

Legislation

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INTRODUCTION

Legislation that affects SGIGs' data governance and management comes from a variety of places and operates at different levels. These may be laws enacted by SGIGs themselves. There also may be applicable laws at the federal and provincial/territorial levels.

Self-government agreements and treaties recognize that SGIGs have the authority to make laws in many areas that affect socioeconomic data governance and data management. SGIGs determine for themselves where they will draw down authority.

The legislative landscape impacting collection, storage, and usage of socioeconomic data is wide and varied. There is no one statute or collection of statutes that govern socioeconomic research across Canada. That means SGIGs need to review and research the applicable law from a variety of sources. This document summarizes the main sources of law that affect socioeconomic data governance and management.

Currently, the law regarding socioeconomic data governance and management lives in separate siloes. These silos are:

- Statistics statutes in federal, provincial and territorial law;
- Privacy and access to information statutes in SGIG, federal, provincial and territorial law;
- Equality rights and affirmative action programs under the Canadian Charter of Rights and Freedoms;
- Human rights statutes in federal, provincial and territorial law;
- Research statutes in federal, provincial and territorial law;
- Other relevant statutes regarding child protection, public health, workplace safety and Indigenous rights.

This document focuses primarily on the two areas of law with greatest impact on SGIG data governance and management: statistics legislation and privacy and access to information legislation.

STATISTICS LEGISLATION

All provinces, territories, and the federal government have similar statistics laws. These statutes ensure that statistics are scientific, impartial, truthful, and reliable. Although these statutes do not impose any duty on SGIGs regarding data governance and management, it is useful to be aware of them and the criteria they provide for proper statistical reporting. Statistics statutes across Canada generally have the following features:

- They require that a periodic population census be conducted by statistical staff.
- They require that statistics staff take an oath of secrecy to ensure the confidentiality of individuals' data.
- They prohibit discrimination to ensure equality.
- They protect returns with census information (i.e., the hardcopy or online forms that citizens fill in for a census).
- They provide for collaboration and information-sharing between governments. This avoids duplication, increases efficiency, and promotes coordination and integration of statistics between governments.
- They make it a fineable offence for a person to provide a false declaration, to knowingly include false information in the statistical data, and to refuse to grant access to records when required to verify that the statistical information is accurate.
- They require statistics to be published. By making statistics accessible, data can be analysed and gaps identified.

Statistics Canada (StatCan), created by the Statistics Act, is the national statistical office. It has two main purposes: (1) to provide statistical information and analysis about Canada's economic and social structure; and (2) to promote sound statistical standards and practices. You can find more information on data that is relevant to SGIGs in the External Data Sources section of the Toolkit.

To date, no SGIG has enacted their own statistics legislation. SGIGs who want to develop their own statistics laws should consider the following priorities:

- Ensure harmonization, cooperation, and information sharing with other governments - SGIGs may want to consider incorporating similar provisions as those included the Statistics statutes of other governments across Canada (see description above).
- Ensure the SGIG law is publicly accessible, to be open and accountable to citizens.
- Ensure the independence of the SGIG's statistical office in the legal framework of the SGIG statistical legislation.
- Consider whether to enshrine the practices, customs, and traditions of the SGIG in the statistics laws.
- To ensure the SGIG's statistical laws are modern, SGIGs may consider adopting provisions regarding emerging issues from the United Nations Economic Commission for Europe (UNECE) [Guidance on Common Elements of Statistical Legislation](#):
 - Use of "open data" (data that can be freely used or used at a reasonable cost, reused and redistributed by anyone for any purpose);
 - Protection of "open data";

- Extent of sharing and exchanging social well-being data with third party statistical agencies;
- Conducting its own census, including protecting data confidentiality, ensuring quality assurance and management/training; and
- Extent to which Geographical Information System (GIS) data is integrated with statistics.

Resources

- The [United Nations Fundamental Principles of Official Statistics: Implementation Guidelines has examples of other government's statistical legislation](#) as well as a helpful list of matters to be covered in SGIG legislation and regulations.
- The United Nations Economic Commission for Europe (UNECE) has a helpful section on common elements in statistics law in its [Guidance on Common Elements of Statistical Legislation](#).

