Comparing privacy laws:
GDPR v. PIPEDA

OneTrust DataGuidance™
REGULATORY RESEARCH SOFTWARE

About the authors

OneTrust DataGuidance™ provides a suite of privacy solutions designed to help organisations monitor regulatory developments, mitigate risk, and achieve global compliance.

OneTrust DataGuidance™ regulatory research includes focused guidance around core topics (i.e. GDPR, data transfers, breach notification, among others), Comparisons which allow you to compare regulations across multiple jurisdictions at a glance, a daily customised news service, and expert analysis. These tools, along with our in-house analyst service to help with your specific research questions, provide a cost-effective and efficient solution to design and support your privacy program.

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Introduction

On 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) ('GDPR') went into effect. The Personal Information Protection and Electronic Documents Act ('PIPEDA'), which regulates privacy in Canada at a federal level, was introduced on 13 April 2000 and entered into force in stages, beginning on 1 January 2001. Both pieces of legislation aim to protect individuals' privacy and personal data, and apply to businesses' collection, use, or sharing of personal data.

The GDPR and PIPEDA are aligned in numerous respects. Both pieces of legislation establish accountability as a fundamental legislative principle and impose similar obligations regarding territorial and material scope, implementation of security measures, and breach notification requirements. In addition, the GDPR's definition of 'personal data' is similar to PIPEDA's definition of 'personal information'. The supervisory authority powers and responsibilities established under the GDPR and PIPEDA are, likewise, relatively aligned.

There are, however, notable differences between the GDPR and PIPEDA. Unlike the GDPR, PIPEDA only applies to organizations engaged in 'commercial activities' and does not apply to public bodies. Moreover, whereas the GDPR provides a list of specific legal bases for the processing of personal data, PIPEDA contains an overarching requirement that organizations may only collect, use or disclose personal information for purposes that a reasonable person would consider appropriate. In addition, whereas PIPEDA places the onus of ensuring comparable protection on organizations carrying out data transfers, the GDPR places that onus on both the exporter and recipient organizations. Other areas of differentiation include the regulation of data subjects' rights to object to the processing of their data and to access their data.

Finally, the GDPR and PIPEDA deviate markedly in respect of several matters. For example, the GDPR expressly requires data processors to carry out a Data Privacy Impact Assessment ('DPIA') in certain circumstances, while PIPEDA allows organizations to carry out a Privacy Impact Assessment ('PIA') without establishing a requirement to do so. The GDPR and PIPEDA are also inconsistent with respect to the right to erasure, the right to be informed, and the right to data portability.

This Guide highlights the similarities and differences between the GDPR and PIPEDA in order to assist organizations' compliance with both. In addition, the Guide refers to non-binding guidance from the Office of the Privacy Commissioner of Canada ('OPC') which aims to clarify the OPC's position on a range of topics. As a whole, the GDPR and PIPEDA lie between a balance of fairly consistent and fairly inconsistent in their regulation of individuals' privacy and the protection of personal data.

Structure and overview of the Guide

This Guide provides a comparison of the GDPR and PIPEDA on the following topics:

1. Scope
2. Key definitions
3. Legal basis
4. Controller and processor obligations
5. Individuals' rights
6. Enforcement

Each topic includes relevant provisions from the GDPR and PIPEDA, an analysis of the similarities and differences between the legislative frameworks, and a summary of the comparison.

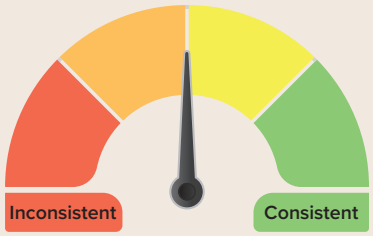
Key for giving the consistency rate

Consistent: The GDPR and PIPEDA bear a high degree of similarity in the rationale, core, scope, and the application of the provision considered.

Fairly consistent: The GDPR and PIPEDA bear a high degree of similarity in the rationale, core, and the scope of the provision considered, however, the details governing its application differ.

Fairly inconsistent: The GDPR and PIPEDA bear several differences with regard to the scope and application of the provision considered, however, its rationale and core presents some similarities.

Inconsistent: The GDPR and PIPEDA bear a high degree of difference with regard to the rationale, core, scope, and application of the provision considered.



Usage of the Guide

This Guide is general and educational in nature and is not intended to provide, and should not be relied on, as a source of legal advice. The information and materials provided in the Guide may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.

1. Scope

Fairly inconsistent

1.1. Personal scope

The GDPR applies to data controllers and data processors, which may be natural or legal persons, public authorities, or agencies, as well as not-for-profit organizations. By contrast, PIPEDA does not distinguish between data controllers and data processors. Rather, PIPEDA applies to all organizations engaged in commercial activities. PIPEDA does not apply to public bodies.

Both pieces of legislation protect living individuals in relation to their personal data.

GDPR	PIPEDA
Articles 3, 4(1) Recitals 2, 14, 22-25	Sections 4(1), 4(1.1), 4(2), 4(3)

Similarities

The GDPR **only** protects **living individuals**. The GDPR does not protect the personal data of deceased individuals, this being left to Member States to regulate. Article 4(1) of the GDPR clarifies that a **data subject** is 'an identified or identifiable natural person.'

PIPEDA protects the personal information of **individuals**. 'Individual' is not defined in PIPEDA but guidance from the OPC, such as the OPC's Questions and Answers, clarifies that 'individual' means a **natural person**. PIPEDA **does not protect** the personal information of deceased individuals. However, if information about a deceased individual contains personal information about a living individual, then PIPEDA applies with respect to the personal information of the living individual.

Differences

The GDPR **applies** to data controllers and data processors who may be **public bodies**.

PIPEDA **does not** distinguish between data controllers and data processors. Rather, PIPEDA applies to **all organizations** which collect, use, or disclose personal information in the course of **commercial activities**, and to certain **employee personal information**. The term 'organization' includes a person and thus PIPEDA applies to both corporations and natural persons, as well as associations, partnerships, and trade unions. **PIPEDA does not apply to public bodies**.

The GDPR defines a **data controller** as a 'natural and legal person, public authority, agency or other body which, alone or jointly, with others, determines the purposes and means of the processing of personal data.' The GDPR defines a **data processor** as a 'natural or legal

PIPEDA **only applies** to organizations that conduct **commercial activities** or to personal information about an employee of, or an applicant for employment with, an organization that collects, uses, or discloses in connection with the operation of a **federal work, undertaking, or business**. The

GDPR	PIPEDA
Differences (cont'd)	
person, public authority, agency or other body which processes personal data on behalf of the controller.'	term **federal work, undertaking, or business** is defined in PIPEDA and generally pertains to matters that are within the legislative authority of the federal government, such as shipping, railways, banks, telecommunications, and air transportation, among other activities. Whether an organization conducts commercial activities is not always immediately clear. For example, not-for-profit status does not automatically exclude an organization from the application of PIPEDA. Not-for-profit organizations that engage in commercial activities, such as selling, bartering, or leasing memberships, are subject to PIPEDA.
The GDPR provides that it 'should apply to natural persons, **whatever their nationality or place of residence**, in relation to the processing of their personal data.'	PIPEDA **does not** explicitly **refer to nationality or place of residence**. However, personal information which is collected, used, or disclosed by organizations during the course of commercial activities will be subject to PIPEDA.

1.2. Territorial scope

With regard to extraterritorial scope, the GDPR applies to data controllers and data processors that do not have a presence in the EU where processing activities take place in the EU. Similarly, PIPEDA applies to organizations outside of Canada if the relevant activities of the organization have a real and substantial connection to Canada.

PIPEDA does not apply to organizations that collect, use, and disclose personal information solely within a Canadian province that has enacted private sector privacy legislation which the federal government has deemed substantially similar to PIPEDA.

GDPR	PIPEDA
Articles 3, 4, 11 Recitals 2, 14, 22-25	Sections 4(1), 26(2)(b)

Similarities

The GDPR **applies** to organisations that have a presence in the EU. In particular, per Article 3, the GDPR applies to entities or organisations established in the EU, notably entities that have an '**establishment**' in the EU or if processing of personal data takes place in the context of the activities of that establishment, irrespective of whether the data processing takes place in the EU or not.

