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CANADIAN GEOSPATIAL DATA INFRASTRUCTURE
INFORMATION PRODUCT 38e

Report on Legislative Barriers to the Release of Geospatial Data

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1. Introduction

This Report was prepared pursuant to a contract between Hickling Arthurs Low Corporation and Natural Resources Canada to produce a Geospatial Data Sharing Guideline for use by organizations in Canada that want to share or exchange their geospatial data assets with others.

1.1 Terms of Reference

This Report has been prepared pursuant to the following terms of reference:

> One of the barriers that organizations face in their attempts to share or exchange geospatial data with others is specific provisions of legislation that inhibit such data sharing and exchange.
>
> This project involves the research of federal and provincial legislation to identify and document specific provisions that negatively impact the open sharing of geospatial data. […] Legislation to be reviewed includes Acts of the Parliament of Canada and Acts of the Legislatures of the Provinces of British Columbia, Alberta, Ontario and Québec.

CIPPIC conducted its research using the following definition for "geospatial data" offered by the terms of reference:

> geospatial data is defined as data with implicit or explicit reference to a location relative to the earth (e.g. geographic co-ordinates). Geospatial data can be represented in various formats: maps, print publications, geo-referenced satellite images, digital charts, etc.

1.2 Methodology

The preparation of this Report involved researching federal and provincial legislation to identify and document specific provisions that negatively impact the open sharing of geospatial data. This involved the following:

- First, we undertook a general secondary literature review of the subject area to assess the extent to which this work has already been undertaken.
- Second, we targeted federal primary sources of legislative barriers to the open sharing of geospatial data.
- Third, we targeted provincial primary sources of legislative barriers to the open sharing of geospatial data, focusing on British Columbia, Alberta, Quebec and Ontario.

- Finally, we synthesized the research into this Report. We also included, as Appendix A of this Report, details on when each statute under discussion is slated for mandatory legislative review and whether the relevant legislature is presently considering any amendments.

1.3 Limitations

This Report looks at federal statutes and the provincial statutes of British Columbia, Alberta, Quebec and Ontario. The Report does not purport to be exhaustive in nature. It does not examine the statutes of the other provinces and territories of Canada (with targeted exceptions), not does it examine the obligations of Canada and its territories and provinces pursuant to international treaties, trade agreements, or other international instruments. The legislation does not examine the laws of other jurisdictions which may purport to have extra-territorial effect in Canada. This Report is also limited by its mandated resources and generality: specific fact scenarios might prove to implicate federal or provincial statutes that did not surface in the research we undertook to complete this Report. Legislative barriers remain that may be discovered through, for example, interviewing individuals that work with geospatial data regularly. Such inquiries, however, were beyond the resources of this project.

Federal and provincial access to information legislation may assist in identifying potential legislative barriers to the disclosure of information not detailed in this Report. Access to information legislation typically includes exceptions to government disclosure obligations. One class of such exceptions preserves secrecy or non-disclosure obligations imposed by such statutes. We have appended to this Report Schedule II of Canada's federal *Access to Information Act, R.S.C., 1985, c. A-1*, which lists a number of federal statutes that impose secrecy or non-disclosure obligations on government actors. To the extent each such statute may govern geospatial data, the statute may constitute a barrier to the release of geospatial data.[1]

[1] The authors acknowledge the valuable research assistance of CIPPIC interns Vanessa Davies and Angela Heung.

2. Intellectual Property

Copyright, trade-mark, and trade-secret regimes in Canada each have the potential to impact the distribution of some forms of geospatial data. Many geospatial datasets in which Crown employees have invested skill and judgment will implicate copyright. Crown marks that might appear on maps or other documents will raise trade-mark issues. Trade-secret laws are unlikely to directly impact works which the Crown willingly releases, but may create issues where ownership or joint ownership of a work vests with a contractor.

2.1 Copyright Act

2.1.1 Works in Which Copyright Subsists

Copyright law applies to many, but not all, types of geospatial data. In Canada, Copyright law is an entirely statutory form of intellectual property protection. As set out in the *Copyright Act*, copyright protection only applies to works that are fixed in material form and that express originality.[2] Any geospatial data in a document, image, or digital database is sufficiently fixed to meet the fixation requirement. However, some geospatial data may not express originality – in which case, no copyright protection applies and anyone may freely reproduce the work without infringing copyright.

In particular, copyright does not attach to "raw data". The originality stipulation requires an "exercise of skill and judgment" that is not "so trivial that it could be characterized as a purely mechanical exercise".[3] For example, copyright may not cover many automatically-snapped satellite images. It also may not apply to geospatial data that a computer generates from such images. For these works, copyright law poses no barrier to licensing. On the other hand, where data is compiled in a way that involves skill and judgment – such as is involved with the creation of a map – copyright protection applies.

2.1.2 Crown Copyright

In cases where a government organization produces geospatial data and copyright protection applies, the "Crown copyright" regime may pose hurdles for the open sharing of geospatial data. Section 12 of the *Copyright Act* provides that "where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty".

[2] *Copyright Act*, R.S.C. 1985, c. C-42, ss. 3(1) & 5(1).
[3] *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13 at para. 16.

Where it applies, Crown copyright gives the government exclusive rights in a work. No one may reproduce these works unless the Crown authorizes it; thus, in the absence of a license, everyone is entirely barred from copying, communicating or distributing a Crown work (unless one of these uses happens to fall under one of the exceptions enumerated in the *Copyright Act).* The only way for the Crown to openly share these works is for them to release them under an "open license". For example, Creative Commons and the Open Knowledge Foundation publish several open licenses that the governments and other authors can apply to works in order to grant the public wide and permissive authorizations to use them.

The barriers that the Canadian Crown copyright regime erects are best contrasted to the copyright regime for government works in the United States. There, copyright does not attach to any work "prepared by an officer or employee of the U.S. government as part of that person's official duties"[4]. Therefore, from the outset, the government does not retain any exclusive right in a work and copyright poses no barrier to open sharing of data.

2.1.3 Private Copyright

Where contractors working for the Crown create or organize geospatial data, they may, in some cases, retain ownership of the work or of their contributions to a larger work. Specifically, where an agreement stipulates that a non-governmental party will own copyright, Crown copyright will not apply. It is always "subject to any agreement with the author".[5]

The ownership rights of any particular work authored under contract will always depend on the contractual terms between the Crown and the private individual or corporation. Given that geospatial data often contains many constituent parts, it is important to note that a private party with copyright ownership of even one part in a compilation work can effectively prohibit the open sharing of the entire work. Copyright in a compilation or derivative work subsists in each party's contribution, allowing any single owner to enforce their exclusive rights. This can potentially create considerable barriers to the open sharing of data when large data sets consist of contributions from numerous entities.

2.1.4 Royal Prerogative

The *Copyright Act* states that the crown copyright regime is "without prejudice to any rights or privileges of the Crown".[6] This preserves the Crown prerogative powers to control the publishing of government works. Although the extent of the prerogative today remains unsettled, early jurisprudence suggests that it may at least cover admiralty and hydrographic charts.[7] In

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4 US, 17 U.S.C. §101 [*Copyright Act* of 1976].

5 *Copyright Act*, supra note 2, s. 12

6 *Ibid.*

7 In *R. v. Bellman,* Baxter C.J. discusses the royal prerogative in charts at length, but does not firmly decide whether the Crown rights rest in copyright or the royal prerogative or copyright (*R. v. Bellman,* [1938] 3 D.L.R. 548 at para. 11-26); also see Harold Fox, "Copyright in Relation to the Crown and Universities" (1947) 7 U. Toronto L.J. 98 at 117.

cases where the crown prerogative applies to geospatial data, it will even apply past the normal expiration of a copyright term.

In this context, the royal prerogative gives the Crown the exclusive rights to publish documents that fall under the protection of the prerogative. Even where the Crown shares protected geospatial data, others cannot republish it unless the Crown grants permission to do so (such as through the terms of a permissive license).

2.2 Trade-marks Act

The *Trade-marks Act* establishes a wide scope of protection for the "official marks" of public authorities.[8] Although the *Act* is unlikely to apply to most forms of geospatial data, it could apply to government marks that appear on maps, charts, and other documents.

Unlike ordinary trade-mark protection, the protection for an official mark is not tied to a specific ware or service. A person is prohibited from adopting an official mark in connection with any business whatsoever.[9] This could bar potential geospatial data users from using or redistributing any works that contain these official marks.

This trade-mark protection applies only to the mark itself, and not to any underlying work on which they marks appear. Therefore, under trade-mark law, a user of a work that contains an official mark could still openly use and share the work if he or she removes the official mark. Of course, any government body that shares a work could also avoid these trade-mark issues by ensuring that no official marks appear on any shared works.

As an alternative to removing marks, the *Trade-mark Act* also permits a public authority that owns a mark to authorize others to use it.[10]

2.3 Trade Secrets

Trade secret protections may cover geospatial information where businesses controlling the geospatial information intend for it to remain secret. The scope of trade secrets reach to include any process, formula, pattern, device or compilation of information.[11] Trade secret protections can even apply to information in instances where copyright does not apply, such as to raw data.

