

SUMMARY TABLE OF CONTENTS

<i>About the Authors</i>	iii
<i>What's New in the 2024 Edition</i>	v
<i>Introduction</i>	1
Chapter 1: Overview, Legislative Goals and Objectives	7
Chapter 2: Data Breach	57
Chapter 3: Outsourcing, International Transfers of Personal Information and the Sale of a Business	71
Chapter 4: Healthcare Sector Impact	95
Chapter 5: The Application of PIPEDA to the Education Sector	117
Chapter 6: Information Technology Issues	131
Chapter 7: PIPEDA and the Employment Relationship	163
Chapter 8: Artificial Intelligence.....	179
Chapter 9: Looking Ahead	191
Personal Information Protection and Electronic Documents Act.....	195
PART 1 — Protection of Personal Information in the Private Sector	195
Division 1 — Protection of Personal Information	201
Division 1.1 — Breaches of Security Safeguards	216
Division 2 — Remedies	218
Division 3 — Audits	226
Division 4 — General.....	227
Division 5 — Transitional Provisions	237
PART 2 — Electronic Documents.....	237
PART 3 — Amendment to the <i>Canada Evidence Act</i>	246
PART 4 — Amendments to the <i>Statutory Instruments Act</i>	250
PART 5 — Amendments to the <i>Statute Revision Act</i>	250
PART III — Consolidated Statutes and Regulations of Canada	256

PIPEDA Quick Reference 2024 Edition

PART 6 — Coming into Force	258
Schedule 1 — Principles Set Out in the National Standard of Canada Entitled Model Code for the Protection of Personal Information, CAN/CSA-Q830-96	259
Schedule 2 — Acts of Parliament.....	271
Schedule 3 — Regulations and Other Instruments	271
Schedule 4 — Organizations	272
Can. Reg. 2018-64 — Breach of Security Safeguards Regulations	273
Can. Reg. 2004-308 — Electronic Alternatives Regulations for the Purposes of the Federal Real Property and Federal Immovables Act	277
Can. Reg. 2008-115 — Electronic Alternatives Regulations for the Purposes of Subsection 254(1) of the Canada Labour Code.....	280
Can. Reg. 2013-221 — Electronic Commerce Protection Regulations	282
Can. Reg. 2005-399 — Health Information Custodians in the Province of Ontario Exemption Order.....	292
Can. Reg. 2001-8 — Order Binding Certain Agents of Her Majesty for the Purposes of Part 1 of the Personal Information Protection and Electronic Documents Act ..	293
Can. Reg. 2004-219 — Organizations in the Province of Alberta Exemption Order.....	294
Can. Reg. 2004-220 — Organizations in the Province of British Columbia Exemption Order.....	295
Can. Reg. 2003-374 — Organizations in the Province of Quebec Exemption Order.....	296
Can. Reg. 2011-265 — Personal Health Information Custodians in New Brunswick Exemption Order.....	297
Can. Reg. SI/2012-72 — Personal Health Information Custodians in Newfoundland and Labrador Exemption Order.....	298
Can. Reg. 2016-62 — Personal Health Information Custodians in Nova Scotia Exemption Order.....	299
Can. Reg. 2001-7 — Regulations Specifying Publicly Available Information.....	300

