

Canada's Privacy Law Priorities:

Better Protections for Canadians + Innovation
for Economic Growth

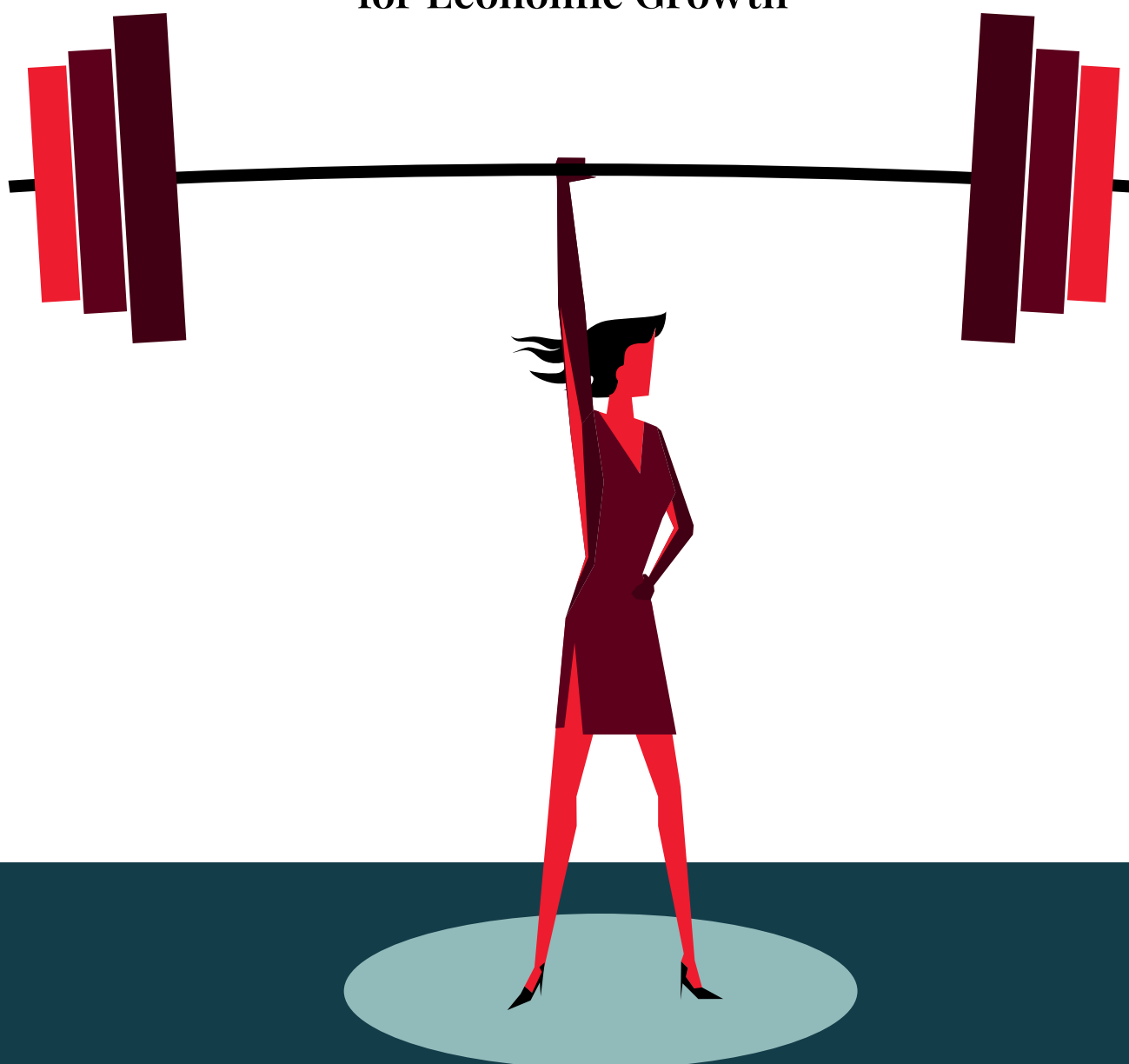


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Executive summary

In June 2022, the Government of Canada introduced Bill C-27, which would modernize Canada's private sector privacy framework through a proposed Consumer Privacy Protection Act (CPPA). The CPPA's purpose statement sets two fundamental priorities: ensuring effective privacy protection for consumers and enabling Canadians to enjoy the enormous social and economic benefits of private sector data use.

To achieve these priorities, the law needs to be uniquely Canadian. It must borrow from the strengths of Canadian privacy law to date, learn from the pitfalls of other jurisdictions, and take into account Canada's unique social and economic context.

It must reflect an understanding that in Canada, there are—and should continue to be—separate public and private sector privacy laws, reflecting the vastly different nature of the relationships between an individual and the state, and between an individual and a private sector organization.

