Comparison of the proposed *Consumer Privacy Protection Act* ("CCPA") under C-11 (2020) and C-27 (2022)

Topic	Changes introduced by Bill C-27 vs. C-11
Preamble	• **Key change:** New preamble to the CPPA
Enforcement	• Procedural changes regarding Office of the Privacy Commissioner of Canada ("Commissioner") investigations [ss. 83, 84, 85] • **Key change:** contraventions to additional provisions are subject to a penalty, namely: (i) privacy management program (s. 9), (ii) transfers to service providers (s. 11), (iii) purpose limitation (s. 12(3) and (4)), (iv) requirement to obtain consent (s. 15(1)), (v) prohibition to force consent when not a condition of service (s. 15(7), (vi) consent obtained by deception (s. 16), (vii) withdrawal of consent (s. 17(2)), (viii) retention (s. 53), (ix) service provider obligation to report breach to the organization (s. 61), (x) making available information about policies and practices. (s. 62(1)). [s. 94(1)] • **Key change:** the Commissioner must take into account new factors in deciding whether to recommend that a penalty be imposed by the Tribunal: (i) evidence that the organization exercised due diligence to avoid the contravention; (ii) whether the organization made reasonable efforts to mitigate or reverse the contravention's effects; (iii) any prescribed factor. [s. 94(2)] • The Commissioner's power to audit an organization's personal information management practices extends to situation where the Commissioner has reasonable grounds to believe that the organization is contravening or likely to contravene the CPPA. [s. 97]

Topic	Changes introduced by Bill C-27 vs. C-11
Accountability	• **Key change:** New Commissioner power to provide guidance on, or recommend that corrective measures by taken by the organization in relation to, its privacy management program [s. 10(2)]
Readily accessible information about policies and practices	• Additional details to be included in readily available information about the organizations privacy management policies and practices: (i) description of activities in which they have a legitimate interest and (ii) retention periods applicable to sensitive information [s. 62(2)(b) and (e)]
Consent	• Information to be provided in order to obtain consent must be provided in plain language *that the individual would reasonably be expected to understand* [s. 15(4)] **Consent exception for "business activities"** • **Key change:** Organizations may not rely on implied consent to collect or use personal information in the context of "business activities" – they may only rely on express consent or must satisfy the requirements set out in the "business activities" exception [s. 15(6)] • **Key change:** "Business activities" no longer include activities carried out in the exercise of due diligence to prevent or reduce the organization's commercial risk [s. 18(2)(b)] • Additional "business activities" may be created by regulation [s. 18(2)(d)] • **Key change:** New legitimate interest consent exception and associated conditions, including an obligation to carry out an record a legitimate interest assessment [s. 18(3), (4) and (5)] **Consent exception for fraud prevention, detection or suppression** • The exception also applies to the use of personal information (not only to collection) [s. 27(2)]
Reasonableness test (appropriate purposes)	• Codification of case law specifying that an organization may collect, use or disclose personal information only in a manner and for purposes that a reasonable person would consider appropriate in the circumstances, *whether or not consent is required* [s. 12(1)]

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Individual rights	• **Key change:** individual rights do not apply to de-identified information [s. 2(3)] **Right to disposal** • **Key changes:** new conditions for the right to disposal: (i) the information was collected, used or disclosed in contravention of the CPPA; (ii) the individual has withdrawn their consent, in whole or in part, to the collection, use or disclosure of the information; or (iii) the information is no longer necessary for the continued provision of a product or service requested by the individual. [s. 55(1)] • **Key change:** new exceptions to the right to disposal: (i) the information is necessary for the establishment of a legal defence or in the exercise of other legal remedies by the organization; (ii) the information is not in relation to a minor and the disposal of the information would have an undue adverse impact on the accuracy or integrity of information that is necessary to the ongoing provision of a product or service to the individual in question; (iii) the request is vexatious or made in bad faith; or (iv) the information is not in relation to a minor and it is scheduled to be disposed of in accordance with the organization's information retention policy, and the organization informs the individual of the remaining period of time for which the information will be retained. [s. 55(2)] **Automated decision-making** • **Key change:** the requirement to provide an explanation regarding automated decision-making only applies to a prediction, recommendation or decision that could have a *significant impact* on the individual [s. 63(3)]
Anonymization/ de-identification	• **Key change:** Revised definition of "de-identify": "means to modify personal information so that an individual cannot be directly identified from it, though a risk of the individual being identified remains" [s. 2] • **Key change:** New definition of "anonymize": "means to irreversibly and permanently modify personal information, in accordance with generally accepted best practices, to ensure that no individual can be identified from the information, whether directly or indirectly, by any means" [s. 2] • **Key change:** Explicit recognition that the CPPA does not apply in respect of personal information that has been anonymized [s. 6(5)] • **Key change:** Additional exceptions to the prohibition on re-identifying de-identified information [s. 75] • An organization may request the Commissioner's authorization to re-identify an individual based on de-identified information, if the Commissioner believes it is clearly in the interests of the individual [s. 116]

Topic	Changes introduced by Bill C-27 vs. C-11
Research and analytics	• The consent exception regarding de-identified information for research and development purposes also extends to *analysis* [s. 21] • **Key change:** The consent exception allowing disclosure of personal information is no longer limited to *scholarly* study or research purposes [s. 35]
Outsourcing & cross-border transfers	• Organizations must ensure that service providers provide a level of protection *equivalent* to that which the organization is required to provide under the Act (rather than *substantially the same protection*) [s. 11(1)]
Safeguards and incident response	• Security safeguards include "reasonable measures to authenticate the identity of the individual to whom the personal information relates" [s. 57(3)]
Business transactions	• **Key change:** the condition to use de-identified information at the prospective business transaction stage is qualified and does not apply if it undermines the objectives of carrying out the transaction and the organization has taken into account the risk of harm to the individual that could result from using or disclosing the information [s. 22(2)]
Minors	• **Key change:** Personal information of minors is sensitive information [s. 2]
Retention	• Sensitivity of personal information added as a factor for determining the length of the retention period [s. 52(2)]

Key contacts:

For any questions you may have about recent developments regarding Bill C-27, please reach out to a key contact below or a member of BLG's Cybersecurity, Privacy & Data Protection team.

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