



October 1, 2020

Hon. Lisa M. Thompson  
Minister of Government and Consumer Services  
777 Bay Street, 5<sup>th</sup> Floor  
Toronto, Ontario  
M5B 2H7

**VIA Ontario Regulatory Registry**

Dear Minister Thompson:

**Re: Public Consultation – Reforming Privacy in Ontario’s Private Sector**

1. The Canadian Wireless Telecommunications Associations is the recognized authority on wireless issues, developments and trends in Canada. Its membership is comprised of companies that provide services and products across the wireless industry, including wireless carriers and manufacturers of wireless equipment, who combine to deliver Canada’s world-class wireless services, one of the key pillars on which Ontario’s digital and data-driven economy is built.
2. We are writing you with respect to the Ministry of Government and Consumer Service’s request for consultations regarding *Reforming Privacy in Ontario’s Private Sector* (Consultation).
3. CWTA and its members recognize that the protection of personal information (PI) and customer trust are important to ensuring Ontarian’s confidence in digital services. That is why our members have made the protection of PI a key element of their business practices and corporate values. Our members’ reputations and success are based on establishing a trusting relationship with their customers. It is why they invest significant resources into their privacy-related processes and security.
4. CWTA and its members understand that regulation can help foster customer trust. However, as noted in the government’s discussion paper, any new privacy protections should not “pose unnecessary burden to businesses, or inhibit the growth and prosperity of Ontario’s innovation ecosystem.” This is particularly the case for federally-regulated industries, such as the telecommunications industry, which is already subject to multiple federal laws and regulations governing the protection of PI. For this reason, and the reasons set out below, CWTA and its members respectfully request that any private sector privacy legislation enacted by the Government of Ontario expressly exempt telecommunications service providers (TSPs) from its application.

**Creating Coherent Canadian Privacy Regulations**

5. While we support the government’s desire to safeguard the PI of Ontarians, Ontarians’ PI is already well-protected in the context of the telecommunications services that they receive pursuant to multiple

federal laws and regulations applicable to federally regulated undertakings generally and to TSPs specifically.

6. The collection, use, and disclosure of PI by TSPs is governed by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) and subject to the oversight of the Office of the Privacy Commissioner of Canada (OPC). In addition to investigating privacy complaints and ensuring compliance with the mandatory reporting of security incidents, the OPC also develops general guidance related to the application of PIPEDA to specific issues. These include issues arising from new business models and technical innovations, such as outsourcing, cloud computing, and obtaining meaningful consent.
7. PIPEDA has long been recognized as a leading piece of privacy regulation globally. Canada is known for taking a leadership role in the protection of PI and the Federal Government has announced that it intends to introduce changes to PIPEDA. It has already completed its consultation regarding changes that it is considering, including topics identified in the Government of Ontario's discussion paper.
8. TSPs are also subject to the federal *Telecommunications Act (Act)* and the oversight of the Canadian Radio-television and Telecommunications Commission (CRTC). The CRTC is the federal agency that regulates and supervises Canada's communications systems, including telecommunication systems, in the public interest.
9. The CRTC's responsibility for privacy in telecommunications is explicitly set out in objective 7(i) of the Act (i.e. "to contribute to the protection of the privacy of persons"). While the investigation of complaints under PIPEDA is within the jurisdiction of the OPC, the CRTC has the power to create regulations concerning privacy with respect to telecommunications services. This power includes the ability to impose privacy standards that go beyond those found in PIPEDA and that are specific to industry use cases.
10. Under the powers granted in the Act, the CRTC has imposed regulatory measures and other actions to protect confidential customer information and safeguard consumer privacy. These measures include:
  - a. Prohibiting TSPs from disclosing confidential customer information other than the customer's name, address, and listed telephone number, without express consent of the customer, except in certain specified circumstances;
  - b. Prohibiting TSPs from using PI collected for the purpose of traffic management practices for other purposes or disclosing such information;
  - c. As part of the Wireless Code and the Internet Code, contracts and related documents, including privacy policies, "must be written and communicated in a way that is clear and easy for customer to read and understand." Permanent copies of these documents must be provided to customers after they agree to a contract and TSPs must notify customers of amendments to their privacy policies at least 30 days before the amendments take effect, also in language in that is plain, clear and easy to understand;
  - d. Issuance of an expectation that any TSP that charges for services will obtain express, opt-in consent before using a customer's data for the purposes of targeted advertising. The requests for consent must include a detailed explanation of the actual information that a company might use to target them for advertising purposes; and
  - e. Requiring TSPs to offer services that protect consumer privacy, such as unlisted number service, call display, call display blocking, prohibiting call return to a blocked number and call

trace. The CRTC also established the National Do Not Call List and the unsolicited Telecommunication Rules framework.

