

The ugly, the bad and the good of cloud computing for government institutions

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Outline

- Basics... what is cloud computing?
- The ugly – use of consumer cloud computing services by employees
- The bad – too much hype and uncertainty
- The good – outsourcing best practice should theoretically be all that's required
- Questions

What is cloud computing?

- Cloud is a metaphor for the internet
- Also commonly referred to as “software as a service” or “SaaS”
- Involves remote storage and processing on “virtual machines”
- By third-party providers
- Data centres ordinarily located throughout the world

The three challenges of cloud computing

Hicks
Morley

What is cloud computing?

- Consumer cloud services
 - Business productivity (Google Apps)
 - E-mail (Gmail, Hotmail)
 - Social networking (Yammer, Second Life)
 - Health (Google Health)
- Enterprise cloud services
 - Business productivity (Google Apps “Premiere”)
 - Application hosting - Amazon EC2

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The ugly – EE use of consumer services

- Institutions can and should control information
 - Advice to government
 - Third-party information
 - Economic and other interests
 - Solicitor-client privilege
 - Personal information...
 - ...and, generally, information addressed by the other (M)FIPPA exemptions

The ugly – EE use of consumer services

- Use of consumer services is bad and ugly cloud computing
 - No routine access to data
 - No due diligence vis-à-vis cloud service provider
 - No contractual rights vis-à-vis cloud service provider
 - Regarding individual contractual rights... you get what you pay for

The ugly – EE use of consumer services

- What to do about it?
 - Amend data security policy
 - Amend acceptable use policy
 - Demand that work is done on work computers with limited exceptions
 - Prohibit e-mailing work home with limited exceptions
 - Recognize remote computing investment as part of risk management

The ugly – EE use of consumer services

- What to do about it?
 - Or go with the flow by outsourcing business services to the cloud

The bad – Hype and uncertainty

- You will need to deal with the force of perception
 - Outsourcing cross-border gives rise to significantly higher data security risks than outsourcing within Canada
 - Outsourcing to a cloud provider gives rise to significantly higher data security risks

The bad – Hype and uncertainty

- Outsourcing does not necessarily alter the legal status of your information
 - Confidential information stays confidential (i.e. you still should be able to rely on the economic interests exemption)...
 - Privileged information stays privileged...
 - ...provided you do outsource right

The bad – Hype and uncertainty

- Control over data is indirect, through contract
 - Achieve data control through contract
 - Achieve security assurances through contract
 - Achieve both through due diligence pre-relationship and during relationship

The bad – Hype and uncertainty



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The bad – Hype and uncertainty

- What kind of information are we talking about anyway?
 - Are you outsourcing storage of personal information banks?
 - Or is this about outsourcing work product?
 - Do employees have a real privacy interest in their work e-mail? Their work documents?

The bad – Hype and uncertainty

- Lakehead University case
 - Faculty grieves outsourcing of e-mail to Google
 - Complains of cross-border outsourcing not outsourcing alone
 - Two unique collective agreement provisions
 - Grievance dismissed – promise of secure communications not a promise of absolutely secure communications

The bad – Hype and uncertainty

- Lakehead University case lessons
 - Outsourcing across borders is sensitive, so stakeholder management is very important
 - Don't lose sight of data security because you're busy managing the cross-border issue
 - The contract should address access by third-parties

The bad – Hype and uncertainty

- Other cross-border outsourcing authority
 - The federal OPC (cases and 2009 Guideline)
 - The BC Supreme Court (Maximums outsourcing)
 - The Alberta OIPC (2006 paper)

The bad – Hype and uncertainty

- Los Angeles Google Apps outsourcing
 - 30,000 employee base
 - Sold through integrator but security Google-driven
 - Security concerns voiced by police and attorneys
 - Proposal to delay implementation for police and attorneys and work on special security features
 - Approval now pending

The bad – Hype and uncertainty

- Los Angeles Google Apps outsourcing
 - More uproar >>> stakeholder management
 - Don't assume all work product is created equal
 - Understand what type of information you're processing and classify it first
 - Does the 80/20 rule apply
 - Be prepared to push by a one size fits all model

The bad – Hype and uncertainty

- Key FIPPA provisions to consider
 - Disclosure to agent – s. 42(1)(d)
 - Personal information banks – s. 45
 - Reasonable measures re unauthorized access and inadvertent destruction or damage – s. 4 Reg.
 - The disposal regulation

The bad – Hype and uncertainty

- Key MFIPPA provisions to consider
 - Disclosure to agent – s. 32(d)
 - Personal information banks – s. 34
 - Reasonable measures re unauthorized access and inadvertent destruction or damage – s. 3 Reg.

The bad – Hype and uncertainty

- If provider is an agent, key duties of the HIC under PHIPA are:
 - Accountability for personal health information transferred to agent – s. 17
 - Reasonable safeguards – s. 12
 - Place of storage under “control” – s. 14(2)

The good – Outsourcing best practice

- Recognize that cloud service providers are not in the regular outsourcing business
 - Will the service provider provide answers to questions about security?
 - Will the service provider negotiate?

The good – Outsourcing best practice

- Create a good team for due diligence
 - Business sponsor
 - IT
 - Privacy officer
 - Qualified IT security expert

The good – Outsourcing best practice

- The Maximus contract
 - Special purpose BC corporation
 - Data claw-back provision
 - No outbound web and e-mail, restriction on devices
 - \$35 m liquidated damages for privacy breach
 - Employee training
 - Employee NDAs
 - Special whistleblower protection for employees

The good – Outsourcing best practice

- Alberta OIPC - Contract
 - Subcontracting prohibition
 - Notification of solvency concerns
 - Notification of third-party access demands
 - Breach notification
 - Audit for compliance with contract and legislation
 - Routine access to system logs
 - Stipulated consequences for breach

The good – Outsourcing best practice

- Alberta OIPC - Policy
 - Consider laws, customs and workforces first
 - PIAs for significant new outsourcings
 - Keep a master list of outsourcing agreements for information tracking
 - Appoint an accountable individual for each contract
 - Have a trusted agent in foreign jurisdictions report on social/legal developments

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