

PRIVACY LEGISLATION

by Edward N. Levitt*

PIPEDA ... Let's Talk About It

On January 1, 2004, the final phase of Part 1 of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") came into force. PIPEDA now applies to commercial activities of organizations operating within a province and their collection, use and disclosure of personal information. Personal information means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization. Currently, Quebec is the only province that has legislation dealing with personal information in the private sector that meets the Federal Government's 'substantially similar' test. Therefore organizations and activities subject to the Quebec legislation will be exempted from PIPEDA for intra-provincial matters. In B.C. and Alberta, although both provinces passed their Personal Information Protection Acts ("PIPA"), both statutes have not yet been declared substantially similar to PIPEDA. Therefore, both the provincial statutes and PIPEDA must be complied with in these provinces. Canadian Standards Association publishes in the Model Code For The Protection Of Personal Information, ten (10) principles that form the basis for every organization's privacy policies:

1. Accountability – An organization must appoint an individual responsible for maintaining compliance with PIPEDA. These individuals are required to develop, implement and monitor personal information policies and practices.
2. Identifying Purposes – An organization must disclose why they are collecting personal information, how it will be used, and whether such information will be shared with third parties at the time or prior to collection.
3. Consent – The organization needs to obtain an individual's consent at the time personal information is collected and whenever a new use for the previously collected information is identified, except where exempted by law.
4. Limited Collection – An organization is required to limit the collection of personal information to that which is deemed necessary for the purposes identified.
5. Limited use, disclosure and retention – An organization may only use information for the purpose for which it was collected, unless consent is received from the individual or the new use is specifically permitted by PIPEDA. Information may be retained only as long as needed and should be destroyed or anonymized according to the organization's retention policy.
6. Accuracy – The organization is required to maintain personal information as accurate, complete and up to date as is necessary for the purposes for which it is to be used.
7. Safeguards – The organization must protect personal information, regardless of format, against unauthorized access, disclosure, copying, use or modification. The degree of protection should be commensurate with the sensitivity of the information.

8. Openness – The organization must inform customers and employees of policies and practices relating to the management of personal information. These policies must be easily understandable and readily accessible.
9. Individual Access – Upon request, organizations are required to inform individuals of the existence, use and disclosure of personal information pertaining to that individual. Individuals should be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
10. Challenging Compliance – The organization needs to provide simple and readily accessible mechanisms for individuals to challenge compliance with PIPEDA. The organization should inform individuals of the avenues of recourse, including internal company recourse mechanisms, responsible industry association, regulatory bodies, and ultimately the privacy commissioner of Canada.

PIPEDA...What should a Franchisor do to comply with the CFA Disclosure Policy?

(A) Within Ontario and Alberta

Section 7(3)(i) of PIPEDA permits organizations to disclose personal information without the knowledge and consent from the individual, if such disclosure is required by law. Thus, since the *Arthur Wishart Act (Franchise Disclosure) 2000* and the *Alberta Franchises Act* apply in these respective provinces, compliance with the CFA Disclosure Policy would not require compliance with the disclosure requirement of PIPEDA. However, the other sections of PIPEDA would be applicable. It is very important to remember that PIPEDA does not change what is disclosed by Franchisors pursuant to the CFA Disclosure Policy. PIPEDA primarily governs how personal information is collected, kept and disclosed. It is useful to note, in addition, that compliance with the Ontario or Alberta franchise legislation meets the requirements of the CFA Disclosure Policy.

(B) Outside Ontario and Alberta

PIPEDA protects an individual's right to the privacy of their personal information. The CFA Disclosure Policy requires franchisor's to provide specific information about officers, directors and current and former franchisees. Personal information about officers, directors and a franchisee, **who is an individual**, would require the franchisor to comply with PIPEDA with respect to such information. Although it is good business practice for franchisors generally, and required for members of the CFA, to provide disclose to prospective franchisees in other provinces, they must comply with all of the provisions of PIPEDA as there is no legal requirement for such disclosure in those other provinces. It is very important to remember that PIPEDA does not change what is disclosed by Franchisors pursuant to the CFA Disclosure Policy.

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