PIPEDA **applies** to organizations within Canada.

In relation to **extraterritorial scope**, the GDPR applies to the processing activities of data controllers and data processors that **do not have any presence in the EU**, where processing activities are related to the **offering of goods or services to individuals in the EU, or to the monitoring of the behaviour of individuals in the EU**.

In relation to extraterritorial scope, PIPEDA applies to organizations located outside Canada if the relevant activities of the organization have a **real and substantial connection** to Canada. The real and substantial connection test is applied on a case-by-case basis. **Factors** which the OPC has considered include, but are not limited to:

- the location in which the **activity** takes place;
- the location to which **profits** flow;
- the location of **preparatory activities**;
- the **residency** of parties involved;
- the **location of a contract** (if any);
- the jurisdiction where **promotional efforts** are primarily targeted;
- the location of the **content provider**;
- the location of the **host server**;
- the location of **intermediaries** (if any); and
- the location of the **end user**.

GDPR	PIPEDA
Differences	
The GDPR is implemented within Member States through **national laws** and sets out specific areas where these laws may **derogate** from GDPR provisions.	PIPEDA **does not** apply to organizations that collect, use, or disclose personal information solely within a **Canadian province** that has enacted private sector privacy legislation which the federal government has deemed **substantially similar** to PIPEDA. To date, Alberta, British Columbia, and Quebec have enacted substantially similar privacy legislation and thus PIPEDA does not apply to organizations which collect, use, or disclose personal information solely within one of those provinces. However, PIPEDA applies to activities involving disclosure of personal information over provincial or international borders.
It is generally considered that the GDPR and Member State Laws are **relatively clear** in terms of their scope of application over a specific given activity.	It is often **unclear** whether PIPEDA or provincial privacy legislation, or both, apply to a given activity. Many organizations may be subject to provincial privacy legislation in respect of certain aspects of their operations, and to PIPEDA in respect of other aspects.
There is **no equivalent** within the EU.	PIPEDA applies to all **federally regulated businesses** in Canada (such as banks, telephone companies, shipping companies, and railways), even within provinces which have enacted substantially similar privacy legislation.

1.3. Material scope


Fairly consistent

The definition of personal data under the GDPR and the definition of personal information under PIPEDA both relate to information regarding an identified or identifiable individual. The GDPR provides a list of information that is regarded as 'sensitive' and provides specific requirements for processing of sensitive data. PIPEDA does not distinguish personal information as sensitive or otherwise. However, OPC guidance on Personal Information ('the Personal Information Guidance') and PIPEDA in Brief ('the PIPEDA in Brief Guidance') clarifies that certain types of personal information will be considered sensitive and that organizations must exercise heightened care when collecting, using, or disclosing sensitive personal information in order to comply with PIPEDA.

GDPR	PIPEDA
Articles 2-4, 9, 26 Recitals 15-21, 26	Sections 2(1), 4 Schedule 1, 4.3.4

Similarities

The GDPR applies to the '**processing**' of personal data. The definition of 'processing' covers 'any operation' performed on personal data 'such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.'

PIPEDA applies to personal information that an organization **collects, uses, or discloses** in the course of commercial activities. It also imposes obligations in relation to safekeeping, access, retention, and destruction of personal information. PIPEDA does not, however, have a definition of **processing**.

The GDPR defines '**personal data**' as 'any information' that directly or indirectly relates to an identified or identifiable individual. The GDPR does not apply to the personal data of deceased persons.

Personal information means information about an **identifiable individual**. Information is generally considered personal information where there is a **serious possibility** that an **individual could be identified** through the use of the information, alone or in combination with other available information. PIPEDA does not generally apply to the personal information of deceased individuals.

The GDPR defines **special categories of personal data** as personal data revealing **racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation**. The GDPR also provides specific requirements for its processing.

PIPEDA imposes heightened levels of care with respect to **sensitive personal information**. PIPEDA **does not define** what constitutes sensitive personal information, but clarifies that any information can be sensitive depending on **context**. PIPEDA lists medical records and income records as examples of personal information which will almost always be considered sensitive. The Personal Information Guidance clarifies that the **following types of information constitutes sensitive personal information**:

- **medical information** - considered highly sensitive;
- **financial information** - considered highly sensitive;
- **work performance information**;

GDPR	PIPEDA
Similarities (cont'd)	
	• **social insurance numbers**; and • **live streaming of young children**. The above list is non-exhaustive.
The GDPR **excludes** from its application the processing of personal data by individuals for **purely personal or household purposes**. This is data processing that has 'no connection to a professional or commercial activity.'	PIPEDA does not apply to the collection, use, or disclosure of personal information for **personal or household purposes**, as it only applies to an organization that collects, uses, or discloses personal information in the course of **commercial activities** or to personal information about an employee of, or an applicant for employment with, an organization that collects, uses, or discloses personal information in connection with the operation of a **federal work, undertaking, or business**.
The GDPR **excludes** from its application data processing in the context of **law enforcement or national security**.	PIPEDA does not explicitly exclude personal information collected in the context of law enforcement or national security, but **allows** for the collection, use, or disclosure of personal information without consent for certain **investigations, enforcement of laws, and national security purposes** if the government institution requesting the information has identified its lawful authority to obtain the information.
The GDPR **excludes anonymous data** from its application, which is defined as information that does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable.	While PIPEDA does not explicitly exclude anonymous information from its application, the definition of personal information means that anonymous information could not be personal information and thus **anonymous information is not subject to or covered by PIPEDA**.
Differences	
The GDPR provides requirements for specific processing situations including processing for **journalistic purposes and academic, artistic, or literary expression**.	PIPEDA **does not** apply to the collection, use, or disclosure of personal information for journalistic, artistic, or literary purposes.
The GDPR applies to the processing of personal data by **automated means or non-automated means** if the data is part of a filing system.	PIPEDA **does not** differentiate between the collection, use, or disclosure of personal information by automated and non-automated means.

2. Key definitions

2.1. Personal data

The definitions of personal data or personal information under the GDPR and PIPEDA respectively both relate to information regarding an identified or identifiable individual. However, while the GDPR provides a list of information regarded as 'sensitive' and provides requirements for the processing of such data, PIPEDA does not distinguish personal information as either sensitive or not. The OPC's PIPEDA in Brief Guidance and its Personal Information Guidance clarify that certain types of personal information will be considered sensitive and note that organizations, when collecting, using, or disclosing sensitive personal information, must exercise heightened care in order to comply with PIPEDA.

GDPR	PIPEDA
Articles 4(1), 9 Recitals 26-30	Sections 2(1), 4(2)(b)-(c), 4.01 Schedule 1, 4.3.4

Similarities

The GDPR defines '**personal data**' as 'any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.'

PIPEDA defines **'personal information' as 'information about an identifiable individual.'**
The PIPEDA in Brief Guidance outlines that 'personal information includes any factual or subjective information, recorded or not, about an identifiable individual.
This includes information in any form, such as:

- **age, name, identification numbers, income, ethnic origin, or blood type;**
- **opinions, evaluations, comments, social status, or disciplinary actions; and**
- **employee files, credit records, loan records, medical records, existence of a dispute between a consumer and a merchant, or intentions (for example, to acquire goods or services, or change jobs).'**

Furthermore, the Personal Information Guidance indicates that information will be personal information where there is a **serious possibility** that an individual could be identified through the use of that information, alone or in combination with other information.

The GDPR defines **special categories of personal data** as data revealing a data subject's 'racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation.'

Although PIPEDA does not define what constitutes **sensitive personal information**, it provides that any personal information may be sensitive depending on the context, although some information, including medical and income records, is almost always considered sensitive.

