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## CANADA'S NEW PERSONAL INFORMATION LAWS

*Equifax is pleased to provide its members with this series of bulletins prepared by BLG describing highlights of the Personal Information Protection and Electronic Documents Act (Canada) ("Bill C-6") and similar provincial laws. These bulletins are meant to discuss some of the more common issues surrounding this legislation and how they might impact your business. They are not intended as legal advice on any particular facts; we urge you to consult your legal advisor as to any specific issues related to the needs of your organization in complying with these laws.*

### 1. What is this all about?

Unless they are exempt, organizations which collect, use or disclose personal information in the course of commercial activities will be required by Part 1 of Bill C-6 to comply with the obligations set out in the Model Code for the Protection of Personal Information, which is Schedule 1 to Bill C-6. "Federal" organizations must do the same with personal information about their employees.

### 2. Are you exempt?

Probably not. Part 1 does not apply at all to: a government institution to which the *Privacy Act* (Canada) applies (i.e., which is listed in the Schedule to that Act); an individual collecting, using or disclosing personal information solely for "personal or domestic purposes"; or an organization collecting, using or disclosing personal information solely for "journalistic, artistic or literary purposes".

While Part 1 uses the term "organization", this is a short form: it includes an association, a partnership, a person (which under the *Interpretation Act* includes a corporation) and a trade union. Even a single individual (such as a self-employed professional or consultant) can be an "organization". A parent company and its subsidiary are separate organizations.

### 3. When will this apply to you?

Even if you are not covered by one of the three exemptions, there is a three-year delay (until January 1, 2004) for an organization that collects, uses or discloses information within a province, unless:

- the organization does so in connection with the operation of a "federal work, undertaking or business"; or
- the organization "discloses" the information outside the province "for consideration".

### 4. Do you operate a "federal work, undertaking or business"?

The definition of this term in Part 1 is virtually identical to the definition of the same term in the *Canada Labour Code*: if you are now governed by that Code in your relations with employees because you fall within that definition, then you will also be "federal" for purposes of Part 1.

### 5. Do you disclose personal information outside the province for consideration?

"Disclosure" refers to a transfer to another organization. Part 1 does not define when disclosure is for "consideration"; clearly, this would apply if an organization sells information to someone else across a provincial border. While some have suggested that it might apply to any disclosure that was part of a

broader arrangement under which the organization received some benefit, the office of the Privacy Commissioner is taking the approach that this exception applies only where organizations lease, sell or exchange mailing lists or other personal information, when the information itself is the subject of the transaction and the consideration is for the information.

## 6. Can you relax until 2004?

NO! Even if your organization will not be subject to the new federal Act on January 1, 2001, you should start planning now, for a number of reasons.

First, Part 1 provides that if a province passes legislation that is “substantially similar” to Part 1 (as Québec has had since 1994), then the federal Cabinet can exempt an organization or activity (or classes of them) from the application of Part 1 within that province. Other provinces are likely to enact such legislation to avoid having Part 1 apply to organizations within their borders, and that legislation may come into force before January 1, 2004. Ontario has already released a consultation paper in this area, and is likely to introduce legislation sooner rather than later.

Second, Part 1 does not contain any “grandfathering” provision (and provincial legislation may not do so either). This means that when Part 1 (or provincial legislation) does apply to you, it will require you to have the consent of the individual to “use” or “disclose” personal information you hold at that time, even if it was collected before the legislation applied to you. In other words, without consent it will be legal for you to have the information (because consent was not required when you originally collected it), but it will not be legal for you to make any use of it, or to disclose it to anyone else.

Third, even if you do not operate a “federal work, undertaking or business” or disclose personal information across a provincial border for consideration, if you do business with an organization that does, you may have to comply indirectly. For example, if a “federal” organization discloses personal information to you, the new rules will require it to obtain a contractual commitment from you to observe those rules.

Finally, getting ready now may give you a competitive edge (concerns about privacy rank high with Canadian consumers), and will not be wasted effort even if you end up being governed by provincial privacy legislation. While the details of such legislation may differ from Part 1, particularly in such matters as the pattern of exemptions and the enforcement provisions, in order to qualify for a general provincial exemption from Part 1 the legislation will have to be “substantially similar” to Part 1, and we therefore expect that the same basic principles will apply.

You should therefore begin planning for this kind of legislation, and in particular should be incorporating consent procedures into your information-gathering practices, so that there will be no delay in your being able to use and disclose information when either federal or provincial legislation applies to you.

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Our bulletin next month will discuss the requirements of Bill C-6, and in particular what organizations have to do, and how. In the meantime, if you would like to know more about this legislation in general, or for advice on compliance in any particular situation (including, in the case of Québec, its existing personal information law), please do not hesitate to call or write to the indicated contact in the most convenient of the BLG offices shown below:

Vancouver: Roger McConchie, (604) 640-4080, [rmconchie@blgcanada.com](mailto:rmconchie@blgcanada.com)

Calgary: Michael Massicotte, (403) 232-9602, [mmassicotte@blgcanada.com](mailto:mmassicotte@blgcanada.com)

Toronto: Brian Keith, (416) 367-6217, [bcketh@blgcanada.com](mailto:bcketh@blgcanada.com)

Ottawa: Peter Doody, (613) 787-3510, [pdoody@blgcanada.com](mailto:pdoody@blgcanada.com)

Montreal Thomas Davis, (514) 954-3133, [tdavis@blgcanada.com](mailto:tdavis@blgcanada.com)

**PIPEDA Series: Bulletin 1, December, 2000**