Canada's approach must also reflect four key realities:

- **The benefits to Canadians of data use**, which is critical to providing products and services, and to driving innovation, efficiency and productivity across all Canadian sectors.
- **The unique nature of the Canadian economy**, including Canada's reliance on global trade and data flows, and the vital role of small and medium-sized enterprises.
- **Consumers' growing expectations** that organizations will provide them with relevant products, services and information, and their increasing understanding that data exchange is required to deliver that value.
- **The realities of technological advancement**, with the pace of global innovation requiring a fluid and responsive policy framework to ensure Canadian organizations can compete effectively at home and globally.

The CPPA proposes a strong and effective framework that accounts for these realities, including:

- Preserving Canada's principles-based and technology-neutral approach to privacy, which would ensure that Canadian privacy law remains responsive to the face of rapidly evolving technologies, business models and consumer expectations.
- Proposing strong and modernized protections, including a suite of new consumer rights, greater transparency and accountability requirements for organizations, and the strongest financial penalties in the G7.
- Reflecting stakeholder feedback on an earlier draft bill by introducing a number of upgrades, including Canada's first-ever targeted protections for children and youth and new efforts to ensure meaningful consent.

Appropriately, Canada has taken a principles-based and risk-weighted approach, avoiding the pitfalls and unintended consequences resulting from the rules-based, one-size-fits-all approach to privacy governance seen in other jurisdictions like the European Union.

If passed, the CPPA would achieve Canada's privacy law priorities. It would strengthen privacy protections for consumers and ensure Canadian organizations could leverage data to secure a competitive economic position in the global digital economy for years to come.



Context

A dual-purpose law

Canada's long-anticipated privacy law reform bill was tabled in the House of Commons in June 2022. Bill C-27, if passed, would replace Canada's current privacy law (PIPEDA) with a new law to be known as the Consumer Privacy Protection Act (CPPA).

The CPPA has a dual-purpose statement: to "govern the protection of personal information of individuals while taking into account the need of organizations to collect, use or disclose personal information in the course of commercial activities."¹



This dual-purpose statement reflects the importance of commercial privacy law achieving two fundamental priorities: providing effective privacy protection for consumers and enabling Canadians to benefit from the enormous social and economic benefits of data. These two priorities can and must be achieved in harmony.

To achieve these priorities, the law needs to continue to be uniquely Canadian. It must borrow from the strengths of more than two decades of Canadian privacy law, learn from the pitfalls of privacy laws in other jurisdictions, and consider Canada's unique social and economic context.

This report confirms why a made-in-Canada approach to privacy reform that achieves its dual purpose is critical for Canadians, and demonstrates why the CPPA proposes a strong framework that, if passed, will serve Canadians for years to come.

Note: All references to privacy law in this document pertain to law governing commercial activities in the private sector (including the commercial activities of not-for-profit organizations), and not to laws governing the public or regulated health sectors.

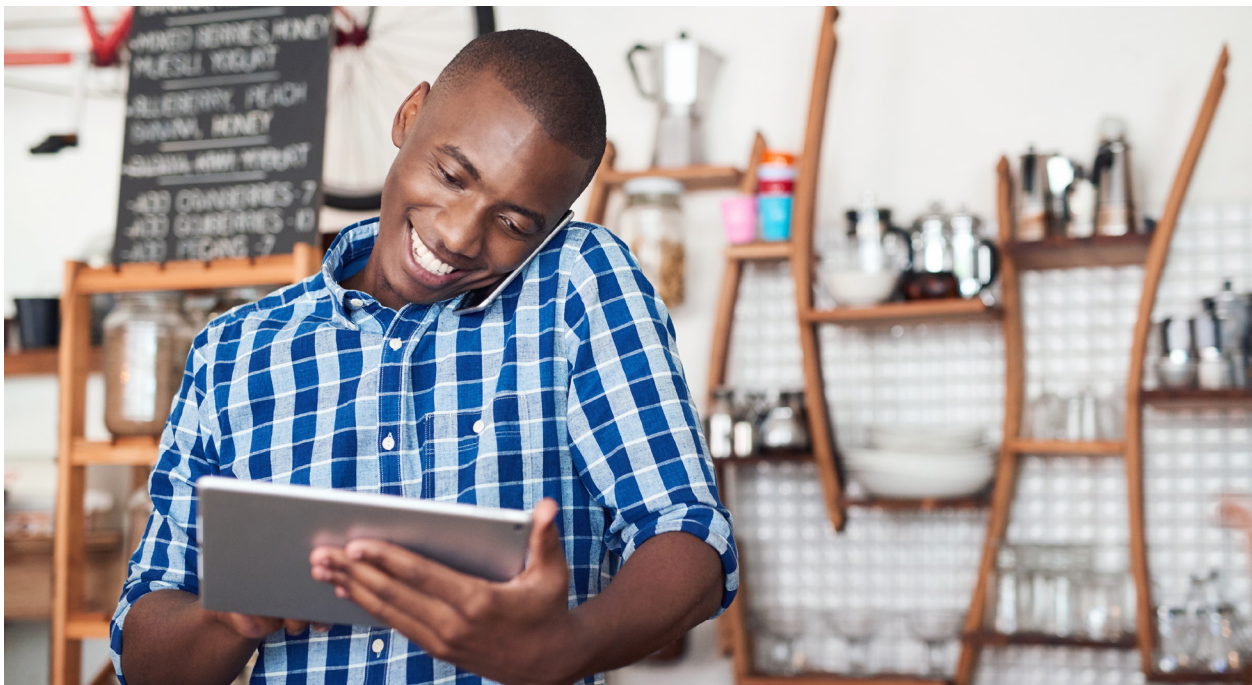
¹ [Digital Charter Implementation Act](#), House of Commons, 2022.

