

Privacy of Information in the Workplace

JUDITH SHRIAR

The heightened awareness of privacy issues by all segments of society is driving businesses to pay more attention to the need for protecting privacy in their day-to-day practices. A wide range of industries from banking and financial services, to insurance, to direct marketing, to telecommunications have developed their own voluntary privacy codes. As described below, the legal landscape is changing and it is only a matter of time until compliance will be mandatory.

The *Personal Information Protection and Electronic Documents Act*, also known as Bill C-6, received royal assent April 13, 2000 and is to be proclaimed in force in three stages between January 1, 2001 through January 2004. Only the first part of the *Act* deals with personal information privacy protection. The latter parts of the *Act* relate to electronic documentation creating an electronic alternative for doing business with the federal government and clarifying how courts can assess reliability of electronic records as evidence. These latter parts of the *Act* are a key component of the federal government's electronic commerce strategy aimed at building the same levels of confidence and reliability in e-business as in the conduct of conventional business.

The protection of privacy provisions will apply to all personal information collected, used and disclosed in the course of otherwise private commercial activity within the federally regulated sector, such as banks, railways, airlines, telecommunications, etc. The *Act* will apply to commercial activity in areas otherwise under provincial jurisdiction where personal information is collected, used and disclosed across provincial borders. One controversial provision of the *Act* provides that it is to apply to all commercial activity, even when conducted exclusively within provincial jurisdiction, within three years if no "substantially similar" legislation has been passed in the province. The idea is to force the provinces to enact legislation regulating information privacy in the private sector in the next few years.

The definition of personal information is broad ranging, including all customer, potential customer and employee information relating to home address, phone number, age, marital status, education or employment history, performance appraisals, references, income and assets, debts, benefit utilization, medical information, tissue or biological samples, discipline records, investigation material, surveillance records and more.

The core of Bill C-6 is the Canadian Standards Association ("CSA") model privacy code. The privacy code is included as Schedule "1" to the *Act*. Its principles are explained and elaborated in sub-clauses, sometimes by way of example. The principles are general because the *Act* applies to organizations of all sizes across the country, allowing them flexibility to adapt the principles as appropriate.

Further, the *Act* gives strong investigatory and auditing powers to the federal Privacy Commissioner, who can use mediation, conciliation and is authorized to publicize results of his investigations. However, the Commissioner must apply

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

400 THE LOUGHEED BUILDING
604 1 STREET SW
CALGARY, AB T2P 1M7
PH: 403.260.8500

203, 5120 - 49TH STREET
YELLOWKNIFE, NT X1A 1P8
PH: 867.920.4542

www.fieldlaw.com

to the Federal Court for enforcement. The Federal Court in turn has jurisdiction to impose penalties and financial damages with no upward dollar limit imposed by statute. Further, anyone who obstructs the Commissioner in an investigation or destroys records before all recourse is exhausted, or dismisses or disciplines an employee for taking steps under the *Act*, is guilty of an offense punishable by a fine of up to \$100,000.

Perhaps nothing is more important to privacy protection than the organizational culture that has developed within a corporation or other entity. It is important for everyone, from senior managers to frontline workers, to buy into the benefits of a privacy policy for the organization. The idea of keeping employee information private is not revolutionary. This information generally is kept private as part of a general belief that employees should be treated ethically and fairly. But as more employers begin to use the internet and corporate intranets to administer their pension and benefit plans, for example, they are quickly realizing that privacy issues merit detailed attention. Awareness, education and training are critical.

Even if your organization is clear where it stands on issues of privacy and confidentiality, it will not be of much use if your third party service providers do not share the same philosophy. Most employers have relationships with one or more outside suppliers, and it is important to consider all the different ways information is flowing. Due diligence is required in selecting service providers that take privacy issues seriously. It is important to know how your providers are handling information if you are setting up any sort of program involving the exchange and/or transmission of personal information.

Many of the implications of our increasingly networked society remain to be seen. However, privacy issues are here to stay and we have only just begun to consider how they will evolve in the workplace. It is important to take measures now to protect yourself in the future.

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The Labour and Employment Group
Edmonton 780-423-3003
Calgary 403-260-8500

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