

**Submission
to the Office of the Privacy Commissioner
by the Canadian Marketing Association
on the OPC's Strategic Plan 2024-27**

March 2024

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Introduction

The Canadian Marketing Association (CMA) appreciates the opportunity to provide feedback to the Office of the Privacy Commissioner of Canada (OPC) on how it will advance the priorities identified in its [Strategic Plan 2024-27](#).

It is crucial that the plan reflect the relevant law and public interest. Before providing feedback on operational issues, we offer some reflections on the plan itself.

Achieving the dual purpose of PIPEDA and the proposed Consumer Privacy Protection Act

As the agent of Parliament that oversees compliance with both the Personal Information Protection and Electronic Documents Act (PIPEDA) and the Privacy Act, it is critically important for the OPC to integrate the principles and purposes of these laws into its strategic approach and operations to achieve this vision.

The purpose of PIPEDA is:

“to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information **and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.”**

This dual purpose is well reflected in the tone that the current Commissioner has set in his early days of his new position. He has articulated a vision for privacy that includes supporting the public interest as well as innovation, and recognizing privacy’s role as an accelerator of Canadians’ trust in their institutions and participation as digital citizens.

The proposed Consumer Privacy Protection Act, which is currently before Parliament and would replace PIPEDA if passed, defines its purpose as: **“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.”**

The OPC’s Draft Strategic Plan has done a thorough job of envisioning how it will fulfill the first half of its mandate – namely, to ensure compliance that protects the personal information of individuals and how it will accelerate the trust that Canadians have in their institutions and in their participation as digital citizens. It is, however, almost entirely silent in reflecting how the OPC will support Canada’s innovation and competitiveness, with only a passing reference under Strategic Priority 2.

The role of innovation and consumer trust

Innovation is a principal driver of productivity, growth, and prosperity. The responsible use of data to personalize experiences is key to providing value and cost-savings to consumers, along with delivering the increasingly sophisticated expectations for products and services of today’s consumer.

When 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.

When consumers give their data to an organization, they are exercising their right to receive information and offers from that organization. The right to privacy does not equate to secrecy. Rather, it means the ability to make choices about when and how to share one's data (in the context of adequate disclosures and consent processes). It is a matter of empowerment and self-determination.

Consumers are demanding much greater speed and quality of information so they can identify and access services provided by companies to make informed purchase decisions. Research has confirmed this shift in consumer expectations, with a substantial 71% of consumers now anticipating personalized interactions from companies. A staggering 76% of them express frustration when they don't receive personalized attention.¹ Responsible use of data to personalize experiences is key to providing value and cost-savings to consumers and to delivering on their increasingly sophisticated expectations in a fast-paced world. Surveys show that one of the most popular reasons for data-sharing with companies, cited by 90% of consumers, is to receive discounts on products. This could be in the form of an email sign-up, with many e-commerce sites offering an immediate discount in return for a newsletter sign-up.²

Consumers increasingly expect organizations to intuitively deliver the products and services that they want and need. In 2022, close to half (43%) of Canadian consumers agreed that data exchange with business is essential to the running of modern society—rising significantly from 35% who agreed with this statement in 2018.³

Research in Europe found that consumers are more comfortable sharing their data when they understand how they are benefiting. With regards to online advertising, the same study found that people's attitudes towards online privacy shift based on the perceived value of an advertisement. People find ads valuable when they are tailored to their interests, lead to time savings or cost savings, and are brought to their attention at the right moment.

Data flow is required for data analysis which informs operational strategies, improves business competitiveness, drives technological advancement and increases profitability while stimulating the economy and supporting job creation across all sectors.

Moreover, consumer trust is critical to a successful business. Organizations that use data in a responsible manner to reach out to and serve their customers more meaningfully have a more trusted relationship with consumers. Most organizations operating in Canada are responsible, and committed to building and maintaining those trusted relationships. Businesses dedicate significant attention and resources to protect personal information, including substantial investments in data management, privacy enhancing technology and cybersecurity.

Customers reward companies that effectively meet their needs with their loyalty and trust. Companies that excel at personalization generate up to 40% more revenue than average players who do not offer personalization, contributing significantly to the economy.⁴ Organizations that have fully reoriented operations, delivery models and technology investment to meet incremental customer experience demands grow their year-over-year profitability by at least six times their industry peers.⁵

Integrating measures to support Canada's innovation and competitiveness.

Concrete measures that the OPC can take to achieve its priorities, as well as the full range of its mandate include the following:

- Conduct meaningful consultations with a range of stakeholders for major initiatives, guidance, and strategies (including strategic planning documents) before the draft materials are released,

¹ [The value of getting personalization right—or wrong—is multiplying](#), McKinsey, 2021.

² [Personalized marketing: Brands and e-commerce retailers](#), Smart Insights, 2020.

³ [Global Data Privacy: What the Consumer Really Thinks](#), GDMA, 2022.

