



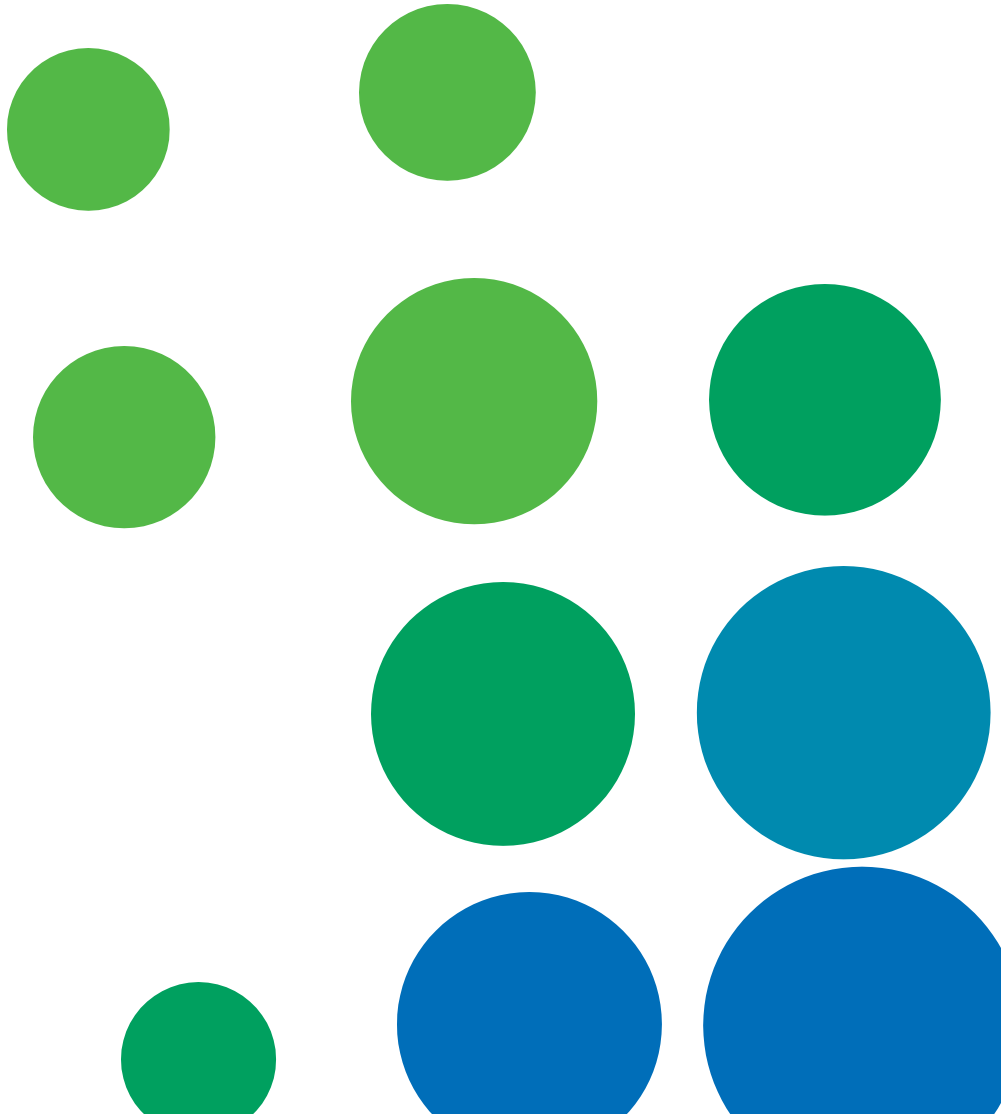
**CPA**

CHARTERED  
PROFESSIONAL  
ACCOUNTANTS  
CANADA

**Submission in response to:  
Strengthening Privacy for the Digital Age**

**Chartered Professional Accountants  
of Canada**

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# Executive Summary

Digital technologies and the growing use of data offers tremendous opportunities and potential to society, but also poses risks to personal privacy, organizational reputations, financial integrity and national security. Governments around the world, businesses of all types, academia and civil society are all struggling to answer the same questions on the governance of data. Chartered Professional Accountants of Canada (CPA Canada) is pleased that the Government is addressing this issue and, through the introduction of Canada's Digital Charter, setting out to build trust in the emerging digital economy.

The first big legislative reform is modernization of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and in this submission, CPA Canada offers its response to some of the questions posed in the discussion paper *Strengthening Privacy for the Digital Age*, issued by Innovation, Science and Economic Development. Our comments address four topics raised in the discussion paper.

Professional accountants have always dealt with data, but the increasing amount, speed, type and unreliable quality of data is transforming the profession. Data governance is at the forefront of CPA Canada's Foresight Initiative, which sets out to re-imagine what accountants do, how they do it and how they qualify. For centuries, businesses and society have relied on professional accountants to provide assurance about the quality and integrity of financial information. In the future, we envision that businesses and society will turn to professional accountants to provide assurance about the quality and integrity of data.