Summary Table of Contents

Can. Reg. 2005-30 — Secure Electronic Signature Regulations	302
<i>Index</i>	307

TABLE OF CONTENTS

<i>About the Authors</i>	iii
<i>What's New in the 2024 Edition</i>	v
Introduction.....	1
Chapter 1: Overview, Legislative Goals and Objectives	
Introduction: Definitions of Privacy	7
Part I: The Origins of the New Privacy Legislation	8
1. The Change Created by the Internet	8
2. The Origins and Evolution of PIPEDA.....	9
3. Canada's Anti-Spam Legislation	13
4. Private Sector Privacy Legislation in Canada's Provinces	14
Part II: The Mechanics of the Application of PIPEDA.....	16
1. When Did the Various Provisions of the Act Come into Effect?.....	16
2. Amendments to PIPEDA	17
3. What Kinds of Activities Are Covered?.....	17
4. What Kinds of Activities Are Not Covered?	19
5. What Is Personal Information?	19
6. Restrictions on the Collection, Use and Disclosure of Personal Information	22
Part III: Practical Advice	23
1. Accountability: Implementing a Privacy Policy	23
2. Identifying the Purposes	24
3. Consent	25
4. Limiting the Collection of Information	33
5. Limiting Use, Disclosure and Retention of Information .	35
6. Accuracy	37
7. Safeguards.....	37
8. Openness	38
9. Individual Access.....	38
10. Designation of a Compliance Team	40

PIPEDA Quick Reference 2024 Edition

Part IV: The Effect of PIPEDA on the Employer-Employee Relationship.....	40
Part V: The Practical Complaints Process and Penalties That Could Be Imposed	41
<i>Appendix: Sample Privacy Policy</i>	49

Chapter 2: Data Breach

Part I: Breach Reporting and Notification Requirements	59
Part II: Equifax and Other Recent Data Breach Decisions	62
Part III: Privacy Torts	67
Conclusion.....	70

Chapter 3: Outsourcing, International Transfers of Personal Information and the Sale of a Business

Part I: Outsourcing	72
Part II: CIBC Outsourcing Decision & TD Canada Trust Outsourcing Decision	75
Part III: Equifax Decision and Consultation regarding Transfers for Processing	79
Part IV: International Transfers of Personal Information	80
Part V: Collection of Personal Information from Other Organizations	86
Part VI: Mergers, Acquisitions and Asset Purchases.....	89
<i>Appendix: Checklist of Considerations When Outsourcing or Transferring Personal Information Across Borders</i>	93

Chapter 4: Healthcare Sector Impact

Introduction.....	95
Part I: Is Personal Health Information or Medical Information Treated Any Differently from Other Personal Information under PIPEDA?	95
Part II: Are Healthcare Organizations Engaged in “Commercial Activities”?.....	96
Part III: The Relationship Between PIPEDA and Provincial Privacy Legislation.....	99
Part IV: Collection, Use and Disclosure of Personal Health Information by Healthcare Providers	101

Table of Contents

1. Health Research.....	103
2. Genetic Testing	105
3. Disclosure to Comply with a Subpoena, Warrant or Court Order or Rules of Court Related to the Production of Records in the Litigation Context	106
4. Statutory Reporting Obligations	107
5. The Sale of Information Regarding Physicians' Prescribing Patterns.....	108
6. Use of Prescription Information for Marketing to Patients.....	109
7. Protecting Privacy During a Pandemic	110
Conclusion.....	111
<i>Appendix: Privacy Program Implementation Checklist (Health Care Institution)</i>	113
1. <i>Privacy Audit: Identify Collection, Uses and Disclosures of Information within the Organization</i>	113
2. <i>Identify Privacy Officer & Privacy Team</i>	113
3. <i>Prepare the Privacy Policy.....</i>	114
4. <i>Training of Staff & Publication of the Privacy Policy ...</i>	114
5. <i>Security of Privacy Information</i>	115
6. <i>Complaint Process</i>	115
7. <i>Access to Information Process.....</i>	116
8. <i>Maintaining Current Knowledge</i>	116
Chapter 5: The Application of PIPEDA to the Education Sector	
Part I: Educational Institutions Subject to PIPEDA.....	117
Part II: Meaning of "Commercial Activities"	120
Part III: Consent Exemptions for Statistical, Scholarly or Research Purposes	122
Part IV: Consent Exemptions for Fundraising	125
Part V: Educational Institution Employee Information	126
Part VI: Student Records.....	127
1. Access to Records	127
Conclusion.....	128

PIPEDA Quick Reference 2024 Edition

<i>Appendix: PIPEDA Compliance Checklist for Educational Institutions</i>	129
---	-----

