
<b>Research Exception</b>	<ul style="list-style-type: none"> <li>• Bill 64 fails to limit the delays caused by the authorization request process that researchers must currently go through in order to access personal information. By limiting the involvement of the CAI in this process, Bill 64 shifts an important burden onto researchers. Notably, the latter will be responsible for interpreting the law, which requires an expertise they do not have and makes reaching a standardized understanding increasingly difficult. A lack of predictability in the law’s applicability is likely to follow and cause additional delays, ultimately harming the research community.</li> <li>• Recommends changing the current granular level of control exercised on researchers applying for access to personal information. Access to personal information should be granted for a set research “program,” rather than for one project (<i>i.e.</i>, research protocol) at a time. Researchers should undergo a privacy training on the handling of personal information in order to gain special access privileges. They should then be audited on a regular basis. The CAI can take on the role of auditor if given the proper resources.</li> </ul>	<p>How can we make the authorization process to access personal information more effective for researchers while protecting the population’s personal information? (Simon Jolin-Barrette)</p> <p>What do you currently need to be qualified as a researcher that can access personal information? (Marc Tanguay)</p>	<p>We could give a global authorization to specific researchers, as it is done in Ontario, after the researchers have received training. They will then have more flexibility and an audit committee can control their use of personal information. Databases can be equipped with strict identification systems to ensure that they are granting access to the person with the actual qualification to access such information.</p> <p>Suggests that getting access to personal information should be based on a researcher’s pedigree and qualifications instead. For example, if the researcher has been recognized by his peers and is experienced, he or she may receive access to personal information for multiple projects.</p> <p>Stresses the importance of having a framework adapted to research. Does not support the simple application of legislation created for public and private organizations onto researchers. For example, the data limitation principle limits data access to researchers and fails to consider the unique characteristics of their domain. A criterion of “pertinence” (as opposed to “necessity”) may be more suitable for researchers because they do not have the same interests as public or private organizations. It is difficult for</p>

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Themes and Issues Discussed		Questions	Response
			researchers how exactly they will be using the information because they are in the process of researching something unknown.
		Can you tell us more about your idea of granting access to researchers for a “research program” rather than for one project at a time? (Marc Tanguay)	Instead of applying based on the specific methodology of a project, researchers can submit a broader research program. The current problem is that methodologies are so specific that researchers already need data to draft them and request for access.
<b>Privacy Regulator (Role of)</b>	<ul style="list-style-type: none"> <li>Supports the CAI’s new powers, but recommends ensuring that they receive adequate resources to enforce Bill 64 and play its role properly.</li> </ul>	Do you agree with the additional powers the Bill grants to the CAI? (Simon Jolin-Barrette)	<p>Believes that the CAI’s new powers are necessary and pertinent. Supports the CAI’s capacity to be flexible in distributing administrative penalties according to the size of the organization in default and the gravity of the offence. However, it is important to increase the resources available to the CAI.</p> <p>The CAI is often accused of being overprotective of personal information but having a CAI with a mission that includes advancing research and scientific progress would allow it to strike a better balance between the protection of personal information and supporting high quality research.</p>
<b>Right to Be Forgotten</b>	<ul style="list-style-type: none"> <li>Is not opposed to including a right to be forgotten under Bill 64, and endorses the OPC’s position in this respect (draft position paper).</li> </ul>	As you have written on the RTBF, what is your opinion on the right to be forgotten? (Kathleen Weil)	He is not opposed to including a right to be forgotten under the Bill. He is not concerned about the right to be forgotten limiting free speech rights, as judges are able to strike the right balance.



