

Privacy Law – What it means to your business

On January 1, 2001, the federal government's *Personal Information Protection and Electronics Documents Act* (PIPEDA) came into effect to govern the collection, use and disclosure of all personal information in connection with commercial purposes for a federal work, undertaking or business, and in connection with the sharing or disclosing of information, for profit, across provincial borders or across the Canadian border.

PIPEDA is scheduled to similarly apply to the collection, use and disclosure of personal information in the course of any commercial activity within Ontario, including privately owned, provincially regulated commercial organizations on January 1, 2004, unless Ontario introduces its own substantially similar legislation.

At this point, the Ontario government has yet to introduce privacy legislation to regulate the collection, use and disclosure of personal information. In February of 2002, the Ontario Ministry of Consumer and Business Affairs prepared draft privacy legislation and circulated it for comments, but the government has yet to table it for reading in the legislature. It is possible that the new Liberal government in Ontario may move quickly to table the same or new privacy legislation to govern the protection of personal information in the private sector. In the absence of any such provincial legislation, PIPEDA will apply to all privately owned businesses operating in Ontario beginning on January 1, 2004.

Why is privacy legislation being enacted?

The right to privacy has increasingly become a concern in modern societies. With the relatively recent growth of electronic technology, particularly e-mail and Internet use, it is becoming easier for individuals and organizations to gather, access and distribute personal information. From an organization's point of view, personal information would include any client, customer or consumer information. Governments are recognizing that steps need to be taken to protect basic freedoms, including an individual's right to control the collection, use and disclosure of his or her personal information.

How does PIPEDA work?

PIPEDA establishes rules for the collection, use and disclosure of personal information by organizations involved in commercial activities. It strives to balance privacy rights of individuals with the legitimate needs of organizations to collect, use and disclose certain personal

information. Most importantly, PIPEDA is designed to ensure that organizations obtain informed consent from individuals when they collect, use and disclose personal information about individuals, thus allowing individuals the ability to retain control over their personal information.

PIPEDA allows an individual the right to examine, at minimal or no cost, the information an organization has about him or her, and to request that such information be updated or changed if it is incorrect. PIPEDA is overseen by a Privacy Commissioner and redress for inappropriate actions or inactions is available through the Privacy Commissioner's office, with further appeals to be made to the Federal Court of Canada.

PIPEDA was based upon and attempts to give effect to the following ten primary privacy principles developed by the Canadian Standards Association: accountability; identifying purposes; consent; limiting collection; limiting use, disclosure and retention; accuracy; safeguards; openness; individual access; and challenging compliance.

What should you do now to prepare for privacy legislation?

As a first step, organizations should determine the answers to the following questions: What personal information exists within the organization? How is it collected and for what purpose? Is the purpose reasonable? Who collects the information and who has access to it? How is the information actually used? Is the information accurate, complete and up to date? How is the confidentiality of such personal information ensured? To whom it is disclosed? When and how is it disposed of?

Depending on the size and nature of your organization, you may also wish to consider which individual or group of individuals should be responsible for ensuring your organization's compliance with the applicable privacy legislation. Your organization should also start developing internal and external policies and procedures to deal with personal information.

The sooner your organization starts to examine its operations to answer the foregoing questions in anticipation of pending privacy legislation, be it PIPEDA or a substantially similar version enacted by the Ontario government, the better prepared it will be to comply with the legislation when it comes into effect.

Pallett Valo, LLP will be monitoring the area of privacy legislation closely. If you have any questions or concerns regarding PIPEDA, the potential Provincial legislation, or privacy rights generally, please feel free to contact us to discuss this bulletin further.

The purpose of this document is to provide information as to recent developments in the law. The comments are of a general nature and do not contain a full analysis of the law nor does it constitute an opinion of Pallett Valo, LLP or any member of the Firm on the points of law discussed.

***Brian Reiss** is a partner in the Business Law Group and a member of the Privacy Group.*

***Andy Balaura** is an associate in the Labour & Employment Law Group and a member of the Privacy Group.*

Contact Members Of The Privacy Group

Brian Reiss breiss@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 278

Andy Balaura abalaura@pallettvalo.com
Direct Dial: 905.273.3022 Ext. 225

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