The scope of privacy law

To assess the reasonableness and effectiveness of the proposed law, it is important to consider its intended scope. The CPPA reflects an understanding that in Canada, there are—and should continue to be—separate public and private sector privacy laws. In contrast, some jurisdictions, such as the European Union, combine all privacy issues pertaining to both the public and private sector into one law, which creates complexity.

The nature of the relationships between an individual and the state, and between an individual and a private sector organization, are fundamentally different, as are the potential consequences to an individual flowing from these relationships. These different contexts demand different legislative approaches, and substantiate why a consumer rights-based approach—rather than a human rights-based approach—is most appropriate in a Canadian context.

As emphasized in a recent Public Policy Forum report (referring to the European Union's General Data Protection Regulation (GDPR) and the California Consumer Protection Act (CCPA)): "While the GDPR and the CCPA are often cited as the policy inspiration in Canada, the GDPR is firmly grounded in human rights law while the CCPA is rooted in consumer protection law. It was noted that the federal government was deliberate in naming the federal privacy law proposed ... the "Consumer Privacy Protection Act."²



² Debating the Right Balance(s) for Privacy Law in Canada, Public Policy Forum, 2022.

Unfortunately, much public discourse to date has compared our private sector privacy law to the omnibus approach of other jurisdictions, permitting public sector privacy issues to wade their way into a conversation about commercial legislation. This conflation of issues has contributed to the stalling of progress on a much-needed bill to update our private sector law.

In addition to being solely a private sector law, the proposed CPPA is but one of a series of existing or soon-to-be legislative frameworks that seek to govern the full implications of the data-driven digital economy.

Canada's full data policy is intended to cover a broad spectrum of complementary but adjacent issues to privacy rules. These include addressing the power imbalances created by data use and access through competition law, providing consumers with more rights and choices online through platform or online harms regulation, and efforts to regulate the use of data-fueled algorithms through the proposed Artificial Intelligence and Data Act (AIDA).

These issues are critically important and warrant their own consultation and development. In the meantime, Canada needs to focus discussions about the CPPA on matters related to private sector privacy law and adopt legislation that ensures that the bill's dual-purpose statement is achieved.

A data-driven world

Data use is, and will continue to be, a driving force for progress and innovation across all Canadian sectors. Statistics Canada has estimated that Canadian investment in data grew more than 400% from 2005 to 2019 and that data-related assets in Canada were worth \$217 billion in 2018—equivalent to more than two-thirds the value of the country's crude oil reserves.³

Note: All amounts in this report are expressed in Canadian dollars unless otherwise indicated.

The volume of data worldwide has almost doubled since 2020, and is expected to triple by 2025.⁴ Data has no inherent worth; its value derives from how it is used. The explosion of data growth in recent years is making policy decisions around data usage more important than ever.

³ Study: The value of data in Canada: Experimental estimates, Statistics Canada, 2019.

⁴ Volume of data/information created, captured, copied, and consumed worldwide from 2010 to 2020, with forecasts from 2021 to 2025, Statista, 2022.

The benefits of data to Canadians

Canadians have never been more reliant on the digital economy. At home, it supports our daily lives and well-being. At work, it supports our ability to innovate, build businesses and remain competitive.

According to IBM, the data economy reflects “the social and economic value realized from data sharing,” and Canada has particularly unique advantages that position it to create a globally competitive data economy, including a highly skilled workforce, fueled by a skills-based immigration system.⁵



When used responsibly, the analysis and use of consumer information is highly beneficial to Canadians and the economy they rely on.

For businesses, data analysis informs operational strategies, improves business competitiveness, drives technological advancement and increases profitability, stimulating the economy and supporting job creation across all Canadian sectors.

For consumers, it provides them with the relevant and useful products, services and information that they expect. In a recent survey by the Office of the Privacy Commissioner of Canada, more than three-quarters (77%) of businesses collect customer information simply to provide the services consumers are requesting. A further 22% use it to personalize their services a further 11% use it to support and their marketing efforts.⁶

Data-driven systems, including recommendation engines, customer service chatbots and marketing geared towards consumer preferences, are important tools and services for consumers, and for organizations looking to better serve them. For example, nearly all industries (retail, banking, insurance, travel, grocery etc.) provide recommendation engines to assist consumers with their digital choices.