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**Bureau d’assurance du Canada (Marie-Pierre Grignon and Alain Camirand) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Consent Exceptions</b>	<ul style="list-style-type: none"> <li>Argued that article 18 of the private sector act, which gives businesses the ability to transfer or disclose personal information where it reasonably believes there is fraud, is currently insufficient to prevent fraud in a meaningful way. Insurers should be able to collect, use and transfer information with other organizations in order to prevent fraud without obtaining consent, as this jeopardizes an anti-fraud agenda.</li> <li>With respect to the commercial transactions exception, Bill 64 limits it to a transfer of ownership. This limitation does not sufficiently capture all business transactions, which should also benefit from the exception.</li> </ul>	Can you speak to your proposed anti-fraud consent exception measures? (Mathieu Lévesque)	We ask for more flexibility with respect to the use and disclosure of information in order to prevent fraud. If the legislative framework in Québec is too restrictive, it may lead to Québec being a target for fraudsters.
<b>Anonymization and De-Identification</b>	N/A	Can you explain your comments concerning the notion of anonymization and de-identification? (Mathieu Lévesque)	With respect to anonymization and depersonalization, we want to ensure that the Bill does not prevent insurers from using information for actuarial purposes in order to, for instance, generate new predictive models and generate premiums that are equitable and reflect reality.
<b>Transitional Provisions</b>	<ul style="list-style-type: none"> <li>Recommends including transitional provisions recognizing “droits acquis” (vested rights) with respect to existing data processing activities – that is, with respect to existing consents that were obtained prior to Bill 64’s assent as well as existing data processing agreements.</li> </ul>	N/A	N/A
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>Proposed sanctions are disproportionate. Indeed, Québec’s market size is considerably smaller than that of Europe, and sanctions should be scaled back accordingly.</li> </ul>	How can we abate your concerns regarding disproportionate sanctions related to non-compliance? Don’t you think that it is important to maintain these sanctions in order to signal to businesses the importance of taking data privacy and security seriously? (Simon Jolin-Barrette)	We are not opposed to having sanctions, as they can be effective deterrents. However, the sanctions proposed under Bill 64 may be disproportionate in their amount, especially in light of the size of Québec’s market relative to that of Europe. We recommend reducing those amounts.

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Themes and Issues Discussed		Questions	Response
<b>Automated Decision-Making</b>	<ul style="list-style-type: none"> <li>Recommends greater flexibility concerning automated decision-making requirements because it may be particularly burdensome for insurance companies, as most of their decisions are automated.</li> </ul>	<p>What are your concerns regarding the proposed amendments with respect to automated processing of information? (Simon Jolin-Barrette)</p>	<p>We are concerned that the Bill does not distinguish between different types of automated processing. Insurer’s business models are based on the automatized processing of information for the purposes of generating premiums. We question whether the Bill is meant to subject all automatized decisions to these amendments. We are suggesting a certain flexibility be introduced to the Bill.</p>
<b>Privacy Impact Assessments</b>	<ul style="list-style-type: none"> <li>The proposed provisions are too restrictive and unjustified given the privacy legislation existing in other provinces. It would be more appropriate that the obligation to conduct an impact assessment be only for disclosures/transfers outside of Canada. A principled approach would allow organizations to flexibly create their own policies, taking into account their size, their practices and their culture while maintaining the objective of protection.</li> </ul>	<p>Please identify examples of principled approaches that should be favoured? (Kathleen Weil)</p>	<p>Regarding evaluations of risk factors, under the Bill, all projects are captured by this evaluation obligation and we believe this is unnecessary. Instead, there should be a materiality threshold.</p>
<b>Interoperability</b>	<ul style="list-style-type: none"> <li>Bill 64 must reflect Québec’s market and must be harmonized with Canadian legislation, including PIPEDA, as this will avoid creating compliance and enforcement complications for businesses and financial institutions operating across Canada. Harmonization for insurance companies is critical given the rigorous legislative frameworks in which they operate in each province. Bill 64 creates incompatibilities and redundancies with a number of industry guidelines and, thus, risks creating confusion.</li> </ul>	<p>Are you proposing in your brief that Québec have the same criteria for breach notification requirements as those found under the federal legislation? (Simon Jolin-Barrette)</p> <p>How do you suggest we undertake harmonization efforts and what issues can you identify of which we should be aware? (Kathleen Weil)</p>	<p>Generally, we are proposing a harmonized approach throughout Canada in a manner not to subject national businesses to burdensome compliance requirements. However, we are not saying that the federal legislation is necessarily better than what is proposed under Bill 64.</p> <p>We should be inspired by the federal regulation’s privacy by design approach whereby consent is utilized in a manner that does not over-burden citizens. We must consider the Québec context within this approach.</p>
<b>Cross-Border Requirements</b>	<ul style="list-style-type: none"> <li>The proposed mechanisms for the transfer of information create barriers for businesses. Mechanisms that facilitate the transfer of information between related entities should be encouraged.</li> </ul>	N/A	N/A

