



ISSUE: Review of the Personal Information Protection and Electronic Documents Act

Last Reviewed: September 5th, 2008

SUMMARY:

In 2006, the federal government commenced its statutory review of Part 1 of the Personal Information Protection and Electronics Documents Act (PIPEDA or the Act). Consultations were initiated by the Office of the Privacy Commissioner, the House of Commons Standing Committee on Access to Information, Privacy and Ethics and Industry Canada. Canadian Central participated in all stages of the consultation process. .

In its submissions, Canadian Central stressed that any amendments should focus on a greater harmonization between federal and provincial privacy legislation. CUCC highlighted the advantages of Alberta and British Columbia's legislative approach which permits the sharing of information between financial institutions when the objective of such sharing is fraud prevention.

CURRENT STATUS:

September 2008:

The statutory review of PIPEDA is now in its final stages. In October 2007, the federal government tabled its response to the Fourth Report of the Standing Committee on Access to Information, Privacy and Ethics on the Statutory Review of PIPEDA. The government's report contained 25 recommendations for how PIPEDA could be fine-tuned to ensure that the Act continued to achieve this objective. One such recommendation was the introduction of a legislative requirement for data breach reporting and notification.

In June 2008, Industry Canada released a Model for Data Breach Reporting and Notification under PIPEDA. The document was presented solely as a working model to provide additional background to assist in framing and considering the proposed legislative amendments to PIPEDA.

Industry Canada also announced in June their intention of tabling in Parliament proposed amendments to PIPEDA. Canadian Central will meet with Industry Canada representatives to discuss the system's perspective on proposed amendments to PIPEDA.

DESCRIPTION OF ISSUE:

PIPEDA which came into force on January 1, 2001 sets rules for the collection, use and disclosure of personal information in the course of commercial activity in Canada.

Initially, PIPEDA applied only to personal information about customers or employees that was collected, used or disclosed in the course of commercial activities by the federally regulated private sector organizations such as banks, airlines, and telecommunications companies. The Act, or provincial legislation deemed “substantially similar”, now applies to personal information collected, used or disclosed by the retail sector, publishing companies, the service industry, manufacturers and other provincially regulated organizations. The Act does not apply to the personal information of employees of these provincially regulated organizations.

In July 2006, the Office of the Privacy Commissioner released in June 2006 a discussion paper in light of the upcoming review of PIPEDA. A link to Canadian Central's submission to the Privacy Commissioner can be found below.

As mandated by the Act, the House of Commons Standing Committee on Access to Information, Privacy and Ethics undertook in 2006 a comprehensive review of Part I of the Act (Protection of Personal Information in the Private Sector) to determine whether any aspects of the legislation need to be amended. Canadian Central appeared before the Committee as well as presented a detailed submission outlining the system's perspective on the evolution of PIPEDA.

In May 2007 the House of Commons Standing Committee on Access to Information, Privacy and Ethics tabled its report on its study of PIPEDA. The report suggested that future changes should be in the manner of “fine-tuning” and not be an overhaul of the Act. The report also recommended that the Federal Government seek greater harmonization with the provincial Acts found in British Columbia and Alberta.

In October 2007, the federal government tabled in Parliament its response to the Committee's Report. The government agreed with the majority of the Committee's recommendations, and in particular with the fact that the Act is working well and not in need of significant changes. However, the government stated that specific amendments may be warranted and proceeded with a further consultation. Canadian Central again participated in the consultation process and provided to Industry Canada further feedback to possible amendments to PIPEDA in areas of interest to credit unions.

As a result of these recommendations, held an industry wide meeting with representatives from the financial sector to discuss the inclusion of breach notification provisions in the PIPEDA. CUCC participated in the meeting. In June 2008 Industry Canada released a Model for Data Breach Reporting and Notification under PIPEDA. The document was presented as a working model to provide additional background to assist in framing and considering the proposed legislative amendments to PIPEDA.

Industry Canada also announced in June their intention of tabling in Parliament proposed amendments to PIPEDA.

SIGNIFICANCE FOR CREDIT UNIONS:

The Parliamentary review of PIPEDA is important to the credit union system as entities within the system which are federally regulated financial institutions, such as Credit Union Central of Canada and Concentra Financial fall directly under PIPEDA.

