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VIA E-MAIL

Sonia Lebel

Minister responsible for Government Administration and Chair of the Treasury Board, Minister responsible for Canadian Relations and the Canadian Francophonie and Minister responsible for Democratic Institutions, Electoral Reform and Access to Information

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Re: Bill 64, An Act to modernize legislative provisions as regards the protection of personal information

The Electronic Transactions Association (“**ETA**”) submits these comments in response to the introduction of Quebec’s *Bill 64, An Act to modernize legislative provisions as regards the protection of personal information*, would introduce the following significant amendments to an *Act Respecting the Protection of Personal Information in the Private Sector*. We hope that these comments will assist the Government in understanding the potential negative ramifications of Bill 64 to the payments industry as the legislation is currently proposed.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives.

ETA and its members support privacy protections designed to protect the personally identifiable information of Canadian individuals, and value the privacy protections that Canadian laws provide to protect the personal information of Canadian end users. However, ETA and its members are concerned by a number of elements of Bill 64. ETA submits that the bill makes significant amendments to the privacy regime, including adding substantial monetary penalties and several onerous new requirements that are inconsistent with PIPEDA and other Canadian privacy regimes. Some of the key concerns include:

- The requirement that organizations disclosing or transferring information for processing outside of Quebec must conduct an assessment to ensure the receiving jurisdiction has

equivalent protections. This applies to transfers to any other Canadian province as well as internationally. If the receiving jurisdiction does not have the same level of protection, the transfer may be prohibited even if an individual consented to the information being transferred;

- the proposed amendment requiring express consent where sensitive personal information is involved, and must be requested for each purpose separate and apart from any other concern, while codifying that consent is only valid for that exact time period;
- the changes to the security incident reporting regime are inconsistent with existing provisions that apply across Canada – the trigger would be “risk of serious injury” compared to PIPEDA’s “real risk of harm”;
- there is a lack of a “balancing of interests” provision to ensure legitimate use of information alongside reasonable protections;
- regarding the requirement to publish governance policies and practices: We recommend differentiating between public-facing privacy notices (geared at consumers, etc.) versus internal documents which contain the level of specificity described in the Act, which for optimal data protection is not released to the public;
- the Act creates an obligation to “inform” individuals of the use of technology that allows them to be identified, located or profiled, and the means to deactivate said functions: It would be preferable here to obtain additional specificity with respect to what constitutes “informing” an individual, what if any exceptions apply to this requirement, and whether deactivation must apply if it would no longer be feasible for the individual to then perform the action. To the extent that this provision is intended to focus on cookies and pixels, it would be desirable for the Act to specify the exact technology contemplated and the expectations surrounding that technology.

For ETA members the section of the law requiring organizations disclosing or transferring information for processing outside of Quebec to conduct an assessment to ensure the receiving jurisdiction has equivalent protections will have a significant impact. When every business can instantly operate in the global economy with a simple website, encouraging the flow of data across borders and recognizing that the wide availability of information leads to more trade and economic growth. Bill 64’s proposal requiring an assessment of equivalency for the transfer of personal information to service providers for processing will create interoperability challenges and limitations for organizations that are subject to both PIPEDA and the privacy laws of other jurisdictions, such as the European Union’s GDPR. This provision would also create an unfair burden on Canadian businesses as the expectation that they conduct a province by province assessment of privacy standards will lead to unnecessary and burdensome compliance for businesses, particularly when there is a Federal Privacy Commissioner already conducting such analysis. Additionally, the recently adopted CUSMA prohibits data localization requirements that are harmful to business and enables each country to adopt a flexible privacy law to protect consumers. Privacy laws must be respected, but they should not be written in a way that prohibits the movement of secure personal data across borders. Subjecting the payments sector to data localization requirements as a condition for conducting business in Quebec runs counter the goal of increasing economic activity while threatening the benefits of the recently enacted CUSMA.

ETA does not disagree with the requirement to collect explicit consent for collecting sensitive personal data. However, ETA questions whether it is possible to give a precise time period for use. ETA therefore submits that the section of Bill 64 requiring expressed consent for the transfer of personal information to service providers for processing, namely the explicit time limitation of consent, will create additional interoperability challenges for organizations that are subject to both

Bill 64 and the privacy laws of other jurisdictions, such as the PIPEDA and the GDPR. The GDPR in this respect allows a collecting party to state the criteria by which a retention period will be decided. Further, consent under the GDPR is only valid if can be “freely given”, meaning that the individual must have the opportunity to refuse to provide his or her consent. Consent cannot be relied upon under the GDPR in circumstances where the individual must provide his or her consent in order to obtain a product or service. Here however, the proposed legislation goes beyond the principles of both PIPEDA and GDPR and would appear to require business to receive multiple layers of separately expressed consent for what are traditionally viewed as routine business practices in the payments industry. This provision in Bill 64 is therefore extremely challenging for the payments sector which relies on an ongoing, routine exchange of information that are implicit in providing business and consumers ongoing access to the global payments system. Ultimately, ETA submits that if the proposal set forth by Bill 64 is implemented, payment providers will need to develop different, costly onboarding flows for Quebec as compared with other jurisdictions, while limiting new opportunities to citizens and local business to participate in existing and innovative new financial technologies.

Given the significant impact which Bill 64 will have, ETA would be pleased to discuss the comments herein with the Government of Quebec to ensure the perspective of the payments industry is well understood.

ETA thanks you for the opportunity to submit these comments.

Yours respectfully,

A handwritten signature in black ink that reads "Scott E. Talbott". The signature is written in a cursive, flowing style with a large initial 'S' and a distinct 'E'.

Scott Talbott
Senior Vice President
Electronic Transactions Association