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**Commission de l’éthique en science et en technologie (Jocelyn Maclure and Dominic Cliche) [\[Video\]](#)**

Themes and Issues Discussed	Questions	Response
<p><b>Notion of Consent</b></p>	<ul style="list-style-type: none"> <li>Sometimes, obtaining consent from users is not enough to ensure the protection of personal information. The law must explain to organizations what it can and cannot do with personal information, even after obtaining consent from the individual.</li> </ul>	<p>What do you think about the consent requirements set out in the Bill? (Mathieu Lévesque)</p> <p>What is your position on the way organizations should ask for consent? (Gabriel Nadeau-Dubois)</p> <p>We do not think that the consent requirements must be removed, but it is not in and of itself sufficient. There should be rules about what can and cannot be done with data, regardless of if consent was obtained from the users.</p> <p>Individuals often do not have the required level of knowledge to give informed consent. Furthermore, they are restricted by the high costs of not giving consent and not accessing services.</p> <p>Experimenting with the idea of blanket consent should only be done in the context of research. For private companies, the usual consent requirements should be maintained.</p> <p>However, the more we increase the requests for consent, the more we risk seeing users trivialize them. We have to keep in mind that the goal is not to give individuals the control on all and any use of their data, but to make sure that they have the tools to not be fooled.</p>
<p><b>Definition of Personal Information</b></p>	<ul style="list-style-type: none"> <li>Bill 64 offers a narrow definition of what is personal information.</li> <li>There is a legislative gap regarding the regulation of other types of information (e.g., inferred data). This is important because information that appears to no longer qualify as personal information can still be re-identified.</li> </ul>	<p>What do you think of the Bill’s definition of personal information? (Mathieu Lévesque)</p> <p>How can we protect ourselves against inferred data? (Kathleen Weil)</p> <p>The problem is also the dichotomy that the Bill imposes regarding personal versus non-personal information. We could imagine a framework that not only regulates personal information, but also regulates inferred data. One way to regulate them would be to say that there are certain types of inferred data that organizations are unauthorized to create. We could also imagine a system with a gradual classification of data and corresponding regulations.</p> <p>This question highlights the weaknesses of a system based only on individual consent. Inferred data slips through the cracks of the consent requirements.</p> <p>We could have a framework that obliges organizations to identify what data is inferred and to disclose what information it was based on and what kind</p>

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Themes and Issues Discussed		Questions	Response
			of inferences were made. Furthermore, the inferences could be subjected to guidelines that ensure that they are made to increase the population’s benefit.
		What do you suggest we do to protect personal information inferred from anonymized data? (Simon Jolin-Barrette)	The legislators should think about what organizations they can allow to create links between anonymized data sets (cross matching). This includes defining what kind of inferences these organizations can make. In addition, as currently done in Europe, it may be beneficial to require organizations to conduct a risk of re-identification assessment in a privacy impact assessment.
<b>Privacy by Design</b>	<ul style="list-style-type: none"> <li>We appreciate and support the introduction of the notion of “privacy by design” under Bill 64, as it supports data protection in addition to the notion of consent.</li> </ul>	N/A	N/A
<b>Research Exception</b>	<ul style="list-style-type: none"> <li>It may be interesting to consider a completely distinct regime for access to information in the context of research.</li> </ul>	How can we make sure that the research is separated from all commercial interests? (Simon Jolin-Barrette)	We could evaluate the researcher’s project. However, the relationship between researchers and commercial groups is already standardized overall. Research must respect academic freedom, the scientific method, and ethical standards.

