

## **Private Sector Privacy: Maintaining a Proper Balance and Fostering Innovation**

Privacy and the protection of personal information are important issues for consumers and businesses alike. Good business privacy practices lead to consumer confidence and loyalty, which are imperative elements to business success.

The Canadian Chamber of Commerce has supported the federal government in its work to put in place private sector privacy legislation, *The Personal Information Protection and Electronic Documents Act* (herein "PIPEDA") based on the consumer- and industry-developed best practices embodied in the Canadian Standards Association Model Code for the Protection of Personal Information.

Since PIPEDA came into force, the Canadian Chamber has worked closely with our members, local chambers and boards of trade to ensure that businesses of all sizes understand their roles and responsibilities under the Act. The Chamber has provided its members with tools to comply with PIPEDA and to adopt best practices in the collection, use and disclosure of personal information.

The principles-based structure of PIPEDA allows for an effective and workable balance between the interests of protecting an individual's personal information and allowing for business to operate effectively. In addition, the flexibility built into PIPEDA is an important factor in allowing industry to respond to privacy issues in a meaningful way. The adoption of innovative technologies that enable personalized service to consumers can only happen and be facilitated with a principles-based system that is not mired in old ways of doing things. Finally, PIPEDA, as it currently exists has relatively low associated costs and a very efficient complaints mechanism.

Both business and the Privacy Commissioner's Office have demonstrated a solid, co-operative working relationship. This collaborative relationship and efficiency of complaint-resolution depends on the prevailing ombudsman model, by which the Commissioner seeks to *resolve* complaints rather than meting out punishments. The ombudsman model works and should not be altered unless there is clear evidence that the current system is broken. Any alteration of this scheme would transform the relationship from one of collaboration and cooperation to an adversarial one. In addition, the protections that would be required by the Charter to implement principles of natural justice and procedural fairness would lead to inefficiency and litigation.

The Canadian Chamber and its members believe that Canadian privacy legislation should continue to strike an appropriate balance between the privacy rights of individuals and the legitimate needs of businesses to collect and use customer information. The legislation has built-in flexibility that takes into account consumer expectations and permits business to meet those expectations through the delivery of innovative products and services that are tailored to the individual consumer. The flexibility built into PIPEDA has been very beneficial to consumers and business alike during the more than five years since its implementation.

The Canadian economy is increasingly a service economy and technology is a key enabler for increasing productivity and efficiency. The future of Canada's economy is rooted in innovation and technological developments that it can provide to Canadian consumers and to the world-wide marketplace. One of the most important enablers of efficiency and access to secure leading-edge IT services is cloud computing. Interprovincial and international barriers, in the name of protectionism couched as privacy rules, are a key barrier to the adoption of cloud computing. It would be ironic for Canadians to be denied greater IT security and privacy because of protectionism, masquerading as privacy concerns.

The Canadian Chamber believes that ensuring Canada has a consistent, national approach to the protection of privacy and personal information is still a crucial issue. Privacy legislation must be consistent to break-down interprovincial barriers and Canada should strongly encourage consistent privacy regulation among our major trading partners. In particular, Canada needs to be on guard against using privacy as a pretext to erect barriers. In addition, undue compliance burdens place Canadian

businesses at a disadvantage when competing on the world stage. To accomplish this, we urge the federal government to keep in mind the following three key principles:

**Balance of Interests:** Canadian privacy legislation should aim to strike the appropriate balance between the rights of individuals and legitimate needs of business to manage customer's information in order to provide services consumers expect. Both sets of interests are important and must be satisfied if public confidence and maximum compliance are to be attained.

**Harmonization:** A central goal of Canadian privacy legislation should be to harmonize provincial law with federal law. Privacy legislation in Canada should not create excessive compliance burdens for businesses and individuals, nor should it be the source of further internal or external trade barriers.

**Innovation:** Canada's regulatory framework, including privacy regulation, should seek to foster innovation by Canadian businesses and the making available of innovative products and services to Canadian consumers. Good privacy legislation should be an enabler of this innovation instead of a barrier.

**CSA Privacy Principles:** Canadian privacy legislation should continue to be based on the ten principles found in the Canadian Standards Association's Model Code for the Protection of Personal Information. These principles were the result of consensus-based, multi-stakeholder (business, consumer and government representatives) consultations.

## **Recommendations**

That the federal government:

1. Only make changes to PIPEDA if it is failing to meet the above key principles.
2. Continue to work with the provinces and our major trading partners to create a consistent framework for privacy, based on the principles of harmonization, the fair information practices set out in the CSA Model Code and balance.
3. Ensure the Privacy Commissioner continues her role of educating and informing firms of their privacy responsibilities and focusing on resolution of issues, rather than adopting an oversight role that is inherently adversarial and counter-productive.