

focus

on Technology



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NEW PRIVACY LEGISLATION IN ALBERTA

The federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") is scheduled to apply to virtually all private sector organizations in Canada on January 1, 2004 and will govern the collection, use and disclosure of "personal information". However, PIPEDA will not apply to provincially regulated organizations within provinces which have privacy legislation that is "substantially similar" to PIPEDA.

In the Spring sitting, the Alberta Legislature gave first reading to Bill 44, the *Personal Information Protection Act* ("PIPA") which is intended to displace PIPEDA in Alberta. PIPA would not apply to those organizations and persons subject to the *Freedom of Information and Protection of Privacy Act* or the *Health Information Act*.

The Alberta Department of Government Services has indicated that the responsible Minister intends to proceed with Bill 44 in the Fall sitting, where it is expected to be passed. However, it remains unclear whether PIPA will be considered substantially similar to PIPEDA. In May 2003, the then federal Privacy Commissioner advised that, in his view, PIPA was "gravely" deficient and was not "substantially similar" to PIPEDA. This, unfortunately, may leave Alberta businesses in the uncertain position of not knowing which privacy legislation will be applicable to them.

Regardless of whether PIPA or PIPEDA (or both) are applicable to private sector businesses and other organizations in Alberta, these entities will, for the first time, be required to comply with strict requirements and restrictions as to the collection, use and disclosure of "personal information". If not already in place, this will very likely require the adoption of a formal privacy policy and procedures and will entail a comprehensive review of business practices to ensure compliance.

If you have any questions on this topic please contact Dana Bissoondatt of our Edmonton office at (780) 423-7184.

DISASTER RECOVERY PLANNING - POST BLACKOUT

The power outage experienced on the East coast of North America this past August presents an excellent opportunity to review the existing disaster recovery procedures of your business. The purpose of this article is to provide some helpful tips on how to prepare your business for an unforeseen disaster.

Critical Functions. As part of your disaster recovery plan, determine the critical functions of your business which are required during a disaster event prior to the occurrence of such event and arrange for the backup and recovery of such functions with your service providers.

Access. Ensure that all procedures, manuals, contact names, numbers and service level agreements are updated frequently and available in hardcopy. This may seem like an obvious measure, however, it is easily overlooked given our reliance on technology.

Testing the Plan. At least annually review and test your disaster recovery procedures and facilities to ensure that all critical functions are operational during such testing.

Capacity of Disaster Recovery Centres. If you required the use of a disaster recovery centre during the blackout, you are now familiar with your service provider's capacity to accommodate several users at the same time. If your disaster recovery centre failed to accommodate your needs, consider retaining a new service provider, or if your business has several offices throughout Canada, it may be worthwhile and more cost effective to consider re-locating your disaster recovery centre to another province.

Service Level Agreements. Ensure that service level agreements clearly stipulate not only response times to problems but resolution times as well. Consider how well your service providers responded to a wide spread blackout. Were they accessible? Were they able to accommodate your post-blackout requirements, such as, for example, replacement parts, in a timely manner?

With the benefit of hindsight, you are now in a better position to evaluate your service provider's capabilities as well as the critical functions required by your business during a disaster event. We encourage you to take this opportunity to reflect and modify your disaster recovery plan, if necessary, as one never knows when the next disaster may occur.

If you have any questions, please contact Rachael Mendicino of our Toronto office at (416) 863-4569.

LEGISLATION INTRODUCED TO DEAL WITH SPAM

Unsolicited bulk email, or "spam", is quickly becoming a major problem for businesses. A recent study determined that spam accounts for approximately 52 percent of email received in Canada and is estimated to cost Canadian business \$1.0 billion per year.

Bill S23, the "Spam Control Act", received second reading in the Senate on September 24, 2003. This Act, if passed, will mandate the formation of an Internet Consumer Protection Council which all internet service providers would be required to join. The Act will also establish a "no spam list" and provides for a civil cause of action for sending excessive spam.

Until Bill S-23 becomes law there are a number of other legal options available to counter spam:

- File a complaint with the federal Privacy Commissioner under the *Personal Information Protection and Electronic Documents Act*. Anyone gathering personal information must have consent before using that information for another purpose or before passing the information on to a third party or be subject to fines and injunctions.
- Complain to the Consumer Marketing Association (the "CMA"). Members of the CMA are required to give solicited consumers the opportunity to opt-out of any further communication. Unfortunately, most spam does not originate from CMA members.
- Complain to the spammer's internet service provider ("ISP"). Most ISPs include anti-spam policies in their standard agreements that allow the ISP to terminate the account of any subscriber who engages in abusive email practices.

Given recent statistics, these measures seem to be ineffective at putting a stop to spam in general. While they may be effective at regulating legitimate marketers, the "rogue" spammers, who originate most spam, are nearly impossible to regulate. It may take a technical solution rather than a legal solution to put a stop to spam. In the meantime, those who are inundated with spam are best advised to obtain up to date filter software.

For more information on this topic please contact James Beeby of our Vancouver office at (604) 443-7129.

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This newsletter is designed to supply brief details of recent legislative or other initiatives of interest and some commentary. The summaries and comments provided are, of necessity, brief and should not be relied upon as legal advice. We encourage you to contact any member of this group at any of our offices for further details or advice in the context of a particular situation.