Chapter 6: Information Technology Issues

Introduction	131
Part I: General Information Technology Issues	134
1. Obtaining Consent Electronically	134
2. The Need for Compliance	137
Part II: Specific Information Technologies Issues	138
1. Internet-Based Marketing	138
A. E-mail addresses	138
B. Cookies	138
C. Spyware	139
2. Social Networking Sites	139
3. Data Mining	144
4. Radio Frequency Identification Device (RFID)	145
5. Deep Packet Inspection	146
6. Imaging Technology	147
7. Payload Data Collection	147
8. Outsourcing	148
A. Applications Service Provider Arrangements	150
B. Disaster Recovery	150
9. Biometrics	151
10. Live Video Streaming	155
11. Disclosure of Online Information to Police During an Investigation	156
12. Internet of Things	157
13. Remote Access Technology	159
Part III: Practical Tips on Compliance	160
Conclusion	162

Chapter 7: PIPEDA and the Employment Relationship

Part I: Application of PIPEDA to Federally Regulated Employers	164
1. Surveillance	164

Table of Contents

2. Security Checks	173
3. Medical Information.....	174
4. Labour Arbitrator’s Jurisdiction	176
Part II: Other Potential Applications of PIPEDA	176
Conclusion.....	177

Chapter 8: Artificial Intelligence

Introduction.....	179
Part I: Application of PIPEDA to Artificial Intelligence	180
1. Training Data and the Improper Collection, Use or Disclosure of Personal Information	180
2. The Problem of Explainability	182
3. Effective Safeguards	183
Part II: Federal Private-Sector Privacy Regulation of AI	185
1. OPC’s Regulatory framework for AI	185
2. Bill C-27: The Consumer Privacy Protection Act and the AIDA.....	185
A. The Consumer Privacy Protection Act	186
B. Artificial Intelligence and Data Act (“AIDA”)	186
3. OPC Recommendations.....	188
Conclusion.....	188

Chapter 9: Looking Ahead

Part I: Bill C-26 – <i>An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts</i>	191
Part II: Bill C-27 – <i>The Digital Charter Implementation Act, 2022</i>	192
Conclusion.....	193

PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

SHORT TITLE

1 Short title	195
----------------------------	-----

PIPEDA Quick Reference 2024 Edition

PART 1 — PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR

Interpretation

2	Definitions	195
	Purpose	
3	Purpose.....	199
	Application	
4	Application	199
4.01	Business Contact Information.....	200
4.1	Certificate under <i>Canada Evidence Act</i>	200

DIVISION 1 — PROTECTION OF PERSONAL INFORMATION

5	Compliance with obligations.....	201
6	Effect of designation of individual.....	201
6.1	Valid consent.....	202
7	Collection without knowledge or consent	202
7.1	Definitions	207
7.2	Prospective business transaction.....	208
7.3	Employment relationship	210
7.4	Use without consent	210
8	Written request	211
9	When access prohibited	212
10	Sensory disability	215

DIVISION 1.1 — BREACHES OF SECURITY SAFEGUARDS

10.1	Report to Commissioner	216
10.2	Notification to organizations	217
10.3	Records.....	218

DIVISION 2 — REMEDIES Filing of Complaints

11	Contravention.....	218
----	--------------------	-----

Table of Contents

Investigations of Complaints		
12	Examination of complaint by Commissioner	219
12.1	Powers of Commissioner	220
Discontinuance of Investigation		
12.2	Reasons	221
Commissioner's Report		
13	Contents	222
Hearing by Court		
14	Application	223
15	Commissioner may apply or appear	223
16	Remedies	224
17	Summary hearings	224
Compliance Agreements		
17.1	Compliance agreement	224
17.2	Agreement complied with.....	225
DIVISION 3 — AUDITS		
18	To ensure compliance	226
19	Report of findings and recommendations	227
DIVISION 4 — GENERAL		
20	Confidentiality	227
21	Not competent witness	229
22	Protection of Commissioner	230
23	Consultations with provinces	230
23.1	Disclosure of information to foreign state	232
24	Promoting the purposes of the Part.....	233
25	Annual report.....	234
26	Regulations	234
27	Whistleblowing	235
27.1	Prohibition.....	235
28	Offence and punishment.....	236
29	Review of Part by parliamentary committee	236

