



Privacy and Network Liability Insurance Seminar

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Canadian Legislation and Risk Environment

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- Growth and importance of IT systems and technology through 1980's and 1990's meant past legislation outdated.
- Data being collected, stored and transmitted in ways not contemplated when existing legislation enacted.
- Clear that new legislation was required to ensure its relevance to the modern world.
- Realisation of such led to a raft of legislation being enacted the world over, including.....

- Europe – EU Data Protection Act, overseeing various laws at Member State level including UK Data Protection Act.
- USA – Fair Credit Reporting Act (FCRA), Gramm Leach Bliley Act (GLB), Health Insurance Portability & Accountability Act (HIPAA), Children’s Online Privacy Protection Act (COPPA) and various State acts.
- Australia – Commonwealth Privacy Act, amended by Privacy Amendment (Private Sector) Act.
- Canada – Privacy Act and Personal Information Protection & Electronic Documents Act (PIPEDA)

- All seek to address the collection, storage and use of “personal information” by both Government agencies and the private sector.
- All seek to outline appropriate technical and organisational measures to protect such data.
- “Personal Information” usually described as any data that can be used to identify a living person, with focus upon financial and healthcare related data.
- All seek to outline the rights of individuals and potential sanctions for breaches of such legislation.

- Initial legislative efforts focused on rights of individuals to know what information is being stored by an organisation and to gain access to it but.....
- Little or no right to know when such information has been tampered with or leaked illegitimately to a third party as a result of a security or administrative breach.
- US has led the way in implementing breach notification laws, mandating that organisations inform those individuals potentially affected by such a breach (notification laws now in place in 40 states and counting)
- Following recent well publicised security breach events pressure being put on legislators in other jurisdictions to follow suit.

Public Sector

Privacy Acts(federal & provincial)

Criminal Code

Charter of Rights

Common Law

Collective Agreements

Private Sector

PIPEDA

Quebec Legislation

BC, Alta, Ontario Health
Privacy Act

Sector specific rules/regs

Criminal Code

Common law

Collective Agreements

- Accountability
- Identify Purposes
- Consent
- Limiting Collection
- Limiting use, disclosure & retention
- Accuracy
- Safeguards
- Openness
- Individual access
- Challenging compliance

- Negligent or intentional disclosure of personal information
- Stolen data used for fraud
- Criminal offences- new offences proposed Nov. 07
- Network & website disruptions due to malicious code or “glitches” (viruses, worms, Trojan horses)

- Electronic information theft
- Cyber extortion
- Disruption of operations/revenues-network outages shutting down operations
- New exposures?
 - Copyright reform threat to privacy- digital rights management
 - U.S. Patriot Act & conflict with Canadian law

- Liabilities:
 - Compensation to clients or employees
 - class actions
 - Third party subrogation costs
 - Contingent business interruption-downstream losses
 - Contractual obligations

- Regulatory/Law Enforcement
 - complaint to Privacy Commissioner/Federal Court
 - Recommendations/orders to change practices, damages(includes humiliation and no cap), fines/penalties(PIPEDA- \$100k)
 - Audit by Commissioner

- Criminal Code