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Professor Céline Castets-Renard, Université Toulouse and University of Ottawa [\[Video\]](#)

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>Recognizes that consent may not always be required.</li> </ul>	How should we define consent and when should we require it? (Simon Jolin-Barette)	It might not be the right approach to ask for consent at every step. It is important to remember that the objective of consent requirements is to protect individuals and that asking for it at every step does not always guarantee protection. For example, users might not always read all the privacy terms and conditions.
<b>Anonymization</b>	N/A	Can you help us understand where we are heading with anonymized information? (Louis Lemieux)	It is important to distinguish anonymized and pseudonymized information. Anonymized data is discussed as being the standard that we must strive for but it is almost impossible to reach. Pseudonymization is an appropriate standard because it is realistic and maintains the obligation of protecting personal information, even when the information is in its pseudonymized form.
<b>Definition of Sensitive Information</b>	<ul style="list-style-type: none"> <li>The definition of sensitive information is vague and fragile, which is especially problematic for the treatment of bulk data that sometimes includes a mix of personal and non-personal information. If you do not provide a clear definition of sensitive information, it is difficult to classify the information and to respect the law.</li> </ul>	Does the Bill’s definition of sensitive information provide enough information for private and public organizations to govern themselves and respect the law? (Marc Tanguay)	<p>The definition is difficult to implement in practice. It does not allow for a unique and certain interpretation. Companies will not be able to know, before interpretation, if they are dealing with sensitive information.</p> <p>Québec could consider adding a list to the Bill of what it considers to be sensitive information, similarly to the GDPR.</p> <p>The international trend is to follow the GDPR because countries want to maintain information sharing on an international scale. The Bill’s strict provisions can be considered a competitive advantage because Québec must respond to the development of an artificial intelligence hub in Montréal.</p>
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>The authority on privacy issues, in this case the CAI, must be equipped with professionals and large financial resources. It is of no use to draft a law including high penalties if the regulator does not have the means to ensure that the law is being respected.</li> </ul>	What is your opinion on the powers granted to the CAI in the Bill? (Simon Jolin-Barette)	<p>The CAI must be able to help companies respect the law and can do so by publishing guidelines and organizing informative conferences.</p> <p>The CAI can only help companies if it is equipped with the proper resources and with professionals that understand both the law and the technologies used by businesses.</p>

**SUMMARY OF SPECIAL CONSULTATIONS AND PUBLIC HEARINGS ON QUÉBEC’S BILL 64**

Themes and Issues Discussed		Questions	Response
<b>Small and Medium-Sized Enterprises</b>	<ul style="list-style-type: none"> <li>Recommends developing directives and tools to accompany and provide support to SMEs. For example, the GDPR allows for a gradual application of some norms through the acknowledgement of contextual factors (<i>e.g.</i>, level of knowledge, risks for the right of individuals). Favours an interpretation <i>in concreto</i> of the law’s dispositions.</li> </ul>	What kind of measures would you propose to support SMEs? (Mathieu Lévesque)	<p>The support offered to SMEs should include informative tools, software, guidelines on how to manage sensitive versus non-sensitive information, and questionnaires that SMEs can fill out to assess if they are respecting the law.</p> <p>It is important to clarify the requirements set out in the law. For example, the Bill does not tell companies exactly what it expects from them when it comes to the privacy impact assessment that they want them to perform.</p>
<b>Interoperability</b>	N/A	Are the Bill’s similarities with the GDPR positive or negative? Should Québec wait for the federal government to enact privacy legislation? (Simon Jolin-Barette)	There are interesting provisions in the GDPR but privacy is strongly related to culture and context. Canada is in between the United States and Europe. This can be an opportunity for Québec to serve as a model for other provinces. If Canada imposes high penalties, as Québec proposed to do under the Bill, it will not be alone in doing so in North America. The Federal Trade Commission already imposes such penalties.
<b>Children’s Privacy</b>	N/A	Is there currently a trend in North America to include special protections for children when drafting privacy legislation? (Kathleen Weil)	The Bill does have a provision on consent for children and other jurisdictions similarly address this issue in their legislation. Such clauses are necessary and efforts should be made to raise privacy awareness amongst children.

