



New privacy law evolves rapidly, changes consumer attitudes

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Privacy Primer - Brian T. D. Bowman

Lawyer Brian T. D. Bowman prepared a number of columns for the Free Press at the beginning of 2004 to introduce businesses to new federal privacy legislation which came into force. Today he takes a look at what has happened in the last year with privacy issues and what may be ahead.

IN early 2004, you probably heard a lot about the new federal Personal Information Protection and Electronic Documents Act or PIPEDA. So, what has happened since?

PIPEDA came into force Jan. 1, 2004, and applied to every organization in Manitoba that collects, uses or discloses your personal information in commercial activities. The new privacy law has arguably changed consumer attitudes and certainly has promoted a heightened awareness of privacy issues in the marketplace.

By providing us with new legal controls over our personal information, PIPEDA has compelled law-abiding businesses to take privacy matters to heart. From appointing privacy officers and implementing privacy policies to reviewing security safeguards and data retention periods, businesses have been busy this last year adjusting practices to comply with their new legal obligations and telling us how they use our personal information.

A common criticism of PIPEDA is that it does not provide clear direction to businesses about what practical steps need to be taken to protect privacy and comply with the new law. Rather, PIPEDA establishes "principles" to be interpreted and applied on a case by case basis.

The privacy commissioner of Canada and the courts provided some insight in 2004 about how PIPEDA will be interpreted. However, due to the subjectivity of the new privacy law and the evolving nature of modern business practices, PIPEDA's application continues to evolve at a rapid pace.

Many businesses in Manitoba, as well as in other provinces, faced privacy complaints in 2004. These complaints often resulted in businesses having to amend their practices, offer cash settlements to complainants and/or investigations by the privacy commissioner.

So far, the privacy commissioner has publicized nearly 300 PIPEDA-related findings, which in some cases have identified the names of businesses subject to investigation. Businesses subject to privacy complaints have faced massive costs in terms of negative media attention, settlement monies to complainants and lost productivity dealing with such complaints. Good privacy is good business -- bad privacy is expensive business.

PIPEDA governs businesses in Canada except in provinces which have enacted "substantially similar" provincial privacy laws. Currently, British Columbia, Alberta and Québec have such laws in force. In those provinces, businesses are regulated by their provincial privacy laws while PIPEDA continues to regulate out-of-province transfers of data.

The Manitoba government has been notably silent on the issue of a "substantially similar" provincial privacy law. As a result, many eyes continue to watch the provincial government to see if it will introduce a Made-in-Manitoba privacy law designed to be "substantially similar" to PIPEDA.

The privacy commissioner and provincial privacy commissioners expressed concern in 2004 regarding the implications of the U.S. anti-terrorism law, the Patriot Act. In fact, the privacy commissioner recently stated in a speech to the Canadian Access and Privacy Association that one of the issues of greatest concern to her is transborder data flow -- a common business practice in Canada that raises the spectre of U.S. law enforcement officials rummaging through your personal information without your knowledge or consent.

Looking back at 2004, we can forecast that the following will take place in 2005:

The number of privacy complaints will continue to rise. Currently, the privacy commissioner is receiving close to 100 inquiries every day.

Other provinces, perhaps Manitoba, may introduce "substantially similar" provincial privacy laws. This would have a significant impact on human resource management practices and also affect not-for-profit and charitable organizations.

The recently introduced "do-not-call" bill will be enacted by the federal government, paralleling a similar law recently implemented in the U.S. Such a law will allow us to remove our telephone numbers from lists used by telemarketers.

Ongoing issues such as video surveillance, identity theft, Internet and e-mail monitoring in the workplace, radio frequency identification tags (RFIDs), anti-terrorism laws and Internet SPAM will continue to force businesses to consider privacy in the PIPEDA era.

Looking back at 2004 and assessing the immediate issues on the privacy horizon, should make all businesses reflect upon whether their current business practices position themselves for privacy compliance or complaints. And, we should all prepare for more privacy debates, issues and developments in the year ahead.

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