Credit unions operating in provinces that have not yet introduced substantially similar privacy legislation (ie. Ontario (for non health related information), Saskatchewan, Manitoba) are also subject to PIPEDA. Furthermore, the evolution of PIPEDA will likely have an impact on all provincial privacy legislation that, in turn, will directly impact credit unions.

The current review of Act is an opportunity to make PIPEDA more “user friendly” from an operational standpoint, more consistent with similar legislation found in Alberta and British Columbia and more protective of the personal

information of Canadians. To obtain these desired ends it is important that the credit union system work with Parliament and the Federal Government to amend the Act in order to make it more effective and efficient.

CANADIAN CENTRAL POSITION:

Canadian Central participated in several consultations pertaining to PIPEDA's statutory review. Links to Canadian Centrals' submissions are provided below.

CUCC is in general pleased with the measured manner with which the Parliament and the Federal Government are approaching possible amendments to the legislation and the fact that efforts are being made to harmonize PIPEDA with similar legislation found in Alberta and British Columbia. In its submissions, CUCC commented on several technical points but mainly focused on the following two issues.

1. Ensuring that members of the Credit Union Office for Crime Prevention and Investigation (CUOCPI) have access to the Bank Crime Prevention and Investigation Office (BCPIO) Grid Network.

The bank operated Grid Network is a controlled and managed sharing of information which allows members of the BCPIO to assess risk and prevent fraud losses. Such access could be obtained for credit unions by amending PIPEDA to permit the sharing of personal information when the objective of such sharing is the prevention of fraud. Canadian Central recommended amending PIPEDA so that it mirrors the Alberta and British Columbia approaches which define the term "investigation" and allows collection, use and disclosure without consent for that purpose. This later approach does away with the need for designated investigative bodies.

That being said, if the Federal Government decides to retain the designation process Canadian Central recommended that the Government of Canada amend PIPEDA to allow designated bodies performing similar functions to share information without consent in order to facilitate fraud detection and prevention. To that end, the Government of Canada should define the term "investigation" in PIPEDA to specially include fraud prevention activities.

Please see the Issue Paper on the Crime Prevention Office and Access to the Grid Network for more information (link is provided below).

2. Breach notification

Canadian Central believes that it is unnecessary for the government to legislate in this area at this time. However, in response to Industry Canada's support of legislative requirements for data breaches, CUCC provided a number of recommendations with respect to the implementation of legislative requirement for notification of data breaches. Canadian Central would support the creation of clauses within PIPEDA that mandate notification in defined circumstances.

Canadian Central will be meeting with Industry Canada representatives to discuss the upcoming amendment to the PIPEDA as well as the issue of access to the bank crime prevention and investigation office.

CONTACTS:

Canadian Central Committee overseeing issue: Legislative Affairs Committee

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RELATED DOCUMENTS:

Government issued documents:

Copy of the Personal Information Protection and Electronics Documents Act:
<http://laws.justice.gc.ca/en/showtdm/cs/P-8.6>

Fourth report of the Standing Committee on Access to Information, Privacy and Ethics on the Statutory Review of PIPEDA: <http://cmte.parl.gc.ca/Content/HOC/committee/391/ethi/reports/rp2891060/ethirp04/ethirp04-e.pdf>

Government response to the fourth report of the Standing Committee on Access to Information, Privacy and Ethics on the Statutory Review of PIPEDA: [http://www.ic.gc.ca/epic/site/ic1.nsf/vwapj/ETHI-e.pdf/\\$file/ETHI-e.pdf](http://www.ic.gc.ca/epic/site/ic1.nsf/vwapj/ETHI-e.pdf/$file/ETHI-e.pdf)

A Model for Data Breach Reporting and Notification under the Personal Information Protection and Electronic Documents Act:

Canadian Central submissions:

Credit Union Central of Canada Submission to the House of Commons standing Committee on Access to Information, Privacy and Ethics on the Statutory Review of Personal information Protection and Electronic Documents Act (PIPEDA): http://www.cucentral.ca/PIPEDA_Review_0107

Credit Union Central of Canada Submission in Response to the Privacy Commissioner of Canada, PIPEDA Review Discussion Document:
http://www.cucentral.ca/SEPTEMBER_2006

Credit Union response to Industry Canada on the implementation of the Government Response to the Committee's report: http://www.cucentral.ca/SEPTEMBER_2006

Issue Paper on the Crime Prevention Office and Access to the Grid Network:
http://www.cucentral.ca/BCP_25aug08