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**Option consommateurs (Christian Corbeil and Alexandre Plourde) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>The consent-based approach is inadequate for protecting consumers given that the only means by which consumers can express their desire not to consent is through abstaining from using products or services (e.g., Facebook or Google) that have become almost essential to daily life.</li> <li>The provisions reinforcing the obligation to inform consumers of the use of their data are welcomed; however, the scope of information provided to consumers should be broadened.</li> </ul>	N/A	N/A
<b>Right to Be Forgotten</b>	N/A	<p>Are the provisions regarding de-indexing in the Bill satisfactory? (Simon Jolin-Barrette)</p> <p>Have you looked at de-indexing from the perspective of victims? (Ian Lafrenière)</p>	<p>Yes, this new right strikes the appropriate balance. It is narrower than what is proposed under the GDPR and is likely compatible with freedom of expression.</p> <p>We have not. However, we would like to address some concerns expressed by others with respect to making private organizations judges of what is removed. We believe that rather than removing data indiscriminately when faced with a large volume of requests, organizations will simply fail to respond or refuse to de-index. As such, requestors may turn to the CAI as a recourse for enforcement.</p>
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>We support the adoption of provisions allowing higher penalties to be imposed on offending businesses, as these will foster a preventative approach with respect to privacy protection.</li> <li>We support the inclusion of a maximum penalty (as a per cent of a company’s worldwide sales) and concerns that these sanctions will impeded innovation are unfounded.</li> </ul>	Can you speak to the dissuasive measures imposed on offending companies? (Kathleen Weil)	Businesses are not incentivized to take cybersecurity issues seriously. Note that, while the fines are high, they provide for maximums as a means of deterring multinationals. The Bill has provided for criteria to apportion penalties based on the severity of the breach and the capacity of the business to pay.
<b>Privacy Regulator (Role of)</b>	<ul style="list-style-type: none"> <li>Increasing funding to the CAI is critical for achieving the purposes of Bill 64. We propose that the CAI’s annual budget be doubled.</li> </ul>	How do you interpret the CAI’s role as guide under the Bill? (Kathleen Weil)	I think we can anticipate interpretation issues and, thus, the CAI will need to provide clear guidelines for businesses.

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Themes and Issues Discussed		Questions	Response
<b>Prohibited Practices (“No-go zones”)</b>	<ul style="list-style-type: none"> <li>• Bill 64 does not sufficiently challenge business models that rely on tracking and mass collection of citizen data for commercial purposes. The ubiquity of the internet-of-things has serious implications for consumers and their data; Bill 64 should better regulate these digital business models.</li> <li>• Bill 64 should explicitly include the right of internet users to refuse to be tracked online through simple and easily accessible technological mechanisms.</li> <li>• Bill 64 should prohibit data processing causing unlawful discrimination or economic exploitation of consumers, as well as the use of data collected on children for commercial purposes.</li> </ul>	<p>How must the Bill integrate parental rights with child protection? (Louis Lemieux)</p> <p>Can you elaborate on what you mean by “consumers should protected from being economically exploited” by virtue of their data being collected? (Simon Jolin-Barrette)</p> <p>What technological mechanisms are available to enforce the right of internet users to refuse to be tracked online? (Marc Tanguay)</p>	<p>Under the Bill, parents must provide consent for their children under 14. We are concerned that this may lead to abuses where parents over-share the information of their children. De-indexing solves this issue, but we propose that the use of children’s information for commercial purposes be prohibited.</p> <p>We are mainly concerned with multinational tech companies and online giants tracking consumers and using their data against them (e.g., artificially inflating prices based on behavioural analytics). These are illicit and discriminatory practices that should be regulated.</p> <p>With respect to tracking, we are concerned with how far reaching a company’s ability to track consumers is. Thus, there should be mechanisms in place to allow the user to stop tracking when on third party sites.</p>