## Consent and transparency

Informed consent is a critical element in building trust in the digital economy, but it is breaking down due to complexity, repeated requests for the user's consent, and insufficient digital literacy. Allowing exceptions for "standard business activities" could help streamline the process, resulting in benefits for both businesses and consumers. The challenge will be in clearly defining what services and purposes should be captured by the term "standard business activities."

Complexity – in language and in compliance requirements – creates challenges for both consumers and businesses, especially small and medium-sized enterprises. Guidance and best practices for businesses, and digital literacy programs for Canadians of all ages would help to address the challenge of complexity. The Office of the Privacy Commissioner of Canada could address this role and should expand its effectiveness by collaborating with suitable non-governmental partners.

## Data mobility

Data mobility presents opportunities for enhanced consumer choice and convenience as well as stimulating business innovation. However, data mobility may also pose significant challenges to some organizations, particularly small and medium-sized enterprises, non-governmental organizations and charities, which may lack the digital technologies and digital literacy skills necessary to securely comply with data mobility requests. The size and type of organizations should be factored in when developing data mobility requirements.

Business innovation could be hampered by customer requests to transfer data if that data is critical for business purposes, especially artificial intelligence algorithms. Data mobility could also impact recordkeeping requirements which would, in turn, affect the work done by CPAs and their role in presenting a complete, reliable and comparable picture of an organization's performance. Accounting and auditing can involve verifying and reconciling data with historical records, something that would be hampered if the historical records are incomplete. Carefully defining which data would be covered by data mobility requirements is key to addressing some of these concerns. But this too, is problematic. As data is collected and modified through different business processes, the line between the customer's data and the business's proprietary data becomes unclear and debatable. Finally, if PIPEDA reform includes adoption of the "right to be forgotten", standards for disposing of data would also be necessary.

## Enabling data trusts

While data trusts have significant potential to spur innovation, there are certain challenges hindering their development and adoption. They include organizations' unwillingness to share valuable data, a lack of understanding of how data trusts work and of their benefits, the interactions with privacy obligations and rights, and consumer trust. Expanded digital literacy, clearly defined regulations, effective guidance, and possibly standards are all needed to make data trusts a viable consideration.

## Standards and codes

Standards, codes and certification schemes each have potential value in addressing data governance challenges, provided they are applied in the right context. Standards are effective in ensuring a consistent level of performance or conduct from a broad population of participants, but they need to be supported by measures that ensure their consistent application, oversight and enforcement. Alignment with international standards, where they exist, is a critical consideration.

The Data Governance Standardization Collaborative, led by the Standards Council of Canada, is working to develop a comprehensive roadmap of needed data governance standards and is a critical first step in this process. CPA Canada is very much engaged in the topic of standards for data governance and will have more to offer on this subject in the future.

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## About CPA Canada

Chartered Professional Accountants of Canada (CPA Canada) is pleased to offer input on modernizing the *Personal Information Protection and Electronic Documents Act* (PIPEDA) in response to the discussion paper *Strengthening Privacy for the Digital Age*, issued by Innovation, Science and Economic Development Canada.

As a regulated profession, society's expectations of CPAs are set out in provincial legislation establishing the self-regulatory organizations that govern the profession and ensure public accountability and oversight. Various pieces of federal legislation, such as the *Canada Business Corporations Act*, entrust specific duties such as audit and assurance services to CPAs because of the public trust earned through this governance regime. Audit and assurance responsibilities have traditionally focused on financial information and reporting, but the same principles can be expanded to data governance and reporting as well. The CPA profession is one of the few regulated professions that can support governments in managing compliance with the new laws and regulations that are expected to frame a host of data governance issues such as privacy, portability, security, ownership and copyright, traceability and residency.

CPA Canada represents the Canadian accounting profession, both nationally and internationally. With more than 217,000 members, CPA Canada is one of the largest accounting bodies in the world. The organization supports the setting of accounting, auditing and assurance standards, advocates for economic and social development in the public interest, and develops leading-edge thought leadership, research, guidance and educational programs.

Professional accountants have always dealt with data. This has involved the aggregation and analysis of data, informing business decisions with data, and providing assurance about the reliability of that data. For the most part, the data the profession has focused on has been mainly financial information and usually historical in nature. Increasingly though, data is non-financial, may not be uniform in structure, and projects the future rather than reflecting the past. The sheer volume of data and the speed with which it is generated make managing and interpreting it an immense challenge for governments and business.

To ensure that Canada’s accounting profession is shaping its own future in an increasingly data-driven world, CPA Canada launched an ambitious research and consultation initiative, Foresight: Reimagining the Profession (see accompanying sidebar). CPA Canada is the first national accounting body to undertake such a comprehensive initiative. Other professions and occupations will no doubt launch similar processes of reflection and re-invention in the years to come as artificial intelligence and other technological innovations disrupt their traditional roles.

