

BILL 44, THE PERSONAL INFORMATION PROTECTION ACT

PRIVATE SECTOR PRIVACY LEGISLATION



Judy Shriar

On one of the last days of the spring sitting of the Alberta Legislature in May 2003, the Government introduced draft private sector privacy legislation, known as Bill 44 or the *Personal Information Protection Act* (“PIPA”). Over the summer and behind the scenes, the wording has been tweaked and regulations drafted. It is expected PIPA will be passed into law during the brief fall session in or around November 2003. The law will likely be effective January 1, 2004.

PIPA is Alberta’s response to the challenge posed by the Federal Government, which requires provinces to pass satisfactory private sector privacy legislation, or be subject to the Federal private sector privacy statute, known as the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”). By January 2004, privacy protection legislation will be mandatory across Canada. It is worth noting that even if PIPA is enacted, PIPEDA will govern private sector privacy in most other provinces, which have chosen not to pass their own privacy legislation, at least for the time being. Further, even if PIPA is enacted, PIPEDA will still apply to the transmission of personal information across provincial and national borders. Harmonizing the two statutory regimes will remain a challenge for the foreseeable future.

Although a detailed analysis of the differences between Alberta’s PIPA and the Federal PIPEDA is beyond the scope of this article, it is widely believed in the private sector that PIPA better achieves the goal of balancing an individual’s right to privacy with the needs of organizations to collect, use and disclose personal information. If passed and approved by the Federal cabinet as “substantially similar” to the privacy protection in PIPEDA, PIPA will apply to all “personal information” in the care and control of “organizations” in Alberta.

The term “personal information” is broadly defined; it covers information about identifiable individuals but expressly excludes so called “business contact information”. In other words, information such as a person’s name, job title, fax and phone numbers, and office and email addresses is not considered to be personal information.

2000, 10235 - 101 STREET
EDMONTON, AB T5J 3G1
PH: 780.423.3003

1900, 350 - 7TH AVENUE S.W.
CALGARY, AB T2P 3N9
PH: 403.260.8500

203, 5102 - 50TH AVENUE
YELLOWKNIFE, NT X1A 3S8
PH: 867.920.4542

The term “organization” is also broadly defined in PIPA and includes corporations, partnerships, trade unions and even individuals acting in a commercial capacity. If passed, the Act will apply to most of the private sector, but there are many exceptions. Most notably, the not-for-profit sector and professional regulatory organizations will not be subject to the ordinary rules under PIPA. Not-for-profit organizations are only subject to PIPA to the extent they handle personal information in the course of commercial activity and professional regulatory organizations can establish their own personal information codes. Details concerning enforcement of those codes will be set out in the Regulations to PIPA, which are still unpublished.

Other exceptions to the application of PIPA include information that is subject to any sort of legal privilege or otherwise available to parties to a lawsuit or subject to a lawyer’s undertaking or trust conditions. Information that is collected, used or disclosed for artistic, literary or journalistic purposes is also outside the scope of the draft legislation.

PIPA is noteworthy for its reliance on the concept of reasonableness. The term “reasonable” is used approximately 64 times in the draft statute, which only contains 65 sections! Given that the Act will apply to so many organizations of different sizes, it is not surprising that the standard to be applied in assessing organizations’ privacy practices will vary with the context, according to a standard of appropriateness to the circumstances. To do otherwise, it is suggested, would make compliance unduly onerous.

An individual can complain to the Provincial Information and Privacy Commissioner about an organization’s failure to comply with PIPA. The Commissioner is empowered to conduct investigations and inquiries, to refer matters to mediation, to provide recommendations or make advance rulings and other orders. Breach of an order of the Commissioner or of the Act is punishable by fines ranging from \$10,000 for individuals to \$100,000 for organizations. Individuals can also sue an organization for financial damages sustained as a result of a breach of PIPA.

Getting started on compliance is no easy task; the only way is to “just do it”. Hopefully the following list will prove a useful framework for where to begin:

- Appoint a privacy team with enough time and resources for the job;
- Undertake a detailed audit of personal information in your organization’s custody and control;

- Create policies and procedures appropriate for your organization;
- Amend forms, notices and consents;
- Consider necessary security upgrades;
- Develop and deliver training programs; and
- Monitor information management and compliance on an ongoing basis.

It is expected that PIPA will be enacted in the fall session of the Legislature, then submitted and approved by the Federal cabinet as substantially similar to PIPEDA and in force by January 1, 2004. PIPA will have a significant impact on all organizations carrying on business in Alberta. Hopefully, this brief summary of Alberta’s anticipated private sector privacy legislation shows that your organization must take steps to ensure that it will be able to comply with significant new legal obligations by January 1, 2004.

DISCLAIMER	this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to the author:
<i>Judy Shriar in Calgary at 403-232-1761</i>	
REPRINTS	
Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.	