
ONTARIO BAR ASSOCIATION CHARITY AND NOT-FOR-PROFIT LAW

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Charities and Privacy Legislation – Are You Ready for January 1 (Power Point Presentation)

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Introduction

- **The substantive provisions of the *Personal Information Protection and Electronic Documents Act* came into force on January 1, 2001 (PIPEDA)**
- **Impact of PIPEDA on charitable and not-for-profit organizations**

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PIPEDA

- **On January 1, 2001 PIPEDA applied to organizations involved in the operation of a federal work, undertaking, or business**
- **On January 1, 2004, PIPEDA will apply to all other organizations engaged in the collection, use and disclosure of personal information in the course of commercial activities**

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- **PIPEDA contains the following important definitions**

“Organization”

- **Includes an association, partnership, person, corporation, or a trade union**

“Personal Information”

- **Information about an identifiable individual but does not include the name, title or business address or telephone number of an employee of an organization**

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- **Only that information which can be ascribed to an identifiable individual and does not include general databases which do not allow for the identification of individuals**

“Commercial Activity”

- **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**
- **Includes any transfer of personal information for profit**

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- **Charities and not for profit organizations may be caught by the act if they engage in “commercial activities”**
- **“Commercial activities” for a charity or not for profit organization may include a related business (as interpreted by *Income Tax Act*), or alternatively, may include any exchange of value which requires that a charity or not for profit organization incur an expense not normally incurred by it**
 - e.g. of “commercial activities”
 - Charitable golf tournament
 - Sale of books, hymnals, magazines
 - Sale of promotional items

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- **There are no exceptions in the application of PIPEDA for the size of the organization**
 - i.e. A small corner convenience store will be forced to comply with PIPEDA in relation to personal information about clients who rent movies
- **Compliance with PIPEDA will impose onerous, expensive and time consuming administrative requirements on organizations which collect, use or disclose personal information**
- **Failure to comply will lead to sanctions under PIPEDA**

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Requirements of PIPEDA

- **If a charity or not for profit organization determines that it is subject to PIPEDA, then it must comply with part 1 of PIPEDA**
- **Part 1 of PIPEDA incorporates the CSA “Model” code for the Protection of Personal Information (The Model Code)**
- **The Model Code was meant to establish a voluntary national standard for the protection of personal information**
- **The Model Code incorporates 10 primary principles related to the collection, use and disclosure of personal information**

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10 Principles

1. Accountability

- **An organization is responsible for personal information under its control and shall designate an individual or individuals in the organization who will be accountable for compliance with PIPEDA**

2. Identifying Purposes

- **An organization must identify the purposes for which personal information is collected and used at the time of, or before the collection of the personal information**

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3. Consent

- **The consent of the individual providing personal information is required at or before the collection of the personal information**

4. Limited Collection

- **The collection of personal information shall be limited to that personal information which is necessary for the purposes identified by the organization and shall be collected by fair and lawful means only**

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5. Limited Use, Disclosure and Retention

- **Personal information shall not be used or disclosed for purposes other than those purposes for which it was collected except with the consent of the individual or as required by law**

6. Accuracy

- **Personal information collected shall be accurate, complete and up-to-date as is necessary for the purposes for which it is to be used**

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7. Safeguards

- **Personal information shall be protected by security measures appropriate to the sensitivity of the information**

8. Openness

- **An organization shall make readily available to individuals, specific information about its policies and practices related to the management of personal information**

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9. Individual Access

- **Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information; shall be given access to that information; shall be given the opportunity to challenge the accuracy of that information and have it amended if necessary**

10. Challenging Compliance

- **An individual shall be entitled to address a challenge concerning compliance with the principles to the designated information officer or individual (See Principle No. 1)**

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What Happens If There Is Non-compliance?

- **An individual who has concerns that an organization is not complying with PIPEDA may do the following:**
 - **Complain to the Privacy Commissioner**
 - **The Privacy Commissioner may attempt to mediate the complaint**
 - **The Privacy Commissioner may also make recommendations. However, the recommendations are not binding.**

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- **Federal Court may:**
 - **Order the organization to correct its practices**
 - **Order the organization to publish a notice of any action taken or proposed to be taken to correct the problem**
 - **Award damages against the organization**

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How Can an Organization Comply with PIPEDA?

- **Following are some basic recommendations to assist in complying with PIPEDA:**
 - **Appoint a compliance officer or officers who will be responsible for compliance.**
 - **Carry out a privacy audit; review impact of privacy principles on your client's organization**

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- **Assist your client in developing privacy policies**
- **Revise your client's contracts**
- **Ensure consent**
- **Develop appropriate security measures**
- **Maintaining ongoing compliance**

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Concluding Comments

- **Once personal information is obtained, it is a valuable commodity**
- **PIPEDA is designed to ensure that no inappropriate use of such personal information is made**
- **Compliance with PIPEDA is mandatory**
- **Failure to comply will lead to possible sanctions and a loss of credibility**

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