PRIVACY AND ACCESS TO INFORMATION LEGISLATION

One key area of legislation that impacts data governance and management for SGIGs is privacy and access to information legislation. The privacy and access to information statutes across Canada have similar provisions for protecting individuals' privacy and for providing access to government information. Jurisdiction can be a challenge for SGIGs. Different privacy statutes may apply depending on the business of the SGIG and whether or not they have passed their own legislation.

Privacy and access to information are related, like flip sides of the same coin. Both are fundamental principles of Canadian democracy. Privacy law protects an individual's information from unauthorized access, and from being used for purposes other than why it was gathered or shared. Access to information laws allow citizens to request information about the actions of their government and how public money is being spent. The proper operation of these laws builds trust between a government and its citizens.

What is personal information?

Personal information is information about an identifiable individual. This includes data such as name, address, and phone number, as well as more

sensitive information such as medical, education and employment history; financial information; details about citizenship in an Indigenous government; or any other data that is about an individual. Personal information collectively forms an individual's identity. It is a universal human right for an individual to determine his or her identity. Privacy legislation protects individuals' rights to determine what information they share about themselves and what they want to keep private. These laws hold governments accountable to protect individuals' identities and keep safe any personal information the individual has shared. In addition, privacy legislation gives individuals the right to access their personal information and to correct that information if it is wrong.

What is access to information?

For individuals to have effective access to government information, access to information laws require governments to respond to citizens who request information about what the government is doing. This process must be conducted in an open, accountable, and transparent manner. The government must provide the information to the citizen without undue delay and without discrimination. There are, however, some limitations on what information citizens can have access to - for example, governments cannot disclose information that would violate an individual's

privacy, or information that would expose state secrets.

SGIG privacy and access to information statutes

Seven SGIGs have already passed privacy and access to information laws. These SGIGs have exclusive jurisdiction over the records held by their government bodies defined under their statutes. These are:

- [Huu ay aht](#);
- [Tla'amin Nation](#) legislation and regulations;
- [Toquaht Nation Government](#);
- [Tsawwassen First Nation](#) legislation and regulations;
- [Uchucklesaht Tribe Government](#);
- [Yuułu?it?ath Government](#); and
- [Westbank First Nation](#).

Tr'ondëk Hwëch'in has a [draft Freedom of Information and Protection of Privacy Act](#).

In addition to these SGIG privacy statutes, the Alberta First Nations Information Governance Centre provides a [Privacy Law Template](#).

These statutes contain provisions similar to those found in federal, provincial, and territorial privacy statutes. This allows for harmonization to a degree between SGIGs and other governments.

All of these statutes:

- Provide access to government information and protect individuals' privacy.
- Define what records the statute applies to and what records it does not.
- Set the rules for providing access to government information to ensure that government is open, accountable, and transparent.
- Set the rules to protect an individual's privacy in the collection, use, disclosure, and management of personal information.

- Provide a review of the decisions made by government officials under the statute.
- Incorporate both access to information and protection of privacy into one statute.
 - Note: this is preferred since access to information and privacy are closely linked together. It is also easier for staff in each SGIG to administer just one statute instead of two.
- Are customized to the needs of the SGIG.

Considerations for developing privacy and access to information legislation

The following are some matters that you may want to consider in setting priorities for your privacy and access to information legislation:

- Have a preamble to your law that sets out your values, teachings, and visions of self-government. For example:
 - The Tla'amin Nation's [Freedom Of Information And Protection Of Privacy Act](#) has a preamble.
- Include record retention provisions in your privacy law. For example:
 - Huu-ay-aht's [Freedom Of Information And Protection Of Privacy Act](#) makes rules regarding records management, including requiring Huu-ay-aht bodies to retain records for a minimum 5 year retention after creation.
 - The Tla'amin Nation's [Freedom Of Information And Protection Of Privacy Act](#) has records management provisions but does not set a retention period for government records; instead the statute delegates records retention to guidelines and procedures.
- Have specific provisions in your law that include both modern legal structures and traditional frameworks.

