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Federal Personal Information Privacy Law

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The Personal Information Protection and Electronic Documents Act is now law.

This legislation controls the collection, use and disclosure of individuals' personal information by businesses.

This law applies to all businesses - either now, next year or in three years, and compliance will likely mean a major change in the way businesses gather, process and use personal information.

As an individual, you should know about the controls the Canadian federal government has imposed on the collection, use and disclosure of your personal information.

If the Act now applies to your organization, you should be taking immediate steps to comply with it. Early compliance with the **Fair Information Practices** of the Act can set you apart from your competition and improve your relationships with your customers and clients.

Does the Act now apply to your business? Please read our *Privacy Law Quick Points*, attached. If the Act now applies, please check out the Privacy Law section of our website for more information, at:

<http://www.fielddlaw.com/privacy.html>

If you'd prefer, we'll mail you a copy of the Privacy Law publication from our website. Please contact Judy Yeats at (403) 260-8502 or jyeats@fielddlaw.com



PRIVACY LAW QUICK POINTS

What's the Act all about?

The purpose of the *Personal Information Protection and Electronic Documents Act*, as stated by the federal government in the Act, "is 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 and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances."

Personal Information is information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization. The definition of personal information is broad ranging, and includes **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.

If (or when) the Act applies to your organization, **you must obtain an individual's consent when your organization collects, uses or discloses the individual's personal information**. The individual has a right to access personal information held by your organization and to challenge its accuracy, if need be. Personal information can only be used for the purposes for which it was collected. If your organization is going to use it for another purpose, consent must be obtained again. Obviously, there are many details to how your organization must comply, and there are penalties for non-compliance.

Does the Act apply to your organization?

To understand if the Act applies to your business, you must be familiar with some key definitions:

Commercial Activity means any particular transaction, act or conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.

Federal work, undertaking or business - this is a broad and complicated definition, due to constitutional issues. If your company is subject to any part of the *Canada Labour Code*, it is probably a federal work, undertaking or business. The Act specifically applies to **inter-provincial or international transportation** by land or water, airports, aircraft or airlines, telecommunications, radio and television broadcasting, banks, grain elevators and offshore drilling operations. The fact that your company is federally incorporated does not necessarily mean that it is a federal work, undertaking or business.

A **Record** of personal information includes all physical and electronic methods of storing personal information, including, for example, letters, pictures, information stored on computers, microfilms and **any other documentary material, regardless of physical form or characteristics**, and any copy of any of those things. This means that your **Rolodex**, the **yellow Post-It note** with a customer's birthday written on it, and other typical ways of recording personal information, are all caught by the Act.

THE ACT DOES NOT APPLY IF:

- your organization is a charity, community association, club or other entity which does not carry out commercial activities
- your organization is under exclusive provincial jurisdiction (for example, a provincial government, municipality, hospital, school, college or university)
- Your organization is already governed by the federal *Privacy Act* (note, the *Privacy Act* is different than the *Personal Information Protection and Electronic Documents Act*)
- Your organization uses personal information only for journalistic, artistic or literary purposes.

THE ACT APPLIES NOW IF:

- your organization is a federal work, undertaking or business that collects, uses or discloses personal information (except personal health information) in the course of a commercial activity. (Note that the Act also applies to your employees' personal information as well as your customers' personal information.)
- Your organization discloses personal information (except personal health information) outside the province for consideration (for example, you sell mailing lists outside your province, or are a credit reporting service).

THE ACT WILL APPLY STARTING IN 2002 IF:

- You are an organization subject to the Act in 2001 and you collect, use or disclose "personal health information" (defined as information about an individual's mental or physical health, including information concerning health services provided and information about tests and examinations)

THE ACT WILL APPLY STARTING IN 2004 IF:

- Your organization undertakes commercial activities within any province and your organization collects, uses or discloses personal information in the course of those commercial activities. (The federal government may exempt organizations and/or activities in provinces that have adopted substantially similar privacy legislation.)
- Your organization undertakes interprovincial or international commercial activities and your organization collects, uses or discloses personal information in the course of those commercial activities.

We can help

If you're not sure if (or when) the Act applies to your organization, we can help you make that determination. Please contact your regular Field Atkinson Perraton lawyer, or one of the members of our Privacy Law Group listed below.

If the Act applies to your organization, please check out the Privacy Law section of our website for more information, at:

<http://www.fieldlaw.com/privacy.html>

Our Privacy Law section has more detailed information about the Act and how to comply with it.

As a service for our clients, we can also provide you with implementation checklists and suggested privacy policies, so that you can get your organization into compliance with the Act as efficiently as possible. Please contact your regular Field Atkinson Perraton lawyer, or one of the following members of our Privacy Law Group:

In Calgary

Judy Shriar

(403) 232-1761

jshriar@fieldlaw.com

Peter Collins

(403) 260-8516

pcollins@fieldlaw.com

In Edmonton

Tom O'Reilly

780-423-7661

toreilly@fieldlaw.com

Chris Rapp

(780)-423-7673

cgrapp@fieldlaw.com