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Quebec Privacy Legislative Reform: Canvassing Key Law 25 Enforcement and Litigation Considerations

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Law 25: Regulatory Enforcement

Financial Consequences Under Law 25: AMPs and Fines

90.12 The maximum amount of the monetary administrative penalty is $50,000 in the case of a natural person and, in all other cases, $10,000,000 or, if greater, the amount corresponding to 2% of worldwide turnover for the preceding fiscal year.

91 Anyone who [commits an enumerated offence] is liable to a fine of $5,000 to $100,000 the case of a natural person and, in all other cases, of $15,000 to $25,000,000, or, if greater, the amount corresponding to 4% of worldwide turnover for the preceding fiscal year.

92.1 In the case of a subsequent offence, the fines under this division are doubled.

Financial Consequences Under Quebec Privacy Law: Personal Liability

93. Where an offence under this Act is committed by a legal person, the administrator, director or representative of the legal person who ordered or authorized the act or omission constituting the offence, or who consented thereto, is a party to the offence and is liable to the prescribed penalty.

Principles Underlying the Imposition of AMPs

90.2 The Commission shall develop and make public a general framework for the application of monetary administrative penalties and shall specify in the framework the following elements in particular:

(1) the purpose of the penalties, such as urging a person carrying on an enterprise to rapidly take the measures required to remedy the failure and deter repetition of such failures;

(2) the criteria that must guide designated persons in the decision to impose a penalty when a failure occurs and in the determination of the amount of the penalty, including

(a) the nature, seriousness, repetitiveness and duration of the failure;

(b) the sensitivity of the personal information concerned by the failure;

(c) the number of persons concerned by the failure and the risk of injury to which they are exposed;

(d) the measures taken by the person in default to remedy the failure or mitigate its consequences;

(e) the degree of cooperation provided to the Commission to remedy the failure or mitigate its consequences;

(f) the compensation offered by the person in default, as restitution, to every person concerned by the failure; and

(g) the ability to pay of the person in default, given such considerations as the person's assets, turnover and revenues […]

Principles Underlying the Imposition of Penal Fines

92.3 In determining the penalty, the judge takes into account the following factors, among others:

(1) the nature, seriousness, repetitiveness and duration of the offence;

(2) the sensitivity of the personal information concerned by the offence;

(3) whether the offender acted intentionally or was negligent or reckless;

(4) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;

(5) the offender's attempts to cover up the offence or failure to try to mitigate its consequences;

(6) whether the offender failed to take reasonable measures to prevent the commission of the offence;

(7) whether the offender obtained or intended to obtain an increase in revenues or a decrease in expenses by committing the offence or by omitting to take measures to prevent it; and

(8) the number of persons concerned by the offence and the risk of injury to which they are exposed.

Enforcement Mechanisms and Appeals

83 The inquiries of the Commission are non-adversary investigations. Following an inquiry relating to the collection, retention or communication of personal information by a person carrying on an enterprise, the Commission may, after giving the person an opportunity to present his observations, recommend or order the application of such remedial measures as are appropriate to ensure the protection of the personal information within the reasonable time limit the Commission specifies.

61 A person directly interested may bring an appeal from a final decision of the Commission before a judge of the Court of Québec on a question of law or jurisdiction or, with leave of a judge of that Court, from an interlocutory decision which cannot be remedied by the final decision.

The person may also contest before a judge of the Court of Québec an order issued by the Commission's oversight division.

90.9 A review decision confirming or amending the decision to impose a monetary administrative penalty may be contested before the Court of Québec within 30 days after notification of the contested decision. […]

Law 25: Litigation Risk

The Civil Code of Quebec: General Civil Liability

CCQ, art. 1457: Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.

The Civil Code of Quebec: Examples of Privacy Rights

CCQ, art. 35: Every person has a right to the respect of his reputation and privacy.

The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law. […]

CCQ, art. 37: Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. […]

CCQ, art. 38: Every person may cause information which is contained in a file concerning him and which is inaccurate, incomplete or equivocal to be rectified. […]

Evolution of Law 25: Removal of General Damages

Section 93.1 as proposed in the first reading of Bill 64 (June 2020):

93.1. Unless the injury results from superior force, a person carrying on an enterprise who keeps personal information is bound to compensate for the injury resulting from the unlawful infringement of a right conferred by this Act or by articles 35 to 40 of the Civil Code.

In addition, where the infringement is intentional or results from a gross fault, the court shall also award punitive damages of at least $1,000.

Section 93.1 in the assented to version (September 2021):

93.1. Where the unlawful infringement of a right conferred by this Act or by articles 35 to 40 of the Civil Code causes an injury and the infringement is intentional or results from a gross fault, the court shall award punitive damages of not less than $1,000.

The Quebec Charter

Art. 5: Every person has a right to respect for his private life.

Art. 49: Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.