

# TOWARDS A CARIBBEAN DATA PRIVACY FRAMEWORK:

*LOOKING BACK / CHARTING THE WAY FORWARD*

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# Overview of Presentation

## TOWARDS A CARIBBEAN DATA PRIVACY FRAMEWORK: *LOOKING BACK | CHARTING THE WAY FORWARD*

1. **WHERE ARE WE?**
2. **WHAT'S ON THE HORIZON?**
3. **WHERE CAN WE GO (CDPR)?**





# 1 – Where are we?



# 1 – Where are we? / Caribbean Data Privacy Big Picture

## Common law

Numerous privacy-related torts (confidentiality; intrusion upon seclusion; invasion of privacy)

Imprecise in scope

Expensive to enforce

## Constitution

Protection imprecise in scope

Informational privacy not expressly available in most Constitutions

But see ***Robinson v Attorney General (Jamaica)*** [2019] JMFC Full 04 establishes constitutional basis for all 3 forms of privacy (informational, choices, person) even if not express

See also ***Severin v R*** [2018] CCJ 20 (AJ) suggests that privacy, even as a preambular right may be enforceable

Expensive to enforce

## Privacy Laws


Specifically addressing the INFORMATIONAL PRIVACY deficit via Data Protection laws

Data Protection laws not yet passed or in force in numerous Caribbean jurisdiction

Significant variance in scope and substance of data privacy laws across jurisdictions with laws



# 1 – Where are we? / Data Protection laws being passed BUT

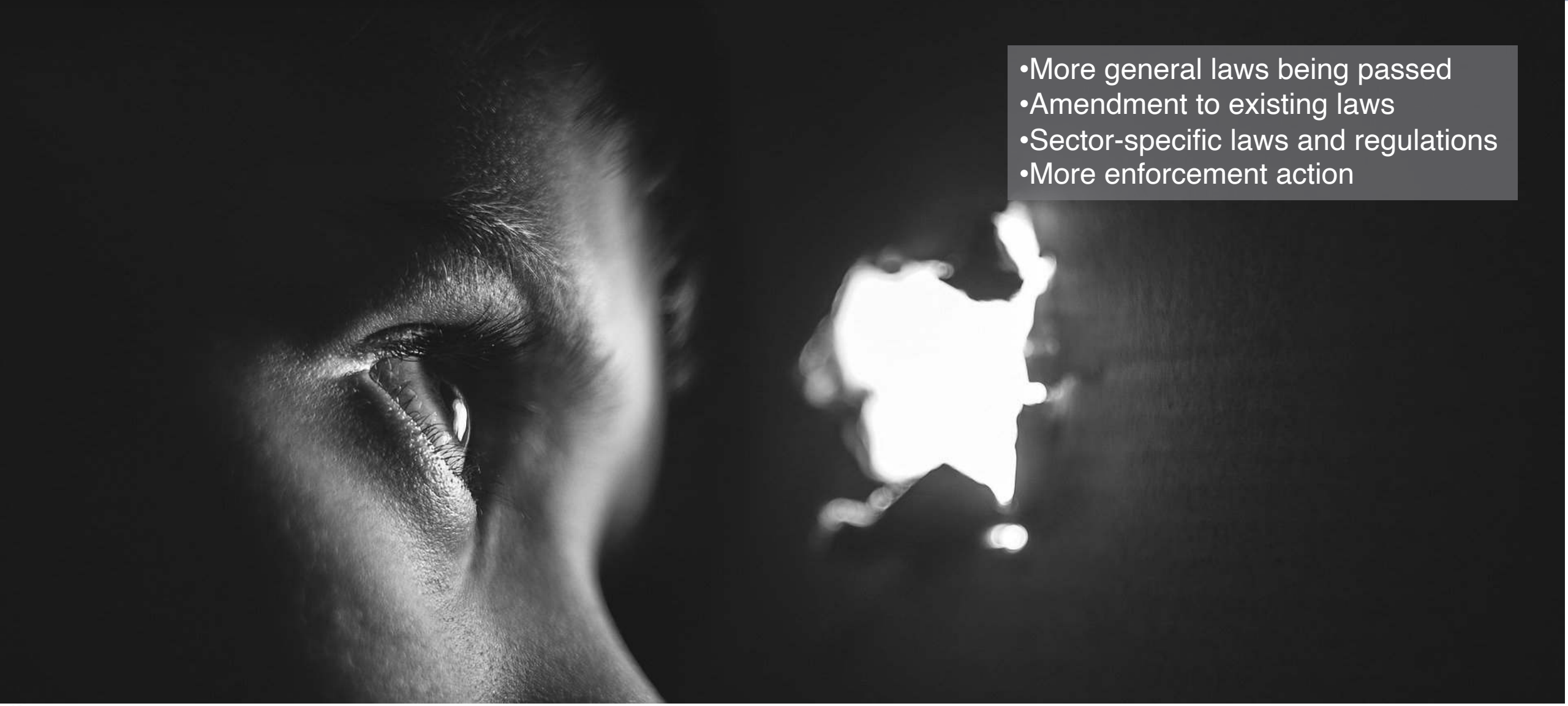


COUNTRY	Registration Requirement	DPO Required	Cross-border Limitation	Breach Notification
ANTIGUA	✗	✗	✗	✗
BAHAMAS	✗	✗	✓	✗
BARBADOS	✓	✓	✓	✓
BERMUDA	✗	✗	✓	✓
CAYMAN	✗	✗	✓	✓
DOM REP	✗	✗	✓	✗
JAMAICA	✓	✓	✓	✓
SAINT LUCIA	✗	✗	✓	✗
SAINT VINCENT	✗	✗	✗	✗
TRINIDAD	✗	✗	✓	✗

## 2 – What's on the horizon?



## 2 – What's on the horizon? /

- 
- More general laws being passed
  - Amendment to existing laws
  - Sector-specific laws and regulations
  - More enforcement action



### 3 – Where can we go?





# What would we like to see?



1. Free flow of data within Caribbean states
2. Standard/uniform principles
3. Unified enforcement mechanisms
4. Singular enforcement authority
5. Modern DP features (breach notification; scalable fines)
6. One-stop certification for external controllers; processors of outbound Caribbean data
7. One stop certification of safeguard mechanisms of internal actors
8. Country level flexibility on particular issues
9. Flexible data sovereignty approach - ??

# Possible Models

1. GDPR-type approach?
2. Model laws?
3. Treaty/Intl Agreement?



# Build or Buy?

## [**BUILD**]

*GENERATE UNIQUE,  
CARIBBEAN-SPECIFIC  
SOLUTION?*

## [**BUY**]

*SIGN ON TO  
EXISTING  
FRAMEWORK?*





# Thank you / Questions

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# About the speaker



Bartlett D. Morgan is an experienced commercial attorney with a digital law and policy practice, focused on the Caribbean.

He has substantial cross-sector experience and has supported clients in telecommunications, banking & finance, healthcare, fintech, digital media, e-commerce, distribution, manufacturing and government in respect of various aspects of their data privacy compliance obligations in multiple jurisdictions in the region.

Bartlett is a member of the International Association of Privacy Professionals.



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