PIPEDA Quick Reference 2024 Edition

DIVISION 5 — TRANSITIONAL PROVISIONS

30	Application	237
----	-------------------	-----

PART 2 — ELECTRONIC DOCUMENTS

Interpretation

31	Definitions	237
----	-------------------	-----

Purpose

32	Purpose.....	238
----	--------------	-----

Electronic Alternatives

33	Collection storage, etc.....	239
----	------------------------------	-----

34	Electronic payment	239
----	--------------------------	-----

35	Electronic version of statutory form	239
----	--	-----

36	Documents as evidence or proof	240
----	--------------------------------------	-----

37	Retention of documents	240
----	------------------------------	-----

38	Notarial act	241
----	--------------------	-----

39	Seals	241
----	-------------	-----

40	Requirements to provide documents or information.	241
----	---	-----

41	Writing requirements.....	241
----	---------------------------	-----

42	Original documents	242
----	--------------------------	-----

43	Signatures.....	242
----	-----------------	-----

44	Statements made under oath.....	242
----	---------------------------------	-----

45	Statements declaring truth, etc.....	243
----	--------------------------------------	-----

46	Witnessed signatures	243
----	----------------------------	-----

47	Copies	243
----	--------------	-----

Regulations and Orders

48	Regulations	244
----	-------------------	-----

49	Amendment of schedules	244
----	------------------------------	-----

50	Regulations	245
----	-------------------	-----

51	Effect of striking out listed provision	246
----	---	-----

PART 3 — AMENDMENT TO THE CANADA EVIDENCE ACT

52-55	246
-------	-------	-----

56	247
----	-------	-----

Table of Contents

57	.....	249
PART 4 — AMENDMENTS TO THE STATUTORY INSTRUMENTS ACT		
58-59	.....	250
PART 5 — AMENDMENTS TO THE STATUTE REVISION ACT		
60-61	.....	250
62-64	.....	251
Revision		
65	.....	252
66-67	.....	253
68	.....	254
69-70	.....	255
71	.....	256
PART 6 — COMING INTO FORCE		
72	Coming into force	258
SCHEDULES		
Schedule 1 — Principles Set Out in The National Standard of Canada Entitled Model Code for The Protection of Personal Information, CAN/CSA-Q830-96		259
Schedule 2 — Acts of Parliament.....		271
Schedule 3 — Regulations and Other Instruments		271
Schedule 4 — Organizations		272
2018-64 — BREACH OF SECURITY SAFEGUARDS REGULATIONS		
INTERPRETATION		
1	Definition of “Act”	273
REPORT TO COMMISSIONER		
2	Report — content, form and manner	273

PIPEDA Quick Reference 2024 Edition

NOTIFICATION TO AFFECTED INDIVIDUAL		
3	Contents of notification	274
4	Direct notification — form and manner.....	275
5	Indirect notification — circumstances.....	275
RECORD-KEEPING		
6	Record-keeping requirements	275
COMING INTO FORCE		
7	S.C. 2015, c. 32.....	276
2004-308 — ELECTRONIC ALTERNATIVES REGULATIONS FOR THE PURPOSES OF THE FEDERAL REAL PROPERTY AND FEDERAL IMMOVABLES ACT		
1	Interpretation	277
2	Application	277
3	Electronic Documents.....	278
4	Electronic Signature.....	278
5	Coming Into Force	279
2008-115 — ELECTRONIC ALTERNATIVES REGULATIONS FOR THE PURPOSES OF SUBSECTION 254(1) OF THE CANADA LABOUR CODE		
INTERPRETATION		
1	Definitions	280
ELECTRONIC DOCUMENTS		
2	Conditions	280
3	Pay statement considered furnished to the employee.....	281
COMING INTO FORCE		
4	Registration	281