GDPR	PIPEDA
Similarities (cont'd)	
The GDPR specifies that **online identifiers** may be considered as personal data, such as **IP addresses, cookie identifiers, and radio frequency identification tags**.	PIPEDA does not explicitly state that online identifiers may be considered personal information. However, the Personal Information Guidance clarifies that **IP addresses, GPS tracking information, and radio frequency identification tags** may be considered personal information.
The GDPR does **not** apply to 'anonymised' data, where the data can no longer be used to identify the data subject.	While PIPEDA does not explicitly exclude anonymous information from its application, the definition of personal information means that anonymous information could not be personal information and thus **anonymous information is not subject to or covered by PIPEDA**.
Differences	
Not applicable.	Not applicable.

2.2. Pseudonymisation

The GDPR provides a definition for pseudonymised data and clarifies that such data is subject to the obligations of the GDPR. PIPEDA neither provides a definition nor expressly regulates pseudonymised data.

GDPR	PIPEDA
Articles 4(5), 11 Recitals 26, 29	Not applicable

Similarities

GDPR	PIPEDA
Not applicable.	Not applicable.

Differences

GDPR	PIPEDA
The GDPR defines **pseudonymised data** as 'the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.'	PIPEDA **does not** expressly define pseudonymised data nor does it outline specific provisions on the treatment of pseudonymised data for organizations.

2.3. Controllers and processors

Although PIPEDA does not provide definitions for data controllers and data processors, it does define the term organization. The GDPR and PIPEDA provide a similar set of responsibilities for data controllers, data processors, and organizations, specifically with regards to accountability, purpose limitation, and accuracy, among other things.

GDPR	PIPEDA
Articles 4, 17, 28, 30, 32, 33, 35, 37, 38 Recitals 64, 90, 93	Section 2 Schedule 1, 4.1 - 4.10

Similarities

Data controllers must comply with the **purpose limitation and accuracy principles, and rectify** a data subject's personal data if it is **inaccurate** or **incomplete**.

When collecting, using and disclosing personal information, organizations must **identify the purposes** for which personal information is collected at or before the time the information is collected. Subsequently, organizations must **limit the collection** of personal information to that which is necessary for the identified purposes, and must collect information by fair and lawful means.

Organizations must also **limit the use, disclosure, and retention** of personal information. Personal information must not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information must be retained only as long as necessary for the fulfilment of those purposes.

Organizations must also maintain the **accuracy** of personal information, which must be complete, and up to date as is necessary for the purposes for which it is to be used. Moreover, upon request, an individual must be informed of the existence, use, and disclosure of their personal information and must be given **access to that information**. An individual must be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

Data controllers must implement **technical and organisational security measures**, and notify supervisory authorities of **data breaches**.

Organizations must ensure the protection of personal information which must be protected by **security safeguards** appropriate to the sensitivity of the information.

Accountability is a fundamental principle of the GDPR (see section 4.6. of this Guide). In certain circumstances under the GDPR, appointment of a data protection officer ('DPO') may be required (see section 4.4. of this Guide).

As **accountability** lies with organizations for personal information under their control, including information which has been disclosed to third parties, organizations must designate an individual or individuals who

GDPR	PIPEDA
Similarities (cont'd)	
	are accountable for the organization's compliance with the principles established in PIPEDA.
The GDPR stipulates that data controllers and data processors keep **records of processing activities** and provides an exception from this obligation for small organisations.	Organizations must maintain **openness** by making information about their policies and practices relating to the management of personal information readily available to individuals.
The GDPR provides **processes for data subject complaints** as well as rights relating to accessing and rectifying personal data (see section 5. of this Guide).	Organizations must allow individuals the opportunity to **challenge compliance**. Individuals must be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.
Differences	
A **data controller** is a natural or legal person, public authority agency, or other body that determines the **purposes** and **means** of the processing of personal data, alone or jointly with others.	PIPEDA **does not** provide a definition for data controllers; however, PIPEDA does define the term 'organization' which includes an association, a partnership, a person, or a trade union.
A **data processor** is a natural or legal person, public authority, agency, or other body which processes personal data on **behalf** of the controller.	PIPEDA **does not** provide a definition for data processors.
The GDPR provides that data controllers or data processors must conduct **DPIAs** in certain circumstances.	PIPEDA **does not** establish Privacy Impact Assessment ('PIA') requirements. However, an organization may choose to complete a PIA as an aspect of its policies undertaken to give effect to the principles in Schedule 1. Furthermore, the OPC has issued its Guidance on the use of PIAs ('the PIA Guidance') which recommends the use of a PIA by organizations before new products, services, or information systems are introduced or existing ones are significantly changed.
Data controllers based outside the EU and involved in certain forms of processing, with exceptions based on the scale of processing and type of data, are obliged to **designate a representative based within the EU** in writing.	Organizations located outside of Canada which are subject to PIPEDA are **not required to designate a representative based in Canada**. As discussed below, all organizations subject to PIPEDA are required to appoint a privacy officer. However, PIPEDA imposes no obligations with respect to the geographic location of the privacy officer.

2.4. Children

Unlike the GDPR, PIPEDA does not impose obligations relating to children. However, the OPC has released Guidance on services aimed at children and youth ('the Children Guidance') which provides instructions on the collection, use, and disclosure of youth information.

GDPR	PIPEDA
Articles 6, 8, 12, 40, 57 Recitals 38, 58, 75	Not applicable

Similarities

The GDPR **does not** define 'child' or 'children.'

When any information is addressed specifically to a child, controllers must take **appropriate measures** to provide **information** relating to processing in a concise, transparent, intelligible, and easily accessible form, using clear and plain language, that the child can easily understand.

The GDPR considers children as '**vulnerable natural persons**' that merit specific protection with regard to their personal data. In particular, specific protection should be given when children's personal data is used for marketing or collected for information society services offered directly to a child.

PIPEDA **does not** define 'child' or 'children.'

The Children Guidance provides organizations with tips regarding the collection, use, and disclosure of youth information, including:

- **limiting, or avoiding altogether, the collection of personal information;**
- **being cautious of 'inadvertent' collection;**
- **having an appropriate retention schedule for inactive accounts;**
- **speaking to the specific services being provided to youth;**
- **making sure users can understand the organization's privacy policies and practices, or know how to engage their parents/guardians;**
- **considering the user experience;**
- **making clear who is agreeing to terms and conditions;**
- **ensuring proper defaults considering the age of users;**
- **knowing what is happening on an organization's site; and**
- **preventing unauthorised use of childrens' information, as opposed to monitoring use and assuming third parties will comply with contractual obligations.**

Differences

The GPDR provides that data controllers are required to make reasonable efforts to **verify** that **consent** is given or authorised by a parent or guardian.

The GDPR applies to children's data in relation to **information society services**.

PIPEDA **does not** require organizations to make efforts to verify that parents or guardians have provided consent on behalf of children.

PIPEDA **does not** specifically address information society services.

GDPR	PIPEDA

Differences (cont'd)

Where the processing is based on consent, the consent of a parent or guardian is required for providing information society services to a child below the **age of 16**. EU Member States can **lower this age limit to 13**.

The Children Guidance notes that in all but exceptional cases, consent for the collection, use, and disclosure of personal information of children **under the age of 13**, must be obtained from their parents or guardians.

2.5. Research

Under the GDPR, the processing of sensitive data is not prohibited when necessary for research purposes and certain measures have been taken to safeguard the fundamental rights and interests of the data subjects. The GDPR provides specific rules for the processing of personal data for research purposes, including data minimisation and anonymisation. PIPEDA permits organizations to use and disclose personal information without consent where use or disclosure is for statistical or scholarly study or research purposes and certain other conditions are met.

GDPR	PIPEDA
Articles 5(1)(b), 9(2)(j), 14(5), 17(3), 21(6), 89 Recitals 33, 159-161	Sections 7(2)(c), 7(3)(f) Schedule 1, 4.3.8

Similarities

According to the GDPR, **the processing of sensitive data is not prohibited when 'necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes**, which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.'

According to PIPEDA, an organization is permitted to use or disclose personal information **without the knowledge or consent** of the individual if the personal information is used for **statistical or scholarly study or research purposes**.

Differences

Under the GDPR, the processing of personal data for research purposes is subject to **specific rules** (e.g. with regard to the purpose limitation principle, right to erasure, data minimisation and anonymisation etc.).