11. In addition to the above measures, the CRTC engages in ongoing research that contributes to its understanding of current and emerging privacy issues in the wireless market. For example, in 2017, the CRTC published its *Report on the Collection and Use of Canadians' Personal Information by Wireless Service Providers and Third Party Entities*.<sup>1</sup>
12. TSPs are also subject to Canada's anti-spam legislation, commonly referred to as CASL, which has as one of its purposes, the regulation of "commercial conduct that discourages the use of electronic means to carry out commercial activities, because that conduct compromises privacy and the security of confidential information." CASL – enforced by the CRTC, OPC, and Competition Bureau, establishes rules (including consent rules) pertaining to the sending of commercial electronic messages, the alteration of transmission data in electronic messages, and the installation of computer programs on another person's computer system, in the course of commercial activity. The detailed rules set out in CASL, coupled with the onerous penalty provisions under the Act, have ensured that TSPs have developed rigorous compliance programs in connection with the legislation's requirements.
13. As the above examples illustrate, the CRTC and the OPC have complementary roles in protecting the privacy of TSP customers across Canada, including Ontario. Given the Federal Government's plan to update PIPEDA to address new ways in which PI is collected and processed, while also ensuring Canadian businesses can remain competitive and innovative in the global digital economy, there is nothing to suggest that this privacy framework is insufficient to protect the privacy of Ontarians who use federally-regulated telecommunications services.
14. Introducing an additional privacy regime would put an unnecessary burden on TSPs, including the need to develop different privacy measures to meet varying regulatory requirements, and will introduce confusion for individual Ontarians regarding their rights and where to go for resolution of a privacy matter.

#### **Overlapping and Inconsistent Regulations Undermine Competitiveness**

15. The Government of Ontario has recognized that having overlapping provincial and federal regulations is unnecessary to protect the interests of Ontarians. In December 2018, a bill entitled "Restoring Ontario's Competitiveness Act" was introduced by Ontario's Minister of Economic Development, Job Creation and Trade. The bill amended or repealed certain Acts, including the *Wireless Services Agreement Act, 2013 (WSAA)* and two regulations made under it.
16. In explaining why the WSAA, which provided for certain consumer protections in relation to wireless services contracts, should be repealed, the Government spokesperson indicated that it "has been superseded by federal regulations which provide nearly identical protections for all Canadians."<sup>2</sup> The spokesperson further stated that, "[b]y repealing it, we are harmonizing with federal regulations, which have made the original Act redundant", and that repealing the WSAA "frees businesses from

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<sup>1</sup> <https://crtc.gc.ca/eng/publications/reports/rp170106/rp170106.htm#4>

<sup>2</sup> <https://mobilesyrupt.com/2018/12/10/experts-split-ontario-bill-66-aim-repeal-wireless-services-agreement-act/>

burdensome duplicate regulations and provides consumers with clarity...<sup>3</sup> The bill received royal assent and the WSAA was repealed on October 3, 2019.

17. The same logic applies with respect to protecting the privacy of Ontario users of telecommunication services. As described above, multiple federal regulations and administrative oversight by the OPC and CRTC provide for a robust framework that protects the PI of telecommunication subscribers. Adding new provincial legislative or regulatory requirements – particularly those which may be inconsistent with federal requirements - would be redundant, create confusion for customers, and impose burdensome regulations on service providers that would impede the competitiveness of important federal undertakings that provide critically important services to Ontarians and, indeed, all Canadians.

#### **Exempting TSPs from Provincial Private Sector Privacy Regulations**

18. For the reasons stated above, CWTA strongly recommends that if the government of Ontario introduces private sector privacy legislation it expressly exempts TSPs from the application of such legislation.
19. CWTA appreciates the opportunity to provide its comments regarding this matter.

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<sup>3</sup> Ibid.