result in longer, more complicated privacy notices and consent forms, which the OPC has criticized in the past. The benefits of this approach over the OPC’s earlier policy position (which already required transparency, accountability and appropriate safeguards) are unclear.

[Lyndsay A. Wasser is the Co-Chair of McMillan’s Privacy & Data Protection Group and its Cybersecurity Group. She is a Certified Information Privacy Professional/Canada, and regularly advises and assists clients on a broad range of privacy and cybersecurity issues, including advising on access requests, legal requirements related to data security, workplace privacy issues (e.g. background checks, computer/video/phone monitoring, GPS tracking, drug and alcohol testing), handling personal health information, CASL compliance, and transferring personal information across borders, as well as helping organizations to develop privacy compliance programs, privacy and social media policies, data sharing agreements and consent forms.

Grace Shaw is an associate in McMillan’s Regulatory Group. She is developing a practice that assists clients in navigating Canada’s complex regulatory environment, including in the areas of privacy, transportation, and competition.

Grace joined McMillan in 2016 as a summer student and completed her articles with the firm in 2018. She holds a Juris Doctor degree from the Peter A. Allard School of Law at the University of British Columbia.]

**• PRIVACY COMMISSIONER OF CANADA REVERSES POSITION ON TRANSFERS OF PERSONAL INFORMATION FOR PROCESSING, INITIATES CONSULTATION ON CROSS-BORDER TRANSFERS •**

Antoine Guilmain, Associate, Julie Uzan-Naulin, Associate, Bruce Tattrie, Partner, Fasken Martineau LLP © Fasken Martineau LLP, Montréal

In early April, the Office of the Privacy Commissioner of Canada (the “OPC”) issued a notice initiating a consultation on transborder data flows (the “Notice of Consultation” and the “Consultation”) in conjunction with PIPEDA Report of Findings #2019-001 (the “Report”). The OPC has also recently issued a supplementary discussion document with additional information on the Consultation.

In its Report and in its Notice of Consultation, the OPC made a surprising reversal of its long-standing position on the transfer of personal information (“PI”) under the Personal Information Protection and Electronic Documents Act (“PIPEDA”). In the past, the OPC viewed a transfer of PI for processing as a “use” of the PI by the transferor rather than a “disclosure” to the processor, such that an additional consent was not required, as long as the PI was being processed for the purpose for which it was originally collected.

The OPC now states that it views the transfer of PI for processing as a disclosure requiring consent. The new OPC position applies to any transfer of PI from
be permitted to opt-out of an existing contract if a processor or subprocessor changes?

• There will also be significant transitional issues. New consents will be difficult to obtain from existing customers. Will existing consents be grandfathered? Existing contracts with processors may not comply with the new OPC expectations, and processors may not agree to amend them.

We will continue to monitor developments related to the OPC’s Consultation and next steps.

[Antoine Guilmain is an associate at Fasken’s Montreal office and a member of the Privacy & Cybersecurity Group. As such, he works in the areas of data protection, access to information, online advertising and marketing, cybersecurity and emerging technologies. He holds a PhD in information technology law from the Université de Montréal and the Université Paris I Panthéon-Sorbonne.

Julie Uzan-Naulin is an associate at Fasken’s Montreal office and a member of the Privacy & Cybersecurity Group. Before joining Fasken, Julie practised law in Paris, in a large international law firm, where she gained highly specific expertise in legal matters concerning the protection of personal information, in particular the General Data Protection Regulation (GDPR). Julie holds a PhD in public law.

Bruce Tattrie is a partner in Fasken’s Vancouver office, and a member of the Technology Media and Telecommunications Industry Group and the Privacy & Cybersecurity Practice Group. Bruce provides advice on information technology transactions, ecommerce, privacy, and other commercial transactions involving technology and technology companies.]