Under PIPEDA, organizations may **only** use or disclose personal information without knowledge or consent for research purposes if the research purposes cannot be achieved without using the personal information. In addition, the personal information must be used in a manner that **maintains confidentiality and obtaining consent must be impracticable**. Lastly, the organization must **inform the OPC prior to the use or disclosure**.

The GDPR clarifies that the processing of personal data for **scientific research** purposes should be interpreted 'in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research.'

PIPEDA **does not** provide an equivalent provision on the scope of 'research' nor does it provide for derogations in the same manner as the GDPR.

Under the GDPR, where personal data is processed for research purposes, it is possible for Member States to derogate from some data subjects' rights, including the

Other than knowledge and consent, PIPEDA **does not** explicitly permit organizations to derogate from particular rights of individuals for the fulfilment of research purposes.

GDPR	PIPEDA

Differences (cont'd)

right to access, the right to rectification, the right to object, and the right to restrict processing, insofar as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such **derogations** are necessary for the fulfilment of those purposes.

The data subject has the **right to object** to the processing of personal data for research purposes **unless such research purposes are for reasons of public interest**.

Although under PIPEDA individuals are generally permitted to withdraw consent at any time, PIPEDA **does not** have an equivalent provision regarding an individual's right to object to the processing of personal information for research purposes.

3. Legal basis

Fairly inconsistent

Unlike the GDPR, PIPEDA does not provide a detailed list of legal bases for the processing of personal data. Instead, PIPEDA contains an overarching requirement that organizations may only collect, use, or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

PIPEDA requires consent prior to the collection, use, or disclosure of personal information, unless an exception applies. The OPC has issued non-binding guidance for obtaining meaningful consent from individuals, which suggests abiding by principles such as providing clear consent options, establishing innovative consent processes, and ensuring the provision of generally understandable information, among other things.

GDPR	PIPEDA
Articles 5-10 Recitals 39-48	Sections 5(3), 6.1, 7(1)-(3) Schedule 1, 4.3

Similarities

The GDPR recognises **consent** as a legal basis to process personal data and includes **specific information** on how consent must be obtained and can be withdrawn.

PIPEDA requires **consent** prior to the collection, use, or disclosure of personal information, **unless an exception applies**. Under PIPEDA, consent is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the **nature, purpose, and consequences** of the collection, use, or disclosure of the personal information to which they are consenting. PIPEDA provides that the way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected, and that **implied consent is generally appropriate for less sensitive personal information**.

Differences

Under the GDPR, as a general rule, the processing of **special categories of personal data is restricted unless** an exemption applies, which include the data subject's **explicit consent**.

PIPEDA does not specify special categories of personal information. Rather, PIPEDA imposes **heightened levels of care with respect to sensitive** personal information. PIPEDA does not define what constitutes sensitive personal information, but clarifies that **any information can be sensitive depending on the context**. As discussed previously, the Personal Information Guidance clarifies that certain types of personal information will be considered sensitive information (see section 1.3. of this Guide).

GDPR	PIPEDA

Differences (cont'd)

The GDPR states that data controllers can only process personal data when there is a **legal ground** for it. The legal grounds are:

- consent;
- when processing is necessary for the performance of a contract which the data subject is part of in order to take steps at the request of the data subject prior to entering into a contract;
- compliance with legal obligations to which the data controller is subject;
- to protect the vital interest of the data subject or of another natural person;
- performance carried out in the public interest or in the official authority vested in the data controller; or
- for the legitimate interest of the data controller when this does not override the fundamental rights of the data subject.

Further permissible uses are provided for the processing of special categories of personal data under Article 9(2).

Under PIPEDA, organizations may only collect, use, or disclose personal information for **purposes that a reasonable person would consider appropriate in the circumstances**.

4. Controller and processor obligations

4.1. Data transfers

Fairly inconsistent

Both the GDPR and PIPEDA regulate the transfer of data to third parties. However, whereas the GDPR specifically regulates international transfers with a mechanism for determining the 'adequacy' of protection, PIPEDA places the onus of ensuring that a comparable level of protection exists on the transferring organization for both domestic and international transfers.

GDPR	PIPEDA
Articles 44-50 Recitals 101, 112	Schedule 1, 4.1, 4.1.3, 4.5

Similarities

The GDPR allows personal data to be **transferred** to a **third country** or international organisation when certain requirements are met.

PIPEDA allows personal information to be **transferred** to a domestic or international **third party** for processing when certain requirements are met.

Differences

The GDPR allows personal data to be transferred to a third country or international organisation that has an **adequate level of protection** as determined by the European Commission. In the absence of a decision on adequate level of protection, a transfer is permitted when the data controller or data processor provides appropriate safeguards with effective legal remedies that ensure the data subjects' rights as prescribed under the GDPR. **Appropriate safeguards include**:

- Binding Corporate Rules ('BCRs') with specific requirements (e.g. a legal basis for processing, a retention period, complaint procedures, etc.);
- standard data protection clauses adopted by the European Commission or by a supervisory authority;
- an approved code of conduct; or
- an approved certification mechanism.

PIPEDA **does not** provide a mechanism for establishing that a third-party organization has developed an **adequate level of protection**. Rather, under PIPEDA, transferring organizations **remain responsible** for personal information transferred to third parties, as the information is considered to remain under the control of the transferring organization. Organizations must use contractual privacy protection clauses or other means to ensure a **comparable level of protection** while the information is being processed by the third party. The OPC's Guidelines for Processing Personal Data Across Borders ('the Cross-border Guidelines') has clarified that **appropriate means include**, but are not limited to, ensuring that the third party:

- has appropriate policies and processes in place;
- has trained its staff to ensure information is properly safeguarded at all times; and
- has effective security measures in place.

The GDPR **distinguishes** between domestic and international transfers. One of the following legal grounds can be applied to the transfer of personal data abroad:

- prior **consent**;
- when a data subject has explicitly **consented** to the proposed

PIPEDA **does not** distinguish between domestic and international transfers of information to third parties. Although there is no requirement for additional consent for cross-border transfers under PIPEDA, the Cross-border Guidelines note that organizations must provide **notice** to customers that:

GDPR	PIPEDA

Differences (cont'd)

transfer and acknowledged the possible risks of such transfer due to inadequate safeguards;

- when the transfer is necessary for the performance or conclusion of a **contract**;
- when the transfer is necessary for important **public interest** reasons;
- when the transfer is necessary for the establishment, exercise, or defence of a **legal** claim; and
- when the transfer is necessary to protect the **vital interests** of a data subject or other persons.

The grounds for a cross-border **transfer includes the transfer being made from a register** which, according to the EU or a Member States' law, is intended to provide information to the public, and which is open to consultation either by the public in general or by any person who can demonstrate a **legitimate interest**, but only to the extent that the conditions laid down by EU or Member State law for consultation are fulfilled in the particular case.

- their personal information may be sent to another jurisdiction for processing; and
- while the information is in the other jurisdiction, it may be accessed by the courts, law enforcement, and national security authorities.

Moreover, the Cross-border Guidelines has clarified that in situations where neither contractual clauses nor other means are effective in safeguarding personal information, **consent may** be required.

PIPEDA **does not** specify grounds for cross-border transfers.