The views expressed in this submission are derived in part from the work of Foresight, as well as the ongoing research CPA Canada conducts into emerging public policy, business and accounting issues. Engagement with our members and other stakeholders adds further understanding to the challenges presented by the digital economy and other business issues. CPAs work in a variety of occupational roles in all sectors of the economy, meaning that they bring a range of perspectives and expertise to the issue of data governance. CPAs routinely interact with, or work for the vast majority of Canada’s almost 1.2 million businesses by delivering a wide range of services from tax and financial auditing services to assurance, compliance and strategic business advice.

The ISED discussion paper raises many serious considerations and questions. We are not in a position to comment on all of them, but will provide input on those where CPAs have a perspective of value.

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#### **ABOUT CPA CANADA’S FORESIGHT INITIATIVE**

*To prepare for tomorrow’s business landscape, CPA Canada embarked on an ambitious multi-stakeholder consultation process to re- imagine the accounting profession. The first phase examined how the drivers of change – technology, geopolitical instability, changing societal perspectives, environmental and economic issues – will impact the profession, resulting in a report that emphasized the need for transformative change.*

*Phase II of Foresight includes the development of research agendas to support two key workstreams:*

- *Rethinking value creation in the information age; and*
- *Mastering and shaping a data-driven economy.*

*The Foresight work will generate detailed guidance and standards to assist CPAs across Canada in their day-to- day data management activities including data governance, data operations and data valuation. This will also help inform the profession’s public policy advice on the topic.*

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# Part 1: Enhancing individuals' control

## Consent and transparency

Informed consent is an important principle of PIPEDA and is a critical element in building trust in the digital economy. In practice though, informed consent is breaking down due to:

- the complexity, technical language, and length of consent forms
- consent fatigue experienced by consumers, and
- the level of digital literacy of consumers.

### Standard business practices

To ensure that consumer<sup>1</sup> consent is truly informed, each of these issues must be addressed and the ISED discussion paper outlines some meaningful proposals to deal with at least the first two. To confront the problem of consent fatigue, the paper proposes allowing exceptions to the need for explicit consent for purposes such as “standard business activities.” This would also benefit businesses, especially small and medium-sized entities, by streamlining the compliance burden. Perhaps of most benefit, it would send the message to all parties that there are different levels of risk and that greater attention must be paid – by both consumers and businesses – to granting and receiving consent for data collection and use that falls outside the scope of standard business activities.

The biggest challenge, as identified in the discussion paper, is to clearly define what services and purposes could be captured by the term standard business practices. In a principles-based framework such as PIPEDA, any time that an exception is carved out from a requirement, it must be clear to all parties exactly what does and what does not qualify as – in this case – a standard business practice. Principles are helpful in regulating activities that require flexibility and judgment, but when carve-outs are created, they require black- and-white clarity.

### Complexity of privacy information

Addressing the problem of complexity is perhaps best done through education rather than regulations. The most common way for businesses to seek a consumer's consent is by asking them to read and agree to the company's privacy policy. Businesses tend to draft long, complex consent forms with a view to protecting themselves against legal liability. The result is that consumers rarely take the time to read the entire privacy policy, and do not fully understand its implications even if they do read it. A company's full, detailed privacy policy should be publicly available, but it may not be the best tool for seeking informed consent.

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<sup>1</sup> Not all data transactions involve consumers, of course. The term “citizen” could be equally appropriate when people share data for purposes other than for commercial transactions, or share data with organizations that are not profit-oriented businesses. Privacy issues can arise in business-to-business transactions as well. A number of different terms could be used, but for simplicity, in this submission we generally refer to “consumers” or “customers” when we are discussing individuals interacting with entities that are collecting or using their data.

Consent forms that are concise, written in plain language, and speak directly to the information being collected are much more effective in truly informing the consumer. The Office of the Privacy Commissioner of Canada (OPC) is charged with promoting public awareness and understanding of privacy issues, and in this context, it could play a helpful role in developing guidance and best practices for businesses to adopt. In playing such a role, the OPC needs to be mindful that the greatest need for such guidance is in small and medium-sized enterprises (SMEs), where resources and expertise may be limited.

According to recent government data, more than half of the almost 1.2 million Canadian businesses employ four employees or less, and 86 per cent have fewer than 20 employees.<sup>2</sup> They will need support to implement new data governance requirements. As such, just as information for consumers needs to be clear and concise, resource material for businesses needs to be the same.

Part of CPA Canada's mandate is to develop guidance and professional development resources for CPAs and other business audiences on a variety of business subjects. CPAs, in turn, rely on these resources to remain current in their knowledge and practices and to assist them to provide advice to their employers and clients. There may be opportunities to engage CPAs in developing appropriate language and data governance resources that would be meaningful to their small business clients.