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**Régie de l’assurance maladie du Québec (Marco Thibault and Sonia Marceau) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>We believe that abandoning the notion of implicit consent is a mistake and that the current legal framework offers a satisfying level of protection.</li> <li>We are concerned that asking for consent at every step may slow down our efforts to innovate and improve.</li> </ul>	<p>Why are you concerned about abandoning the notion of implicit consent? (Simon Jolin-Barrette)</p> <p>Can you explain how we treat consent differently in each situations and when is it express or implied? (Kathleen Weil)</p>	<p>Implicit consent is often used at the Régie, and asking for express consent at every step could be burdensome. It could also harm the efforts of researchers that need to use the data for something they had not considered at the beginning of their project. Greater flexibility with respect to the notion of consent must be developed in the health care system and with respect to health data.</p> <p>When a patient requests a service, you are giving us your implied consent to use your personal information to order to provide you with that service. We do not ask for consent at every step once a request to receive a service is made.</p>
<b>Anonymization</b>	<ul style="list-style-type: none"> <li>With the emergence of artificial intelligence, the risks of re-identification have increased. It is difficult for organizations to develop the expertise necessary to properly anonymize information.</li> <li>We wonder if it is possible to give the mandate of anonymizing data to other organizations like the Institute of Statistics of Québec, for example.</li> </ul>	N/A	N/A
<b>Privacy Impact Assessment</b>	<ul style="list-style-type: none"> <li>Concerned about the efforts necessary to document this process of conducting a privacy impact assessment. This is especially an issue when the production of statistics must also be evaluated, which is something that does not even include any personal information.</li> <li>We are unsure about if evaluating all the technological tools used by the Régie will create value for its users. We must strike a value between documentation and creating value.</li> </ul>	N/A	N/A

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**Commission d’accès à l’information du Québec (Diane Poitras and Jean-Sébastien Desmeules) [\[Video\]](#)**

Themes and Issues Discussed		Questions	Response
<b>Notion of Consent</b>	<ul style="list-style-type: none"> <li>CAI argues that Québec laws already provide for other legal bases authorizing the collection, use and disclosure of personal information.</li> <li>CAI states that consent is not required to collect personal information from the person concerned, provided information is collected for serious and legitimate purposes and other principles are respected (e.g., transparency, limitation principle, etc.). Consent is only required if a business seeks to disclose personal information or use it for new purposes, and the law already provides for consent exceptions for certain types of disclosures.</li> <li>However, the CAI agrees that the definition of “consent” under Bill 64 should be clarified.</li> </ul>	N/A	N/A
<b>Consent Exceptions</b>	<ul style="list-style-type: none"> <li>Recommends clarifying the scope of certain consent exceptions, namely the consent exception applicable to secondary use for “compatible purposes”. Also recommends that the consent exceptions under the public sector should be properly limited.</li> <li>Recommends adopting a model similar to that found in Ontario with respect to the access and use of data for research purposes (in the public sector).</li> </ul>	How should we clarify the definition of “compatible purposes”? (Gabriel Nadeau-Dubois)	CAI worries that the definition would be interpreted too broadly by businesses.
<b>Material Scope</b>	<ul style="list-style-type: none"> <li>With respect to political parties, the CAI is concerned that Bill 64 does not go far enough in that it does not extend to all political parties nor to all information held by those parties. The CAI supports comments made by Élection Québec.</li> </ul>	Do you wish to subject all political parties to the law without any exceptions for destruction, use or disclosure? (Simon Jolin-Barrette)	The CAI endorses the regime currently in place in British Columbia, and recommends extending privacy laws to all information held by provincial and municipal political parties. Exceptions may be enacted to address particular situations.
<b>Anonymization and Pseudonymization</b>	<ul style="list-style-type: none"> <li>Recommends clarifying the meaning of “personal information,” “de-identified information” and “anonymization.”</li> </ul>	How does the definition of “personal information” need clarification? (Simon Jolin-Barrette)	The CAI recommends clarifying the definition of “personal information,” as it noticed that many businesses (wrongfully) believe that by simply removing direct identifiers (pseudonymization), information is no longer subject to privacy laws. It should also expressly state that it includes