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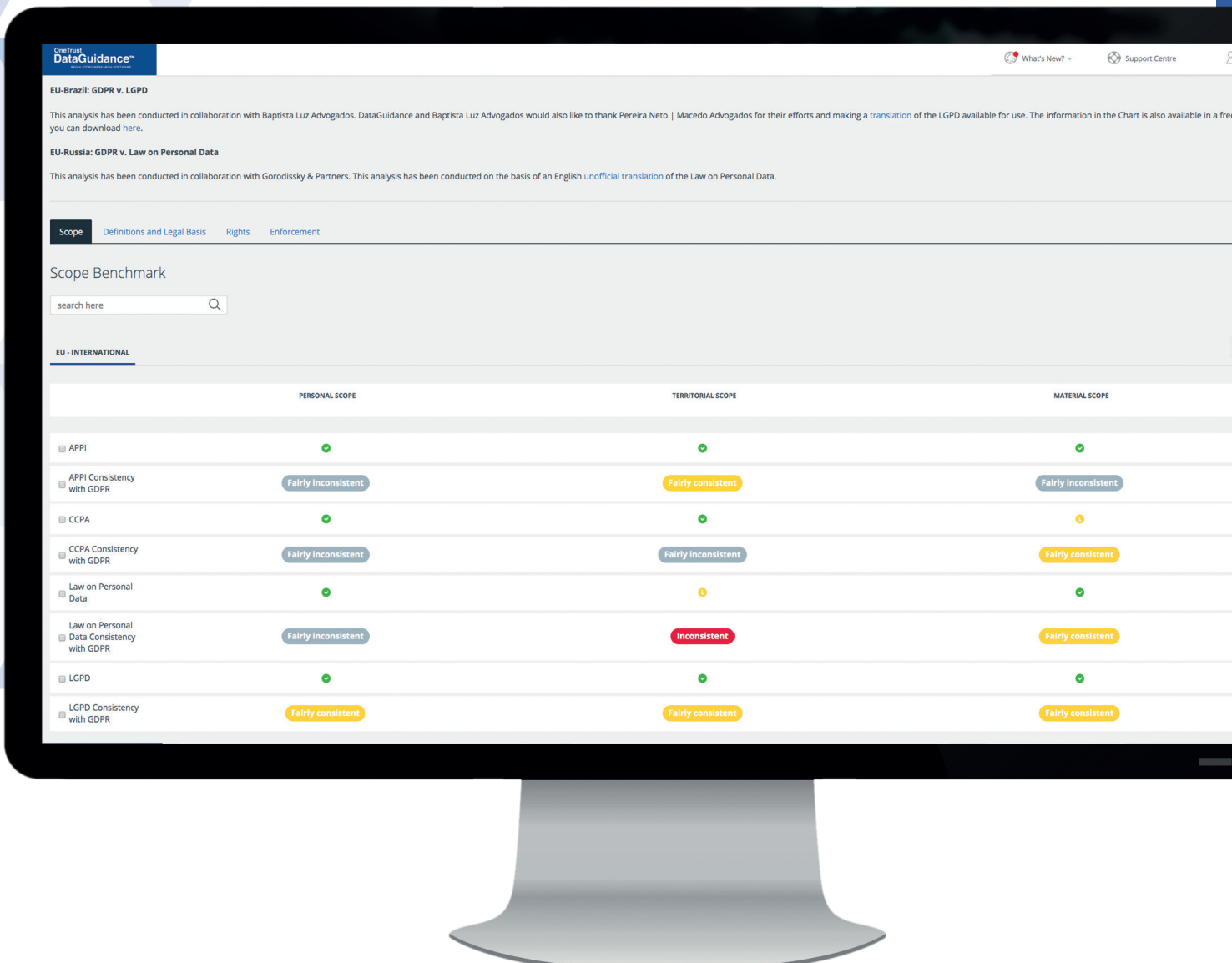

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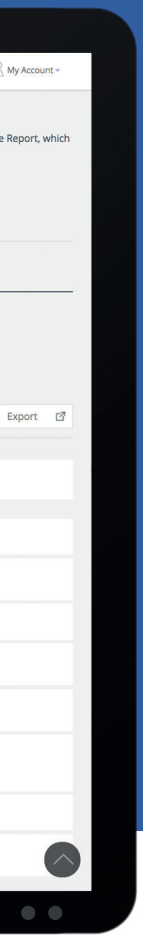

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4.2. Data processing records

The GDPR requires data controllers and processors to maintain a record of processing activities. In contrast, PIPEDA does not impose specific record-keeping obligations for organizations' processing activities.

GDPR	PIPEDA
Article 30 Recital 82	Schedule 1, 4.2.1, 4.5.1, 4.8.1, 4.8.2

Similarities

The GDPR **prescribes a list of information that a data controller** must record:

- the name and contact details of the **data controller**;
- the **purposes of the processing**;
- a description of the categories of **personal data**;
- the categories of recipients to whom the personal data will be **disclosed**;
- the **estimated period for erasure** of the categories of data; and
- a general description of the technical and organisational **security measures** that have been adopted.

Under PIPEDA, organizations must **record the purposes** for which personal information is collected. In addition, organizations must make available information about their **policies and practices** with respect to the management of personal information, which includes:

- **contact information** for the person accountable for the organization's policies and procedures and to whom complaints or inquires can be made;
- the means of gaining **access** to personal information held by the organization;
- a description of the **type of personal information** held by the organization, including a general account of its use;
- information that explains the organization's **policies, standards, or codes**; and
- what personal information is made available to **related organizations**.

Differences

Data controllers and data processors have an obligation to **maintain a record** of processing activities under their responsibility. The processing of information recorded by a data controller must be in **writing or electronic form**. The requirements around data processing records will not apply to **an organisation with less than 250 employees**, unless the processing:

- is likely to result in a risk to the rights and freedoms of data subjects;
- is not occasional; or
- includes special categories of data in Article 9(1) (e.g. religious beliefs, ethnic origin, etc.) or is personal data relating to criminal convictions and offences in Article 10.

PIPEDA **does not** require organizations to maintain a record of processing activities under their responsibility.

GDPR	PIPEDA

Differences (cont'd)

The obligations in relation to data processing records are also imposed on the **representatives of data controllers**.

The GDPR **prescribes a list of information that a data controller** must record with respect to **international transfers** of personal data, such as the identification of third countries or international organisations, and the documentation of adopted suitable safeguards.

PIPEDA **does not** impose obligations on representatives of organizations in respect of processing personal information.

PIPEDA **does not** prescribe information that an organization must record when transferring data to a third party.

4.3. Data processing impact assessment

The GDPR requires a DPIA to be conducted under specific circumstances. Although a PIA is not required under PIPEDA, an organization may conduct a PIA as part of its policies and practices implemented to give effect to the privacy principles listed in Schedule 1.

GDPR	PIPEDA
Articles 35, 36 Recitals 75, 84, 89-93	Not applicable

Similarities

GDPR	PIPEDA
Not applicable.	Not applicable.

Differences

The GDPR provides that a DPIA must be conducted **under the following circumstances**:

- the processing may result in a high risk to the rights and freedoms of an individual;
- when a systematic and extensive evaluation of personal aspects relating to natural persons is involved, which is based on automated processing or profiling;
- there is processing on a large scale of special categories of data;
- there is systematic monitoring of a publicly accessible area on a large scale; and
- a data controller utilises **new technologies** to process personal data.

The GDPR also specifies the information that a DPIA must contain, requirements for prior consultation, and obligations for further reviews where circumstances change.

Organizations subject to PIPEDA are **not required to conduct** a PIA. However, the PIA Guidance recommends the use of a PIA before new products, services, or information systems are introduced or existing ones are significantly changed. In addition, an organization may choose to complete a PIA as part of its policies and procedures undertaken to give effect to the Schedule 1 principles.

4.4. Data protection officer appointment

The GDPR requires the appointment of a DPO in specified circumstances. In contrast, PIPEDA requires all organizations to designate an individual or individuals to be accountable for ensuring the organization's compliance with the principles set out in Schedule 1.

GDPR	PIPEDA
Articles 13-14, 37-39 Recital 97	Section 6 Schedule 1, 4.1-4.1.2, 4.8.2, 4.10.1

Similarities

If a DPO is appointed, then data subjects may **contact** the DPO with regard to the processing of their personal data as well as the exercising of their rights.

The privacy officer(s) must act as the **point of contact** for individuals with compliance concerns.

Contact details of the DPO must be included in the privacy notice for data subjects, and they must be communicated to the supervisory authority.

The **name or title, and the address**, of the privacy officer(s) must be made readily available.

Under the GDPR, a DPO's tasks include:

- **informing and advising** the controller or the data processor and the employees who carry out processing of their obligations pursuant to the GDPR and to other Union or Member State data protection provisions;
- **monitoring compliance** with the GDPR with other Union or Member State data protection provisions and with the policies of the data controller or data processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits; and
- **acting as a contact point** for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.