### Compliance and smaller organizations

Challenges related to the size of the firm are not explicitly addressed in the discussion paper, but should be kept in mind when any reform of PIPEDA is considered. All organizations, irrespective of size, should be held to the same high legal expectations when collecting or using data and personal information. The reality, however, is that not all organizations have the same capacity to manage and comply with regulatory requirements. At the same time, not every collection or use of data poses the same level of risk to personal privacy and security.

When compliance requirements become too onerous, unintended outcomes can arise. For smaller organizations that lack internal resources and expertise, heavy compliance costs or requirements may actually result in increased risk of privacy breaches. Onerous compliance processes can also become a disincentive for smaller firms to pursue opportunities in the digital economy. To be clear, this is not an argument for different rules for smaller organizations. It is just to emphasize that compliance requirements need to be as clear and simple as possible to ensure that organizations of all sizes are able to meet the requirements of PIPEDA and its intended purpose.

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<sup>2</sup> Innovation, Science and Economic Development Canada, "Key Small Business Statistics, November 2019", available at [http://www.ic.gc.ca/eic/site/061.nsf/eng/h\\_02689.html](http://www.ic.gc.ca/eic/site/061.nsf/eng/h_02689.html).



## Automated decision-making

The discussion paper notes the existing lack of transparency around automated decision-making processes and correctly identifies the need to inform people about when and how automated decision-making processes are being used. The paper is less clear about what should be implemented in PIPEDA to address this need, so it is difficult to offer much specific comment.

This is obviously a fast-moving field of innovation and we are not yet able to see the full implications of technologies such as artificial intelligence and machine learning – not just in terms of the implications for privacy, but the implications for society more broadly. Apart from the matter of consent, automated decision-making is a factor to be considered in other data governance questions such as the data mobility topic addressed below.

Given the complexities and potential ramifications of automated decision-making, it might be prudent to conduct further consultations on this specific topic. Artificial intelligence is a topic of interest and importance to the accounting profession and CPA Canada would be interested in more fully exploring questions on the subject. As national standards framing the use of automated decision systems are being published by the Chief Information Officers' Strategy Council and are starting to be used by governments and businesses, CPAs could potentially play roles such as providing assurance that the artificial intelligence is free from bias.

## Digital literacy and education

As mentioned, one of the challenges of a consent-based approach to privacy is the responsibility it places on the individual citizen to be proactive and knowledgeable in protecting their rights. As technologies and their applications become increasingly complex and develop at an ever-faster pace, Canadians need help to understand the full impact on their privacy. Informed consent is not possible if Canadians do not fully understand the subject matter or fully appreciate the risks.

As noted above, the OPC has a role in promoting awareness and understanding of privacy issues. This role could be expanded to promote digital literacy in much the same way that the Financial Consumer Agency of Canada (FCAC) promotes financial literacy.

CPA Canada has a suite of award-winning financial literacy programs and a collaborative relationship with the FCAC. Volunteer CPAs deliver those financial literacy programs free of charge to groups of Canadians across the country. Leadership from the OPC to enhance Canadians' digital literacy might result in similar opportunities to partner with organizations such as MediaSmarts to develop and deliver age-appropriate digital literacy resources for all Canadians, including understanding of the privacy risks of a digital environment.

## Data mobility

The ISED discussion paper puts forward the idea of introducing “new data mobility opportunities to enhance individuals' control over information by providing an explicit right for individuals to direct that their personal information be moved from one organization to another in a standardized digital format, where such a format exists.”<sup>3</sup>

The ISED paper mentions that, according to studies in other jurisdictions, “data mobility has the potential to enhance consumer choice thus fostering the emergence and growth of innovative new goods and services, in addition to supporting greater individual control over data and encouraging competition.”<sup>4</sup> However, with this potential also comes certain challenges that data mobility could pose to some organizations. These challenges are discussed in this section as they should be considered if government develops data mobility requirements.

Should data mobility become mandatory, smaller organizations could be negatively impacted in various ways. For instance, smaller entities, such as SMEs, non-governmental organizations (NGOs) and charities, may not all have the necessary digital technology and literacy (including skills) to move data such as personal information to another organization in a safe and efficient matter. Data mobility requests from individuals could therefore prove to be challenging as well as time-consuming and potentially costly for some SMEs, NGOs and charities.

If not done with the proper digital tools, transferring data to another entity could also pose privacy risks for both the organization and the individual that requested his/her data be moved. In such cases, questions around consent and liability would arise. In this regard, as the ISED discussion paper highlights, exceptions to data mobility requirements could be available in cases where it is not technically feasible for an entity to do so. Considerations around the size and the type of organizations could also be factored in when developing data mobility requirements.

### Fostering innovation

While data mobility has the potential to foster innovation, it could also hinder it in some cases. Requirements to transfer data to other organizations upon customers' request could be disruptive for firms that rely on this data for different business purposes such as recordkeeping, data analysis, marketing and training artificial intelligence (AI) algorithms. In the case of smaller tech companies, having to delete training data could potentially hurt the quality of their AI algorithms. In very rare instances, a firm could technically even be victim of a “data run” (i.e. clients trying, justifiably or not, to take out their data from a given company all at the same time). This would of course have significant consequences on the impacted firm, putting at risk jobs and the overall survival of the business.