- The *Freedom Of Information and Protection of Privacy Acts* of both the [Toquaht Nation Government](#) and the [Uchucklesaht Tribe Government](#) blend hereditary and modern-day governing systems.
- Have provisions in your law to disregard information requests that are repetitious, vexatious, or frivolous.
 - Tsawwassen First Nation’s [Freedom Of Information and Protection of Privacy Act](#) has such a provision.
- Allow for requirements for applicants to pay fees regarding information requests if the SGIG wants to implement this approach. A majority of the SGIG privacy statutes allow fees to be charged.
- SGIGs may wish to publish their laws on their websites and/or in the [First Nations Gazette](#). The First Nations Gazette aims to be a comprehensive source for Indigenous legislation in Canada.

Canada

There are two statutes governing federal privacy law. In the public sector, the [Privacy Act](#) applies. In the private sector, the [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) applies. For access to information held by the federal government, the [Access to Information Act](#) applies.

Privacy Act

The [Privacy Act](#) covers some 250 federal government departments and agencies. The *Privacy Act* gives Canadians the legal right of access to their own personal information held by the federal government, and imposes rules over how the federal government collects, maintains, uses, and discloses personal information under its control. The *Privacy Act* does not apply to SGIGs. However, individuals who are citizens of an SGIG have the right to request access to their own information from the federal government under the *Privacy Act*.

Personal Information Protection and Electronic Documents Act (PIPEDA)

The [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) establishes rules governing the collection, use, and disclosure of personal information by organizations in the private sector. PIPEDA was drafted primarily to regulate how commercial organizations manage personal information they collect about customers or clients, and therefore the provisions in it are mostly limited to personal information collected in the course of commercial activities. PIPEDA also applies to organizations that are engaged in federally-regulated activity in Canada (“the operation of a federal work, undertaking or business”) and their management of health information and/or employee personal information. This includes organizations such as airlines, banks, broadcasting corporations, and telephone companies. There is case law establishing that bands operating under the *Indian Act* can be considered a “federal undertaking”, however it remains unclear how this might apply to SGIGs. Any SGIG that does not have its own privacy legislation may want to consult with legal counsel to determine if PIPEDA is applicable to a particular data governance project or initiative.

There are three provinces (British Columbia, Alberta, and Québec) that have provincial privacy laws for the private sector that are substantively similar to PIPEDA. In these provinces PIPEDA is superseded by the provincial legislation.

Access to Information Act

The [Access to Information Act](#), like the *Privacy Act*, covers some 250 federal government departments and agencies. The *Access to Information Act* allows the public to access records under the control of federal institutions, with

certain limitations. There are some exceptions to access, such as records that were obtained by the federal government in confidence from an Indigenous government. This process is overseen by an independent agent of Parliament, the Information Commissioner of Canada. The *Access to Information Act* does not apply to SGIGs. However, SGIGs and their citizens have the right to request information from the federal government under this Act.

Provinces and Territories

Each of the 13 provinces and territories has their own privacy statutes for provincial/territorial public bodies. In all cases, they combine access to information and privacy protection in a single law. Examples of public bodies are provincial/territorial government agencies, provincial Crown corporations, municipalities, public universities, public school districts, and health care organizations. SGIGs are not subject to these laws, as they are not considered provincial or territorial public bodies. However, these laws may impact how public bodies share information with an SGIG.

Only Alberta, British Columbia, and Québec have provincial privacy laws for private sector organizations. SGIGs in these provinces are subject to these laws, as they apply to any organization that is not a public body. Other examples of private sector organizations are corporations, partnerships, societies, strata corporations, charities, and registered professionals such as lawyers, doctors, and dentists. In all other provinces and territories, private sector organizations are subject to PIPEDA (see above).

Each of these jurisdictions has a privacy statute administered by an independent privacy commissioner. These commissioners can hear complaints and make orders. Their decisions are subject to review by judges. Like human rights commissioners, their decisions can, and have been, appealed to the Supreme Court of Canada. For a list of privacy commissioners across Canada, check [here](#).

HUMAN RIGHTS LEGISLATION

Human rights legislation ensures that people's human rights are not violated through discrimination. It applies mainly to how socioeconomic data is used in decision-making, though it should also be considered to ensure that you are not collecting data in a way that discriminates (for example, you will want to make sure the design of your survey does not inadvertently violate someone's human rights).