⁴ [The value of getting personalization right—or wrong—is multiplying](#), McKinsey, 2021.

⁵ [The Journey to Operations Maturity](#), Accenture, 2021.

allowing sufficient time for meaningful input. This will ensure a well-rounded understanding of the impact on both privacy protection and the needs of organizations to use data to meet consumers' expectations.

- Hold consultations with companies that develop technologies and companies using those technologies when issuing guidance and strategies related to such technologies.
- Develop criteria to ensure that guidance and investigative findings effectively meet the tests of Real Risk of Significant Harm (RROSH) and consider the reasonable expectations of consumers. Standards must ensure meaningful protection and must also be clear and practical so as not to unduly hamper innovation and place Canadian organizations, including SMEs, at a competitive disadvantage.
- Proactively introduce new measures to support business compliance, as opposed to only taking action in the event of a complaint or occurrence of incidents of non-compliance. In this regard, if Bill C-27 becomes law, it will be especially important to help SMEs understand and prepare for the new law.
- Raise consumer awareness about the connection between sharing their data with responsible organizations, and receiving the benefits and services that are relevant to them. Help them understand their role in managing their data and exerting their rights and responsibilities.
- Publicly recognize the high level of compliance that exists in Canada, publishing investigative findings that conclude organizations were found to be in compliance with the law along with information about the volume of complaints (which is small in relation to the number of transactions by all organizations across the country), and highlight prompt corrective actions taken to be in compliance.

Comments on Strategic Priority 1: Protecting and promoting privacy with maximum impact

Strategic Priority 1 focuses on the OPC's core mandate to achieve strong compliance and prepares for potential changes to privacy law.

We agree that this is a key priority, and support the stated commitment to: "timely, constructive, and strategic engagements to continue to help shape federal privacy laws and regulations," and to "ensure fair, accessible and timely handling of complaints and assessment of breach reports." We see organizations continuing their implementation of robust data privacy measures to safeguard confidentiality while maximizing their impact on promoting trust and compliance.

Comments on Strategic Priority 2: Addressing and advocating for privacy in this time of technological change

Strategic Priority 2 aims to address the speed of technological change, the multitude of emerging business models, and the new ways in which organizations are using data. It notes that this emerging landscape is "teeming with exciting possibilities and unprecedented challenges."

The significant benefits made possible by Artificial Intelligence (AI) must be given equal weight in decision-making as the potential challenges.

AI has the capacity to increase productivity, boost economic growth, and raise incomes across the country. The automation of routine tasks and the responsible use of big data has redefined what is possible to achieve. Canada's position in the global marketplace may be compromised if innovation is overly restricted.

Canada has long taken a principles-based and technology-neutral approach to privacy, which ensures that privacy law continues to apply to rapidly evolving technologies. The same holds true for the proposed CPPA. These laws are a testament to the harmony that can be achieved between privacy and innovation.

Comments on Strategic Priority 3: Championing children's privacy rights

The CMA unequivocally supports the protection of minors. For decades, we have been the leader in setting standards for marketing to children and youth, through the Canadian Marketing Code of Ethics & Standards. Our Code has recently been updated to reflect principles in the UK Children's Code.

Under PIPEDA, the limiting collection principle requires organizations to collect only the personal information required to fulfill a legitimate identified purpose. In the course of normal business transactions, most organizations do not know – nor do they need to know – the age of their customers. For example, buying shoes or shopping for groceries is not an age sensitive activity. They treat all customers the same, and there is little risk of harm to their customers – even if, unbeknownst to the organization, they happen to be. The OPC must consider that the attempt to protect children's privacy does not result in over collection of children's data which would be counter intuitive to the intent of the law. In the majority of cases, the collection and retention of authentication information may pose greater potential harm to minor customers than being served a relevant ad.

We support the OPC's commitment to enhance its knowledge and expertise in children's privacy, and to develop initiatives that keep children safe. We are interested in providing inputs to the OPC as it develops resources and guidance in this area. It will be important to consider the age and capacity of the minor, the nature of the business activity and the risk for potential real harms that may need to be addressed. For example, mature minors share their data online when applying for post-secondary education and jobs.

The need to keep minors safe online relates to online hate, harmful & violent content, bullying and sexual victimization, all of which falls outside of the scope of a commercial privacy law. We fully support initiatives to address these nefarious activities under the proper law, through online harms legislation and criminal law.

About the Canadian Marketing Association

The CMA is the voice of the marketing profession, representing corporate, not-for-profit, public, and post-secondary organizations across Canada. We help marketers and their organizations maintain high standards of conduct and transparency through our Canadian Marketing Code of Ethics & Standards, our extensive resources on privacy law and best practice, including a Guide on Transparency for Consumers, and our training and professional development programs, including our Privacy Essentials for Marketers course and the Chartered Marketer (CM) professional designation. Our Consumer Centre helps Canadians understand their privacy rights and obligations, and we respond to marketing-related enquiries from consumers and organizations.