

Privacy provisions highlights

Purpose

The purpose of the *Personal Information Protection and Electronic Documents Act* is to provide Canadians with a right of privacy with respect to their personal information that is collected, used or disclosed by an organization in the private sector in an era in which technology increasingly facilitates the collection and free flow of information.

Application

Legislation will initially apply to the federally-regulated private sector, including telecommunications; broadcasting; banking and interprovincial transportation. It will also apply to federal Crown corporations operating in these areas: Atomic Energy of Canada Limited; the Canadian Broadcasting Corporation; the various Ports Corporations; Marine Atlantique and Via Rail.

The legislation will cover federal entities which are not covered under the existing federal *Privacy Act*, such as Canada Lands Co., some subsidiaries of Canada Post, the Canadian Race Relations Foundation, Cape Breton Development Corporation (DEVCO) and Enterprise Cape Breton.

The provisions will also apply to trade in personal information that occurs inter-provincially or internationally.

Three years after coming into effect, the provisions will apply more broadly to all personal information collected, used, or disclosed in the course of commercial activities, so that all Canadians, no matter where they live, will be assured of privacy protection. Where and whenever a province adopts legislation that is substantially similar, the organizations, classes of organizations or activities, covered will be exempted from the application of federal law.

Privacy Principles

The privacy provisions are based on the Canadian Standards Association's *Model Code for the Protection of Personal Information*, recognized as a national standard in 1996. The Standard addresses the ways in which organizations collect, use and disclose personal information. It also addresses the rights of individuals to have access to their personal information and to have it corrected if necessary.

The code's 10 principles are:

- 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.
- 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.
- 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 fulfilment of those purposes.

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.

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

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.

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.

Exceptions

Some groups, such as law enforcement agencies and journalists, have a lawful or investigative need to collect, use and disclose personal information without having to obtain the consent of the concerned individuals. For these reasons, certain exemptions are included:

- Personal information collected, used or disclosed solely for journalistic, artistic or literary purposes;
- if the action clearly benefits the individual or if obtaining permission could infringe on the information's accuracy;
- where such data can contribute to a legal investigation or aid in an emergency where people's lives and safety could be at stake; and
- if disclosure aids, in times of emergency, matters of legal investigation, or facilitates the conservation of historically important records.

PRIVACY COMMISSIONER'S ROLE

Complaints

Individuals will have the right to complain about any aspect of an organization's compliance with the provisions relating to the protection of personal information to the federal Privacy Commissioner. The Commissioner will have general powers to receive and investigate complaints, and to attempt dispute resolution.

Remedies

Unresolved disputes relating to certain matters can be taken before the Federal Court. In addition to its normal powers, the Court may order an organization to correct its practices and award damages to the complainant. Punitive damages may not exceed an amount of \$20,000.

Public Information

The Privacy Commissioner will have a mandate to develop and conduct information

programs to foster public understanding of the privacy provisions of the Act.

Annual Report

The Privacy Commissioner will report annually on the application of the provisions on personal information and the extent to which the provinces have enacted legislation.

ONE-TIME REVIEW

The privacy provisions of the Act will be reviewed five years after the coming into force of the legislation by a Committee of the House of Commons, or of both Houses of Parliament.