Table of Contents

2013-221 — ELECTRONIC COMMERCE PROTECTION REGULATIONS

DEFINITION

- | | | |
|---|---------------------------|-----|
| 1 | Definition of “Act” | 282 |
|---|---------------------------|-----|

FAMILY RELATIONSHIP AND PERSONAL RELATIONSHIP

- | | | |
|---|---|-----|
| 2 | Family and personal relationships | 282 |
|---|---|-----|

EXCLUDED COMMERCIAL ELECTRONIC MESSAGES

- | | | |
|---|---|-----|
| 3 | Excluded messages — Section 6 of Act | 283 |
| 4 | Excluded messages — Paragraph 6(1)(a) of Act..... | 284 |

CONDITIONS FOR USE OF CONSENT

- | | | |
|---|---------------------------------------|-----|
| 5 | Person whose identity is unknown..... | 285 |
|---|---------------------------------------|-----|

SPECIFIED COMPUTER PROGRAMS

- | | | |
|---|-------------------------|-----|
| 6 | Specified programs..... | 286 |
|---|-------------------------|-----|

MEMBERSHIP, CLUB, ASSOCIATION AND VOLUNTARY ORGANIZATION

- | | | |
|---|-----------------|-----|
| 7 | Membership..... | 287 |
|---|-----------------|-----|

COMING INTO FORCE

- | | | |
|---|-----------------------|-----|
| 8 | S.C. 2010, c. 23..... | 287 |
|---|-----------------------|-----|

2005-399 — HEALTH INFORMATION CUSTODIANS IN THE PROVINCE OF ONTARIO EXEMPTION ORDER

- | | | |
|---|-------------------------|-----|
| 1 | Exemption | 292 |
| 2 | Coming Into Force | 292 |

2001-8 — ORDER BINDING CERTAIN AGENTS OF HER MAJESTY FOR THE PURPOSES OF PART 1 OF THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

- | | | |
|---|------------------------|-----|
| 1 | Application | 293 |
| 2 | Coming into Force..... | 293 |

PIPEDA Quick Reference 2024 Edition

**2004-219 — ORGANIZATIONS IN THE PROVINCE OF
ALBERTA EXEMPTION ORDER**

1	Exemption	294
2	Coming Into Force	294

**2004-220 — ORGANIZATIONS IN THE PROVINCE OF BRITISH
COLUMBIA EXEMPTION ORDER**

1	Exemption	295
2	Coming Into Force	295

**2003-374 — ORGANIZATIONS IN THE PROVINCE OF QUEBEC
EXEMPTION ORDER**

1	Exemption	296
2	Coming Into Force	296

**2011-265 — PERSONAL HEALTH INFORMATION CUSTODIANS
IN NEW BRUNSWICK EXEMPTION ORDER**

1	Exemption	297
2	Coming into Force.....	297

**SI/2012-72 — PERSONAL HEALTH INFORMATION
CUSTODIANS IN NEWFOUNDLAND AND
LABRADOR EXEMPTION ORDER**

1	Exemption	298
2	Coming into Force.....	298

**2016-62 — PERSONAL HEALTH INFORMATION
CUSTODIANS IN NOVA SCOTIA EXEMPTION ORDER**

1	Exemption	299
2	Coming into Force.....	299

**2001-7 — REGULATIONS SPECIFYING PUBLICLY
AVAILABLE INFORMATION**

1	Information	300
2	Coming into Force.....	301

Table of Contents

2005-30 — SECURE ELECTRONIC SIGNATURE REGULATIONS

1	Interpretation	302
2	Technology or Process	303
3	.....	304
4	.....	305
5	Presumption.....	305
6	Coming Into Force	305
	<i>Index</i>	307