

Privacy – 2023 Year in Review



FEDERAL

LAWS & ANNOUNCEMENTS

Feb 27: The Treasury Board banned federal government workers from downloading or using the TikTok app on their government-issued mobile devices in the interest of privacy and national security. There have been reports suggesting that the Chinese government has been using the app for espionage and unauthorized collection of individuals' private information.

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May 29: The Office of the Privacy Commissioner published [new guidelines](#) on workplace privacy, including with regard to the use of software and other electronic solutions to monitor employees without violating PIPEDA and other personal privacy laws.

Jun 29: The Office of the Privacy Commission offered [new instructions](#) to help businesses and individuals protect privacy on mobile apps. Many organizations that use apps to improve their customer interactions collect clients' personal information to do so, the Commission notes.

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Aug 24: The federal Office of the Privacy Commission joined its global counterparts in issuing a [joint statement](#) calling

on social media companies and other operators of websites that host publicly accessible personal information to take stronger measures to protect the private personal information of their users from illegal AI data scraping programs.

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Nov 25: The Office of the Privacy Commissioner of Canada issued [new guidelines](#) to help employers and others who deploy web-connected cameras to monitor rooms or areas keep the images gathered confidential in accordance with federal privacy rules.

ALBERTA

LAWS & ANNOUNCEMENTS

May 25: The privacy commissioners of Canada, Alberta, BC and Quebec announced that they will jointly investigate OpenAI, the artificial intelligence company that operates ChatGPT, to ensure that it has secured “valid and meaningful consent” to collect, use and disclose personal information of individuals in Canada via the new app, which has gained more than 100 million worldwide users since its release last November.

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CASES

Privacy: Lunchroom Security Cameras Can Stay but Workers Must Be Notified

The union objected when a grocery store unilaterally installed surveillance cameras in the small lunchroom of a remote area warehouse in which all workers had no realistic alternative but to take their breaks. The company contended that the cameras were there to monitor security not productivity, which is far more problematic under privacy laws. Moreover, the cameras were in plain view and not monitored in real time.

While ruling that the cameras could stay given the history of security incidents at the site, the Alberta arbitrator ordered the employer to post signs and add language to its theft policy making it clear to workers that:

- The cameras are there;
- The video recordings aren't accessible remotely;
- Only limited personnel have access to the recordings and only as needed to investigate a security incident; and
- The recordings are deleted within 6 months after they're made

[[*Teamsters Local Union No. 987 of Alberta v Sobeys Capital Incorporated \(Rocky View\)*](#), 2023 CanLII 4464 (AB GAA), January 16, 2023].

Action Point: Implement a [legally sound video surveillance policy](#) at your workplace

BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

Jan 27: The BC Privacy Commissioner called on the province to beef up privacy law protections to prevent data breaches in the private sector the way it has for the public sector.

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Mar 6: Newly tabled [Bill 12](#), the *Intimate Images Protection Act*, would make it easier for victims whose intimate photos or images have been published without consent to get the postings taken down and sue the person(s) who posted them for money damages.

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Mar 30: Newly passed [Bill 12](#), the *Intimate Images Protection Act*, makes it easier for victims whose intimate photos or images have been published without consent to get the postings

taken down and sue the person(s) who posted them for money damages.

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May 4: BC sent letters to Twitter, Tinder, Meta, Grindr, Pornhub and other social media companies of their duties to immediately stop distribution or remove intimate images that were posted without the subject's consent from their platform or face court orders, fines and other penalties under newly passed [Bill 12](#), the *Intimate Images Protection Act*.

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Sep 13: A new BC Office of Information and Privacy Commission report finds that the Provincial Health Services Authority has taken "meaningful steps" to bolster the security of the Provincial Public Health Information System (System) used to track the spread of COVID-19 and other infectious diseases.

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CASES

Privacy: Railway Needs Union OK to Use Surveillance Camera Footage for Discipline

The union didn't object when the railway installed new surveillance cameras at the General Yard Office because it was assured that they were just a security measure to prevent break-ins. So, when the railway used footage from the cameras to suspend 2 employees for conduct unbecoming, the union filed a grievance. The federal arbitrator sided with the union, finding that if the railway wanted to use the cameras for purposes other than preventing theft and break-in, it had to first get the union's permission [[Canadian pacific railway company v Teamsters Canada rail conference](#), 2023 CanLII 59873 (CA LA), June 6, 2023].

Action Point: Implement a [legally sound video surveillance](#)

[policy](#) at your workplace

MANITOBA

LAWS & ANNOUNCEMENTS

Mar 6: Following the federal government's lead, Manitoba banned use of the TikTok app on all government-issued mobile devices. The ban is a cautionary measure and there's no evidence that the app has actually compromised any government information, according to the press release announcing the ban.

