



"PIPEDA" Canada's Privacy Legislation

Caveat Venditor: Seller Beware

Disclaimer

This presentation is not intended to provide legal advice on any particular facts. We urge you to consult your legal advisor as to any specific issues related to the needs of your organization in complying with these laws.



Any News is Good News?

The Office of the Privacy Commissioner has sharply criticized security at Air Canada's popular Aeroplan frequent-flyer program and told the airline to better protect members' account information.

"On the whole, there was a clear lack of diligence on the part of Air Canada with respect to its handling and protection of customer personal information," Heather Black, assistant privacy commissioner, said in a recent ruling involving a Vancouver businessman whose Aeroplan account was accessed, and changed, by his former boss



Video Surveillance on an Employee

- A former employee of a company complained that his employer had collected his personal information, by way of video surveillance, and used that information to terminate his employment
- The judge concluded that the complaints were not well-founded
- However, video surveillance is a last resort and should only be contemplated if all other avenues of collecting personal information have been exhausted

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SIN not required when signing apartment lease

- A student complained that he was unable to rent an apartment without providing his SIN to the property management firm
- Personal Information Protection and Electronic Documents Act clearly stipulates that providing a SIN for identification purposes is optional and not a condition of receiving service

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No Privacy Policy

- An individual wrote to a business requesting his personal information, as well as a copy of its privacy policy
- The business said he was not entitled to any of his information that pre-dated January 1, 2004 and did not send a privacy policy
- Individual got his info and the company drafted a privacy policy

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Why should you care?

- It's the law
- Consumers demanding recourse
- Minimizing your liabilities
- Maximizing your "good-will"
- Beat your competition
- Personalization Issues

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Privacy and Personalization

- 62 percent of all 18-24 year-olds expressed interest in personalization
- 37 percent of 50+ year-olds expressed interest
- Almost 50 percent of Survey respondents indicated that they would be more likely to download ringtones, music or other content to their mobile devices if they were presented with choices based on their tastes and preferences.
- 40 percent indicated that they would watch more VOD/PPV if it were easier to find programming and movies that matched [their] tastes and interests
- 45 percent of survey respondents are dissatisfied with their current onscreen TV program guide because it takes too long to find programming of interest.
- 47 percent expressed interest in receiving a personalized guide to help them find shows and movies that match their tastes and interests

2007, Center for Media Research

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What is PIPEDA anyway...

- Personal Information Protection and Electronic Documents Act
- Clarifying Marketplace Rules
- Privacy: The protection of personal information

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What's Not Personal Information?

- Name, title, business phone number of an employee of an organization
- Described as anything on a business card
 - The privacy protection of E-mail addresses is vague

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Personal Information Exemptions

- Names, addresses and phone numbers in the phone book
- Magazines and other publications available to the public, where the individual has provided the information
- Publicly available databases and registries
- Court records
- Business or professional Directories
- Can be used without consent to the extent that its collection, use and disclosure relate to the purpose for which the information appears in the database, registry, record or directory

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PIPEDA Phase 1

- Federally-regulated private sector and out-of-province exchanges of personal information
 - Starting on January 1, 2001, the law applied to personal information of clients and employees in the federally regulated private sector: airlines, banking, broadcasting, inter-provincial transportation and telecommunications.
 - The law also applied to all organizations that disclose personal information for consideration outside a province or the country.

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PIPEDA Phase 2

- Health information
 - On January 1, 2002, the law also applied to personal health information for the organizations and activities already covered in the first stage.

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PIPEDA Phase 3

- Commercial use of personal information within individual provinces
 - On January 1, 2004, the law extended to every organization that collects, uses or discloses personal information in the course of a commercial activity within a province, whether or not the organization is a federally-regulated business or not.
 - However, the federal government may exempt organizations and/or activities in provinces that have adopted privacy legislation that is similar to the federal law.
 - ◆ BC
 - ◆ AB
 - ◆ QC

Source: Department of Justice, 2000

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What is Personal Information?

- “Information about an identifiable individual...”
- Very broad, limited only by the ability to identify an individual
- Includes information in any format about clients, employees and third parties, and e-mail addresses

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When is Collection Without Consent o.k.?

- Collection with knowledge would compromise the availability or accuracy of the information and collection is reasonable for investigating a breach of an agreement or a contravention of federal or provincial law
- Upon reasonable belief, for the investigation of a contravention of federal, provincial or foreign law
- It is used for statistical, or scholarly study or research, its confidentiality is preserved, it is impracticable to obtain consent, and the Privacy Commissioner is given advance notice of such use
- The information is publicly available

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When is Disclosure Without Consent o.k.?

- To legal counsel
- To collect a debt owed by the individual to the Organization
- For administering and enforcing the law
- For purposes of national security

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Grandfathering Clause?

- There is none
- Means that information collected prior to the application of PIPEDA may be retained, subject to the principles of PIPEDA, but its use and disclosure will require consent

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The 10 Privacy Principals

- 1. Accountability:
 - An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.
- 2. Identifying Purposes:
 - The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

Source: Department of Justice, 2000

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The 10 Privacy Principals

- 3. Consent:
 - The knowledge and consent of the individual are required for the collection, use or disclosure of personal information, except when inappropriate.
- 4. Limiting Collection:
 - The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

Source: Department of Justice, 2000

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The 10 Privacy Principals

- 5. Limiting Use, Disclosure, and Retention:
 - Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by the law. Personal information shall be retained only as long as necessary for fulfillment of those purposes.

Source: Department of Justice, 2000

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The 10 Privacy Principals

- 6. Accuracy:
 - Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.
- 7. Safeguards:
 - Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

Source: Department of Justice, 2000

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The 10 Privacy Principals

- 8. Openness:
 - An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

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The 10 Privacy Principals

- 9. Individual Access:
 - Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

Source: Department of Justice, 2000

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The 10 Privacy Principals

- 10. Challenging Compliance:
 - An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals for the organization's compliance.

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Who Can Complain?

- Individual may complain to federal Privacy Commissioner
- Commissioner may initiate a complaint

The What Happens?

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Business Disruptions

- Upon complaint, the Commissioner “shall” conduct an investigation
- Commissioner may enter business premises, make inquiries, and examine documents
- Commissioner may report and make public information about the Personal Information management practices of an organization, in the public interest
- Serious Public Relations or Material Reporting issue for Public Company

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Potential Damages

- The Privacy Commission may convene court proceedings to conduct a summary hearing
- The court may award general damages, including damages for humiliation
- The court may order an organization to correct its deficient practices, or to publicize those deficiencies
- Obstruction of the Commissioner is summary conviction offence, fine up to \$100,000

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Information and Privacy

- Information
 - What information do you need to collect, safeguard and analyze?
- Customer Privacy
 - Customer Privacy, Access, & Challenges
- Data Responsibility
 - Accountability, Retention, Disclosure & Accuracy

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The Future of Privacy

- You have none...
- Commissioner's will be granted order-making power
- Policy of shielding the targets of privacy complaints will be abandoned
- Statutory amendment will tighten government control

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