

Cloud Computing: Privacy & Jurisdiction from a Canadian Perspective

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Cloud Computing - Canada

- Competitive advantage?
 - Climate: reduced energy costs
 - Infrastructure: networks running north
 - Geography: proximity to U.S.
 - Legislative: national privacy legislation

Canadian Privacy 101

- National privacy legislation takes effect in 2004; sub similar provincial rules in BC, Alta, Quebec
- Privacy Commissioner - ombuds power but has proven effective (Facebook)
- Consent requirements for collection, use, disclosure
- Security and safeguard requirements
- Accountability principle - collector responsible regardless of location, future uses
- Access requirements

Privacy Meets Jurisdiction

B.C. Outsourcing Case

- Not strictly a cloud computing issue, but puts outsourcing, jurisdictional concerns on the map
- BC Gov't plan to outsource health management data - U.S. companies likely RFP winners
- Concerns focus on USA Patriot Act (non-disclosed disclosure)
- Quickly expands - NSA letters, grand jury, etc.
- Provincial privacy consultation

Privacy Meets Jurisdiction

B.C. Outsourcing Case

- New legislation enacted targeted public sector outsourcing of personal information
 - effectively prohibits export of citizen's data, with some exceptions (*e.g.*, system upgrades or repair, with ministerial consent)
 - All BC public bodies must ensure personal information stays in Canada and is accessed only in Canada
 - Cannot disclose in response to foreign requests or demands
 - This extends to service providers to public bodies
 - Exceptions: other Canadian legislative authority; Canadian court order; installation, repair, upgrade, *etc.* of electronic systems or equipment Disclosure also allowed by law enforcement agencies to foreign counterparts under an arrangement, written agreement or treaty

Other “Patriot Act” Cases

- LSAC
 - Privacy complaint against LSAC for requiring fingerprint for test takers
 - Object to mandatory collection of biometric data, transfer to the U.S.
 - Commissioner rules in favor of complainants
 - LSAC adjusts requirements in Canadian testing centers
- SWIFT
 - Complaint re: transfer of banking information
 - Not well-founded
 - Law does not block outsourcing of data
 - Banks ultimately responsible under accountability principle

Subsequent Cases - Web based email

- Canada.com (2008-394)
 - Major media organization switches email management to U.S.
 - Privacy Commissioner receives multiple complaints
 - Rejects complaint
 - “The risk of a U.S.-based service provider being ordered to disclose personal information to U.S. authorities is not a risk unique to U.S. organizations.”
 - “emphasizes the importance of organizations assessing the risks that could jeopardize the security and confidentiality of customer personal information when it is transferred to foreign-based third-party service providers. It is essential that organizations using third-party service providers outside Canada use contractual or other means to provide a comparable level of protection while the information is being processed by the third party.”

Subsequent Cases - Web based email

- Lakehead University v. CAUT
 - University wishes to switch email management to Gmail
 - Faculty association objects - raises Patriot Act privacy concerns
 - Case proceeds to arbitration
 - University wins
 - Privacy concerns arise regardless of whether data transferred to U.S. or remains in Canada

Subsequent Cases - Jurisdiction

- Abika
 - Complaint against U.S. provider advertising access to personal info
 - Privacy Commissioner refuses to investigate, claims no jurisdiction
 - Judicial appeal of decision - orders Commissioner to investigate
 - Well-founded finding - works with FTC in taking action
 - Opens door to future cases - ie. Facebook

The Cloud Computing Consultation

- Privacy commissioner launches cloud computing consultation in
- Comments due by April 15, 2010
- Roundtable scheduled for Calgary in June 2010
- Includes panel on jurisdiction

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