

Canada: Recent Developments in Information Technology

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Canada's tech sector witnessed many developments in 2014. Some of the most noteworthy developments are summarised below.

CASL

The majority of Canada's anti-spam legislation (CASL), including complex rules regulating commercial electronic messages, came into force on July 1, 2014. A flood of re-consenting emails were sent to Canadians in advance of July 1, as domestic businesses (and foreign businesses with contacts or customers in Canada) rushed to implement CASL compliance initiatives. CASL's unprecedented rules regulating the installation of computer programs came into force on January 15, 2015. The publication in November of related enforcement guidance by the CRTC helped to reduce concerns about how CASL may limit access to technology by Canadians, but did not eliminate the need for businesses to implement detailed compliance programs. Although commentators have questioned the constitutionality of CASL on the grounds of freedom of expression, federalism and vagueness, no legal challenges have been commenced.

Cloud

The migration to the cloud by enterprise customers continued in 2014. Service providers faced the greatest challenges in selling to financial institutions (largely due to regulatory issues created by the financial services sector regulator's outsourcing guidelines) and public bodies (largely due to data sovereignty concerns). Identifying solutions that work within the constraints of cloud offerings (i.e., multi-tenant, standardised services) remains the most significant gating issue that has slowed the pace of cloud migration. Despite these challenges, major Canadian businesses continue to pursue ways to realise the benefits available through cloud service offerings, and while adoption may be slower than predicted,

customers and service providers are expected to continue to work together to develop cloud service offerings that satisfy the risk appetites and regulatory requirements of large, established customers. Although the federal government has announced that it wants to adopt a “cloud-first” procurement preference, it remains to be seen whether this will involve the creation of a costly “Government of Canada Cloud” or if public cloud services will be embraced.

Lawful Access

Lawful access came front and centre in Canada in 2014. The Supreme Court of Canada (*R. v. Spencer*) ruled that internet users have a reasonable expectation of privacy in their subscriber information, effectively leading to the end of a long-standing practice by some telcos and cablecos to make voluntary disclosures of this information to police. Transparency reports published by many of the same companies, together with Snowden’s revelations about Canada’s security organisations, highlighted the prevalence of data collection without warrants.

Mobile Payments

Last year saw the increased growth of mobile payment and mobile wallet applications that allow customers to use their smartphones to make in-store payments at point-of-sale terminals, as financial institutions and other first movers introduced mobile payment products into the marketplace. Customer adoption has proven to be slow, but is predicted to pick up in the ensuing year as initiatives such as the launch of Apple Pay in the United States and an increased emphasis on loyalty programs continue to develop. While NFC (near field communication) technology has been the basis for most mobile payment products to date, cloud-based operating models are finding their way into the mix. As mobile payment product use increases, the amount and granularity of data collected on individual consumers is on the rise, along with the growth of analytics engines designed to improve the ability of retailers to use the personal data to improve customer experience. As a result, issues relating to privacy, data security and fraud will continue to take centre stage.

High-Growth Tech Companies

The Canadian technology landscape is witnessing a significant transformation with the emergence of a new generation of high-growth businesses. Companies such as Hootsuite, Shopify, BuildDirect, Vision Critical, Desire2Learn, Verafin, Kik Messenger, Wattpad and Freshbooks, among others, are rapidly gaining prominence on a global scale – both among users and venture capital investors. Following some major setbacks (including the demise of Nortel and the decline of Blackberry), Canada is once again proving to be a dynamic place for technology companies to grow and flourish.

Outsourcing

Outsourcing transactions continued throughout 2014. Long-term, first and second generation, large-scale sole source outsourcing arrangements continued to come up for renewal. As clients’ experience with outsourcing increases, more sophisticated outsourcing models continue to develop. Increasingly, clients are looking to replace pure offshore outsourcing operating models with hybrid models and managed services models to mitigate the risks associated

with exit and loss of control. In many cases, clients are embracing multi-sourcing strategies in lieu of enterprise-wide arrangements with a single vendor. Along with this, focus has turned to the establishment of performance criteria and economic models for outsourcing that are better designed to align incentives by tying performance measurement and service provider compensation to a client's desired business outcomes. As the outsourcing world continues to evolve in an increasingly complex direction, clients are recognising the importance of establishing more mature and sophisticated outsourcing governance models and vendor risk management strategies.

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