Like any person, the government is not usually legally permitted to distribute trade secrets. However, trade secret liability will not arise in connection with any data that the government develops in-house (because such data is only ever secret only to the government itself). Amongst

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[8] *Trade-marks Act*, R.S.C. 1985, c. T-13, s. 9(1)(n)(iii).
[9] *Ibid.*, s. 9(1).
[10] *Ibid.*, s. 9(2).
[11] See *Montour ltée v. Jolicoeur*, [1988] Q.J. No. 702 at para. 24 (process, formula or recipe); *R.I. Crain Limited v. Ashton and Ashton Press Manufacturing Company Limited* , [1949] O.J. No. 455 (formula, pattern, device or compilation of information) at para. 19.

other requirements, trade secret protections will also only apply in instances where (1) the government receives the data from a business and (2) the business meant for the data to remain secret.

The legal protection for trade secrets involves civil remedies that serve to protect fair practices in business relationships. As such, trade secrets falls under provincial jurisdiction.[12] In Quebec, a plaintiff generally must ground an action for a breach of a trade secret under the *Civil Code of Quebec* provisions on contractual obligations. In other provinces, common law jurisprudence governs trade secret actions. However, no province has any legislation that specifically addresses trade secrets.

2.3.1 Quebec: Contractual Liability for Trade Secret Violations

A confidentiality or trade secret breach is actionable as a contractual breach under article 1458 of the *Civil Code of Quebec* when a person violates a contractual duty of confidentiality. The duty to respect trade secrets can be explicit in a contract, or implicit through the overall negotiation process or nature of an agreement.[13] The *Civil Code of Quebec* details the liability of a person who breaches a trade secret as follows:

> 1612. The loss sustained by the owner of a trade secret includes the investment expenses incurred for its acquisition, perfection and use; the profit of which he is deprived may be compensated for through payment of royalties.

As noted, given that a plaintiff can only ground a trade secret action in contractual liability vis-à-vis another person, trade secret law has no impact on the ability of a government to release its own data (even though internal policies on the handling of confidential information might pose other barriers). Trade secrets will only create barriers where the government desires to share geospatial information obtained from other persons. Although there is no clear test in the *Civil Code*, nor in jurisprudence, for the definition of a trade secret, courts are most likely to find that information is secret when it has economic value, is not generally known, and cannot be easily obtained.[14]

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[12] See e.g. *MacDonald et al. v. Vapor Canada Ltd.*, [1977] 2 SCR 134(Laskin C.J. held that s. 7(e) of the federal *Trade-mark Act* was constitutionally invalid insofar as it aimed to set out a private right of action for dishonest business practices).

[13] Art. 1458 C.C.Q.; Art. 1434 C.C.Q. (implicit terms); see also Éric Dufresne, "Contrats de haute technologie et secrets..." (2001) 33:16 Le Journal, <http://www.barreau.qc.ca/publications/journal/vol33/no16/strategiques.html>.

[14] See e.g. *Éditions CEC inc. c. Hough*, 2008 QCCS 4526 at para. 61-66.

2.3.2 British Columbia, Alberta & Ontario: Contractual & Equity-based Actions for Trade Secret Violations

The law governing trade secrets in other provinces, which courts have developed at common law, is similar to the regime in Quebec. The scope of a trade secret, as well as when the doctrine applies, is similar except that it finds its roots in common law contractual obligations and equity:

> In common law, there are essentially five (5) types of civil action that a trade secret holder can rely on to seek protection of its trade secrets before a court of justice: (i) breach of contract (express or implied provision), (ii) breach of confidence, (iii) breach of fiduciary duty, (iv) unjust enrichment and (v) wrongful interference with the contractual relations of others .[15]

2.3.3 Confidential Information Disclosed to Government Under an Act

Government often requires the submission of confidential information by an industry actor in return for some right or privilege. Examples may include geotechnical work or well-site seabed surveys submitted to government agents pursuant to the *Canada Petroleum Resources Act*,[16] or confidential documents including geospatial data submitted to a review panel pursuant to an environmental assessment under the *Canadian Environmental Assessment Act*.[17] The practice in such cases is to impose an obligation of confidence on the receiving government party. In the two examples mentioned, the Acts in question deem each such submission to be privileged and prohibit the disclosure of the document.[18]

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[15] Julie Desrosiers & Marc-André Nadon, "The Law of Trade Secrets in Quebec and in Canada: A Pragmatic Approach" (2008), <http://www.fasken.com/en/publications> at 12.
[16] R.S.C., 1985, c. 36 (2nd Supp.).
[17] S.C. 1992, c. 37 (as amended).
[18] See *Canada Petroleum Resources Act, op. cit.*, s. 101; *Canadian Environmental Assessment Act, ibid.*, subsection 35(4).

3. Access to Information

3.1 Federal Access to Information

The *Access to Information Act*[19] governs Canadians' right to access information in federal government records. Provincial and federal access to information legislation differs from most of the other legislative barriers to releasing geospatial data canvassed in this Report in that access to information laws typically address circumstances in which data is "pulled" out of government at the request of a private party, rather than deliberately "pushed" into the public by a government actor. In this way, the federal access to information regime only establishes a right of access to information for a requesting individual, and not to the broader public.

The federal *Access to Information Act* governs "records", defined as "any documentary material, regardless of medium or form".[20] Geospatial data, so long as documented, fall squarely within this definition and is subject to Canada'a access to information regime. The policies guiding the Act include that of providing:

> a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.[21]

Government's obligation under the Act is, on a person's request, to give that person access to any record under the control of a government institution.[22] The right of access includes the right to examine the record or to be given a copy of it.[23]

A number of exceptions to government obligations to release records pursuant to requests under the Act may potentially act as barriers to the release of geospatial data. These include:

- records containing information that was obtained in confidence from a the foreign government, an international organization of states (such as the United Nations), or a provincial, municipal, or aboriginal government;[24]

- records pertaining to federal-provincial affairs[25] or international affairs and defense;[26]

[19] R.S.C., 1985, c. A-1 (as amended).
[20] *Ibid*., s. 3.
[21] *Ibid*., ss. 2(1).
[22] *Ibid*., ss. 4(1).
[23] *Ibid*., ss. 12(1).
[24] *Ibid*., ss. 13(1).

- records pertaining to law enforcement and investigations,[27] security,[28] or policing services;[29]

- records pertaining to investigations and audits of governmental agencies (such as the Office of the Privacy Commissioner of Canada and the Auditor-General);[30] and

- records that could compromise the safety of individuals[31] or Canada's economic best interests.[32]

Other large exceptions to the obligation to disclose records address the personal privacy of individuals identified in such records,[33] or safeguard third party trade secrets.[34] Elsewhere in this Report, we discuss the potential for these third party rights to pose a barrier to the voluntary release of geospatial information. Finally, the Act includes a general carve-out that attempts to mesh access to information exceptions with legislation prohibiting government agents from disclosing information. Some of these statutes, which are diverse and run the gamut from laws of general application (*e.g.*, the *Statistics Act*, R.S.C. 1985 c. S-19 (as amended)) to highly specialized statutes (e.g., the *DNA Identification Act*, S.C. 1998, c. 37) could bar the release of geospatial data to the extent that such data could fall under the purview of the statute. This is likely (at least with respect to some datasets) in the case of the *Statistics Act*, unlikely in the case of the *DNA Identification Act.* We have included Schedule II of the Act as an appendix to this Report to give a flavour for the diversity of statutes which could potentially pose a barrier to the release of geospatial data, whether pursuant to an access request or otherwise.

3.2 Provincial Access to Information Legislation

3.2.1 Alberta FIPPA

In Alberta, the *Freedom of Information and Protection of Privacy Act* (*Alberta FIPPA*) governs the disclosure of information by public bodies.[35] In general, this *Act* applies to most geospatial information, with a few exceptions such as for data from the Land Titles Office and any health information.[36]

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[25] *Ibid.*, ss. 14(1).
[26] *Ibid.*, ss. 15(1).
[27] *Ibid.*, ss. 16(1).
[28] *Ibid.*, ss. 16(2).
[29] *Ibid.*, ss. 16(3).
[30] *Ibid.*, ss. 16.1(1) – 16.4(1).
[31] *Ibid.*, s. 17.
[32] *Ibid.*, s. 18.
[33] *Ibid.*, ss. 19(10).
[34] *Ibid.*, ss. 20(1).
[35] *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 [*Alberta FIPPA*].
[36] *Ibid.*, paras. 4(1)(l) & 4(1)(u).

However, the freedom of information provisions do not apply to the more specific act of sharing geospatial information with the public. The *Alberta FIPPA* only establishes a right of access to information for an individual "applicant", and not to the broader public.[37] Likewise, the restrictions where a public body must refuse to disclosure information only apply in respect of an "applicant".[38]

The only provision that even discusses the release of information to the public at large is a requirement for public bodies to give the public information on health and environmental risks:

> 32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant
>
> (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or
>
> (b) information the disclosure of which is, for any other reason, clearly in the public interest.[39]

This creates no barrier, but is worth noting in that it creates a positive obligation to openly share data in select contexts.

Part 2 of the *Alberta FIPPA* deals with privacy, which we discuss under the *Privacy* section of this document.

3.2.2 British Columbia FIPPA

Similar to the Alberta legislation, the B.C. *Freedom of Information and Protection of Privacy Act (B.C. FIPPA*) creates a right of access only to a person who makes a specific request for information.[40] The restrictions on disclosure also likely only apply to such an applicant.[41]

The B.C. legislation also has one provision where providing information to the public is mandatory. The *B.C. FIPPA* requires open public disclosure of information where it relates to environmental risks, health risks, or where disclosure is "for any other reason, clearly in the public interest".[42] Given the context of the public interest clause where it appears in parallel with disclosure obligations for environmental and health risks, an "other" reason that is in the public interest likely necessitates a high threshold of public interest, such as an emergency situation.