The potential impacts of data mobility requirements on recordkeeping is of great interest to

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<sup>3</sup> Innovation, Science and Economic Development Canada, “Strengthening Privacy for the Digital Age.” Last modified on May 21, 2019. [https://www.ic.gc.ca/eic/site/062.nsf/eng/h\\_00107.html](https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00107.html).

<sup>4</sup> Ibid.

the accounting profession. In the context of their work, many CPAs perform tasks related to record management, business accounting and auditing, all of which can involve going back in time to verify and reconcile data and records. If a firm cannot keep records of the data it transfers to another organization, some CPAs might face difficulties in performing their work which is so vital for the Canadian economy.

The aforementioned potential challenges posed by data mobility to a wide array of organizations and even professions like accounting sheds light on the importance of carefully defining which data would be covered by data mobility requirements. However, definitions might prove to be elusive in many cases as data is highly fungible and can be transformed. For instance, a customer might provide some personal information to order a product online. The information provided might then become part of the merchant's transaction data (for instance, the address to ship the product to). The transaction will also generate financial data. The merchant may then input all this data in customer relationship management (CRM) and enterprise resource planning (ERP) software. At this point, the customer's and merchant's data are extremely intertwined and it may be hard to untangle them. In light of this example, difficult questions need to be considered: at what point does a customer stop owning his or her data? When does this data become the merchant's data because additional value was added to it?

Furthermore, as the ISED discussion paper points out in the consideration section, "the development of common approaches to data transference, reception, and use, potentially through codes of practice or the development of technical standards"<sup>5</sup> would be required to achieve data mobility. However, at an even more fundamental level, organizations might not share common data definitions for personal information, let alone other more complex data. This issue of definitions is particularly pertinent and warrants considerations in a bilingual country like Canada where anglophones and francophones have different ways of coding some personal information (such as addresses and dates of birth for instance). Assuming data mobility happens solely through digital channels, divergent definitions might prove problematic in some cases and lead to errors, thus hindering the consistency, integrity and accuracy of the data. Ensuring data definitions are aligned is also essential in the context of data trusts, which will be discussed in the next section.

Given the fact data mobility and the "right to be forgotten" are intertwined, standards for disposing of data would also be necessary if data mobility requirements were to be enacted. One of the qualities that makes data challenging to govern is that it can be duplicated unlimited times. In this regard, there is a risk that an organization could keep a copy of the customer's data despite transferring it to another entity. It could therefore prove challenging to verify whether firms do indeed delete the data customers asked them to transfer.

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<sup>5</sup> Ibid.

On that front, we are looking forward to the release of national standards establishing a Canadian Trust Framework currently being developed by the Digital ID and Authentication Council of Canada. The framework could alleviate some of the concerns regarding the ability of SMEs to support data portability. Again, CPAs could play a role in implementing the third-party certification and conformance aspects of the framework.<sup>6</sup>

## Part 2: Enabling responsible innovation

### Enabling data trusts for enhanced data sharing

The ISED discussion paper indicates that “emerging solutions, such as ‘data trusts’ may provide a way forward to help enable responsible innovation.”<sup>7</sup> Data trusts can support the creation of new innovative startups by overcoming challenges related to the lack of access to quality data for smaller players and the hoarding of data by large entities (public and private). Access to the data in these trusts can benefit many different participants in multiple ways as the data can be used for instance for research, analysis, gaining market insights and training AI algorithms. As the Open Data Institute (ODI) in the United Kingdom puts it, “a data trust could ensure data’s benefits are distributed more widely, ethically and equitably.”<sup>8</sup>

While data trusts have significant potential to spur innovation, there are challenges hindering their development and adoption. These barriers, which are discussed in this section, could inform some of the legislative and/or regulatory changes required to encourage the uptake of data trusts.

As a starting point, data is extremely valuable for many businesses and organizations across the economy. In this regard, firms might not want to share their data with other entities that could leverage it to compete against them. A 2019 Canadian Chamber of Commerce report mentioned that alternative data access models like data trusts “could have adverse consequences, including by undermining the willingness of large technology companies to invest in Canada [because they do not want to share their data for instance] and by imposing a disproportionate burden on SMEs.”<sup>9</sup> These potentially adverse consequences on investment highlight the need for government to consider multiple economic dimensions when developing privacy and/or competition legislation meant to facilitate the sharing of data and the development of trusts.

