

The Effect of Bill C-6 “Privacy Act” Legislation

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Bill C-6, otherwise known as the *Personal Information Protection and Electronic Documents Act* (the “*Privacy Act*”) was passed on April 4th, 2000, and Part I came into effect on January 01, 2001. It is the first privacy legislation dealing with the private sector in Canada. The following is a brief introduction to the legislation, and an illustration of some of the ways that it will impact upon charities.

Purpose of the Privacy Act

The *Privacy Act* is concerned with the protection of personal information in the context of electronic commerce, as well as the electronic means by which such information is communicated and recorded. There is a myriad of different ways in which personal information is gathered over the internet on a daily basis. Through registration and contest entry forms, when on-line purchases take place, through the use of “cookies” and data mining, and through the use of various software that can create “pictures” of domain users for their hosts. This brief summary will focus on Part 1 of the *Privacy Act* which has as its stated purpose:

“to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information for purposes that a reasonable person would consider appropriate in the circumstances.”

Applicability To Charities

Part 1 will have an obvious effect on charities that engage in fundraising activities on the internet. In order to understand the applicability of this legislation, it is necessary to look at s.4(1) which sets out the scope of Part 1:

s.4(1) *This part applies to every organization in respect of personal information that:*

- (i) *the organization collects, uses or discloses in the course of commercial activities,*
or
- (ii) *is about an employee of the organization and that the organization collects, uses or discloses in connection with the operation of a Federal work, undertaking or business*

In order to understand the relevance of s.4(1), some definitions must be understood. First, “Organization” is defined in the Act as including:

an association, a partnership, a person, a trade union, and both unincorporated and incorporated charities.” [emphasis added]

Secondly, “Commercial Activity” is defined in the *Privacy Act* as:

“Any particular transaction, act or conduct or any regular course of conduct that is of a commercial character including the selling, bartering or leasing of donor, membership or other fundraising lists.” [emphasis added]

It should be noted that the Privacy Act will only apply to personal information that is collected, used or disclosed inter-provincially or internationally and will apply to intra-provincial transactions three years after it has come into force. Nevertheless, the reality of the internet is that it is global in scope, so Charities using the internet to solicit fundraising should consider its message as extending beyond the boundaries of the province in which it operates.

It is therefore evident that the *Privacy Act* will apply to Charities that engage in fundraising on the internet. Specifically, it may impact as follows:

(a) Commercial “Conduct”:

In the broader sense, Charities may be engaging in “conduct that is of a commercial character” over the internet through fundraising campaigns that include some benefit coming to the donor. For instance, if raffle tickets or tickets to a charity dinner and auction are being sold, or other similar transactions are taking place via the internet, then this could fall within the parameters of commercial conduct. Moreover, when the Charity requests that order forms, etc., are completed on-line, it is ‘collecting’ and ‘using’ that personal’ information. In this regard, Charities must ensure that they are complying with the legislation in the way that they are collecting, using and disclosing the information.

(b) Donor. Membership or other Fundraising Lists:

The definition of commercial activity in the legislation includes the “selling, bartering or leasing of donor, membership or other fundraising lists.” Therefore, the legislation will apply to charities which have acquired lists of names from other organizations for the purpose of contacting those persons as prospective donors. Conversely, the legislation would apply to charities from which other organizations have acquired name lists as well. In this regard, charities that are involved in the acquisition or distribution of name lists must ensure that they are complying with the legislation in the way that the information contained in those lists is collected, used and disclosed.

Complying With the Privacy Act:

For those charities to which the *Privacy Act* applies, there are very strict information control and management provisions that must be complied with. These provisions are adopted from the *National Standard of Canada Model Code for the Protection of Personal Information* (the “CSA Model Code”), which is included as Schedule 1 to the *Privacy Act*. The CSA Model Code is comprised of ten principles which are briefly set out below:

1. Accountability: The organization must be responsible for complying with the CSA Model Code, and must designate an individual or individuals to be accountable in this regard. The organization must also implement policies to give effect to the CSA Model Code including means of establishing procedures to:

- protect personal information;
- receive and respond to complaints;
- train staff regarding these policies; and
- develop explanatory information regarding these policies.

2. Identifying Purposes: The purposes for which information is collected must be identified, documented, and communicated to the individuals whose personal information is being collected either prior to or at the time of its collection. Furthermore, where the information collected is going to be used for a new purpose not originally communicated, the individual whose information is going to be used must be informed of such, and his or her consent must be obtained.

3. Consent: The individual whose information an organization wishes to collect, use or disclose must give prior consent of this happening. In addition, the organization must make a reasonable effort to ensure that the individual consents freely. In this regard, the purposes for which and individual's personal information is being collected, used or disclosed must be communicated to the individual in a manner which he or she can reasonably be expected to understand. Furthermore, an organization must not require an individual to consent to the collection, use or disclosure of personal information as a condition of the organization supplying a product or service, except that information that is required to fulfil the explicitly specified and legitimate purposes connected to that product or service. Finally, an individual may withdraw consent at any time subject to legal or contractual restrictions and reasonable notice.

4. Limiting Collection: Personal Information must only be collected for necessary and identified purposes, and only by fair and lawful means.

5. Limiting Use, Disclosure and Retention: Personal information must only be used for consented to purposes, and may only be retained as long as is necessary to fulfil those purposes.

6. Accuracy: Personal information must be routinely kept up to date and accurate.

7. Safeguards: Safeguards appropriate to the nature and form of personal information must be implemented.

8. *Openness*: An organization must ensure that its policies and practices for the management of personal information is made readily available.
9. *Individual Access*: Upon request from an individual, the organization must inform that individual of the existence, use and disclosure of his or her personal information and provide access thereto.
10. *Challenging Compliance*: The organization must have a process in place to receive, investigate and address complaints from individuals who wish to challenge the organization's compliance with the CSA Model Code principles.

Consequences of Non-Compliance:

An individual may submit a written complaint to the Privacy Commissioner who may conduct an investigation if there are reasonable grounds. The Privacy Commissioner will submit a report within one year, after which the individual may apply to the court for a hearing. The court may impose various penalties on an organization found to be in contravention of the *Privacy Act*, including:

- ordering an audit of the personal information management practices of the organization;
- publishing information regarding the information management practices of the organization;
- ordering that the organization correct its practises, and publish steps taken by the organization to do so; and
- awarding damages to the Complainant, including damages for humiliation suffered.

It is clear that Bill C-6 will have an impact in the future, and charities should consider the new Privacy Act to determine if it applies to them, and if so, that they are in compliance with it.

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