⁵ [How Canada is growing its data economy](#), IBM, 2022.

⁶ [2021-22 Survey of Canadian businesses on privacy-related issues](#), Office of the Privacy Commissioner of Canada, 2022.

Most consumers have grown accustomed to these recommendations as they often save time and money, and provide what consumers require to utilize the products and services they are purchasing. Similarly, many companies run advanced pricing or loyalty analytics to offer consumers discounted prices based on historic shopping behaviour. This helps companies build better relationships with consumers by providing them with additional opportunities to save.

This value exchange underscores the need for privacy law to achieve the two fundamental purposes contained in the proposed CPPA; the legitimate use of personal information by private sector organizations to meet consumers' needs and drive our economy forward, and the protection of consumer privacy. These two priorities must both be achieved.

Canada's unique economy

Canada's privacy legislation must reflect and support Canada's unique economy. In particular, it must take into account our dependence on trade and globalization, and our reliance on small and medium-sized enterprises (SMEs) as the backbone of our economy.

Reliance on trade and globalization

As noted on the Government of Canada's website, "exporting is vital to Canada's economy. It is a driver of economic growth and is strongly correlated with real gross domestic product growth. Furthermore, exporting can provide a strategically important means of growing a firm by expanding its market beyond the confines of Canada's relatively small domestic market."

International trade, including both exports and imports, makes up about two-thirds of Canada's GDP.⁷ Cross-border data transfers underpin nearly all aspects of international trade, fueling cross-border business activities and global supply chains, and providing Canadian businesses with access to the world. The flow of data across borders is vital—not only for the business operations of multinational companies—but also for small Canadian SMEs to gain access to the international services, partners and consumer markets they critically need to grow.

⁷ Canada trade statistics: Exports, Imports, Products, Tariffs, GDP and related Development Indicator, WITS, 2022.



The international flow of data to the global economy is expected to expand to \$14 trillion by 2025.⁸ The increased digitalization of Canadian organizations, driven by the rapid adoption of technologies like cloud computing and data analytics, has made digital trade just as critical as traditional trade to Canada's economic future. For years, cross-border data flows have generated more global economic value than the traditional flows of traded goods and services.⁹

Given Canada's small and saturated market, Canadian companies need access to global markets to grow. This is especially true for Canada's SMEs. With free flows of data, SMEs can leverage global platforms to reach customers all over the world. Of the nearly 50,000 Canadian businesses that exported goods in 2020, a whopping 97.5% were SMEs—contributing 43% of total goods exports.¹⁰ SMEs are also responsible for a higher proportion of Canada's service exports (48%) than large enterprises (41%).¹¹ Furthermore, SME exporters are significant innovators. Those that export, on average, innovate almost twice as much as their counterparts that do not export.¹²

Canada has the benefit of learning from the fall-out from the European Union's adequacy scheme for international data flows (contained in the GDPR), which has had a chilling impact on the global digital economy without a proportionate or proven privacy benefit.¹³

⁸ Measuring the economic value of data and cross-border data flows: A Business Perspective, OECD, 2020. Numerical figures converted using Xe, based on an exchange rate of US\$1 = C\$1.30, on August 26, 2022.

⁹ Digital Globalization: The New Era of Global Flows, McKinsey & Company, 2016.

¹⁰ Key Small Business Statistics — 2021, Innovation, Science and Economic Development Canada, 2021.

¹¹ Trade by exporter and importer characteristics: Services, 2019, Statistics Canada, 2021.

¹² Trade and small and medium-sized enterprises, Global Affairs Canada, 2019.

¹³ Privacy Law Pitfalls: Lessons Learned from the European Union, The CMA, 2022.

The GDPR approach has also been administratively unworkable, ignoring the fact that most businesses, customer bases and data traffic is oriented in such a way that data passes through other countries or is saved in international cloud services in a way that may be difficult for the average business to trace.¹⁴

The challenge facing Canada now is to achieve enough compatibility between a revised privacy law and the GDPR to be deemed adequate by the European Union for the purposes of their data transfer requirements, without jeopardizing the ability of Canadian businesses to innovate with data.

The CPPA carries forward and builds on Canada's longstanding approach to cross-border data transfers, emphasizing organizational accountability, and requiring notice to consumers and the use of contractual means with third parties to ensure a comparable level of privacy protection when data is transferred. This is the effective and principled approach that Canada needs.

The Bill C-27 preamble acknowledges that Canada "is a trading nation and (that) trade and commerce rely on the analysis, circulation and exchange of personal information and data across borders and geographical boundaries."¹⁵

The vital role of SMEs

As Canada, and countries around the world, continue to face economic uncertainty, it is critical that our privacy law focus on protecting consumers against bad actors and egregious offences in a manner that does not create an unnecessary administrative burden for legitimate and responsible companies, including SMEs.