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[37] *Ibid.*, s. 6(1).
[38] *Ibid.*, s. 16(1).
[39] *Ibid*, s. 32(1).
[40] *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, ss. 4(1) & 5(1) [*B.C. FIPPA*].
[41] *Ibid.*, s. 12(1).
[42] *Ibid.*, s. 25(1).

3.2.3 Quebec Act Respecting Access to Documents

In Quebec, the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* likewise creates a right of access to information only "on request".[43] Although the *Act* phrases some provisions as broad prohibitions that a "public body must refuse to release or to confirm the existence of information" in certain scenarios, these prohibitions do not likely apply to any decisions to openly share information with the public at large.[44] The *Act* sets out these restrictions under a division entitled "Restrictions on the Right of Access", in a context where this division as a whole serves to narrow the more general right of access that exists only upon request.

Notably, the *Act* also explicitly sets out that the right of access does not affect the intellectual property protections that apply to a government work.[45] Thus, even where individual requestors retrieve information, they cannot openly share it without first clearing intellectual property rights.

3.3 Ontario FIPPA

In theory, the Ontario *Freedom of Information and Protection of Privacy Act* (*Ontario FIPPA)* grants a Minister broader authority – and a broader obligation – to openly share information with the public than do similar regimes in other provinces.[46]

The *Act* sets out the principle that "information should be available to the public" and states that "every person has a right of access to a record or a part of a record in the custody or under the control of an institution", except where an exemption applies to such information.[47] This right to "every" person is wider in contrast to the more circumscribed right of an individual "applicant" or requestor that exists in the legislation of other provinces. Further supporting the broader application of the right in Ontario is the fact that the *Ontario FIPPA* permits a Minister to grant access to information in response to an informal oral request – or even in the absence of any request at all.[48]

Although this right to information in broader, the *Act* may create further barriers to openly sharing geospatial data because the categories of prohibited disclosures also apply more widely, possibly encompassing the act of openly sharing information with the public. The following categories of exceptions, set out in section 12-23 of the *Act*, are the most likely to apply to certain types of geospatial data:

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[43] *An Act respecting access to documents held by public bodies and the Protection of personal information*, R.S.Q., c. A-2.1, s. 9.
[44] Eg. *ibid.*, s. 28.
[45] *Ibid.*, s. 12.
[46] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31
[47] *Ibid.*, ss. 1(a) & 10(1).
[48] *Ibid.*, s. 63(1).

- **Defense information (s. 16):** A Minister cannot disclose information "where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism", unless the Executive Council authorizes release of this information.

- **Third party information (s. 17(1)):** A minister also cannot disclose any "trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly" where the disclosure could reasonably be expected to:

  (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

  (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

  (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

  (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

- **Private personal information (s. 21(1)):** A minister generally cannot disclose personal information without the consent of the affected person (please refer to the privacy section of this report for further details).

- In addition to the above absolute exemptions to the public's right of access, a Minister has the discretion to deny access to certain other types of information:

- **Information impacting the economic and other interest of Ontario (s. 18(1)):** A Minister may refuse disclosure of a record that contains:

  (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

  (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;

  (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

(g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

(h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;

(i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved.

- **Information that could endanger health or safety (s. 20):** A Minister may refuse disclosure "where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual".

4. Privacy

Spatial information may qualify as information subject to a variety of Canadian federal and provincial privacy regimes where the spatial information may be associated with individuals. A special risk arises from the aggregation of data: geospatial data by itself may not be associable with individuals, but when combined with other data, may become associated with particular individuals and so subject to privacy legislation.[49] This does not likely pose a liability risk to the releasing government agency where the aggregation occurs post-release by a third party, but plainly poses risks where aggregation occurs by a government agency pre- or post-release.

We will examine three classes of privacy legislation:

- Federal and provincial public sector privacy laws;
- Federal laws that include specific privacy-related protections; and
- Federal and provincial privacy laws pertaining to health information.

4.1 Federal Laws

A number of federal laws include privacy protections that will prohibit government release of geospatial data with implications for personal privacy. These include both general privacy-related laws and laws addressing other subject matter but that include specific protections addressing privacy concerns.

4.1.1 Federal Privacy Act

The Privacy Act is the federal legislation that controls the ways in which public bodies share personal information. It "extend[s] the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information."[50] The type of information to which it applies is any "personal information", which the Act defines as:

> [I]nformation about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing, information related to race, national or ethnic origin, colour, religion, age or marital status....education... medical, criminal or employment history of the individual or...financial transactions in which the individual has been involved,

[49] Ohm, Paul, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization", 57 UCLA Law Review 1701 (2010) online: SSRN <http://ssrn.com/abstract=1450006>.
[50] *Privacy Act*, R.S.C.1985, c. P-21 s. 2.

> any identifying number, symbol or other particular assigned to the individual, the address, fingerprints or blood type of the individual, the personal opinions or views.[51]

Whenever geospatial information contains personal information, the Act will almost always absolutely prohibit the open sharing of this data with the public. Federal public bodies cannot use or release personal information in their custody for any other purpose other than the purpose for which it was collected, unless the individuals to which the information pertains grant consent.

The definition given to personal information so as to include "information about an identifiable individual" is broad in scope. Even where geospatial data does not directly identify an individual, it could fall under the scope of protected information where the data allows a person to be identified through data aggregation or any other de-anonymization techniques.

4.1.2 Statistics Act

The Statistics Act[52] includes a privacy protection provision that may impose a barrier on the release of geospatial information under some circumstances:

> 17(1)(b) no person who has been sworn under section 6 shall disclose or knowingly cause to be disclosed, by any means, any information obtained under this Act in such a manner that it is possible from the disclosure to relate the particulars obtained from any individual return to any identifiable individual person, business or organization.

Statistics Canada data may create a significant risk of identification through aggregation.

4.1.3 Canada Elections Act

The Canada Elections Act[53] includes a prohibition on the disclosure of "election documents", which include revisions to voter lists and polling station returns. This information has a geographic base, and particularly when aggregated with other data, poses significant privacy risks if disclosed. Section 540(3) of the Act bars the inspection or publication of "election documents" for a period of 2 years following an election.

[51] *Ibid.*, s. 3.
[52] R.S.C. 1985, c. S-19 (as amended).
[53] S.C. 2000, c. 9.

4.2 Provincial Privacy Legislation

4.2.1 Ontario FIPPA

The purposes of the Ontario Freedom of Information and Protection of Privacy Act (FIPPA) are twofold: to provide individuals access to information collected and protect the privacy of individuals with respect to their personal information held by institutions.[54]

The Act prohibits public institutions from disclosing personal information except in a narrow range of circumstances:

> 41. (1) An institution shall not use personal information in its custody or under its control except,
>
> (a) where the person to whom the information relates has identified that information in particular and consented to its use;
>
> (b) for the purpose for which it was obtained or compiled or for a consistent purpose;
>
> (c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act; or
>
> (d) subject to subsection (2), an educational institution may use personal information in its alumni records for the purpose of its own fundraising activities, if the personal information is reasonably necessary for the fundraising activities. R.S.O. 1990, c. F.31, s. 41; 2005, c. 28, Sched. F, s. 5 (1).

None of these exceptions are likely to apply to any common scenarios of a government institution openly sharing geospatial data. Thus, where geospatial data contains or is capable of disclosing personal information, a government body must not publicly release it.

4.2.2 Alberta FIPPA

Similar to the Ontario FIPPA, the Alberta Freedom of Information and Protection of Privacy Act also prohibits public bodies from disclosing personal information except in a narrow set of circumstances enumerated in the Act.[55] Although the set of situations set out is somewhat wider than in the Ontario context, all of the exceptions still relate to disclosures to specific individuals in specific situations relating to a public body's mandate. The exceptions do not permit any wide sharing of personal information with the general public.

[54] *Freedom of Information and Protection of Privacy Act*, supra note 46, s. 1(a) & (b).
[55] *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 39-40.

4.2.3 British Columbia FIPPA

The B.C. Freedom of Information and Protection of Privacy Act (B.C. FIPPA) governs how public bodies in British Columbia collect and disclose information.[56] Like the corresponding legislation in Ontario and Alberta, the B.C. FIPPA also only permits public bodies to disclose information in an enumerated set of circumstances. The Act sets out one set of circumstances in which public bodies may disclose personal information within Canada and another where international sharing of personal information is permissible.[57] However, none of these lists include any open sharing of data with the public and they do not permit a public body to share geospatial information that contains personal information.

4.2.4 Quebec

Where any geospatial data contains personal information, a public body in Quebec also cannot openly share it. The Act respecting access to documents held by public bodies and the Protection of personal information establishes that personal information is confidential.[58] The Act places an obligation on all public bodies in Quebec to ensure the protection of any personal information they collect, use, release, keep or destroy.[59] Although there are a few exceptions enumerated throughout the Act, these are narrow and only aim to allow public bodies to fulfill their mandates in a manner consistent with the purposes for which they originally collect and use personal information.[60] These exceptions are again unlikely to apply to any broad sharing of personal information to the general public.

Although the Act respecting access to documents held by public bodies and the Protection of personal information does not define the scope of "personal information", pre-existing privacy legislation regulating the private sector does define it. Enunciating likely the broadest definition of all provincial privacy legislation, the Act respecting the Protection of personal information in the private sector very defines personal information as "any information which relates to a natural person and allows that person to be identified".[61] Even where geospatial data does not directly identify an individual, it falls under the scope of protected information where the data even "allows" a person to be identified through data aggregation or any other de-anonymization techniques.

