

MANAGING PRIVACY DURING A PANDEMIC
OVERVIEW OF APPLICABLE RULES UNDER CANADIAN PRIVATE-SECTOR PRIVACY LAWS

QUEBEC - ARPPIPS		BRITISH COLUMBIA - PIPA	ALBERTA - PIPA	CANADA - PIPEDA
	<i>Act Respecting the Protection of Personal Information in the Private Sector</i>			
Privacy Commissioners	 Commission d'accès à l'information (CAI)	 Office of the Information and Privacy Commissioner for British Columbia (BC OIPC)	 Office of the Information and Privacy Commissioner of Alberta (AB OIPC)	 Office of the Privacy Commissioner of Canada (OPC)
Activities / Entities Covered	<ul style="list-style-type: none"> Applies to persons that collect, hold, use or communicate personal information in the course of carrying on an enterprise in Quebec within the meaning of article 1525 of the <i>Civil Code of Quebec</i>, which includes information about their employees.(s. 1) 	<ul style="list-style-type: none"> Applies to private-sector organizations in British Columbia that collect, use or disclose personal information, which includes information about their employees. (s. 2) 	<ul style="list-style-type: none"> Applies to private-sector organizations in Alberta that collect, use or disclose personal information, which includes information about their employees. (s. 3) 	<ul style="list-style-type: none"> Applies to private-sector organizations in most Canadian jurisdictions that collect, use or disclose personal information in the course of a commercial activity and to information about employees of federal works, undertakings or businesses (e.g. banks, airlines, telecom., railways, etc.). Applies in all Canadian jurisdictions except for Quebec, British Columbia, and Alberta, which have their own "substantially similar" laws. As such, PIPEDA does not apply to intra-provincial information-handling activities in those three provinces. (s.4, 26(2))
Relevant Guidance	The CAI issued the following guidance: COVID-19 : Protection des renseignements personnels et sécurité de l'information (available only in French)	The BC OIPC issued the following statement: Statement on COVID-19	The AB OIPC issued the following guidance: Privacy in a Pandemic	The OPC issued the following guidance: Privacy and the COVID-19 Outbreak

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Chart no 1 – Screening individuals in the context of a pandemic

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Can you collect personal information for screening purposes? (e.g. travel history, temperature check, contact history, etc.)	<ul style="list-style-type: none"> • Yes, but organizations are required to collect personal information only for purposes that are serious and legitimate. (s. 4) • Collection must be limited to what is necessary to achieve those purposes.(s. 5) 	<ul style="list-style-type: none"> • Yes, but organizations are required to collect, use and disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances. • Collection must be limited to information that fulfills the stated purposes for collection. (s. 11) 	<ul style="list-style-type: none"> • Yes, but organizations are required to collect, use and disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances. • Collection must be limited to the extent that it is reasonable for meeting the purposes for which the information is collected. (s. 11) 	<ul style="list-style-type: none"> • Yes, but organizations are required to collect, use and disclose personal information only for purposes that a reasonable person would consider appropriate in the circumstances. (s. 5(3)) • Collection must be limited to that which is necessary for the purposes identified by the organization. (Principle 4)
Do you need consent to conduct temperature checks of employees and clients?	<ul style="list-style-type: none"> • Yes, except in limited, specific circumstances (e.g. collection is authorized by law), organizations are required to obtain the manifest, free and enlightened consent of the individual for the collection, use, or disclosure of their personal information. (s. 14) 	<ul style="list-style-type: none"> • Yes, except in limited, specific circumstances (e.g. managing employment relationship – see below), organizations are required to obtain the meaningful consent of the individual for the collection, use, or disclosure of their personal information.(s. 6) 	<ul style="list-style-type: none"> • Yes, except in limited, specific circumstances (e.g. managing employment relationship – see below), organizations are required to obtain the meaningful consent of the individual for the collection, use, or disclosure of their personal information. (s. 7) 	<ul style="list-style-type: none"> • Yes, except in limited, specific circumstances (e.g. managing employment relationship – see below), organizations are required to obtain the meaningful consent of the individual for the collection, use, or disclosure of their personal information. (Principle 3)
Can you insist, and deny access to your establishments if the person refuses?	<ul style="list-style-type: none"> • Yes. However, no person may refuse to respond to a <u>request for goods or services</u> or to a <u>request relating to employment</u> by reason of the applicant's refusal to disclose personal information except where collection of that information is necessary for the conclusion or performance of a contract, or collection of that information is authorized by law. (s. 9) 	<ul style="list-style-type: none"> • Yes. However, an organization must not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service. (s. 7(2)) 	<ul style="list-style-type: none"> • Yes. However, an organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service. (s. 7(2)) 	<ul style="list-style-type: none"> • Yes. However, an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes. (Principle 3)

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Chart no 2 – Disclosing personal information relating to COVID-19 without consent (on a voluntary basis)*