A lack of awareness and understanding of what data trusts are and how they work as well as their benefits are other key challenges hindering adoption. Data holders might not realize the value they could extract from pooling their data with other entities. From this lack of understanding and awareness stems concerns around the legal framework and privacy requirements applicable to data trusts in Canada and abroad. On the corporate side, firms might fear their proprietary information and customer data will be shared or, worse, leaked through a data trust. They might also worry they could be offside of privacy laws. In the

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<sup>6</sup> For more information, see <https://diacc.ca/pan-canadian-trust-framework/>

<sup>7</sup> Innovation, Science and Economic Development Canada, *supra* note 3.

<sup>8</sup> Open Data Institute, “Data Trusts: summary report”, April 2019, page 3.

<sup>9</sup> Goldenberg, Adam, and Michael Scherman, “Automation Not Domination: Legal and Regulatory Frameworks for AI,” Canadian Chamber of Commerce, June 2019, page 11.

international context, it might be unclear to some businesses what their obligations and rights are when dealing with data hosted on servers outside Canada. On the civil society side, many individuals might be reluctant to see their personal data used in data trusts due to privacy concerns.

An Element AI and Nesta report comments on privacy concerns and awareness: “Improving data literacy will be critical to encouraging demand for an ecosystem of data trusts that adequately reflects consumer privacy preferences.”<sup>10</sup> Deloitte puts forward a similar position in a report titled *Canada’s AI imperative: Public policy’s critical moment*: “awareness of data trusts is low; for these trusts to work, people need to understand their role in managing and protecting their long-term data rights.”<sup>11</sup>

Ultimately, data trusts could be good mechanisms to protect the privacy of data if the proper guidance and safeguards are in place and if the responsibilities, accountability and liability of the different actors involved are clearly defined. This could be accomplished by updating the Canadian privacy legal framework to ensure data trusts are developed in a responsible way that protects all participants. These changes would be timely as some organizations have been asking government to step in. Deloitte highlighted in its report on AI the need for more clarity from government: “Governments should also issue guidance and clarify the legal environment regarding data trusts—for instance, diligence standards for trustees—to enable and standardize their use.”<sup>12</sup>

We note the emergence of new, flexible models to spur data sharing, for example The Open City currently being developed through a public-private partnership. Under The Open City model, data does not have to be housed in a separate entity for access to be granted and specific rules are being developed to allow for specific data access rights depending on the credentials of the user.<sup>13</sup> We also note progress in framing data sharing through smart contracts, such as the recently released Montreal Data License initiative.<sup>14</sup> CPAs could provide value to the design of flexible data sharing frameworks that are enforceable and verifiable.

In addition to regulatory changes, government could play a role by increasing the awareness across businesses, the research community and the general public of what data trusts are and their potential. To increase the uptake of data trusts, government could also put some of its own datasets in data trusts and could even create its own trusts. This would be aligned with the commitment of the Government of Canada towards open data. Government data might even attract to data trusts additional data holders who are eager to access this data for their own purposes.

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<sup>10</sup> Element AI and Nesta, “Data Trusts: A new tool for data governance”, March 2019, pages 15-16.

<sup>11</sup> Deloitte, “Canada’s AI imperative: Public policy’s critical moment”, page 9.

<sup>12</sup> *Ibid.*, page 16.

<sup>13</sup> For more information, see [www.Theopencity.org](http://www.Theopencity.org)

<sup>14</sup> For more information, see [www.montrealdatalicense.com/en](http://www.montrealdatalicense.com/en)

The prospect of data mobility has implications for data trusts in the context of the offboarding process (i.e. when a participant leaves the trust with its data). Data portability rights would dictate whether and how participants can move their data from one trust to another.<sup>15</sup> Removing the participant's data from the trust may be disruptive for the other participants that might have been using this data. As previously mentioned, this could ultimately incentivize some users to make copies of the datasets prior to them being removed.

### Incentivize the use of standards and codes

The ISED discussion paper raises the topic of codes, standards and certification schemes as potentially playing a role in addressing challenges related to data governance. Speaking from the perspective of a regulated profession, CPA Canada certainly sees potential value in each of these tools provided they are applied in the right context.

Standards can play a very effective role in ensuring a consistent level of performance or conduct from a broad population of participants. As Paul Vallée notes, standards permit potentially risky activities to be carried out where there is a public benefit.<sup>16</sup>

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## DATA TRUSTS IN THE UNITED KINGDOM

*The United Kingdom has been at the forefront when it comes to developing an understanding of data trusts and encouraging their development. Data trusts are considered a component of the broader effort to grow the field of artificial intelligence (AI) in the UK and position the country as a global leader in the AI race.<sup>1</sup>*

*A 2017 independent review prepared for the UK government explicitly called on the government and the industry to help the development of data trusts: "To facilitate the sharing of data between organisations holding data and organisations looking to use data to develop AI, Government and industry should deliver a programme to develop Data Trusts – proven and trusted frameworks and agreements – to ensure exchanges are secure and mutually beneficial."<sup>2</sup>*

*The 2017 review spurred research on data trusts from organizations such as the Open Data Institute (ODI). Some of this research is performed with the support of government entities. In 2018, ODI launched three data trust pilots in the areas of illegal wildlife trading, food waste, and city services. These pilots were developed in collaboration with the UK Office of Artificial Intelligence and Innovate UK to better understand how trusts could be useful and to identify lessons and best practices.<sup>3</sup> The ODI has since released its first wave of findings in its Data Trusts report published in 2019.<sup>4</sup>*

<sup>1</sup> McDonald, Sean, "Reclaiming Data Trusts," Centre for International Governance Innovation, March 2019.