Canadian Charter of Rights and Freedom

Section 15 of the [Canadian Charter of Rights and Freedoms](#) guarantees equality rights for all individuals in Canada. Specifically, section 15 (1) states that every individual is equal before and under the law. Further, every individual has the right to the equal protection and equal benefit of the law without discrimination - in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. Section 15(2) provides that affirmative action programs do not violate section

15(1). An affirmative action program qualifies if it has, as its object, the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The *Charter* is relevant to data governance as you must ensure that you are not using data to make discriminatory decisions or collecting data in a way that discriminates.

Human rights statutes

Like the *Charter* human rights statutes are relevant to data governance as you must ensure that you are not using data to make discriminatory decisions or collecting data in a way that discriminates.

The human rights statutes across Canada have similar provisions prohibiting discrimination, although there are differences from jurisdiction to jurisdiction.

Under the [Canadian Human Rights Act](#), the federal government has jurisdiction over human rights that

come within the legislative authority of Parliament. This jurisdiction includes Indigenous governments operating under the *Indian Act*; federal government agencies, bodies, Crown corporations and departments; and federally regulated industries such as airlines and banks.

Under the *Canadian Human Rights Act*, these are the grounds of prohibited discrimination:

A conviction for which a pardon has been granted

- Age
- Colour
- Disability
- Family status
- Marital status
- National or ethnic origin
- Race
- Religion
- Sex
- Sexual orientation

For socioeconomic data analysis, care needs to be taken so that an SGIG does not inadvertently discriminate contrary to the relevant human rights statute. These are some examples of areas you might want to review to ensure there is no unintended discrimination:

- Excluding groups from research based on prohibited grounds, such as banning participation from homosexual or transgender individuals or excluding individuals solely because they have an addiction or mental health issues.
- Denying access to research based on a prohibited ground.
- Harassment or abuse of research participants.
- Preventing citizens who are disabled from participating in research because the SGIG refuses to provide any accommodations for

them (e.g., requiring participants to enter a building that isn't accessible, or not providing alternatives for someone who cannot see well enough to fill in a paper form).

Other statutes relevant to socioeconomic data collection

Other statutes that may impact socioeconomic data fall into four areas: (1) child protection (2) communicable diseases regarding public health, (3) communicable diseases that are a workplace hazard and (4) British Columbia's *Declaration On The Rights Of Indigenous Peoples Act*.

Requirement to report when a child is in need of protection

During the course of conducting socioeconomic data analysis, information may be discovered that indicates there is a child in need of protection (if the child is likely to be abused, harmed, or exploited). The law requires that anyone who has information or reasonable grounds to believe that a child needs protection must report to a child protection agency in the relevant province or territory. It is an offence to fail to report. The penalty for contravening this law varies from a fine or imprisonment or both. If this is a potential concern, check your local child protection laws and government child protection agencies for more information.

Requirement to report a communicable disease

During the course of conducting social well-being research, information might be discovered that indicates an individual has a communicable disease. Some provincial and territorial jurisdictions require that communicable diseases be reported to relevant government agencies. In BC for example, failure to report is an offence punishable by a fine and/or imprisonment. If this is a potential concern, check with your local health agency to determine if you have a duty to report a communicable disease.

Requirement to report a workplace hazard

While conducting research, workplace health hazards like flammable or dangerous materials, explosives, or

communicable disease, might be detected. Under workplace safety legislation, there may be a duty to report. If this is a concern, check your local workplace safety agency to see if you have a duty to report a workplace hazard.

British Columbia’s *Declaration On The Rights Of Indigenous Peoples Act*

In 2019, BC enacted the [Declaration On The Rights Of Indigenous Peoples Act](#) (DRIPA).

BC is the first jurisdiction in Canada to enact a statute like DRIPA. DRIPA is a framework to align BC laws with the [United Nations Declaration on the Rights of](#)

[Indigenous Peoples](#) (UNDRIP). UNDRIP emphasize the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures, and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations. DRIPA allows the BC government to enter into agreements with BC Indigenous governments. Although not a statute with funding provisions, DRIPA provides a set of tools which may in the future be used to support First Nations and Indigenous governing bodies to access and control data with respect to their citizens and their community well-being.