SMEs are the backbone of the Canadian economy and contribute significantly to Canadian employment. In 2021, small businesses made up 98.1% of all employer businesses in Canada, employing almost two-thirds of the total labour force. Medium-sized businesses employed an additional one-fifth of the labour force and large businesses employed just 15%.¹⁶

Privacy requirements that are designed without regard for the resulting burden they impose on SMEs could prove debilitating in terms of the capital required and limitations on the ability of these organizations to automate and optimize. Furthermore, SMEs

¹⁴ IAPP-EY Annual Privacy Governance Report 2021, The International Association of Privacy Professionals (IAPP), 2021.

¹⁵ Digital Charter Implementation Act, House of Commons, 2022.

¹⁶ Analysis on small businesses in Canada, first quarter of 2022, Statistics Canada, 2022.

lack ready access to legal advice and representation to navigate onerous and unnecessarily complex legislation, making it more difficult for them to responsibly use data to innovate and compete.

Current costs created by regulation are among the top concerns of Canadian small business owners. In 2020, small businesses in Canada spent a total of \$38.8 billion on the cost of compliance stemming from regulation from all three levels of government.¹⁷ Business owners believe this amount—which they have attributed to ‘red tape’—a euphemism for excessive regulation—can be reduced by nearly one-third (\$10.8 billion).¹⁸

In Canada, the smallest businesses bear the greatest burden, on a per employee basis, for regulatory compliance (including privacy and other types of business regulation) at a cost per employee of \$7,023 annually for businesses with less than five employees. This is significantly more onerous than the \$1,237 per employee cost incurred by businesses with 100-plus employees.¹⁹

A 2021 survey of more than 1,000 Canadian SMEs illustrates the critical importance of consumer data. The ability to leverage that data to communicate regularly and in a personalized manner with customers was cited as the primary way SMEs built enough consumer trust and loyalty to weather the pandemic, and to continue to compete against larger online competitors.²⁰

With Canada's SMEs still grappling with the impacts of a global pandemic, supply chain issues, and economic uncertainty, half of Canada's small businesses have reported lower revenues in 2021 compared to 2019.²¹ It is critical that privacy legislation not create unnecessary administrative burdens that would cripple these businesses without adding a proportionate and proven consumer benefit.

The Bill C-27 preamble acknowledges the varying capacities of Canadian organizations, noting that since “organizations of all sizes operate in the digital and data-driven economy...an agile regulatory framework is necessary to facilitate compliance with rules by, and promote innovation within, those organizations.”

¹⁷ [State of SMB in 2021: April Report Now Available](#), Phase 5, 2021.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ [Analysis on small businesses in Canada, first quarter of 2022](#), Statistics Canada, 2022.



Evolving consumer expectations

Canadian businesses highly value their relationships with consumers, and they work hard to protect and respect the privacy interests of the individuals they serve. Most Canadian organizations recognize that strong privacy and data protection practices are a competitive advantage and bolster customer retention. This is because trust in an organization remains the most important factor driving Canadian consumers' willingness to share personal information with a company.²²

In a McKinsey study, half of Canadian consumers indicated that they are more likely to trust a company that asks only for information relevant to its products, limits the amount of personal information requested, and reacts quickly to hacks and breaches.²³

To protect this trust, the CPPA has delivered what consumers have been asking for: limits on the collection, use and sharing of their personal information, better protection of their information, more transparency over how it is used, and modernized rights that offer consumers more choice and control.

Just as technology continues to advance, so have people's attitudes towards sharing their information. Recent research points to a notable decline in overall levels of online privacy concerns among Canadians, with 43% of Canadian consumers agreeing that data exchange with business is essential to the running of modern society—rising significantly from 35% who agreed with this statement in 2018.²⁴

²² [Global Data Privacy: What the Consumer Really Thinks](#), GDMA, 2022.

²³ [The consumer-data opportunity and the privacy imperative](#), McKinsey & Company, 2020.

²⁴ [Global Data Privacy: What the Consumer Really Thinks](#), GDMA, 2022.

Consumers increasingly expect organizations to intuitively deliver the products and services they want and need. They are demanding much greater speed and quality of information so that they can identify and access services provided by companies, and make informed purchase decisions.

Modern economies are predicated on the exchange of personal information. Where individuals provide personal information to an organization in connection with the purchase of goods or services, they reasonably expect the organization to use the information to serve them better, and for everyday business activities, such as managing inventory, identifying areas of expansion, improving products and services, fundraising (in the case of charities), and advertising responsive to their needs and interests.