Guidance from the OPC, including the PIPEDA Self-Assessment Tool and the Getting Accountability Right with a Privacy Management Program Guide, outline **recommended and required responsibilities** of privacy officers, which include informing and monitoring compliance, as well as acting as a point of contact, among other things.

Differences

Under the GDPR, data controllers and data processors, including their representatives, are required to **appoint** a DPO in certain circumstances. The data controller and the data processor will designate a DPO in any case where:

- the processing is **carried out by a public authority or body**, except for courts acting in their judicial capacity;

Under PIPEDA, all organizations are required to **designate** an individual or individuals who are accountable for ensuring the organization's compliance with the principles set out in Schedule 1. The PIA Guidance refers to these individuals as privacy officers.

GDPR	PIPEDA

Differences (cont'd)

• the core activities of a data controller or data processor consist of processing operations which, by virtue of their nature, their scope, and/or their purposes, require **regular and systematic monitoring** of data subjects on a large scale; or • the core activities of the controller or the processor relate to a large scale of **special categories of personal data** (e.g. religious beliefs, ethnic origin, data required for the establishment, exercise, or defence of legal claims etc.)	
The GDPR recognises the **independence** of DPOs.	PIPEDA **does not** explicitly recognise the independence of privacy officers.

4.5. Data security and data breaches

Both the GDPR and PIPEDA require organizations to implement appropriate security measures with respect to personal information. In addition, the GDPR and PIPEDA provide lists of physical, organizational, and technological measures that organizations may utilise in the safeguarding of personal information.

Both the GDPR and PIPEDA contain mandatory data breach notification provisions. However, the GDPR provides exceptions to its data breach notification provisions, whereas PIPEDA does not.

GDPR	PIPEDA
Article 5, 24, 32-34 Recitals 74-77, 83-88	Sections 10.1-10.3 Schedule 1, 4.7 Regulation SOR/2018-64

Similarities

The GDPR recognises **integrity** and **confidentiality as fundamental principles** of protection by stating that personal data must be processed in a manner that ensures the **appropriate security** of the personal data.

All organizations subject to PIPEDA are required to **implement appropriate safeguards** to protect personal information against loss or theft, as well as unauthorised access, disclosure, copying, use, or modification.

The GDPR states that **data controllers and data processors are required to implement appropriate technical and organisational security measures** to ensure that the processing of personal data complies with the obligations of the GDPR.

The safeguards employed to protect the personal information must be appropriate to the **sensitivity** of the information.

The GDPR provides a **list** of **technical and organisational measures**, where appropriate, that data controllers and data processors may implement such as pseudonymisation, encryption, and the ability to restore availability and access to personal data in a timely manner in the event of physical or technical incidents, to ensure integrity and confidentiality.

PIPEDA provides a list of **physical, organizational, and technological measures** that organizations may utilise in the safeguarding of personal information.

In the case of a personal data breach, the **data controller must notify the competent supervisory authority** of the breach, unless the personal data breach is unlikely to **result in a risk** to the individuals' rights and freedoms.

In the case of a breach of personal information under its control, an organization must **notify the OPC** if it is reasonable in the circumstances to believe that the breach creates a **real risk** of significant harm to an individual.

Under the GDPR, data controllers must notify the competent supervisory authority of personal data breaches **without undue delay** and, where feasible, **no later than 72 hours** after having become aware of the breach.

Under PIPEDA, the OPC must be notified of the personal data breach **as soon as feasible** after the organization determines that the breach has occurred.

The controller must **notify** the **data subject** of a data breach without undue delay if the data breach is likely to result in a **high risk** to the rights and freedoms of natural persons.

Unless otherwise prohibited by law, an organization must **notify an individual** of any breach of security safeguards involving the individual's personal information under the organization's

GDPR	PIPEDA
Similarities (cont'd)	
	control if it is reasonable in the circumstances to believe that the breach creates a **real risk** of significant harm to the individual. The notification to the individual must be given as soon as feasible after the organization determines that the breach has occurred.
The GDPR **provides a list of information** that must be, at minimum, **included in the notification** of a personal data breach. For example, a notification must describe the nature of the breach, the approximate number of data subjects concerned, and the consequences of the breach.	Regulation SOR/2018-64 provides a list of information that **must be included** in the notification to the OPC and affected individuals of a breach of security safeguards. For example, a notification must contain a description of the circumstances of the breach and a description of the personal information that is the subject of the breach.
The GDPR states that **data processors must notify** the data controller without **undue delay** after becoming aware of the personal data breach.	When an organization notifies an individual of a breach of security safeguards, it must also notify any **other organization or government institution** of the breach if it believes that the other organization or government institution may be able to reduce the risk of harm that could result from the breach. This notification must be given as soon as feasible after the organization determines that the breach has occurred.
The GDPR requires data controllers to **document** any personal data breaches, comprising the facts relating to the personal data breach, its effects, and the remedial action taken.	Organizations subject to PIPEDA must keep and maintain a **record** of every breach of security safeguards involving personal information under its control.
Differences	
Under the GDPR, the obligation of data controllers to notify data subjects when the data breach is likely to result in a high risk to the rights and freedoms of natural persons, **is exempted in certain circumstances** such as where: • appropriate technical and organisational protective measures have been implemented; • any subsequent measures have been taken in order to ensure that the risks are no longer likely to materialise; or • it would involve disproportionate effort.	PIPEDA **does not provide exemptions** to the requirement to notify individuals when the breach of security safeguards creates a real risk of significant harm to the individual.

4.6. Accountability

Both the GDPR and PIPEDA explicitly refer to the concept of accountability as a fundamental principle of the protection of information.

GDPR	PIPEDA
Article 5, 24-25, 35, 37 Recital 39	Section 5(1) Schedule 1, 4.1

Similarities

The GDPR recognises **accountability** as a fundamental principle of data protection. Article 5 states that 'the data controller shall be responsible and able to demonstrate compliance with, paragraph 1 [accountability].' In addition, the principles can be taken to apply to several other principles as mentioned in other sections of this report, including the appointment of a DPO, and DPIAs.

PIPEDA recognises **accountability** as a fundamental principle of the protection of information. Section 5(1) states that 'every organization shall comply with the obligations set out in Schedule 1.' The accountability principle described in Schedule 1 can be taken to apply to several sections of this Guide, including the transfer of data to third parties and the appointment of a privacy officer.

Differences

Not applicable.

Not applicable.

5. Individuals' rights

5.1. Right to erasure

The GDPR provides data subjects with the right to erasure and stipulates requirements relating to grounds for exercising the right, when fees are applicable, and the information that must be provided to data subjects regarding the right, among other things. While PIPEDA does not contain an equivalent express right, it outlines obligations for deleting or de-identifying personal information irrespective of any request from an individual, and provides that organizations must develop guidelines and implement procedures to govern the destruction of personal information.

GDPR	PIPEDA
Articles 12, 17 Recitals 39, 59, 65-66	Schedule 1, 4.3.8, 4.5.3, 4.9.5, 4.10

Similarities

GDPR	PIPEDA
Not applicable.	Not applicable.

Differences

The right to erasure applies to specific grounds, such as where **consent of the data subject is withdrawn** and there is **no other legal ground** for processing, or the personal data **is no longer necessary** for the purpose for which it was collected. The GDPR also sets out several requirements covering the process of exercising this right, including informing data subjects, specific exceptions, how requests can be made, and timelines for responses, among others.

The GDPR also requires that the period for which personal data are stored are minimised, and that time limits should be established by data controllers for erasure or periodic review.

PIPEDA **does not** provide individuals with the right to erasure. Rather, PIPEDA states that personal information that is **no longer required** to fulfil the purposes for which it was collected should be destroyed, erased, or anonymised. PIPEDA requires organizations to develop guidelines and implement procedures to govern the **destruction of personal information**.

PIPEDA further outlines that individuals must be able to **challenge compliance** with PIPEDA's principles, and organizations must put in place procedures to receive and respond to complaints.