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Mar 13: First Reading for [Bill 27](#), which would make it easier for victims whose intimate images are published without consent to collect money damages by establishing the presumption that published images were nonconsensual. The accused would then have the burden of proving that they had reasonable grounds to believe that the accuser did consent to the publication.

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Apr 12: Second Reading for [Bill 27](#), which would make it easier for victims whose intimate images are published without consent to collect money damages by establishing the presumption that published images were nonconsensual. The accused would then have the burden of proving that they had reasonable grounds to believe that the accuser did consent to the publication.

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May 30: Royal Assent for [Bill 27](#), which will make it easier for victims whose intimate images are published without consent to collect money damages by establishing the

presumption that published images were nonconsensual. The accused will then have the burden of proving that they had reasonable grounds to believe that the accuser did consent to the publication.

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NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

Mar 2: To protect personal information, New Brunswick wiped the TikTok app from all government-issued mobile devices and installed blocks to prevent anybody from uploading the app onto such devices.

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NEWFOUNDLAND & LABRADOR

LAWS & ANNOUNCEMENTS

Feb 8: The Newfoundland Privacy Commissioner began public review of the *Personal Health Information Act* limiting the collection, use and disclosure of private medical information without the individual's written consent. To participate, email phiareview@gov.nl.ca before March 1.

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Mar 2: Newfoundland banned use of the TikTok app on all government-issued mobile devices, citing privacy concerns arising from the Chinese social media service's data collection practices that provide almost complete access to the contents of the user's phone.

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May 3: Newfoundland kicked off required 5-year review of its

personal health information and privacy laws and what, if anything, should be done to improve and modernize them. Deadline to complete the [online questionnaire](#): May 24.

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Oct 6: The Newfoundland and Labrador Information and Privacy Commissioner joined his counterparts across Canada in issuing a resolution calling on governments to take immediate action to beef up legislative privacy protections for young employees that “are significantly vulnerable to the growing influence of digital technologies” and stepped-up monitoring from their employers, both at and away from the workplace.

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NOVA SCOTIA

LAWS & ANNOUNCEMENTS

Mar 1: Add Nova Scotia to the list of provinces that have banned use of the TikTok app on government-issued mobile devices in response to concerns of threats to the personal data those devices contain.

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ONTARIO

LAWS & ANNOUNCEMENTS

Jan 25: The Ontario Privacy Commissioner sent a [letter](#) asking the Ministers of Labour and Public and Business Service Delivery to work together to create new laws to limit employer surveillance over and strengthen workplace privacy protections of workers. Employer “surveillance can invade an employee’s home and capture intimate details of family life that are not relevant to an employee’s professional capacity,” the letter

notes.

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May 25: Ontario's Privacy and Human Rights Commissioners issued a joint statement calling on the government to develop "robust and granular rules" on the use of artificial intelligence technologies in the public sector. While AI technologies can greatly benefit society, they also rely on immense volumes of personal information that may not be properly protected, the Commissioners warn.

CASES

Privacy: Consent to Disclose Medical Info for HR Management Violates Workers' Privacy

Originally, safety-sensitive construction workers had to sign a form giving the company consent to disclose medical information about their functional limitations for the purpose of return-to-work and accommodations planning. When the company expanded the form to include disclosures for managing the employment relationship, the teamsters cried foul. The arbitrator struck down the new policy, concluding that it was overly broad and invasive of workers' privacy. The Ontario court found that the arbitrator's ruling was reasonable and rejected the employer's appeal [[Canadian Pacific Railway Company v. Teamsters Canada Rail Conference](#), 2023 ONSC 5109 (CanLII), September 13, 2023].

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PRINCE EDWARD ISLAND

LAWS & ANNOUNCEMENTS

Mar 1: Following the lead of the federal government, PEI banned the use of TikTok on all government-connected mobile devices to protect the personal data contained on those

devices. The government says it's a proactive measure and that there's no evidence suggesting that any personal data has actually been compromised.

QUÉBEC

LAWS & ANNOUNCEMENTS

May 25: The Québec Information Access and Privacy Commission will join its federal, Alberta and BC counterparts in jointly investigating OpenAI, the artificial intelligence company that operates ChatGPT, to ensure that it's secured "valid and meaningful consent" to collect, use and disclose personal information of individuals in Canada via the new app, which has gained over 100 million worldwide users since its release last November.

SASKATCHEWAN

LAWS & ANNOUNCEMENTS

Aug 1: Updated *Health Information Protection Act* regulations took effect in Saskatchewan. [Key changes](#) include new privacy protections for genetic information and limits on trustees' collection, use and disclosure of personal health information.
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YUKON TERRITORY

LAWS & ANNOUNCEMENTS

Oct 5: Yukon tabled [Bill 32](#), the *Victims of Crime Act*, to make it harder for those convicted or accused of a crime to access personal information about victims that might compromise the latter's privacy and safety. The law won't impact access to employment records by current or former employees nor to victims' access to their own records.
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safety