Quebec laws also obligate other bodies operating in the province to ensure that they provide sufficient protections for the collection, use and distribution of personal information. As mentioned, the Act respecting the Protection of personal information in the private sector

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[56] *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.
[57] *Ibid.*, ss. 33.1 & 33.2.
[58] *Act respecting access to documents held by public bodies and the Protection of personal information*, R.S.Q., c. A-2.1, s. 53.
[59] *Ibid.*, s. 63.1.
[60] See e.g. *ibid.*, ss. 66-68.
[61] *Act respecting the Protection of personal information in the private sector*, R.S.Q., c. P-39.1, s. 2.

controls personal information in the context of commercial enterprises.[62] The Civil Code of Quebec also states that "[e]very person has a right to the respect of his reputation and privacy."[63] The Quebec Charter further recognizes privacy as a human right.[64] Overall, organizations simply cannot openly share geospatial information containing private or personal information under Quebec law.

4.3 Provincial Health Information Legislation

Legislation that imposes extra privacy controls on the distribution of health information could pose barriers to the release of certain types of geospatial data that contain health data. On the other hand, some of this legislation also grants public bodies with broad authority to disclose health information for research, safety and informational purposes.

4.3.1 Alberta Health Information Act (HIA)

Alberta's Health Information Act and its associated regulations apply to most public health authorities, as well as to some provincial government bodies such as the Minister and Department of Alberta Health and Wellness.[65] In most cases, the Act prohibits these bodies from releasing data that includes health information – including any such geospatial data – to the public.

In comparison to similar legislation in other provinces, the Alberta H.I.A. actually grants the government and health care providers some broad powers to share information. One of its purposes is "to enable health information to be shared and accessed, where appropriate, to provide health services and to manage the health system".[66] However, the powers established throughout the legislation aim largely at allowing researchers to obtain access to health information and do not grant health authorities the power to disseminate information to the entire public.

The Act enunciates very specific definitions and procedures regarding the disclosure of health information. The following provisions, in particular, are likely to apply to geospatial information:

1. **Protections on "identifying" health information**: Similar to other privacy legislation, the Act places strict controls on the use and disclosure of any "identifying" health information, which it defines to mean health information where "the identity of the

[62] *Ibid.*, s. 1.
[63] Art. 35 C.C.Q.
[64] *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, art. 5.
[65] *Health Information Act*, R.S.A.2000, c. H-5, s. 1 (definition of "custodian").
[66] *Health Information Act*, R.S.A.2000, c. H-5, s. 2(b).

individual who is the subject of the information can be readily ascertained from the information".[67]

The Act also imposes a general prohibition on any broad dissemination of this information. Public bodies to whom the Act applies may only "collect, use or disclose only the amount of health information that is essential to enable the custodian or the recipient of the information, as the case may be, to carry out the intended purpose".[68]

2. **Mandatory anonymization**: The Act requires that organizations to whom the Act applies use anonymized data whenever possible. Section 57(2) states that "a custodian that intends to collect, use or disclose health information must first consider whether collection, use or disclosure of aggregate health information is adequate for the intended purpose, and if so, the custodian must collect, use or disclose only aggregate health information".[69]

3. **Data matching**: Section 1(g) defines "data matching" as "the creation of individually identifying health information by combining individually identifying or non-identifying health information or other information from 2 or more electronic databases, without the consent of the individuals who are the subjects of the information".[70]

Subsequently, sections 68-72 establish a prohibition on data matching – even with respect to non-identifying health information – unless such a process falls under a permitted exception or an organization obtains authorization after submitting a privacy impact assessment to the Commissioner. This regime serves to prevent the de-anonymization of aggregated and anonymized data sets.

4.3.2 British Columbia - E-Health Act

The B.C. E-Health (Personal Health Information Access and Protection of Privacy) Act governs the establishment and control of "health information banks", such as electronic health record databases.[71] In general, the Act prohibits public health authorities who control these data banks from disclosing the contents to the public.

The E-Health Act permits data-sharing and disclosure of health bank information for some constrained purposes. For example, s. 15 permits the administrative "Data Stewardship Committee" to approve disclosures for objectives that include health planning, research and public health surveillance.[72] However, given the sensitive nature of most health information, the

[67] *Ibid.*, s. 1(p).
[68] *Ibid.*, s. 58(1).
[69] *Ibid.*
[70] *Ibid.*, s. 1(g).
[71] *E-Health (Personal Health Information Access and Protection of Privacy) Act*, S.B.C. 2008, c. 38.
[72] *Ibid*, s. 1, 4(g-h) & 15.

committee is unlikely to grant approval for a body to openly disclose health bank information to the public at large.

Aside from pre-approved disclosures and the pre-approved goals of a particular health information bank, the Act explicitly prohibits the use of health information bank data for any other purpose.[73]

4.3.3 Ontario's Personal Health Information Protection Act

Similar in scope to the Alberta Health Information Act, the Ontario Health Information Act likewise applies to most public health authorities in the province, as well as to the governing Ministry.[74] The provisions of the Act that deal with the disclosure of health information commence with a blanket prohibition against any organization to whom the Act applies disclosing any health information.[75]

Although this Act also enumerates exceptions for purposes such as for the provision of health care, certain court proceedings, and pre-approved research, none of these categories permit a health authority to openly share their data with the public.[76]

4.3.4 Quebec Health Privacy Legislation

Although Quebec does not have legislation to specifically address the privacy of health information, the *Act respecting access to documents held by public bodies and the Protection of personal information* still applies.[77] A public body cannot openly release geospatial data related to health information where the data allows a person to be identified.

4.4 Provincial Statistics Legislation

The provinces and territories offer privacy protections in their statistics legislation similar to that offered by federal statistics legislation.[78] For example, Ontario's *Statistics Act*[79] provides as follows:

> s. 4(2) Subject to section 6, no public servant having knowledge of the answers to questions asked in a questionnaire under this Act shall disclose or give to any person any information or document with respect to such answers without the written permission of his or her minister, and, except where statistical information is collected jointly under this Act, such

[73] *Ibid.,* s. 21.
[74] *Personal Health Information Protection Act,* 2004, S.O. 2004, c. 3, Sch. A., s. 3.
[75] *Ibid.,* s. 29.
[76] *Ibid,* s. 38 (health care disclosure), s. 41 (court proceedings) and s. 44 (research).
[77] *Act respecting access to documents held by public bodies and the Protection of personal information,* supra note 27.
[78] See section 3.1.2, above.
[79] R.S.O. 1990, Chapter S.18 (as amended).

> permission shall be limited to the disclosing or giving of information or documents to public servants in the minister's ministry or in prosecutions instituted for offences against this Act.
>
> (3) Despite anything in this Act, no minister or public servant shall, in any way, use the answers to questions asked in a questionnaire authorized under this Act for any purpose other than the purposes of this Act.

British Columbia[80] and Alberta[81] both offer similar protections against disclosure of personal information contained in returns or statistics generally.

Chapter III of Quebec's *Act Respecting the Institut de la Statistique du Québec*[82] addresses the question of confidentiality and includes even broader disclosure prohibitions where "disclosure would allow information to be associated with a specific person, *enterprise, body or association*."[83]

[80] *Statistics Act*, RSBC 1996, Chapter 439 (as amended), s 9-10.
[81] *Office of Statistics and Information Act*, RSA 2000, c O-5.5 (as amended), ss. 8(1).
[82] R.S.Q., chapter I-13.011 (as amended).
[83] *Ibid*., s. 25 (emphasis added).

5. Distribution Fees

5.1 Federal Legislation

The "open" sharing of geospatial data generally requires the sharer to distribute the data without imposing any user fees. Therefore, legislation that regulates and imposes reporting obligations with respect to user fees may not apply. However, policies and approval processes that are external to a department may still create barriers to a department releasing data.

5.1.1 User Fees Act

The *User Fees Act* establishes a consultation and approval process for all user fees fixed by a regulating authority.[84] The Act does not include an outright prohibition on the release of data, but instead erects a procedural barrier that must be overcome prior to charging a fee for any data released. In this way, the User Fees Act acts as an administrative or procedural barrier to the release of geospatial data.

The *Act* defines a "user fee" as:

> [A] fee, charge or levy for a product, regulatory process, authorization, permit or licence, facility, or for a service that is provided only by a regulating authority, that is fixed pursuant to the authority of an Act of Parliament and which results in a direct benefit or advantage to the person paying the fee.[85]

Geospatial data that the government distributes to the public for free involves no "fee, charge or levy". Thus, the *User Fees Act* does not apply and it should pose no barrier to governmental data sharing. Note, however, that internal policies and procedures may still create obligatory approval processes or even obligatory fees.

5.1.2 Financial Administration Act

Where copyright subsists in geospatial data (as discussed in section 1), it is intellectual property and thus likely constitutes "public property" under the *Financial Administration Act*.[86] The *Act* defines this term as "all property, other than money, belonging to Her Majesty in right of Canada".[87]

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[84] *User Fees Act*, S.C. 2004, c. 6, s. 3(1).
[85] *Ibid.*, s. 2.
[86] *Financial Administration Act*, R.S.C. 1985, c. F-11.
[87] *Ibid.*, s. 2.