When an **individual successfully demonstrates** the inaccuracy or incompleteness of personal information, the organization must **amend** the information as required. Amendment may involve the **correction, deletion, or addition** of information, and where appropriate, this amendment should be **transmitted to third parties** with access to the information.

5.2. Right to be informed

The GDPR recognises the right to be informed and imposes an obligation to provide individuals with specific information relating to the 'processing' of personal data/information.

PIPEDA does not generally recognise an individual's right to be informed in the same manner as the GDPR. Rather, consent under PIPEDA is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose, and consequences of the collection, use, or disclosure of the personal information to which they are consenting.

GDPR	PIPEDA
Articles 5-14, 47 Recitals 58 - 63	Sections 6.1, 7(1)-7(3) Schedule 1, 4.2.3, 4.2.5, 4.3.2, 4.4.1, 4.8.2

Similarities

Data subjects should be **informed of the purposes of processing** in order to validate consent.

Identified purposes for the collection of personal information **should be specified to the individual concerned** at the time or before the time of collection, in writing or orally, depending on the way in which information is collected. The principle of consent under PIPEDA requires 'knowledge and consent' and that reasonable efforts must be made to ensure individuals are advised of the purpose for which personal information may be used.

Differences

Data subjects must be provided with information relating to the processing of personal data in order to validate their consent, including:

- **details of personal data** to be processed;
- **data subjects' rights** (e.g. the right to erasure, right to object, right of withdrawal, right to lodge a complaint to a relevant authority, etc.);
- **purposes** of processing, including the legal basis for processing;
- **recipients or their categories** of personal data; and
- **contact details** of the data controller or its representative and the DPO.

The GDPR establishes several other obligations relating to the right to be informed, such as restricting processing for additional purposes, the format of information provided, informing of transfers, automated decision making, and data retention periods, as well as regulating when information should be provided.

PIPEDA does not explicitly recognise an individual's right to be informed of the collection, use, or disclosure of personal information, so long as certain conditions are met with respect to the collection, use, or disclosure of such information. Consent under PIPEDA, though, is **only valid** if it is reasonable to expect that an individual to whom the organization's activities are directed would **understand** the nature, purpose, and consequences of the collection, use, or disclosure of the personal information to which they are consenting. In limiting the collection of personal information to that which is necessary, organizations must specify the type of information collected as part of their information-handling policies and practices.

5.3. Right to object

Both the GDPR and PIPEDA provide individuals with the right to withdraw consent to the processing of personal information. Unlike PIPEDA, the GDPR provides a right to object to the processing of personal information in certain circumstances. PIPEDA instead allows individuals to challenge an organization's compliance with the consent requirement, and organizations must develop procedures for responding to such complaints.

GDPR	PIPEDA
Articles 7, 12, 18, 21, 29	Schedule 1, 4.3.8, 4.10

Similarities

Data subjects will have the right to **withdraw** their consent to the processing of their personal data **at any time**.

PIPEDA allows individuals to **withdraw consent** at any time, subject to legal or contractual restrictions and reasonable notice. Organizations must inform individuals of the implications of withdrawing consent. However, organizations are entitled to retain the data for the period in which it is necessary to fulfil the purpose for which it was collected.

Differences

Under the GDPR, data subjects are provided with the right to object to the processing of their personal data in specific circumstances:

- the processing of personal data is due to **tasks carried out in the public interest** or **based on a legitimate interest pursued by the data controller** or **third party**;
- the processing of personal data is for **direct marketing purposes**; and
- the processing of personal data is for **scientific** or **historical research**, or **statistical purposes**.

PIPEDA does not provide individuals with the right to object to the processing of personal information for circumstances similar to those in the GDPR. Rather, individuals may **challenge** an organization's compliance with the principles in Schedule 1 of PIPEDA, and organizations must develop **procedures** for responding to such complaints.

The data subject has the right to be **informed** about the right to object, and must be informed of information about **how to exercise** the right. The GDPR also establishes procedures for responding to objection and restriction of processing requests.

PIPEDA **does not** require organizations to inform individuals of their right to withdraw consent or how to exercise that right.

Upon receiving withdrawal of an individual's consent, the data controller must facilitate the exercise of the data subject's rights, which will **require the data controller to instruct the data processor to end processing** of the information.

Upon receiving withdrawal of an individual's consent, PIPEDA **does not** require organizations to contact other organizations to which it has disclosed information to inform those organizations of the withdrawal of consent.

5.4. Right of access

Both the GDPR and PIPEDA provide individuals with a right to access their personal information. The GDPR specifies that, when responding to an access request, the data controller must provide certain information. PIPEDA contains no such requirement.

GDPR	PIPEDA
Article 15 Recitals 59-64	Sections 8, 9 Schedule 1, 4.2.1, 4.9

Similarities

The GDPR recognises that data subjects have the **right to access** their personal data that is processed by a data controller.	PIPEDA provides that, upon request, an organization must inform an individual of the existence, use, and disclosure of his or her personal information and grant the individual **access** to that information. The OPC has also issued guidance on individuals' right of access
The GDPR provides that the right of access **must not adversely affect the rights or freedoms of others**, including those related to trade secrets.	PIPEDA acknowledges that, in certain situations, an organization may **not be able to provide access** to all the personal information it holds about an individual, including when that information contains references to other individuals, or would violate solicitor/client privilege for example.
Data subjects' requests under this right must be replied to without '**undue delay and in any event within one month from the receipt of a request**.' The deadline can be extended by two additional months taking into account the complexity and number of requests. In any case, the data subject must be informed of such an extension within one month from the receipt of a request.	An organization must respond to an individual's access request within a **reasonable time**, but in any case not later than 30 days after receipt of the request unless this time limit is extended.
The right to access can be exercised **free of charge**. There may be some instances where a fee may be requested, notably when the requests are unfounded, excessive, or have a repetitive character.	The response to an individual's request must be provided at a **minimal or no cost** to the individual.

Differences

The GDPR specifies that, **when responding** to an access request, the data controller must indicate the existence of the right to request from the controller the rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing.	PIPEDA **does not** require organizations to provide specific information upon receiving an access request. However, if an individual demonstrates that personal information about the individual held by an organization is incorrect, then the organization **must correct** the personal information.

GDPR	PIPEDA

Differences (cont'd)

The GDPR sets out **information that must be provided** when responding to an access request, **reasons for refusing a request**, the **means through which requests may be made**, and **requirements to have mechanisms in place to identify** requests from data subjects whose personal data is to be deleted.

While specific identity verification mechanisms are not mandated under PIPEDA, **individuals may be required to provide sufficient information** to enable the organization to offer an account of the requested personal information.

5.5. Right not to be subject to discrimination

The right not to be subject to discrimination in exercising rights is not explicitly mentioned in the GDPR or PIPEDA. However, under the GDPR the right not to be subject to discrimination can be inferred from the fundamental rights of the data subject. In Canada, laws other than PIPEDA grant individuals the right not to be subject to discrimination.

GDPR	PIPEDA
Similarities	
The GDPR **does not** explicitly address the right not to be subject to discrimination; therefore, no scope of implementation is defined.	PIPEDA **does not** explicitly address the right not to be subject to discrimination; therefore, no scope of implementation is defined. However, other Canadian laws do address and **prohibit discrimination**.
Differences	
Not applicable.	Not applicable.

5.6. Right to data portability

The GDPR provides data subjects with the right to data portability, whereas PIPEDA does not contain an equivalent right.

GDPR	PIPEDA
Articles 12, 20, 28 Recital 68, 73	Not applicable

Similarities

Not applicable.

Not applicable.

Differences

The GDPR provides individuals with the **right to data portability**, and defines the right to data portability as the **right to receive data processed on the basis of a contract or consent and processed by automated means, in a 'structured, commonly used, and machine-readable format'** and to transmit that data to another controller without hindrance.

PIPEDA **does not** include a direct equivalent to the right to data portability.

⚠ 6. Enforcement

6.1. Monetary penalties

Fairly inconsistent

Both the GDPR and PIPEDA impose monetary penalties for non-compliance, although amounts vary significantly. In addition, supervisory authorities have the power to issue penalties under the GDPR, while under PIPEDA, supervisory authorities refer these infringements to the judiciary.

