

## Canadian Telcos and Banks Subject to the Quebec Privacy Law

A decision was recently issued by the Quebec *Commission d'Accès à l'information* ("CAI") pursuant to the *Act respecting the protection of personal information in the private sector* ("Quebec Private Sector Act") following a complaint filed against a Canadian telco ("Telco") pertaining to the collection of personal information. In *X. c. Rogers Communications Inc.*, the complainant's social insurance number (SIN) and driver's licence number were collected by Telco in the context of the activation of a cell phone.

The CAI declared the complaint founded and ordered Telco to cease collecting and holding the numbers of pieces of identification, including the SIN, presented by customers when opening an account for activation of a cell phone.

This decision is important for several aspects:

### 1. Confirmation of the customer's identity

Telco required the collection of the plaintiff's personal information during an application for opening of an account for activation of a cell phone, namely her SIN and her date of birth. Telco also asked her to present her driver's licence. Given her refusal to provide the information requested, she was informed that Telco could not proceed to open the account.

Telco explained that when an account is opened, the customer is invited to provide his/her name, address, telephone number and date of birth. In addition, the customer is required to provide two pieces of identification, which he/she may choose from a list including the SIN, driver's licence number, credit card number or passport number. It specified that no copies are made of the pieces

of identification requested to validate a potential customer's identity. However, the numbers of these IDs are noted in the customer's file.

The CAI acknowledges that an organization has the right to verify a customer's identity for the purchase or supply of goods or services payable in installments. Although an organization may not require the production of specific pieces of identification, such as the driver's licence or the health insurance card, it nonetheless may ask the customer to provide recognized pieces of identification of his/her choice to confirm his/her identity in accordance with previous decisions<sup>1</sup> and including, more recently, *X. and Loca-Meuble and X. and Skyventure Montréal*. In the Skyventure decision, the CAI recognized the right to authenticate customers' identities, but specified that, to do so, it is not necessary to collect the number of the ID presented for this purpose.

According to the CAI, even though an organization may ask to see pieces of identification in order to verify the identity of its customers, it may not collect their number, nor may it keep a copy of these IDs. The organization may note in the customer's file which of the pieces of identification was presented, but the CAI was not convinced of the necessity of collecting the ID number to identify the customer. Moreover, the CAI mentions that the Quebec *Highway Safety Code* provides at section 61 para. 2 that the driver's licence may only be required in special situations. Thus, the CAI concluded that telcos may not oblige an individual to identify himself/herself by means of a driver's licence.

## 2. Credit checks, fraud prevention and debt collection

Telco alleged that it was necessary for it to ascertain its customers' solvency and ability to pay before making a service agreement. It argued that it must therefore proceed with a preliminary credit check for each of its subscribers. For this purpose, it collects the number of the ID of the customer's choice provided by the customer from

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<sup>1</sup> *Regroupement des comités logement and Association de locataires du Québec and Corporation des propriétaires immobiliers du Québec*, [1995] C.A.I. 370; *Julien v. Domaine Laudance*, [2003] C.A.I. 77; *Perreault v. Blondin*, [2006] C.A.I. 162.

among the above-mentioned pieces of identification. Telco alleged that it is generally practical and easy to provide the SIN, the driver's licence number or a credit card number. It considers that in the absence of reliable pieces of identification, the credit report obtained may turn out to be inaccurate or incomplete, resulting in material financial consequences for Telco.

In several decisions discussed above,<sup>2</sup> the CAI concluded that only an individual's name, address, telephone number and date of birth are necessary to perform a credit check.

The CAI considered that an organization may ask its customers to present pieces of identification in order to verify their identity, but that it may not collect the numbers of these IDs, any more than the SIN, to perform identity checks or credit checks.

In addition, the CAI recognizes that the Federal [Privacy Commissioner](#) recommends that organizations not record personal information appearing on the ID examined to verify the customer's identity. Organizations must only compare the name and photo on the ID with the name indicated on the other ID presented. As for the SIN, the Federal Privacy Commissioner recommends limiting collection, use and disclosure to purposes authorized by the PIPEDA and related to income, according to its various guidelines, including its *Best Practices for the use of social insurance numbers in the private sector, Photo Identification Guidance, Fact Sheet, September 2007* and *Collection of driver's licence numbers under private sector privacy legislation – A guide for retailers*.