The *Financial Administration Act* attaches two stipulations to all such public property that is not real property:

> (a) A department must comply with regulations "authorizing the transfer, lease or loan of public property".[88] The Governor in Council may authorize or make these regulations on the recommendation of the Treasury Board;[89] and
>
> (b) A deputy head of a department must maintain adequate records in relation to public property and must comply with regulations of the Treasury Board governing the custody and control of public property. [90]

As they are set out in the *Act*, these controls have only a limited impact on the ability of a government department to openly share geospatial data. The first stipulation does not apply, as the open sharing of data is neither a transfer, lease, nor loan of public property. Copyright remains with the crown and an open license merely authorizes the public to make use of copies of a work.

The second stipulation creates some administrative barriers, in that it establishes statutory authority for the Treasury Board to control aspects of the licensing process. Any department sharing geospatial data must keep records and comply with other Treasury Board regulations that govern the "custody and control" of the data. In respect of these regulations, the Treasury Board has specific regulation-making power over the "keeping of records of public property".[91] The Treasury Board may also have the authority to make regulations involving public property where such regulations are necessary "for any other purpose necessary for the efficient administration of the federal public administration".[92]

Although internal government policies are outside of the scope of this report, it is also worth noting that the Treasury Board issues various policies governing copyright licensing, such as the *Communications Policy of the Government of Canada.*[93] In this policy, the Treasury Board asserts that other government institutions "must manage the administration and licensing of Crown copyright in co-ordination with Public Works and Government Services Canada".[94]

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[88] *Ibid*, s. 61(2).
[89] *Ibid.*
[90] *Ibid.*
[91] *Ibid.*, s. 10(d).
[92] *Ibid.*, s. 10(f).
[93] Treasury Board of Canada Secretariat, "Communications Policy of the Government of Canada" (2006), <http://www.tbs-sct.gc.ca/>.
[94] *Ibid.*

5.2 Provincial Legislation

The only two provinces to enact user fee legislation are Nova Scotia and New Brunswick.[95] The legislation in these provinces requires departments to report to their respective Clerk of the Assembly in respect of any user fees or user fee increases; however, given that these requirements only apply to "fees", they likely have no impact on the free and open sharing of data.

In other provinces, although legislation does not impose any mandatory fees or reporting obligations for sharing data, internal government policies may, in some cases, create barriers. For example, the Auditor General of Ontario reports that "the Non-Tax Revenue Directive and the Costing and Pricing Policy require that consideration be given to setting fees to recover the full cost of the fee-related service so that those who benefit from a service would pay the cost of providing it where it was reasonable and practical to do so."[96] Some jurisdictions tend to deal with the question of user fees and levies in specific statutes. For example, British Columbia's *Parks Act*[97] permits the Minister, with Treasury Board's approval, to make regulations prescribing user fees for certain park services,[98] which could include the publication of park maps or other geospatial data, and requires the Minister to publish any changes to those fees.[99] Not all provincial statutes enabling the imposition of user fees are restrictive: Alberta's *Water Act*, for example, allows the Minister to charge fees, "by order", for issuing a "document", which is defined to include "maps".[100]

[95] *Fees Act*, S.N.S. 2007, c. 8; *Fees Act*, R.S.N.B. 2011, c. 158; also see Ontario, Auditor General, "2009 Annual Report of the Auditor General of Ontario", <www.auditor.on.ca> at 151 [*2009 Auditor General Report*].
[96] *2009 Auditor General Report*, *ibid.* at 152. Noe that the Office of the Auditor General of Ontario declined to release the full text of the *Non-tax Revenue Directive*.
[97] RSBC 1996, c 344 (as amended).
[98] *Ibid.*, s. 29.2(1)(c).
[99] *Ibid*., para. 29.2(5)(b).
[100] See *Water Act*, RSA 2000, c W-3 (as amended), paras. 168(1)(b) and 1(1)(n).

6. Communication Requirements

6.1 Official Languages Act

In most cases, a federal institution sharing geospatial data with the public will need to provide this service in both official languages. This obligation arises under the *Official Languages Act* and apples to any federal institution's head office, any office in the National Capital Region, and any office where there is a significant demand for communications in both official languages.[101] This language obligation applies in respect of geospatial information when such a federal institution either provides the information itself or contracts with another person or organization to provide information on its behalf.[102] The Act establishes an Office of the Commissioner of Official Languages, and requires the Commissioner to:

> take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions.[103]

The Act establishes a complaints mechanism for individuals to protest violation of their rights under the Act.[104] The Commissioner is empowered to investigate[105] and issue recommendations,[106] and if the recommendations are not acted on, to report to Cabinet[107] and to Parliament.[108] Thus, the Act's objectives are compliance-oriented. Breach of the Act does not lead to fines or other punitive remedies.

The Act does provide for certain exceptions. For example, outside of the National Capital Region and apart from the head office of an institution, offices may offer services in one language only where there is not "significant demand" for both official languages. The phrase "significant demand" is required by regulation to be assessed by taking account of factors including the minority language population being serviced by the office, the importance of the service, and the national or international character of the service.[109]

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[101] *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp), s. 22.
[102] *Ibid.*, s. 25.
[103] *Official Languages Act*, *supra* note 101, at ss. 56(1).
[104] *Ibid.*, ss. 58(2).
[105] *Ibid.*, ss. 58(1).
[106] *Ibid.*, ss. 56(2).
[107] *Ibid.*, ss. 65(1).
[108] *Ibid.*, ss. 65(3).
[109] *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48.

However, one notable exception may apply in instances where a federal institution simply provides access to independently-created geospatial data for which it did not contract. These data sets may not constitute "services from federal institutions": the Treasury Board's "Directive on the Use of Official Languages on Web Sites" permits an institution to make information available as a courtesy "in one official language only, without changing the content, when that information is provided by entities not subject to the OLA".[110] A foremost example of such an occasion is geospatial data obtained from a provincial government.

6.2 Quebec Charter of the French Language

All government bodies in Quebec who share geospatial data with the public must ensure that any text within the data is available in French. The *Charter of the French Language* provides that:

> 15. The civil administration shall draw up and publish its texts and documents in the official language.
>
> This section does not apply to relations with persons outside Québec, to publicity and communiqués carried by news media that publish in a language other than French or to correspondence between the civil administration and natural persons when the latter address it in a language other than French.[111]

This law will not apply to geospatial data provided by the federal government or other provinces. However, even where Quebec government bodies integrate data from outside the province into their own publications, they will need to translate any English text into French.

6.3 Ontario French Languages Services Act

The Ontario French Languages Service Act grants every person "the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature".[112] However, the scope of the government's obligations in this context are only "to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made".[113] The Lieutenant Governor in Council may also make regulations to exempt particular government services.[114]

Thus, where the Ontario government shares geospatial data, it will need to provide information in French when doing so is reasonable and necessary. For example, it is likely reasonable for a government body to need to provide general F.A.Q. information about a data portal in French

[110] Treasury Board of Canada Secretariat, "Directive on the Use of Official Languages on Web Sites" (accessed Nov. 2011), <http://www.tbs-sct.gc.ca>.
[111] *Charter of the French Language*, R.S.Q., chapter C-11, s. 15.
[112] *French Language Services Act*, R.S.O. 1990, chapter F.32, s. 5(1).
[113] *Ibid.*, s. 7.
[114] *Ibid.*, s. 8.

(unless exempted by the Lieutenant Governor in Council). It is much less likely that the government would need to translate all labels found within a large geospatial dataset.

6.4 Provinces Lacking Official Languages Legislation

British Columbia, in contrast to Ontario and the federal government, does not purport to undertake to offer government services in both languages. Rather, British Columbia entered into the *Canada-BC Cooperation Agreement on Official Languages* to "increase" the BC government's "capacity to support the Francophone community by promoting the start up and development of a basic infrastructure in priority areas".[115]

6.5 Accessibility

The *Canadian Charter of Rights and Freedoms* guarantees equality and prohibits discrimination on the basis of mental and physical disabilities.[116] Government agencies therefore have an obligation to reasonably accommodate disabilities, including, according a recent decision of the Federal Court, the obligation to make government websites accessible to the visually impaired.[117]

In general, this principle applies to all government websites, including any that provide geospatial data. It creates an obligation to provide datasets in an accessible format. However, in cases where it is not technically feasible to make geospatial data accessible to the visually impaired, or where to do so would be so expensive as to cause the government "undue hardship", this may be a demonstrably justifiable infringement that is permissible under s. 1 of the Charter.[118]

[115] *Canada-BC Cooperation Agreement on Official Languages 2009-10 – 2010-11*, s. 2, online: <http://www.pch.gc.ca/pgm/lo-ol/entente-agreement/services/cb-bc/09-11/09-11-EntenteService-CB-eng.cfm#a2>.
[116] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 1, s. 15.
[117] *Jodhan v. Canada (Attorney General)*, 2010 FC 1197 (CanLII).
[118] *Ibid.* at para. 179, bullet 7.

7. Tortious Liability

Where geospatial data is inaccurate or used in an unsafe manner, there is some risk that a data provider could potentially face liability for any resulting injuries. For example, a pedestrian struck by a vehicle recently sued Google for negligently providing her with "walking directions that directed her to cross State Route 223 (SR 224), a rural highway with heavy traffic and no sidewalks."[119] Although the U.S. court dismissed this case for lack of a duty of care between Google and the plaintiff, the case demonstrates the possible spectre of actions that could create barriers to geospatial data sharing.