<sup>2</sup> Hall, Wendy and Jerome Pesenti, *Growing the Artificial Intelligence Industry in the UK*, 2017, page 4.

<sup>3</sup> Open Data Institute, "Increasing trust in data: could 'data trusts' help?" retrieved June 2019 (<https://theodi.org/event/could-data-trusts-help/>).

<sup>4</sup> See Open Data Institute, "Data trusts: lessons from three pilots (report)," last modified April 2019 (<https://theodi.org/article/odi-data-trusts-report/>).

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<sup>15</sup> Element AI and Nesta, supra note 10 at 16.

<sup>16</sup> Vallée, Paul, "Trust and Data: How Changes to the Privacy Landscape Can Bolster Innovation in Canada", Centre for International Governance Innovation, downloaded from <https://www.cigionline.org/articles/trust-and-data-how-changes-privacy-landscape-can-bolster-innovation-canada>.

The accounting profession sees the potential for standards to address challenges such as data valuation, the collection and grading of data, and protocols for accessing and sharing data as well as related analytics. However, for standards to be effective, they need to be supported by a range of other measures that ensure their consistent application, oversight and enforcement. Accounting standards, with which we have obvious familiarity, provide an example (see related text box) of the complexity in developing and enforcing standards that are generally accepted, independent and subject to the appropriate oversight.

As the example of accounting standards shows, there are many complementary measures without which the standards themselves would be of little value. Standards are not the right solution for every data governance challenge.

The Data Governance Standardization Collaborative, led by the Standards Council of Canada, is working to develop a comprehensive roadmap of needed data governance standards. CPA Canada is represented on the standardization collaborative steering committee. The process is intended to identify where there are gaps or needs for standards and suggest the appropriate organizations to lead their development. Recognition of such standards in PIPEDA should follow this work rather than lead it.

Another factor in assessing the appropriateness of developing a standard or code is to consider how the issue is being addressed internationally. Data governance is a challenge that all countries are facing and different approaches to regulating data are increasingly an issue of international trade. Having common standards between countries might help to alleviate some of those issues, but major economic powers have fundamentally different views on how data should be governed.

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## **ACCOUNTING STANDARDS IN CANADA: MUCH BEHIND THE SCENES**

*Accounting standards have been developed over the years to ensure consistency and transparency in financial reporting. According to the Accounting Standards Board (AcSB):*

*“Accounting standards specify how transactions and other events are to be recognized, measured, presented and disclosed in financial statements. The objective of such standards is to provide financial information to investors, lenders, creditors, contributors and others that is useful in making decisions about providing resources to the entity.”<sup>1</sup>*

*In Canada, accounting standards are adopted by an independent standard-setting board (AcSB), which is governed by an independent oversight council, the Accounting Standards Oversight Council. The standards are compiled and published in the CPA Canada Handbook – Accounting, and the use of those standards in financial reporting is mandated by the Canada Business Corporations Act and provincial corporations and securities legislation.*

*In conducting an audit of an entity’s financial statements, auditors apply audit and assurance standards (adopted by the Audit and Assurance Standards Board) to arrive at an opinion as to whether the financial statements have been compiled in accordance with Canadian accounting standards. Since the provision of audit services is a regulated service (at the provincial/territorial level in Canada), only professionals (qualified CPAs) who are licensed or recognized to practice by provincial regulatory authorities, are permitted to perform this service. These auditors have qualified by completing specific audit-related education and experience requirements in qualifying as CPAs.*

*As regulated professionals, CPA auditors must meet a number of ongoing requirements established by their provincial/territorial CPA regulatory body, including adherence to a professional code of conduct.*

*Violations of the code of conduct or professional responsibilities can be reported to the CPA regulatory body by members of the public, resulting in investigations and potential disciplinary measures. In addition, audit firms are subject to regular practice inspections and oversight by the Canadian Public Accountability Board.*

<sup>1</sup> *Accounting Standards Board, “What are Accounting Standards?”, downloaded from <https://www.frascanada.ca/en#acsb#abut#what-are-accounting-standards>.*

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Again, accounting standards are illustrative of the challenge. While accounting standards are set at the national level, most countries, including Canada, align with International Financial Reporting Standards (IFRS), established by the International Accounting Standards Board providing a certain level of comparability. However, attempts to converge IFRS with American standards set by the Financial Accounting Standards Board and based on a different framework, are still very much a work in progress.

