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CANADIAN
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Watchdog pledges patience

*Realizes new privacy law takes getting used to
Repeat offenders may face having names publicized*
TORONTO STAR

Canada's new privacy watchdog has two words for businesses scrambling to understand and comply with the country's new privacy legislation: Don't panic.

"I want to say that very strongly," said Jennifer Stoddart, who took over the role of federal privacy commissioner on Dec. 1, nearly five months after a disgraced George Radwanski resigned from the post. "We're going to be very sympathetic to the problems of (trying) to implement a law of this sophistication." At the same time, she warned that "repeat offenders" risk being publicly shamed if it serves the public interest.

On Jan. 1, the final phase of the Personal Information Protection and Electronic Documents Act comes into force. The law requires all businesses across Canada to follow rules that aim to protect the personal information of their customers and employees. The first two phases applied to federally regulated companies, such as airlines, banks, broadcasters, telecommunications carriers and some health organizations.

But the hard part comes in 16 days, when every business across Canada that collects and uses customer information for commercial purposes will need to comply, either with the federal law or similar legislation in British Columbia, Alberta and Quebec. After a lengthy delay, Ontario is expected to introduce its own legislation next year.

For businesses, this means appointing a privacy point-person and putting systems in place to make sure customer information is secure, accurate, gathered with consent and not used beyond a stated purpose. "It's going to hit all kinds and sizes of businesses in Canada," said Stoddart, previously the privacy commissioner of Quebec, the first province to introduce private-sector privacy legislation back in the mid-1990s.

Privacy experts say the far-reaching nature of the law is going to catch many organizations off-guard, particularly small businesses that have never heard of the legislation or simply don't know how to comply with it. A survey conducted last year for the Canadian Chamber of Commerce found that 81 per cent of small and mid-sized businesses were nearly clueless about the need to comply with new privacy legislation. The situation has improved, but a substantial number of businesses remain in the dark.

"I think there is still an enormous lack of awareness," said Brian Keith, a lawyer with Borden Ladner Gervais in Toronto, and a specialist on privacy issues. "This may in part be a legacy of Mr. Radwanski's time, when his view of communication seemed to be flying to places and giving speeches. "I don't think that did a good job of getting the word out."

Keith said the new commissioner has a challenging job ahead of her as she tries to juggle enforcement of a new private-sector law, educate businesses about the new rules, while continuing the path of healing an office that was severely damaged by the Radwanski scandal.

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Jennifer Stoddart,
new Privacy Commissioner

Valerie Steeves, a privacy expert at Carleton University's law school, said Stoddart is highly qualified to take on that task. "She comes with real experience," said Steeves, referring to Stoddart's years as privacy watchdog in Quebec, where she was the only commissioner in Canada to oversee a private-sector law. "She's very bright, she's a quick learner and she likes to develop workable solutions to problems."

Stoddart, a "team player" who describes her work style as consultative, said she learned from her time in Quebec that great effort must be taken to reach out to small business groups and make sure they're getting the message. Her office has already begun to beef up education and outreach efforts. This includes more information on the commissioner's Web site (www.privcom.gc.ca). Yesterday, Stoddart's staff included a link to a PowerPoint presentation that businesses can download and use for their own internal education programs.

One of the questions Stoddart said she asked before taking the job is whether she could publicly name companies that have violated the law. Publicly disclosing the names of lawbreakers is one of the few tools of enforcement a commissioner has. She has said her office will review the policy. "I think there's a big question mark around that," she said. "This has to be done on a reasoned, rational, defensible basis ... "But this is an important part of enforcement and there may be occasions where it may be important to name names."

For example, she questioned the need to give anonymity to repeat offenders. By naming companies, they will be more inclined to change their behaviour. "This is something we can expect to happen in the near future, but exactly in what circumstances we'll see."

Last month, B.C. privacy commissioner David Loukidelis said in a speech that, under the province's new private-sector legislation, he plans to name violators. "The publication of the name of a non-compliant organization is a necessary and legitimate sanction for non-compliance and an incentive for compliance," he said.¹

¹ Watchdog Pledges Patience, Tyler Hamilton, Technology Reporter, Toronto Star 03/12/16