Many of the online services Canadian consumers have come to rely on are supported, at least to some extent, by revenue that relies on interest-based advertising and data collection techniques. Search engines, for example, provide a seemingly free service. In reality, the service isn't free. The trade-off is that consumers provide information (i.e., their IP address and information about their interests), which is then used to improve the accuracy of the service and for revenue-generating activities (including the selling and serving of advertising space) that enable search engines to maintain their operations. There are many examples of popular platforms, services and apps that work this way. A shift to a pay-per-use model would be unpalatable, and in some cases unaffordable, for consumers.

When consumers understand that they are receiving value, they are more comfortable sharing their data.

Today, about half (49%) of consumers across Canada are Data Pragmatists: people who are happy to exchange data with businesses as long as there is a clear benefit in doing so. Just over a quarter (26%) of Canadian consumers are Data Unconcerned: people who show little or no concern about their data privacy, and only 24% are Data Fundamentalists: people who are unwilling to share personal information.²⁵

Many consumers, particularly younger generations, have adopted a more pragmatic attitude sharing their data and realize that doing so is increasingly fundamental to accessing many of the beneficial services they use and interact with daily. In a survey of North American shoppers, nearly half indicated that they are willing to share (with brands) data on how they consume or use products, and more than one-third indicated that they are willing to share personal data, such as demographic data or product preferences, with brands. Millennials are the age group most willing to share their data with brands and Boomers are the least willing.²⁶

²⁵ [Global Data Privacy: What the Consumer Really Thinks](#), GDMA, 2022.

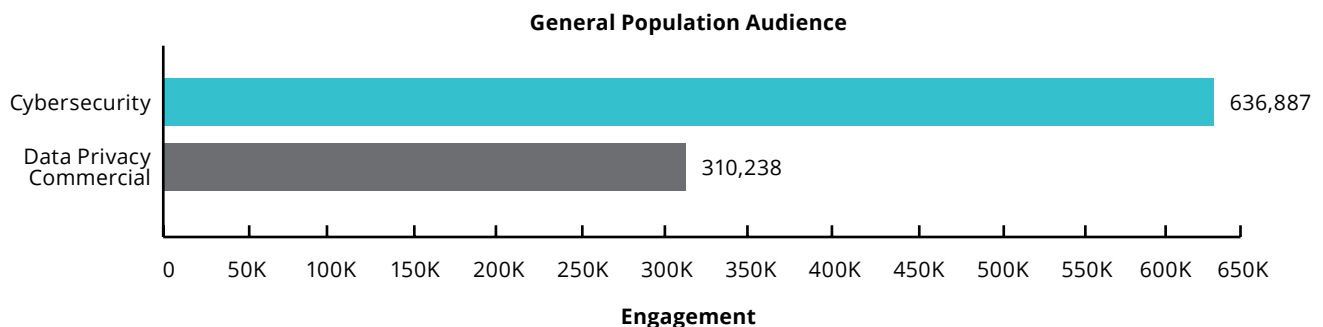
²⁶ [What Matters to Today's Consumer](#), Capgemini Research Institute, 2022.

Consumers consider some types of data usage to be more acceptable than others.²⁷ A survey from Ipsos Canada showed that 50% of consumers indicated a desire to see internet advertising that is relevant and targeted to them.

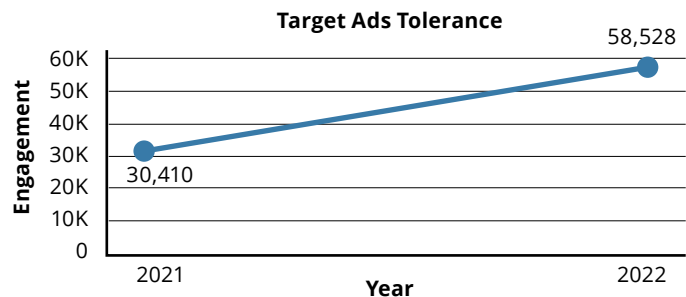
To better understand the sentiment of Canadians, the CMA asked Polly™ – an artificial intelligence tool by Advanced Symbolics Inc. – to ascertain the views of Canadian adults on data privacy and cybersecurity. (See a description of Polly's methodology in the box on the next page.)

Polly's analysis found that:

- Canadians are twice as concerned about cybersecurity compared with data privacy.
- Of those expressing concerns about data privacy, concerns about public sector use of personal information far outweigh concerns about commercial use.



- In the past 12 months alone, Canadians' acceptance of receiving targeted information and advertising online has doubled, from 30,000 to 58,000.



In fact, they are not just accepting of targeted ads but in many cases, they wish the targeting was better. For example, men say they are getting ads for women's clothing and people say they are still getting ads for things after they have bought them. They want better targeting to get more useful information.

²⁷ [Canada's Digital Marketing Pulse](#), Ipsos, 2019.

Polly's methodology

Polly uses algorithms for probabilistic sampling on social media. Developed by researchers at the University of Ottawa, Polly has been commercialized since 2016 and is widely used across Canada by diverse organizations in the public and private sectors.