When considering development of a standard or code for Canada, there needs to be an assessment of how the particular issue is being addressed by other countries and whether a global consensus is emerging. If so, is there a need for a distinct Canadian approach to protect unique Canadian interests? Could having higher standards than are in place in other jurisdictions create a competitive advantage for Canada, or would it discourage investment and business activity? Generally speaking, a consistent approach to standards and codes across all jurisdictions would be the preferable outcome, but we should not assume that to always be the case. Once again, the work of the Data Governance Standardization Collaborative will be instrumental in making these determinations.



## Certification mechanism

The potential value of a certification system was discussed at a CPA Canada roundtable held as part of ISED's 2018 public consultations into digital and data transformation.<sup>17</sup> The idea considered was some form of certification program that would demonstrate to the public and to businesses that the certified individual or business meets a particular standard for data custodianship. For consumers, this would build trust by signaling that a business takes certain prescribed steps to protect the personal data it holds. It would send the same signals to businesses that are seeking to hire third-party vendors, something that would be helpful in reducing the compliance challenges faced by SMEs.

But here too, there are numerous factors to be considered in assessing where and how a certification process may provide value. Should it be the business or the individual that is certified? Considerable thought must obviously go into the certification requirements, and those requirements will need to be re-evaluated and updated on a regular basis. Just as important as how one qualifies for certification, is how one loses it. Certification is not the same as an education credential, which is earned only once and not normally retracted. However, a certification, much like the CPA designation, must be earned every day. There must be a process by which a person (or organization) who fails to meet the expected standards is stripped of the certification. This would require some form of governing body and some form of review or recertification built into the system.

These concerns are raised not as objections to a certification system, only to point out some of the considerations that must go into designing an effective system. There are certainly examples of successful certification systems that can serve to guide development of a data custodianship certification. From the world of product certifications, the Canada Organic Regime and its Canada Organic Logo provides instant reassurance to consumers that a particular food item has qualified as organic under the regulations administered by the Canadian Food Inspection Agency.<sup>18</sup> It serves as a good example of the benefits of certification, but also some of the complexities involved such as setting the criteria for qualifying as organic, establishing a network of certification bodies, and the marketplace challenges of competing certification organizations. For data custodianship, standards set by the International Standards Organization (ISO/IEC 27001 and ISO/IEC 27701) may serve as a starting point for establishing a certification system. As with standards, a certification system is only effective if it has proper oversight and enforcement, rigorous qualification processes, and public transparency.

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<sup>17</sup> CPA Canada, "Digital and Data Transformation Roundtable: Positioning Canada to lead in a Digital and Data-Driven Economy", available at <https://www.cpacanada.ca/en/business-and-accounting-resources/other-general-business-topics/information-management-and-technology/publications/digital-and-data-transformation-roundtable>.

<sup>18</sup> For more information on the Canada Organic Regime, see the Canadian Food Inspection Agency website at <https://www.inspection.gc.ca/organic-products/regulating/eng/1328082717777/1328082783032>.

CPA Canada recently signed a memorandum of understanding with the Chief Information Officers Strategy Council aimed at the development of national standards covering corporate data policies, data operations and data value chains, as well as data valuation and the possible incorporation of data as an asset in financial statements in the future. As noted earlier, under the Foresight Initiative, CPA Canada will engage with its members and data experts in order to collect and review best practices related to data governance, data operations and data valuation with the view to develop guidance, training and standards down the road. We believe that CPAs can play an instrumental role in helping Canada in its transformation towards a digital economy.

### A few closing thoughts

As a matter of public policy, data governance – and its implications for privacy legislation and policy – is a challenging topic because the issues are all so relatively new. One doesn't have to be very old to remember a time when something like artificial intelligence was only featured in science fiction movies. Now it is increasingly affecting our day-to-day lives. The ongoing debate over the Sidewalk Labs proposal for Toronto's waterfront serves as another example of how these data governance and privacy questions are playing out in real life and in real time.

Governments around the world, businesses of all types, academia and civil society are all struggling to answer the same questions about data governance. The answers at this point are not entirely clear. For this reason, we hope that this discussion paper will not serve as the last opportunity for public input on this topic.

As our own work progresses on data governance, artificial intelligence, blockchain and other emerging issues affecting the profession, we deepen our understanding and are able to better articulate our views. In the event there are further consultations and more focused questions in future, we expect to provide more detailed feedback and advice.

As mentioned at the outset, CPAs work in diverse occupational roles in organizations of all types and in all sectors of the economy. To better understand emerging issues, we often convene roundtables to bring together subject matter experts from across our membership and exchange different points of view. Our September 2018 roundtable in support of ISED's consultations into digital and data transformation is one such example. We encourage ISED to keep this in mind in case such consultations might be helpful in understanding some of the specific questions the department is trying to resolve.

Thank you for this opportunity to comment. Should you wish to contact CPA Canada about any of the content or matters raised in this submission, please contact:

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