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Themes and Issues Discussed		Questions	Response
			inferred data. The CAI recommends looking at the definition used under the GDPR.
		What are your thoughts about the risks of re-identification? (Mathieu Lévesque)	“Anonymization” (as defined under the Bill) is practically impossible to achieve. The CAI recommends looking at the definition under the GDPR.
<b>Cross-Border Transfers</b>	<ul style="list-style-type: none"> <li>Recognizes that the obligations imposed on businesses with respect to cross-border data transfers are burdensome.</li> </ul>	N/A	N/A
<b>Enforcement Mechanisms</b>	<ul style="list-style-type: none"> <li>CAI promises to impose fines for the purposes of compliance (not punishment). In any event, the CAI recommends providing fixed amounts that may be imposed for specific types of infringements, and maintain maximum penalties for only the most serious infringements.</li> <li>CAI ask for enhanced funding of its activities in order to properly enforce Bill 64 (the CAI currently only has 67 employees).</li> </ul>	<p>What resources are required to meet the CAI’s enhanced mandate? (Simon Jolin-Barrette)</p> <p>What transition period do you recommend having if Bill 64 is passed? (Marc Tanguay)</p> <p>How do you perceive your role if Bill 64 is passed? (Kathleen Weil)</p> <p>Why do you recommend having the express power to compel the production of document, notwithstanding professional secrecy, litigation privilege or any other confidentiality privilege? (Marc Tanguay)</p>	<p>We have not conducted a study on this, but it will probably be important.</p> <p>CAI recommends a transition period in stages. For most provisions one year, but for sanctions and fines, a longer delay should be considered.</p> <p>CAI agrees that it should act as a guide for businesses (preventative approach). The ultimate objective is to ensure compliance and not to impose sanctions on businesses who want to comply.</p> <p>For instance, in the context of a data breach, the CAI may want to have access to their own internal evaluations/reports in order to determine whether the business took adequate security measures. However, certain businesses tend to raise professional secrecy and litigation privilege in order to prevent access to those documents.</p>
<b>Biometrics</b>	<ul style="list-style-type: none"> <li>Recommends incorporating the provisions on biometric data (which are currently in a separate act known as the IT Act) into the privacy laws.</li> </ul>	Why do you recommend importing biometric data provisions into the privacy laws? (Simon Jolin-Barrette)	First, many organizations are not aware that these provisions exist. Second, the IT Act’s objective is not to protect data ( <i>i.e.</i> , poor fit).

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	Themes and Issues Discussed	Questions	Response
<b>Profiling and Automated Decision-Making</b>	<ul style="list-style-type: none"> <li>Concerned that the provisions on automated decision-making do not adequately ensure transparency and equitable decision-making (especially in the field of AI). Also concerned that the provisions on profiling do not go far enough, especially as profiling is seen as an intrusive practice.</li> <li>CAI recommends enacting prohibitions on the processing of data in situations that are prejudicial/intrusive (<i>e.g.</i>, genetic or biometric data). For instance, using facial features (biometric data) for profiling purposes (<i>e.g.</i>, determine sexual orientation) should be a prohibited practice.</li> </ul>	<p>You recommend that the framework provide for the collection, use, retention and disclosure of genetic information. What example does this recommendation capture? (Marc Tanguay)</p> <p>What problem does the CAI wish to address with the proposal to limit the circumstances under which a criminal record checks may be requested by employers? (Marc Tanguay)</p>	<p>This will prohibit requiring a person to consent to disclose genetic information for the purposes of insurance or employment. This is to reduce the risk of discrimination.</p> <p>These checks are often used in situations where it is not required by the position being applied for. The Ontario framework is interesting in this respect and should be considered.</p>

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