The *Crown Liability and Proceeding Act* establishes liability of the Crown for negligence-based and property-based claims where such liability would otherwise arise were the Crown a person:

> **3.** The Crown is liable for the damages for which, if it were a person, it would be liable
>
> (*a*) in the Province of Quebec, in respect of
>
> (i) the damage caused by the fault of a servant of the Crown, or
>
> (ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and
>
> (*b*) in any other province, in respect of
>
> (i) a tort committed by a servant of the Crown, or
>
> (ii) a breach of duty attaching to the ownership, occupation, possession or control of property.[120]

Thus, the Crown could face liability for negligence in the creation or distribution of geospatial data in the same manner as any individual or corporation.

7.1 Common Law Negligence

Under Canadian common law, there are several key components of negligence that a plaintiff must establish to justify a finding of liability:

- a duty of care towards the person injured;
- a breach of the requisite standard of care; and

[119] *Rosenberg v. Harwood*, No. 100916536 (Utah District Court; May 27, 2011) at 1.
[120] *Crown Liability and Proceeding Act*, R.S.C., 1985, c. C-50, s. 3.

- a causal link between the allegedly negligent act and the damages suffered (as well as the existence of damages that are not "too remote" for the law to recognize them).

7.1.1 Duty of Care

The principle of duty of care finds its roots in the "neighbour principle", first enunciated in the House of Lords decision of *Donoghue v. Stephenson*.[121] A person has a duty to act (or avoid acting) so as to prevent foreseeable injury to those persons in a relationship of proximity – that is, one must avoid injuring one's broadly-construed "neighbour".

Canadian courts have already recognized a duty of care on behalf of government bodies in their provision of geospatial information.[122] For example, in *Bayus v. Coquitlum*, the court held that the City of Coquitlum had a duty of care towards residents in maintaining accurate maps of the surrounding area. The court found that the city was at fault where an incomplete map led to a three to four minute delay in the fire department's response to a house fire.[123]

However, in contrast to this context, the situation of a government openly releasing data has many unique and distinct facets. Rather than releasing data for a specific purpose – which can create a direct relationship of reliance – an open data release is broader and commensurately less proximate. A court may not be apt to recognize an existing duty of care by mere analogy to a case such as *Bayus v. Coquitlum*. If this is the case, the court will apply the following "*Anns* test" to decide if it should recognize a new category of a duty of care:[124]

1. Does the relationship between the plaintiff and the defendant disclose sufficient foreseeability and proximity to establish a *prima facie* duty of care; and

2. If so, are there any residual policy considerations which ought to negate or limit that duty of care?

Certainly, a data user suffering harm from inaccurate data is a foreseeable event of any data release. However, there is a low degree of proximity between a data user and an open data provider. Although a user can reasonable expect a certain level of trustworthiness where data comes from an official government source, the broadly disseminated data on a website portal generally has no specific purpose or intended audience. There is no special relationship between the parties.

As well, the likelihood of a court finding a new duty of care is mitigated by the second stage of the *Anns* test. A court might find that the general benefits of the government releasing data for public consumption constitutes a "residual policy consideration" in favour of negating a duty of care. In an article on tortious liability for open content licensing in Australia, Cheryl Foong

[121] *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.).
[122] *Bayus v. Coquitlam (City)*, [1993] B.C.J. No. 1751 at para. 43.
[123] *Ibid.*, para. 41-43.
[124] *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 at para. 20.

describes several policy factors that reduce the likelihood of a duty of care with respect to public sector information providers (based on similar principles of duty of care that exist in Australia):

> [W]here information is pro-actively released online to the public, a relationship of sufficient proximity, which warrants reliance on such information without proper consideration, is unlikely to exist between the government and the user. This is especially so where information is provided free of charge, without any implicit inducement or warranty as to the accuracy of the information. Accordingly, where information is made available online by government to the general public, without expectation of economic profit, a duty of care is not likely to exist.
>
> Simply put, governments are releasing PSI for the benefit of the public. An individual who places undue reliance on the general information provided by a government without proper critical consideration or proper exercise of common sense, and consequently suffers a loss, has not acted reasonably. It should be the individual's responsibility to obtain professional advice before relying heavily on such information. Likewise, where a professional or skilled individual, or a corporation experienced in the particular field is involved, a reasonable reliance on PSI will be even harder to prove. [125]

Overall, the broad dissemination of geospatial information to the public could, but is unlikely to, give rise to a duty of care.

7.1.2 Standard of Care

A defendant is only liable in negligence if she or he breaches the requisite standard of care in the particular situation at hand. To determine the standard of care, a court will look to what a "reasonable person" would do in the circumstances. This is a highly-contextual analysis and, in the case of geospatial information, the standard of care will depend on the particular geospatial information source at issue. Clearly, a map of city dog parks will attract a lower standard of care than a map of the safe entries to a harbour.

Several notable similar aspects across all open data releases may tend to reduce the standard of care. Foremost, it is *prima facie* more reasonable for the government to release information without careful vetting its accuracy when it releases this information freely and openly. It is also more reasonable for released data to contain errors and inaccuracies when the purpose of the release is generalized – that is, when there is no specific intended use for the data that might otherwise demand a high degree of accuracy.

[125] Cheryl Foong, "Open Content Licensing of Public Sector Information and the Risk of Tortious Liability for Australian Governments" (2010) 17(2) eLaw Journal 23.

7.1.3 Causation & Remoteness of Damages

The general test for causation is whether the harm would have occurred "but for" the negligence on the part of the plaintiff.[126] Additionally, even if causation meets this "but for" test, the damages must not be "too remote" a consequence of the act at issue.[127]

Again, these tests are highly contextual to the particular situation and the particular damages suffered. In the context of data sharing, the test for causation is the same as in any other context. No aspect of data sharing makes an action in negligence more or less susceptible to the causation or remoteness test. As long as there is a clear link between an error in a dataset and the actual harm suffered – and the damage does not result from highly unusual circumstances – an action against the government will likely meet the thresholds for causation and remoteness of damages.

7.1.4 Voluntary Assumption of Risk

The defense of *volenti non fit injuria,* also known as voluntary assumption of risk, serves as an absolute bar to recovery in the negligence context.[128] An assumption of risk can either be express or implied. In the geospatial information context, the doctrine clearly applies when an information recipient agrees to a contractual disclaimer of liability.

Most terms of use for government data portals, as well as standard open license agreements, contain limitation of liability clauses; in most cases, these will be effective in establishing the users' consent to the risks, thereby protecting the data distributor from liability.[129] Some risk does remain due to possible injuries to third-parties. For example, a business might retrieve street map data from the government and subsequently use this data to provide GPS services to customers. These customers then do not necessarily give consent to the risks of using the data. On the other hand, these third parties are also less proximate to the data provider and a finding of a duty of care is therefore less likely.

7.1.5 Business Risk

Overall, the combination of a likely low standard of care, a questionable existence of a duty of care, and the protections provided by a limitation of liability clause together accumulate to form a low, albeit existent, risk to a government in its open sharing of geospatial data.

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[126] Allen Linden & Bruce Feldthusen, *Halbury's Laws of Canada - Negligence* (Markham: LexisNexis Canada, 2007), ch. 2.3(1).
[127] *Ibid.*, ch. 6.1.
[128] *Ibid.*, ch. 8.2.
[129] See e.g. Canada, "Government of Canada Open Data License Agreement" (accessed 17 Jan 2011), online: Open Data <http://www.data.gc.ca>; Creative Commons, "Creative Commons Attribution 3.0 Unported" (accessed 17 Jan 2011), online: <http://creativecommons.org>.

7.1.6 Civil Law Extra-contractual liability

In Quebec, art. 1457 of the *Civil Code of Quebec* governs negligence. On the whole, the components for liability under art. 1457 are similar to the previously discussed components of negligence under the common law. Akin to the standard of care, the requisite component of "fault" in the civil law similarly weighs a person's conduct against that of a reasonable person.[130] The requirement for a "line of causality" requires a causal link between the negligent act and the injury, functioning similarly to causation in the common law.

One notable difference from the common law is the absence of a duty of care requirement in Quebec civil law. However, this is more of a difference in theory than in practice. Although the civil law recognizes a generalized duty of care towards everyone, courts often take a correspondingly more restrictive approach to causation. Several Quebec courts have even directly applied the common law-rooted doctrine of reasonable foreseeability (la prévision raissonable).[131] Therefore, whereas a common law court might find that a government body has no duty of care to a person who merely downloads openly-provided data, a court in Quebec might instead find that the government's act of providing the data does not adequately establish a causal link between the government and any damage suffered through a downstream person's use of the data.

To summarize the differences, the lack of a specific duty of care in Quebec likely leaves a slightly wider, though still low, risk of liability in Quebec for negligence in respect of openly released geospatial data.

[130] J. Baudouin & P. Deslauriers, *La Responsibilité Civile*, 7th ed. (Cowansville: Les Éditions Yvon Blais, 2007), s. 1-179.
[131] *Ibid.*, s. 1-628.

