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Privacy is not a fad, laws are misunderstood

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On the Cutting Edge / Brian Bowman

WHAT could the Virginia Tech massacre and International Privacy Awareness Week have in common? Both were in the news last week. Both highlight the reality that privacy laws are often misunderstood.

Last week the Virginia Tech Review Panel issued its report into the Virginia Tech University massacre that sadly left 33 students dead. The panel's report discussed the manner in which key individuals complied with the relevant privacy laws in the lead-up to the massacre.

University officials explained their failures to communicate with one another and with the parents of Virginia Tech killer, Seung-Hui Cho, by noting their belief that such communications were prohibited by privacy laws.

In reality, and as noted in the panel's report, privacy laws do not block the communication of personal information in cases where there is a public interest at stake. This fact has not muted condemnation of the privacy laws by critics over the last week.

Last Friday's *National Post* editorial entitled *Privacy turns deadly*, for example, implied that a "fad of privacy protection" somehow led to the deadly massacre.

In response, Anne Cavoukian, Ontario's Information and Privacy Commissioner, noted this last weekend that "the problem lies not with our privacy laws, but with those who fail to exercise their ability to disclose much needed information, when required".

Certainly, the legislative response to the terrorist attacks of 9/11 and the recent introduction of private-sector privacy legislation in Canada has heightened the awareness of privacy in business circles. However, to suggest that privacy is "a fad" is not accurate.

Canada's Privacy Act took effect on July 1, 1983. *The next day, Flashdance... What a Feeling* by Irene Cara was the No. 1 hit according to *Billboard Magazine*.

At the risk of offending readers who still listen to *Flashdance... What a Feeling*, I think that the "fad" of this era of music has long past. On the other hand, the Privacy Act remains front and centre in protecting the privacy of Canadians.

The *National Post* editorial does, however, highlight a legitimate concern that privacy laws are often misunderstood.

The newspaper points out that privacy laws "are vague, they are poorly understood by the people meant to implement them, and there is a strong tendency to 'default to the non-disclosure option' in cases of doubt". I agree. But it should not mean that the privacy laws themselves are responsible for the tragic deaths of 33 students.

That is why last week's International Privacy Awareness Week, which ran from Aug, 26 to Sept. 1, is so timely.

International Privacy Awareness Week is an initiative of some of the members of the Asia-Pacific privacy authorities. In support of their efforts, Jennifer Stoddard, Canada's Privacy Commissioner, issued a statement last week that revealed that "a majority of Canadian businesses (55 per cent) believe that customers are more concerned about privacy related issues today than in the past. In fact, many businesses (86 per cent) recognize that taking privacy seriously is just good business."

The ongoing efforts of the privacy commissioners across Canada to educate government and private-sector organizations about the various privacy laws have never been more important.

Privacy is not a fad. The privacy laws have been in place for decades and are here to stay.

The challenge for all organizations -- public and private sector -- is to understand that the privacy laws are not black and white. In most cases personal information should remain confidential while in other cases, like the one at Virginia Tech, key information should be communicated to third parties.

Brian Bowman is a business lawyer with the Information & Ideas Group of Pitblado LLP. He can be reached at (204) 956-3520 or bowman@pitblado.com.