

## Canada – Data Privacy

In Canada, the collection, use and disclosure of personal information in the private sector is regulated by federal legislation entitled the Personal Information and Electronic Documents Act (“PIPEDA”), as well as Quebec’s Act Respecting the Protection of Personal Information in the Private Sector (the “Quebec Privacy Act”), British Columbia’s Personal Information Protection Act and Alberta’s Personal Information Protection Act (collectively, the “BC and Alberta Acts”).

Personal information practices in the provinces of Quebec, British Columbia or Alberta which are purely intra-provincial (i.e., there is no inter-provincial transfer of information) are subject solely to the applicable provincial legislation and not to PIPEDA. All personal information practices performed in the course of commercial activities in the remaining provinces or which involve inter-provincial or international information transfers are subject to PIPEDA.

Due to the division of powers in Canada, PIPEDA can only regulate employee information practices of federally regulated entities (these include banks, airlines, railways, shipping and other businesses that are outside the legislative authority of the provinces). Since only Quebec, British Columbia and Alberta have introduced provincial privacy legislation, outside of these provinces, the information practices of most employers with respect to their employees’ personal information is not subject to regulation.

### Collection and Processing of Personal Data

#### *Compliance Alternatives*

The collection of personal information is permitted under PIPEDA, and the BC and Alberta Acts for journalistic, artistic or literary purposes. In Quebec, journalistic, historical or genealogical material collected, held, used or communicated for legitimate information of the public is excluded and the provisions on collection and confidentiality of personal information do not apply to information which, by law, is public.

The collection, use and disclosure of personal information by employers subject to PIPEDA is subject to certain requirements, including where such collection: 1) has been consented to by the employee (consent can be both express and implied based on the employee’s reasonable expectations); 2) is clearly in the employee’s interests, and consent is not timely available; 3) would compromise the quality of the data if consent were obtained, and collection is required to investigate a breach of contract or law; 4) is of information that is publicly available and specified by regulations; 5) is of data used when investigating a contravention of law; or 6) is made in the context of an emergency that threatens life, health or security.

Express consent is required when collecting, using and disclosing sensitive data (whether information is sensitive will depend upon the context – although some information such as income and medical records will always be considered sensitive).

The Quebec Privacy Act requires the employer, when establishing a file on an employee, to inform the employee of: 1) the object of the file, 2) the use that will be made of the personal information, 3) the categories of persons who will have access to it within the enterprise 4) the place where the file will be kept and 5) rights of access and rectification. Personal information can only be collected from an individual, other than the subject individual, with the subject individual’s consent, unless: 1) such collection is authorized by law; 2) the information is collected in the interest of the subject and cannot be collected from the subject in due time, or 3) collection from a third party is necessary to ensure the accuracy of the information.

The BC and Alberta Acts permit employers to collect, use and disclose employee personal information without the individual’s consent where: 1) such collection, use and disclosure is reasonable, 2) the information is related to the employment of the individual and, 3) prior to the collection, use and disclosure, the individual is notified of the purpose for such collection, use and disclosure.

The Income Tax Act (“ITA”) of Canada requires that written authorization be obtained from an employee for an employer to use his or her Social Insurance Number for purposes other than to comply with the ITA.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company’s equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

Transfer of Personal Data	
<i>Disclosure/ Registration</i>	None applicable.
<i>Other Requirements</i>	<p>Under PIPEDA, the employer must: 1) be accountable for the data privacy policies and practices; 2) identify the purpose for the collection and use of data; 3) obtain the employee's consent before or at the time of collection or any new use; 4) limit collection and not mislead regarding the purpose of collection; 5) use or disclose only for the purpose of collection; 6) keep personal information accurate, complete, and up-to-date as necessary for the identified purpose; 7) adopt appropriate security safeguards; 8) inform employees about policies and practices for the management of personal information; 9) give employees access to data for purposes of correction or amendment; and 10) adopt accessible recourse procedures.</p> <p>Pursuant to the Quebec Privacy Act, the employer must: 1) have a serious and legitimate interest; 2) stipulate the purpose; 3) collect only the data required for the purpose; 5) include in the file the source of personal information collected from any third person carrying on an enterprise 6) establish adequate security measures; 7) ensure that the data is accurate when used; and 8) obtain the consent of the employee to use personal information for a purpose other than the purpose for which it was collected or to communicate it to a third person unless permitted pursuant to the enumerated exceptions.</p> <p>The BC and Alberta Acts contain access and correction, accuracy, protection, retention and administration requirements similar to those contained in PIPEDA.</p>
<i>Compliance Alternatives</i>	<p>There are no restrictions in PIPEDA on the transfer of personal information across the Canadian border (unless disclosure is made to a third party). Consistent with an employer's requirement to inform employees of its personal information practices, employers should describe details of such transfers to its employees.</p> <p>To transfer personal information of individuals residing in Quebec outside of Quebec, an employer must take all reasonable steps to ensure protections against misuse and improper disclosure of the information are maintained and must not transfer it out of Quebec unless the employer is certain that the person or body outside Quebec will adhere to the Quebec privacy rules respecting use of the information and communication of it to third parties.</p>
<i>Other Requirements</i>	The EU has decided that PIPEDA provides an adequate level of protection for personal information that meets the requirements of the EU Data Protection Directive 95/46/EC (the " <b>Directive</b> "), so that all cross-border data transfers between entities subject to PIPEDA and the EU are presumed in compliance with the Directive.

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