8. Security

8.1 Federal Remote Sensing Space Systems Act

The *Remote Sensing Space Systems Act* governs the activities of anyone who receives, stores, processes or distributes the raw data from a remote sensing space system.[132] The *Act* grants the Minister considerable authority to restrict the licensing of both raw data and value-added "remote sensing products".[133] The Minister can require that a person licensed to deal with raw data only communicates the data and/or remote sensing products to specific persons or classes of persons.[134] The Minister can also mandate that any communication or provision of this data to other parties "includes measures respecting their security or their further provision".[135]

8.2 Federal Security of Information Act

The Federal *Security of Information Act*[136] is the successor to the *Official Secrets Act* of 1981. The *Security of Information Act* prohibits a variety of actions that are prejudicial to the safety of Canada. Under the Act, it is an offence to communicate an "secret official code word, password, sketch, plan, model, article, note, document or information that relates to or is used in a prohibited place or anything in a prohibited place" to a person who is not authorized to receive it.[137] Geospatial data is eligible to be included among information designated as an official secret. The Act goes on to create a series of related offences: using such information in any other manner prejudicial to the safety or interests of the State,[138] retaining the information, and receiving such material where one knows, or ought to know, that the information has been communicated in violation of the Act,[139]

The Act also creates a series of related offences around persons bound to secrecy who communicate or confirm[140] "special operational information", which the Act defines as:

> information that the Government of Canada is taking measures to safeguard that reveals, or from which may be inferred, [...]

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[132] *Remote Sensing Space Systems Act*, S.C. 2005, c. 45, s. 2.
[133] *Ibid*, s. 8(6-7).
[134] *Ibid.*
[135] *Ibid.*
[136] R.S.C., 1985, c. O-5.
[137] *Ibid*., para. 4(1)(a).
[138] *Ibid*., para. 4(1)(b).
[139] *Ibid*., para. 4(4)(a).
[140] *Ibid*., ss. 14(1). Subsection 13(1) makes it an offence to communicate information that, if it were true, would be special operational information.

> (b) the nature or content of plans of the Government of Canada for military operations in respect of a potential, imminent or present armed conflict; […]
>
> (d) whether a place, person, agency, group, body or entity was, is or is intended to be the object of a covert investigation, or a covert collection of information or intelligence, by the Government of Canada; [...].[141]

This definition is, again, broad enough to include geospatial data such as maps.

[141] *Ibid*., ss. 8(1).

9. Conclusions

The governments of Canada and its provinces and cities are moving rapidly towards the more open sharing of government data, including geospatial data. However, many impediments to the sharing of such data remain. While some of these impediments are political and cultural, many are legal in nature. Most reflect deliberate policy choices to favour certain interests – such as personal privacy – over openness. Others, however, may involve the unintended consequences of unrelated government policies, such as government branding policies making use of Official Marks. In these latter cases, only legal reform can overcome these unintended consequences.

Most of these legal barriers that can impede CGDI stakeholders from sharing data are contextual. When making decisions on sharing data, stakeholders should consider the type of data they plan to release and the implications of broad public dissemination. Different types of data raise different policy issues and face correspondingly different legislative barriers. In particular, stakeholders should give careful thought to whether data falls into any of the following categories:

- **Third-party data:** Where the government receives data from another party – such as a contractor – it must ensure that it has the right to copy and distribute the data. For instance, if an agreement with a contractor stipulates that the contractor remains the copyright owner, the government cannot distribute the copyrighted work without a license to do so from the contractor. Likewise, if the data contains trade secrets of the contractor, the government cannot distribute the data without permission.

- **Data containing personal information:** Federal and provincial privacy acts are ubiquitous in their prohibition on disseminating personal information without the consent of the affected individuals. Stakeholders should keep in mind that even factors such as the precision of data may affect whether an individual is identifiable, thus impacting the classification of the data as personal information. Even ostensibly anonymized data can become de-anonymized, and therefore personal, through aggregation with other datasets.

- **Uni-lingual textual data:** In most cases, where geospatial datasets contain text, the federal government must make the text available in both official languages. However, the same does not generally apply to provincial datasets, even when the federal governments releases this provincial data through its own means (although, in some cases, provincial governments still have an obligation to distribute their data in the respective official language of their own province).

- **State secrets:** Where data could prejudice the safety of Canada, the *Security of Information Act* will, in some cases, prohibit disclosure. Likewise, provincial legislation such as the Ontario *Freedom of Information and Protection of Privacy Act* may prohibit the information that could prejudice the defense of Canada. Any data from a remote sensing system (i.e. an imaging satellite) also carries specific restrictions pursuant to the *Remote Sensing Systems Space Act.*

Whether or not datasets fit within these key categories, CGDI stakeholders should check for compliance with any other legislation that may apply to a specific type of data. However, in most cases, it is legally permissible – if not administratively permissible – for a government body to share datasets that fall outside of these primary risk categories.

Appendix A: Legislation Review Status and Proposed Amendments

Legislation	Due for review	Proposed amendments
Access to Information Act	The Access to Information Act requires parliamentary review "on a permanent basis" by a committee of the House of Commons and/or Senate.[142]	There are presently two private members' bills before Parliament that propose amendments to the Act: • Bill C-253, An Act to amend the Access to Information Act (response time), proposes mandatory justifications for delays in responses to requests that are outstanding for more than 100 days;[143] and • Bill C-301, the Open Government Act, proposes several amendments such as a public interest override for releasing information.[144]
An Act Respecting Access to Documents (Quebec)	The Quebec *Act Respecting Access to Documents* requires the *Commission d'accès à l'information* to prepare, and the responsible Minister to submit, a report to the National Assembly on the application of the Act every five years.[145] The Commission submitted its first review of the Act on September 29, 2011.[146]	Presently, the only amendment before the National Assembly is a proposal to widen the scope of the *Act*, such that it would apply to partnerships and associations where one third or more of their financing comes from public bodies.[147]

[142] *Access to Information Act*, *supra* note 19, s. 75(1).
[143] Bill C-253, *An Act to amend the Access to Information Act (response time)*, 1st Sess., 41st Parl., 2011.
[144] Bill C-301, *An Act to amend the Access to Information Act (open government)*, 1st Sess., 41st Parl., 2011.
[145] *An Act Respecting Access to Documents*, *supra* note 43, s. 178.
[146] Quebec, National Assembly, Commission d'accès à l'information du Québec, "Rapport Quinquennal 2011: Technologies et vie privée à l'heure des choix de société", No. 501-20110929 (June 2011), online: National Assembly <http://www.assnat.qc.ca/>.
[147] Bill 195, *An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information*, 2nd Sess., 39th Leg., Quebec, 2011.

Legislation	Due for review	Proposed amendments
Canada Elections Act	The *Canada Elections Act* requires the Chief Electoral Officer to report to the House of Commons on any suggested amendments after each general election; however, it imposes no mandatory parliamentary review.	There are presently no proposed amendments to the *Canada Elections Act* that would have any impact on the aforementioned section 540(3).
Charter of the French Language (Quebec)	The *Charter of the French Language* requires the *Office québécois de la langue française* to prepare, and the responsible Minister to submit, an annual report to the National Assembly (on the activities of the Office under the legislation). Also note the proposed amendment regarding a mandatory committee review (described at right).	A bill introduced to the legislature on December 6, 2011 proposes to:[148] • clarify that a subsiduary to a government agency constitutes a government agency for the purposes of the *Charter;*and • mandate a parliamentary committee review of the *Charter* at least once every four years (with the first review occurring before February 1, 2013).
Copyright Act	See proposed amendments (at right).	Bill C-11, the *Copyright Modernization Act*, passed first reading in the House of Commons on September 29, 2011.[149] This bill includes many major revisions to the present-day *Copyright Act.* None of these proposed amendments are likely to notably impact the copyright issues discussed in this report; however, the bill would impose a mandatory parliamentary review of the *Copyright Act* every five years.[150]

[148] Bill 591, *An Act to confirm the application of the Charter of the French language to government agency subsidiaries,* 2nd Sess., 39th Leg., Quebec, 2011.
[149] Bill C-11, *An Act to amend the Copyright Act,* 1st Sess., 41st Parl., 2011.
[150] *Ibid.*, cl. 58.

Legislation	Due for review	Proposed amendments
E-Health Act (Quebec)	The *E-Health Act* includes no mandatory statutory review.	There are presently no proposed amendments before the Legislative Assembly.
Financial Administration Act	The *Financial Administration Act* does not mandate any parliamentary reviews.	There are presently no proposed amendments to the *Financial Administration Act* before Parliament that would have any impact on the issues discussed in this report.
Freedom of Information and Protection of Privacy Act (Alberta)	An all-party special committee of the Legislative Assembly of Alberta tabled a report on the Act on November 15, 2010, thereby completing the Act's mandatory one-time review.[151]	There are presently no proposed amendments to the Act before the legislature.
Freedom of Information and Protection of Privacy Act (B.C.)	The *Act* imposes a mandatory standing committee review of the Act at least once every six years.[152] The special committee submitted its third and latest review of the Act on May 31, 2010.[153]	Presently, there are no proposed amendments before the legislature.
Freedom of Information and Protection of Privacy Act (Ontario)	The Ontario FIPPA requires the Information and Privacy Commissioner to submit a comprehensive annual report on the effectiveness of the Act to the Legislative Assembly.[154] However, there are no mandatory legislative reviews.	There are presently no proposed amendments to the Act before the legislature.

[151] Alberta *FIPPA*, *supra* note 35, s. 97; Service Alberta, "2010 FOIP Act Review", online: <http://www.servicealberta.ca/>.
[152] B.C. *FIPPA*, *supra* note 40, s. 80.
[153] BC, Legislative Assembly, Special Committee to Review the the Freedom of Information and Privacy Act, "Report" (31 May 2010), online: Office of the Information and Privacy Commissoner <http://www.oipc.bc.ca/ >.
[154] Ontario *FIPPA*, *supra* note 46, s. 58.