Polly's Conditional Independence Coupling algorithm, which is published and patented, ensures that the samples collected from social media match the census distribution of the country or population in question. Polly was the first artificial intelligence in the world capable of producing such samples.

For this study, Polly created a sample of 289,014 Canadian adults randomly selected to be representative of the Canadian population. (The margin of error is +/-2% with a confidence interval of 80%)

Because this is a representative sample, results can be extrapolated to the population (i.e., if 10% of the sample expresses concern, that means 10% of Canadians are expressing concern) which is why the engagement numbers are in some cases higher than sample size. Engagement is the number of people in the country who can be expected to be concerned about an issue based on the sample surveyed.

The realities of technological advancement

With one of the strongest economies in the G7, Canada has the economic fundamentals to become one of the top five most innovative nations in the world. Despite these strong fundamentals, Canada is falling behind countries like the U.S., U.K., China, and India in the global innovation race.²⁸

Innovation is a principal driver of productivity growth and national prosperity for Canada. To reach its potential and help ensure a strong economic future for Canadians, public policies must support the increased focus on data as a vehicle to drive innovation, efficiency and productivity.



²⁸ [Building a Nation of Innovators](#), Innovation, Science and Economic Development Canada, 2021.

Through its Innovation and Skills Plan, the Government of Canada is implementing ambitious strategies to enhance the technological capacities of Canadian businesses and unlock the benefits of the data-driven digital economy for all Canadians.²⁹

The goal of becoming one of the top five most innovative countries in the world is a challenging endeavour. OECD data confirms that Canadian innovation activity is lagging further behind other industrialized countries.³⁰

Supporting the growth and commercialization of emerging technologies will be a key impetus to the success of Canada's innovation agenda. Despite a track record of under-investing in disruptive technologies compared to their U.S peers, Canadian companies are stepping up and 84% of Canadian CEOs are prioritizing their technology investments to meet growth and transformation objectives, according to a 2020 study.³¹

Artificial Intelligence is a particularly important emerging technology for Canada. The proper adoption of artificial intelligence has the potential to double annual economic growth rates in developed countries in the next 15 years.³² Although Canada is a leader in research and development in artificial intelligence, research by Forbes Insights indicates that we are lagging behind other G7 countries in our adoption of artificial intelligence technology.³³

Public policy must enable the private sector to innovate with data in ways that are responsible and beneficial to consumers and society. An overly prescriptive privacy framework would impede important new technologies and services, and push emerging technologies—and the innovation they enable—to other jurisdictions.

Technology continues to advance rapidly, and Canada's approach to privacy law must continue to be adaptable to that fluidity. As the uses and implications of emerging technologies evolve, it is impossible for a law made at a particular point in time to predict the trajectory of technology. However, it is possible—and imperative—for our privacy law to be designed in a manner that would once again stand the test of time, as PIPEDA—our current law—did for more than two decades.

²⁹ [Canada's Innovation and Skills Plan](#), Government of Canada, 2017.

³⁰ [Gross domestic spending on R&D](#), OECD, 2022.

³¹ [Emerging technologies are essential for future survival: KPMG Research](#), KPMG, 2020.

³² [Artificial Intelligence is the Future of Growth](#), Accenture Canada, 2016.

³³ [Canadian companies behind in adopting artificial intelligence: Forbes study](#), BNN Bloomberg, 2018.

The CPPA has preserved two of PIPEDA's key strengths: both laws are principles-based and technology-neutral, with rules that apply evenly across all processing activities. This approach is critical to ensure that the law remains flexible in the face of rapidly evolving technologies and business models for years to come.

In this regard, the CPPA has integrated important lessons from the pitfalls of the European Union's GDPR. For example, the GDPR includes prescriptive rules and concepts that are incompatible with many new technological developments. As a result, the GDPR continues to have a chilling impact on the growth of emerging technologies, with many companies in the European Union choosing to innovate less with personal data or pursue their ideas in less restrictive jurisdictions.³⁴

Addressing broader technology challenges

While the evolution of technology has created enormous opportunity for Canada, it has also created some challenges, with implications that extend far beyond protecting personal information, such as addressing online harms or the potential for any significant bias or risk associated with algorithms. It is critically important that privacy law be technology-neutral, rather than serving to restrict or dictate the use of a specific technology at a specific point in time.

For example, in contrast to the GDPR, which over-promises on a broad right for consumers to object to automated decisions fueled by personal information without due consideration for context and the true nature of how automated decisions operate, the CPPA proposes a much more practical and effective approach. It offers individuals greater transparency and a new right to explanation of those decisions, predictions or recommendations that could have a significant impact on them.

