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Office of the Privacy Commissioner of Canada
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Re: Children's Privacy Code – Exploratory Consultation

We are pleased to provide comments as part of the [exploratory consultation regarding the development of a children's privacy code](#) commenced by the Office of the Privacy Commissioner of Canada (OPC).

This submission is made on behalf of [AccessPrivacy](#), a thought leadership platform established by the national Privacy and Data Management Team at Osler, Hoskin & Harcourt LLP. As you may be aware, AccessPrivacy hosted an interactive online workshop on July 25, designed to assist organizations and trade associations in understanding the development process, application and impact of a potential code, and in framing their own submissions for the OPC's consultation.

The recording of the full session is [available here](#) for your consideration as part of the consultation process.

Over 130 Chief Privacy Officers, Senior Counsel and privacy professionals across a breadth of industry sectors attended the workshop, including representatives from retail, health, banking, telecommunications, trade associations, and other public and private sector organizations. AccessPrivacy also extended an invitation to the OPC to join the workshop in an observational capacity, and two representatives were in attendance as observers during the discussion.

The workshop consisted of a discussion moderated by **Adam Kardash** (Co-Chair of Osler's Privacy and Data Management Team and National Lead of AccessPrivacy) and included comments and insights from **Éloïse Gratton** (Co-Chair of Osler's Privacy and Data Management Team), **Joanna Fine** (Partner in Osler's Privacy and Data Management Team), and **Natascha Gerlach** (Director of Privacy & Data Policy at the Centre for Information Policy Leadership).

The workshop speakers considered the following broad topics during the discussion:

- **Rationale and basis** for a regulator-drafted code (06:30 of the recording);
- Design of a **development process** to best support operational considerations and ensure that the regulatory instrument will be seen as helpful, effective, operationally feasible and relevant over time (28:40 of the recording);
- **Structure, scope of application, and substance** of a children’s privacy code (47:30 of the recording);
- **Constructive recommendations** for the OPC to consider as it develops a practical and impactful code or other regulatory instrument concerning children’s privacy (68:00 of the recording);
- **Comments and questions** from workshop attendees (77:30 of the recording).

We summarized key comments and recommendations made by both panelists and attendees during the session (112:30 of the recording). In particular, participants noted that:

- In the absence of a statutory mandate to establish a code, regulatory guidance would be a more appropriate instrument for: (i) clarifying existing obligations under PIPEDA; and (ii) providing considerations for applying those provisions and principles—such as the “appropriate purposes” requirement under subsection 5(3) and corresponding balancing tests established by Canadian courts—to the children’s privacy context, while avoiding unduly prescriptive interpretations;
- The process of developing a regulatory code must commence with a clear articulation of the precise rationale and necessity for such an instrument;
- Interoperability of the regulatory instrument is critically necessary, both at the international and domestic levels, given the wealth of instruments being created in the context of children’s privacy and broader online safety;
- There must be a coherent interplay among processes such as this exploratory consultation, the OPC’s age assurance consultation, and potential federal legislative reform in the areas of privacy, data policy and online safety;
- The process of developing a children’s privacy regulatory instrument matters just as much as substance. In particular, an active, multistakeholder co-design approach is critical to the legitimacy and practicality of the regulatory instrument, as well as to stakeholder buy-in. Key stakeholders to be consulted during the development process include industry representatives with valuable technical and operational

knowledge regarding both children's privacy and the related—but distinct—field of online safety, children themselves, children's guardians, Indigenous communities, and legal experts;

- Caution must be exercised before superimposing external legal concepts onto PIPEDA's statutory scheme, to ensure consistency with its legislative purpose and prescribed obligations, as well as with the authority and jurisdiction of the OPC;
- Given rapid developments in the children's privacy context, the regulatory instrument should expressly contemplate a process whereby the OPC would facilitate a regular review and update of the instrument.

Thank you for your thoughtful consideration of the comments and suggestions raised in this workshop session.

Sincerely,

The AccessPrivacy & Osler Privacy and Data Management Team