Legislation	Due for review	Proposed amendments
French Languages Services Act (Ontario)	The *Act* requires the Commissioner to submit, and the Minister to table, an annual reports to the legislature, optionally including recommendations.[155]	There are presently no proposed amendments to the *Act* before the legislature.
Health Information Act (Alberta)	A special committee of the Legislative Assembly of Alberta submitted a report on the Act in October 2004, thereby completing the Act's mandatory one-time review.[156]	There are presently no proposed amendments to the Act before the legislature.
Official Languages Act	The *Official Languages Act* requires parliamentary review "on a permanent basis" by a committee of the House of Commons and/or Senate.[157]	There are presently no proposed amendments to the *Official Languages Act* before Parliament.
Personal Health Information Protection Act (Ontario)	The Standing Committee on Social Policy of the Legislative Assembly of Ontario completed a review of the Act in October 2008, thereby completing the Act's mandatory one-time review.[158]	There are presently no proposed amendments to the *Act* before the legislature.
Privacy Act	The *Privacy Act* requires parliamentary review "on a permanent basis" by a committee of the House of Commons and/or Senate.[159]	There are presently no proposed amendments to the *Privacy Act* before Parliament.

[155] *French Language Services Act*, *supra* note 112, s. 12.5.
[156] *Health Information Act*, *supra* note 19, s. 109(1); Alberta, Legislative Assembly, Select Special Health Information Act Review Committee, "Final Report" (October 2004), online: Legislative Assembly of Alberta <http://www.assembly.ab.ca/>.
[157] *Official Languages Act*, *supra* note 110, s. 88.
[158] *Personal Health Information Protection Act*, *supra* note 74, s. 75; Ontario, Legislative Assembly, Standing Committee on Social Policy, "Review of the Personal Health Information Protection Act, 2004" (2004), online: Legislative Assembly of Ontario <http://www.ontla.on.ca/>.
[159] *Privacy Act*, *supra* note 15, s. 75(1).

Legislation	Due for review	Proposed amendments
Remote Sensing Space Systems Act	The *Act* requires the Minister of Foreign Affairs to report to Parliament on the *Act* at least once every five years.[160] The *Act* came into force April 5, 2007; therefore, the first review and report Parliament is due before April 5, 2012.	There are presently no proposed amendments before Parliament.
Security of Information Act	The *Security of Information Act* does not mandate any parliamentary reviews.	There are presently no proposed amendments to the *Security of Information Act* before Parliament.
Statistics Act	The *Statistics Act* does not mandate any parliamentary reviews.	There are presently no proposed amendments to the *Statistics Act* that would have any impact on para. 17(1)(b) (previously discussed in this report).
Trade-marks Act	The *Trade-marks Act* includes no mandatory statutory review.	There are presently no amendments to the *Act* before Parliament.
User Fees Act	The President of the Treasury Board tabled a report to Parliament on the *Act* in August 2007 as per the *Act*'s mandatory one-time review.[161]	There are presently no amendments to the *Act* before Parliament.

[160] *Remote Sensing Space Systems Act*, *supra* note 132, s. 45.1.

[161] *User Fees Act*, *supra* note 84, s. 8; Canada, President of the Treasury Board, "Report of the President of the Treasury Board on the Provisions and Operation of the User Fees Act" (2007), online: Treasury Board Secretariat: <http://www.tbs-sct.gc.ca/>.

Appendix B: Access to Information Act Schedule II

Access to Information Act, R.S.C., 1985, c. A-1

SCHEDULE II

Act	Provision
Aeronautics Act *Loi sur l'aéronautique*	subsections 4.79(1) and 6.5(5)
Anti-Inflation Act, S.C. 1974-75-76, c. 75 *Loi anti-inflation, S.C. 1974-75-76, ch. 75*	section 14
Assisted Human Reproduction Act *Loi sur la procréation assistée*	subsection 18(2)
Business Development Bank of Canada Act *Loi sur la Banque de développement du Canada*	section 37
Canada Deposit Insurance Corporation Act *Loi sur la Société d'assurance-dépôts du Canada*	subsection 45.3(1)
Canada Elections Act *Loi électorale du Canada*	section 540
Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3 *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve, S.C. 1987, ch. 3*	section 119
Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28 *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers, L.C. 1988, ch. 28*	sections 19 and 122
Canada-Nova Scotia Oil and Gas Agreement Act, S.C. 1984, c. 29 *Loi sur l'Accord entre le Canada et la Nouvelle-Écosse sur la gestion des ressources pétrolières et gazières, S.C. 1984, ch. 29*	section 53
Canada Petroleum Resources Act *Loi fédérale sur les hydrocarbures*	section 101
Canada Transportation Act *Loi sur les transports au Canada*	subsection 51(1) and section 167

Act	Provision
Canadian Environmental Assessment Act, 2012 *Loi canadienne sur l'évaluation environnemental, 2012*	subsection 45(4) and (5)
Canadian International Trade Tribunal Act *Loi sur le Tribunal canadien du commerce extérieur*	sections 45 and 49
Canadian Ownership and Control Determination Act *Loi sur la détermination de la participation et du contrôle canadiens*	section 17
Canadian Security Intelligence Service Act *Loi sur le Service canadien du renseignement de sécurité*	section 18
Canadian Transportation Accident Investigation and Safety Board Act *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports*	subsections 28(2) and 31(4)
Competition Act *Loi sur la concurrence*	subsections 29(1), 29.1(5) and 29.2(5)
Corporations and Labour Unions Returns Act *Loi sur les déclarations des personnes morales et des syndicats*	section 18
Criminal Code *Code criminel*	sections 187, 193 and 487.3
Criminal Records Act *Loi sur le casier judiciaire*	subsection 6(2) and section 9
Customs Act *Loi sur les douanes*	sections 107 and 107.1
Defence Production Act *Loi sur la production de défense*	section 30
Department of Industry Act *Loi sur le ministère de l'Industrie*	subsection 16(2)
DNA Identification Act *Loi sur l'identification par les empreintes génétiques*	subsection 6(7)
Energy Administration Act *Loi sur l'administration de l'énergie*	section 98
Energy Efficiency Act *Loi sur l'efficacité énergétique*	section 23
Energy Monitoring Act *Loi sur la surveillance du secteur énergétique*	section 33
Energy Supplies Emergency Act *Loi d'urgence sur les approvisionnements d'énergie*	section 40.1
Excise Act, 2001 *Loi de 2001 sur l'accise*	section 211

Act	Provision
Excise Tax Act *Loi sur la taxe d'accise*	section 295
Export Development Act *Loi sur le développement des exportations*	section 24.3
Family Allowances Act *Loi sur les allocations familiales*	section 18
Hazardous Products Act *Loi sur les produits dangereux*	section 12
Canadian Human Rights Act *Loi canadienne sur les droits de la personne*	subsection 47(3)
Income Tax Act *Loi de l'impôt sur le revenu*	section 241
Industrial Research and Development Incentives Act, R.S.C. 1970, c. I-10 *Loi stimulant la recherche et le développement scientifiques, S.R.C. 1970, ch. I-10*	section 13
Investment Canada Act *Loi sur Investissement Canada*	section 36
Canada Labour Code *Code canadien du travail*	subsection 144(3)
Mackenzie Valley Resource Management Act *Loi sur la gestion des ressources de la vallée du Mackenzie*	paragraph 30(1)(b)
Marine Transportation Security Act *Loi sur la sûreté du transport maritime*	subsection 13(1)
Motor Vehicle Fuel Consumption Standards Act *Loi sur les normes de consommation de carburant des véhicules automobiles*	subsection 27(1)
Nuclear Safety and Control Act *Loi sur la sûreté et la réglementation nucléaires*	paragraphs 44(1)(*d*) and 48(*b*)
Patent Act *Loi sur les brevets*	section 10, subsection 20(7), and sections 87 and 88
Petroleum Incentives Program Act *Loi sur le programme d'encouragement du secteur pétrolier*	section 17
Proceeds of Crime (Money Laundering) and Terrorist Financing Act *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*	paragraphs 55(1)(*a*), (*d*) and (*e*)

Act	Provision
Railway Safety Act *Loi sur la sécurité ferroviaire*	subsection 39.2(1)
Sex Offender Information Registration Act *Loi sur l'enregistrement de renseignements sur les délinquants sexuels*	subsections 9(3) and 16(4)
Shipping Conferences Exemption Act, 1987 *Loi dérogatoire de 1987 sur les conférences maritimes*	section 11
Softwood Lumber Products Export Charge Act, 2006 *Loi de 2006 sur les droits d'exportation de produits de bois d'oeuvre*	section 84
Special Import Measures Act *Loi sur les mesures spéciales d'importation*	section 84
Specific Claims Tribunal Act *Loi sur le Tribunal des revendications particulières*	subsections 27(2) and 38(2)
Statistics Act *Loi sur la statistique*	section 17
Telecommunications Act *Loi sur les télécommunications*	subsections 39(2) and 70(4)
Trade-marks Act *Loi sur les marques de commerce*	subsection 50(6)
Transportation of Dangerous Goods Act, 1992 *Loi de 1992 sur le transport des marchandises dangereuses*	subsection 24(4)
Yukon Environmental and Socio-economic Assessment Act *Loi sur l'évaluation environnementale et socioéconomique au Yukon*	paragraph 121(*a*)
Yukon Quartz Mining Act *Loi sur l'extraction du quartz dans le Yukon*	subsection 100(16)