GDPR	PIPEDA
Article 83-84 Recitals 148-149	Section 28

Similarities

The GDPR provides for the imposition of administrative **monetary penalties** for non-compliance.

PIPEDA provides for the imposition of **monetary penalties** on organizations for committing an offence under PIPEDA.

Differences

The GDPR has only one category of administrative fine, which also applies to **government bodies**.

The OPC **does not** have the power to issue fines for non-compliance with PIPEDA. Rather, the OPC can issue findings and make recommendations which are subsequently referred to judicial courts who then determine whether to issue monetary penalties for non-compliance with PIPEDA.

Depending on the violation, the penalty may be up to either: **2% of the global annual turnover or €10 million**, whichever is higher; or **4% of the global annual turnover or €20 million**, whichever is higher.

For offences punishable on **summary conviction**, fines do not exceed **CAD 10,000 (approx. €6,610)**. For **indictable offences,** fines do not exceed **CAD 100,000 (approx. €66,140)**.

Under the GDPR, it is **left to Member States to create rules** on the application of administrative fines to public authorities and bodies.

PIPEDA **does not** elucidate factors to consider when applying administrative sanctions.

When applying an administrative sanction, the supervisory authority must consider:

- the nature, gravity, and duration of the infringement;
- the intentional or negligent character of the infringement;
- any action taken to mitigate the damage;
- the degree of responsibility of the controller or processor;
- any relevant previous infringements;
- the degree of cooperation with the supervisory authority;
- the categories of personal data affected by the infringement;
- the manner in which the infringement became known to the supervisory authority;

PIPEDA provides that the **following conduct constitutes an offence**:

- obstructing the OPC in an investigation;
- failing to report security breaches involving personal information under an organization's control;
- failing to maintain records of security breaches involving personal information under an organization's control; and
- disciplining a whistleblower.

GDPR	PIPEDA

Differences (cont'd)

- where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject matter, compliance with those measures;
- adherence to approved codes of conduct or approved certification mechanisms; and
- any other aggravating or mitigating factor applicable to the circumstances of the case.

Supervisory authorities may develop guidelines that establish further criteria to calculate the amount of the monetary penalty.

The OPC **does not** administer fines and as such has not developed guidelines on the same.

6.2. Supervisory authorities

Both the GDPR and PIPEDA provide supervisory authorities with investigatory powers including the power to obtain information and access premises. However, the GDPR provides supervisory authorities with significantly more corrective powers to ensure compliance, while PIPEDA directs these powers to the Federal Court.

GDPR	PIPEDA
Articles 51-84 Recitals 117-140	Sections 11-13, 17-19, 24

Similarities

Under the GDPR, supervisory authorities have **investigatory powers** which include:

- ordering a controller and processor to provide information required;
- conducting data protection audits;
- carrying out a review of certifications issued; and
- obtaining access to all personal data and to any premises.

Under PIPEDA, the OPC has **investigatory powers**, including the power to:

- summon and enforce the appearance of persons before the OPC and compel them to give oral or written evidence on oath and to produce any records and materials that the OPC considers necessary to investigate the complaint, in the same manner and to the same extent as a superior court of record;
- administer oaths;
- receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the OPC sees fit, whether or not it is or would be admissible in a court of law;
- at any reasonable time, enter any premises, other than a dwelling-house, occupied by an organization on satisfying any security requirements of the organization relating to the premises;
- converse in private with any person in any premises entered under the fourth point above and otherwise carry out in those premises any inquiries that the OPC sees fit;
- examine or obtain copies of or extracts from records found in any premises entered under the fourth point above that contain any matter relevant to the investigation; and
- conduct audits of organizations if the OPC has reasonable grounds to believe that the organization has contravened a specific provision of PIPEDA.

Under PIPEDA, the OPC may attempt to **resolve complaints** by means of dispute resolution mechanisms, such as mediation or conciliation. In addition, the OPC may enter into compliance agreements whereby an organization agrees to bring itself into compliance with PIPEDA within a specified time period during which the OPC must not apply to the Federal Court for a hearing. An organization's failure to live up to a commitment under a compliance agreement may result in an application to

GDPR	PIPEDA
Similarities (Cont'd)	
	the Federal Court requiring compliance with the agreement's terms or seeking another order, penalty, or both.
Under the GDPR, supervisory authorities must also **handle complaints** lodged by data subjects and **cooperate with data protection authorities** from other countries.	Under PIPEDA, the OPC **handles complaints** lodged by individuals. Upon the findings of an investigation and the publication of a report of an investigation, the OPC may apply to the Federal Court for a hearing in respect of which a complaint was made or for matters referred to in an OPC report.
Under the GDPR, supervisory authorities are tasked with **promoting public awareness** and understanding of the risks, rules, safeguards, and rights in relation to processing as well as **promoting the awareness of controllers and processors** of their obligations, amongst other tasks.	Under PIPEDA, the OPC is tasked with **fostering public understanding** and recognition of the purposes of PIPEDA as well as encouraging organizations to develop detailed policies and practices to comply with the protection of personal information and the breach of security safeguards.
Differences	
It is **left to each Member State** to establish a supervisory authority, and to determine the qualifications required to be a member, and the obligations related to the work, such as duration of term as well as conditions for reappointment.	Under PIPEDA, the OPC is the **single federal supervisory authority** and each province and territory designates its own supervisory authority under applicable privacy legislation.
Under the GDPR, supervisory authorities have **corrective powers** which include: • issuing warnings and reprimands; • imposing a temporary or definitive limitation including a ban on processing; • ordering the rectification or erasure of personal data; and • imposing administrative fines.	Under PIPEDA, the corrective powers of the OPC are **limited**.

6.3. Civil remedies for individuals

Fairly inconsistent

Under both laws, individuals have the right to lodge complaints with supervisory authorities, as well as courts. Under PIPEDA, an individual must first file a complaint with the OPC and after the OPC issues a report, the individual may apply to the Federal Court for a hearing. Under the GDPR, data subjects have the right to an effective judicial remedy if they consider that their rights have been infringed.

GDPR	PIPEDA
Articles 79, 80, 82 Recitals 131, 146, 147, 149	Sections 11-16

Similarities

The GDPR provides individuals with a cause of action to **seek compensation** from a data controller and data processor for a violation of the GDPR.

PIPEDA provides that the Federal Court may **award damages** to individuals.

Under the GDPR, the data subject has the right to **lodge a complaint** with the supervisory authority. The supervisory authority must inform the data subject of the progress and outcome of his or her complaint.

Under PIPEDA, an individual has the right to **file a written complaint** with the OPC against an organization that contravened a provision in relation to the protection of personal information or breaches of security safeguards. If it is found that there are reasonable grounds to investigate a matter, the OPC may initiate a complaint. After the OPC issues a report of findings, the complainant may apply to the Federal Court for a hearing in respect of any matter in respect of which the complaint was made.

Differences

The GDPR provides that a data controller or processor must be **exempt from liability to provide compensation** if it proves that it is not in any way responsible for the event giving rise to the damage.

PIPEDA **does not** include any provisions on exemption from liability for organizations.

The GDPR allows Member States to provide for the possibility for data subjects to give a mandate for representation to **a not-for-profit body, association, or organisation** that has as its statutory objective the protection of data subject rights.

PIPEDA **does not** address representation of complainants.

The GDPR **does not** contain an equivalent complaint report requirement, although supervisory authorities must inform data subjects of progress and outcomes of complaints.

The OPC, within one year after the complaint, **must prepare a report on the results of the complaint**, containing:

- findings and recommendations;
- any settlement reached by parties;

GDPR	PIPEDA

Differences (Cont'd)

	• if appropriate, a request that the organization give the OPC, within a specified time, notice of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken; and • the recourse, if any, to be taken.
The GDPR **does not** explicitly define an equivalent set of remedies to be issued by courts. However, Member States may lay down rules on other penalties.	In addition to any other remedies, the Federal Court may **order an organization to correct its practices, publish a notice of any action taken** or proposed to be taken to correct its practices, and **award damages**.

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