	QUEBEC	BRITISH COLUMBIA	ALBERTA	CANADA
When there is a threat to life, health or security	<ul style="list-style-type: none"> • Disclosure permitted, if it is to a person to whom the information must be communicated by reason of the urgency of a situation that threatens the life, health or safety of <u>the person concerned</u>. (s. 18(7)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of <u>any individual</u>. • Notice of disclosure must be mailed to the last known address of the individual to whom the personal information relates. (s. 18(1)(k)) 	<ul style="list-style-type: none"> • Disclosure permitted, if necessary to respond to an emergency that threatens the life, health or security of <u>an individual or the public</u>. (s. 20 (g)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if made to a person who needs the information because of an emergency that threatens the life, health or security of <u>an individual</u>. (s. 7(3)(e)) • If the individual whom the information is about is alive, the organization must inform that individual in writing without delay of the disclosure. (s. 7(3)(e))
To establish, manage or terminate an employment relationship	N/A	<ul style="list-style-type: none"> • Disclosure permitted, if reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual. • An organization must notify the individual concerned that it will be disclosing their employee personal information and must inform them about the purposes for the disclosure before the organization discloses the employee personal information. (s. 19) 	<ul style="list-style-type: none"> • Disclosure permitted, if solely for the purposes of establishing, managing or terminating an employment or volunteer-work relationship between the organization and the individual, and it is reasonable to disclose the information for the particular purpose for which it is being disclosed. • In the case of an individual who is a current employee of the organization, the organization must, before disclosing the information, provide the individual with reasonable notification that their personal employee information is going to be disclosed and of the purposes for which the information is going to be disclosed. (s. 21) 	<ul style="list-style-type: none"> • Disclosure permitted, if necessary to establish, manage or terminate an employment relationship between the federal work, undertaking or business and the individual. • The federal work, undertaking or business must inform the individual that the personal information will be or may be collected, used or disclosed for those purposes. (s. 7.3)

* Given that employers are subject to particular occupational health and safety laws, they are generally required to take reasonable measures to provide a safe work environment. As such, they could be justified in these circumstances to collect and use personal information about an employee affected by COVID-19 to the extent necessary to provide them with a safe work environment.¹

¹ An employer's collection and use of employees' personal information for the purposes of complying with occupational health and safety requirements has generally been accepted as a valid example of "managing an employment relationship" within the meaning of this consent exception. For example, see decision of the Alberta Office of the Information and Privacy Commissioner ("Alberta OIPC") [P2019-04](#) at para. 31.

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Chart no 3 – Disclosing personal information relating to COVID-19 without consent (upon receiving a request from public authority)**

	QUEBEC	BRITISH COLUMBIA	ALBERTA	CANADA
When required by law	<ul style="list-style-type: none"> • Disclosure permitted, if <u>necessary</u> to communicate information under a law applicable in Quebec. (s. 18(4)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if <u>required</u> by law. (s. 18(1)(o)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if <u>authorized or required</u> by a statute of Alberta or of Canada, a regulation of Alberta or a regulation of Canada, a bylaw of a local government body, or a legislative instrument of a professional regulatory organization. (s.20(b)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if <u>required</u> by law. (s. 7(3)(i)) • No obligation to notify the individual concerned.
When it is within the functions of a public institution	<ul style="list-style-type: none"> • Disclosure permitted, if made to a public body within the meaning of the <i>Act respecting Access to documents held by public bodies and the Protection of personal information</i>, which, through a representative, collects such information in the exercise of its functions or the implementation of a program under its management. (s. 18(5)) • No obligation to notify the individual concerned. 	N/A	<ul style="list-style-type: none"> • Disclosure permitted, if made to a public body that is authorized or required by an enactment of Alberta or Canada to collect the information from the organization. (s. 20 (c)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that the disclosure is requested for the purpose of administering any law of Canada or a province. (s. 7(3)(c.1)) • No obligation to notify the individual concerned.
When there is a contravention of laws (e.g. quarantine order)	<ul style="list-style-type: none"> • Disclosure permitted, if made to a body responsible, by law, for the prevention, detection or repression of crime or statutory offences who requires it in the performance of his duties, if the information is needed for the prosecution of an offence under an Act applicable in Québec. (s. 18(3)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if made to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation, to determine whether the offence has taken place, or to prepare for the laying of a charge or the prosecution of the offence. (s. 18(1)(j)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if made to a public body or a law enforcement agency in Canada to assist in an investigation undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result. (s. 20 (f)) • No obligation to notify the individual concerned. 	<ul style="list-style-type: none"> • Disclosure permitted, if made on the initiative of the organization to a government institution, which has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed. (s. 7(3)(d)(i)) • No obligation to notify the individual concerned.

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** Provincial governments are granted a broad range of powers in the event that a public health emergency is declared under their respective public health laws. These powers include the ability to order any person to communicate or give access to personal information within their custody or control. Given that most provinces have declared the current crisis a public health emergency, organizations must stay up to date in order to accurately evaluate their obligations, and assess whether they must comply with any additional disclosure requirements in their respective provinces.