



## Legal Corner

By  
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### *Privacy compliance now law*

In 2001 the federal Parliament enacted Canada's first set of commercial privacy standards, the Personal Information Protection and Electronic Documents Act (PIPEDA).

The law has broad reaching implications. It sets out stringent guidelines for the collection, use and disclosure of "personal information," allows an individual to ask a company to produce all "personal information" it has about that individual, provides for fines if a company doesn't comply, and even allows an individual to take the company to court if a breach of the privacy laws causes damage to the individual.

On January 1, 2004, PIPEDA will move into full gear, requiring privacy compliance for all the commercial activity of private sector companies.

In the course of doing business members of the construction industry collect, use and disclose, personal information that will be captured by PIPEDA. For example, builders who collect personal information about their buyers for the purposes of marketing and or post-close services must comply with PIPEDA.

Members should therefore ask themselves: Do I have appropriate collection, use, disclosure, retention and destruction policies that are actually followed by employees? It's time to check.

#### **Cost of non-compliance**

While it is important to comply with privacy law for legal reasons, doing this for only that reason fails to recognize the benefits compliance can bring to an organization.

Effective privacy compliance is now a necessary part of doing business and staying competitive. It is fundamental to obtaining and retaining accurate customer and employee information, customer and employee trust and loyalty, international business opportunities and ultimately, profit.

For example, some organizations concerned with privacy have already refused to do business with organizations that are not compliant out of concern that personal information ordinary exchanged during the course of business will not properly be protected. As well, customer and employee mistrust can result in the withholding of personal information otherwise necessary for efficient business practices and product development. And an organization can be devastated if the Federal Privacy Commissioner makes public its name as a privacy offender.

The benefits of protecting privacy are therefore more obvious when organizations understand how existing and potential customers, business partners and employees value privacy, as well as the potential costs of a privacy breach in terms of reputation and the bottom line.

#### **Where to from here?**

Whether under PIPEDA (applicable now) or Ontario's own privacy legislation (which will likely be introduced soon) privacy legislation is here to stay.

The first step toward compliance is to learn about PIPEDA and the patchwork of privacy legislation that affects the construction industry. It is absolutely necessary that organizations educate themselves. It is also necessary that privacy protection become a corporate priority. Top level commitment is essential.

The second first step is to designate one or more individuals responsible for privacy compliance. Each organization is required to identify a "Privacy Officer," and that individual must have the training, resources, authority and budget to develop and implement privacy policies and procedures.

Next, organizations must conduct a detailed privacy audit to determine precisely what personal information they collect, use and disclose. A basic audit should identify the following:

1. What is the legal and practical impact of PIPEDA, and/or provincial privacy requirements, on the organization?
2. What personal information about customers and employees does the organization collect, use, disclose and retain? For example, points where personal information may

## *Appropriate protocols needed*

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be routinely collected include: Point-of-purchase; agreements of purchase and sale; contests; E-mail; surveys; video cameras; audio tapes; marketing lists; loyalty programs; delivery services; warranties; application forms; Web sites; employment applications; employee benefit plans.

3. For what purpose is the personal information collected?

4. What forms of consent are used, if any?

5. What personal information does the organization obtain from, or disclose to affiliates or third parties, for example in payroll outsourcing or benefits provider?

6. To whom is personal information disclosed?

7. Are appropriate protocols in place to ensure continued protection where personal information is disclosed to a third party?

8. How does the business plan address the privacy of personal information?

9. Are adequate resources allocated for developing, implementing and maintaining a privacy program?

10. What privacy policies has your organization already established with respect to the collection, use, disclosure, retention and destruction of personal information?

11. Where there are employees, how are the policies and procedures for managing personal information communicated to them?

12. How is management and employees with access to personal

information trained in privacy protection?

13. How is personal health information collected, used, disclosed, stored and destroyed?

14. What mechanisms are in place to ensure that affected individuals are aware of the organization's "privacy policies," including the rights to access personal information and if necessary to correct it?

15. How is the organization able to efficiently and effectively identify and locate personal information about an individual?

16. To what extent have appropriate privacy control measures been identified and implemented?

17. How is the effectiveness of the privacy control measures monitored and reported?

18. What mechanisms are in place to deal effectively with failures to properly apply the established privacy policies and procedures?

19. How would your organization benefit from a comprehensive assessment of the risks, controls and business disclosures associated with personal information privacy?

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