### 3. Jurisdiction of the CAI over complaints filed with a Telco or a Bank

Telco also pointed out that it submitted its observations without admission of the CAI's jurisdiction over the issues raised in the complaint. The ground alleged was the fact that it is a telecommunications undertaking, an area of exclusive federal jurisdiction. In this capacity, Telco argued that it would be subject

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<sup>2</sup> *Ibid.*

only to the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) and considers that it complies with the applicable principles thereof.

This recent decision is therefore interesting for issues pertaining to the jurisdiction of the CAI over a complaint involving a telco, an area of federal jurisdiction. The CAI has the power to inquire into the application of s. 81 of the Quebec Private Sector Act. This Act applies to every person who collects, holds, uses or communicates personal information to third persons in the course of carrying on an enterprise in Québec (s. 1 of the Private Sector Act and also art. 1525 of the *Civil Code of Québec*).

Telcos carry on an organized economic activity that is commercial in nature, which consists of selling products and services. A telco is therefore an enterprise within the meaning of article 1525 of the Civil Code of Québec. Carrying on this economic activity involves the collection, holding, use and communication of personal information. Thus, the CAI concluded that a telco is subject to the Private Sector Act, an Act of general application that establishes specific rules regarding the protection of personal information within the context of carrying on an enterprise in Québec.

For the CAI to conclude the inapplicability of the Quebec *Private Sector Act* in the case at bar, Telco had to prove that the Quebec Private Sector Act affects one of its essential elements to the point of impairing the core of the federal power in telecommunications matters as pointed out by the Supreme Court in the recent decision *Banque de Montréal v. Marcotte*.

The CAI articulated the view that it did not see how the application of the Quebec Private Sector Act, in the case of verification of the identity of a customer and his solvency, impaired the core of telecommunications activities. Moreover, the CAI and the Court of Québec have already concluded that the Quebec Private Sector Act applies to federally regulated enterprises (which would include telcos

and financial institutions) in many decisions including, more recently, in *Nadler v. Rogers Communications Inc.*<sup>3</sup>

Finally, Telco submitted that the Office of the Privacy Commissioner of Canada has already concluded that the collection of two pieces of identification, including the SIN and the driver's licence number for identification and credit check purposes, was in compliance with the PIPEDA in Summaries of conclusions of inquiries under PIPEDA no [2002-104](#), no [2003-151](#), no [2003-204](#), no [2003-217](#) and no [2005-288](#). The CAI articulated the view that these conclusions do not exempt a telco from complying with the provisions of the Quebec Private Sector Act.

The CAI explains how as the Supreme Court has already indicated, if it is possible for an organization to comply with the provincial and federal statutes by satisfying the criteria of the stricter statute, there is no conflict and the organization must comply with the stricter rule in *Procureur général de la Colombie-Britannique v. Lafarge Canada Inc.* According to the Court, an interpretation must be favoured that seeks to reconcile provincial and federal legislation applicable to a given situation, especially when they pursue the same objective. In the case at bar, the CAI explains that the Quebec Private Sector Act and the PIPEDA seek the same objective: the protection of individual's personal information, and that both laws limit the collection of personal information by organizations.

A party invoking federal paramountcy must prove a conflict between the two statutes. The CAI concluded that the collection of a customer's personal identity information with a view to verifying his solvency is subject to the applicable rules of the Quebec Private Sector Act and that the CAI has the jurisdiction to rule on this complaint.

### Takeaways for Businesses

The CAI ordered Telco to cease collecting and holding the numbers of pieces of identification, including the SIN, presented by customers

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<sup>3</sup> 2014 QCCQ 5609.

when opening an account for activation of a cell phone. It states that Telco may collect the name, address, telephone number and date of birth of its customers and that it may verify the customer's identity by the presentation of pieces of identification left to the customer's choice, but it may not collect the number of the ID presented, including the SIN, nor make a copy of that number or piece of ID. While not all Canadian telcos collect SINs and drivers' licence numbers, those that still do may wish to modify their privacy practices in light of this recent CAI decision.

Many Canadian telcos and banks work under the assumption that the Quebec Private Sector Act does not apply to their activities. This decision from the CAI confirms that this assumption is not accurate if they are carrying on an enterprise in Québec. What is also important to keep in mind, is that the Quebec Private Sector Act is probably the most stringent data protection law that we have in Canada.<sup>4</sup>

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#### [a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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<sup>4</sup> *Privacy Law in Quebec – Substantially Similar but Different?*, Nymity, Privacy Interviews with Experts, June 2012, available at: <http://www.nymity.com/about/~media/Nymity/Files/Interviews/2013/2012-11-eloisegratton.ashx>