The approach recognizes that automated decision-making includes a broad range of routine, micro-decisions, the majority of which will have no significant impact on an individual or potential to harm them (such as a call centre using automated decisions to support call routing, or a website declining to serve copyright-protected content to a user resident in a jurisdiction for which the website provider does not hold the rights to make that content available). The goal is to focus on those decisions that could have a significant impact on an individual, permitting individuals to engage if they feel they have been harmed, rather than overwhelming consumers with innocuous information.

³⁴ [Privacy Law Pitfalls: Lessons Learned from the European Union](#), The CMA, 2022.

The approach reflects the fact that, although privacy law can be used as a gateway to greater algorithmic transparency, the regulation of artificial intelligence itself should not fall under a technology-neutral privacy law. Canada has appropriately proposed separate legislation, the Artificial Intelligence and Data Act (AIDA), to ensure the responsible use of artificial intelligence in Canada.

How the CPPA achieves Canada's privacy law priorities

As Canadian policymakers proceed to replace PIPEDA with a law that provides more meaningful privacy protection in the digital age, they have the opportunity to create legislation that serves as a model for the world.

The CPPA introduces strong and modernized protections for consumers while ensuring Canadian businesses can leverage data to secure a competitive economic position in the global digital economy.



The framework preserves Canada's principles-based and technology-neutral approach to privacy. This approach would ensure that the law remains flexible in the face of rapidly evolving technologies, business models and consumer privacy expectations for decades to come.

The CPPA modernizes PIPEDA while retaining its strengths, reflecting years of consultation and input. For example, it introduces:

- A **meaningful enforcement model** backed by broad order-making powers for the privacy commissioner and the strongest financial penalties in the G7, while maintaining a focus on early resolution and constructive engagement with businesses.

- A series of **new consumer rights** that build on existing rights to access and correct their data, and to withdraw their consent. Consumers would be able to move their information from one organization to another (under approved data mobility frameworks) and to request that their information be disposed of when it is no longer appropriate or necessary.



- **Greater transparency requirements** for organizations with respect to their handling of personal information, and with respect to any automated decisions, predictions or recommendations that may have a significant impact on individuals.
- Efforts to **address widespread consent fatigue** by focusing consent on where it is most meaningful for consumers, and introducing practical exceptions to consent with parameters for organizations.
- A new role for **privacy codes and certifications**, permitting industry to support regulatory efficiency through meaningful and practical self-regulatory initiatives, with oversight by the privacy commissioner.

The CPPA reflects stakeholder feedback on its predecessor (the former Bill C-11, introduced in 2020), most notably:

- A response to calls for **targeted protections for children and youth** by—for the first time in Canada—limiting organizations' right to collect or use information on children and youth, and holding organizations to a higher standard when handling that information.
- A response to criticisms of a proposed exemption to consent for business activities in cases where obtaining consent would be impracticable because the organization did not have a direct relationship with the individual. The proposed exception, which was deemed too flexible, now falls under **a new exception to consent (based on**

the “legitimate interests” of an organization), which requires the organization to conduct and document an assessment to ensure that the activity in question outweighs any adverse effect on the individual’s privacy. The individual would have to reasonably expect such collection or use, as is the case today, and the information could not be used for influencing their behaviour.

- **Clarifying the treatment of de-identified versus anonymized information** in line with the standard in other jurisdictions. The bill clarifies that de-identified information is considered personal information subject to the law, with limited exceptions, whereas the law clearly does not apply to anonymized information as confirmed by the courts under PIPEDA.

The bill is reasonably comparable to—and interoperable with—other jurisdictions, while also reflecting and supporting Canadian conditions, practices and expectations.

The approach reflects learnings from the experiences of other jurisdictions. These experiences have shown us that more rules do not necessarily improve privacy compliance or protection, and that moving forward without careful consideration of how a law’s provisions would play out in practice for consumers, businesses and governments alike could lead to negative unintended consequences.³⁵

Appropriately, Canada continues to take a principles-based and risk-weighted approach to its privacy framework, rather than a rules-based, one-size-fits-all approach. The concepts of proportionality and reasonableness that have been hallmarks of Canadian privacy law to date continue to be as important as ever.

If passed, the CPPA would achieve Canada’s privacy law priorities. It would ensure Canadians are consistently protected in an evolving digital world, and that the companies fueling our economy have modern privacy rules to serve consumers in the data-driven economy.

List of sources

Sources are listed here in the order in which they appear in the report.

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About the Canadian Marketing Association

The CMA's purpose is to embolden Canadian marketers to make a powerful impact on business in Canada. We provide opportunities for our members from coast to coast to develop professionally, to contribute to marketing thought leadership, to build strong networks, and to strengthen the regulatory climate for business success. Our Chartered Marketer (CM) designation signifies that recipients are highly qualified and up to date with best practices, as reflected in the Canadian Marketing Code of Ethics and Standards. We represent virtually all of Canada's major business sectors, and all marketing disciplines, channels and technologies. Our Consumer Centre helps Canadians better understand their rights and obligations.

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