

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

**ISSUE:** Since 2001 the Federal Government's *Personal Information Protection and Electronic Documents Act* (PIPEDA) has established ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. The law also gives individuals the right to access and request correction of the personal information these organizations may have collected about them.

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 accordance with Section 29 of the PIPEDA the House of Commons Standing Committee on Access to Information, Privacy and Ethics has undertaken a comprehensive review of Part I of the Act to determine whether any aspects of the legislation need to be amended.

**POTENTIAL IMPACT ON CREDIT UNIONS:** The Parliamentary review of PIPEDA is important to the credit union system since the activities of some parts of the system, including Credit Union Central of Canada, fall directly under PIPEDA. Credit unions are also directly regulated by PIPEDA in provinces that have not introduced substantially similar privacy legislation. Furthermore, the evolution of PIPEDA will likely have an impact on 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 was one of the 67 witnesses that the Standing Committee on Access to Information, Privacy and Ethics heard from during the review. Canadian Central provided the Committee with a detailed submission outlining a credit union perspective on the evolution of PIPEDA (a link to Canadian Central's submission is provided below). Canadian Central's submission was developed in consultation with the credit union system's national Legislative Affairs Committee.

The submission recommended that the Federal Government proceed cautiously with changes to PIPEDA in light of the fact that it is probably too early to judge the real impact of the legislation. The submission also suggested that, where possible, proposed changes should work towards greater harmonization between federal and provincial privacy legislation and that consideration should also be given to select the easiest and most cost-effective approach to achieve desired objectives.

The Canadian Central submission did make a number of specific recommendations to the Committee that could result in amendments to the Act including:

- a recommendation that the existing ombudsman model remain in place;

- a recommendation that PIPEDA be amended to include a definition of “investigation” that specifically includes “fraud prevention” in the definition;
- a recommendation that PIPEDA be amended to allow designated investigative bodies performing similar functions to share information with one another;
- a recommendation that the Federal Government strengthen the Criminal Code in order to deter attempts at identity theft;
- a recommendation that the Act be amended to make it easier to disclose information in the event of a business purchase, merger or mortgage securitization.

Canadian Central’s submission also suggested support - in principle - for the concept of a “duty to notify” individuals in the event of security breaches where personal information may be compromised. Any such a “duty to notify” must have reasonable thresholds established before notifications are required

**ISSUE STATUS/OUTLOOK:** On May 2, 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 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.

Specific Committee recommendations include:

- a recommendation that the Privacy Commissioner remain an ombudsman role rather than one with order-making powers;
- a recommendation that the Federal Government embed a “duty to notify” in the PIPEDA;
- a recommendation that business contact information be excluded from PIPEDA’s privacy provisions and thus exclude business emails and fax numbers from the purview of the Act;
- a recommendation that a provision be included in the Act permitting organization to collect, use and disclose personal information without consent for purposes;
- a recommendation that PIPEDA be amended to replace the “investigative bodies” designation process with a definition of “investigation” as found in the Alberta and B.C. legislation and thus allowing collection, use and disclosure for that purpose.

The Standing Committee has requested a comprehensive response from the Federal Government to the Committee report. Government officials are currently considering whether the response will take the form of proposed legislation or as a document seeking further consultation with the public.

#### **RELATED DOCUMENTS:**

*Statutory Review of the Personal Information Protection and Electronic Documents Act: Fourth Report of the Standing Committee on Access to Information, Privacy and Ethics:*

<http://cmte.parl.gc.ca/Content/HOC/committee/391/ethi/reports/rp2891060/ethirp04/ethirp04-e.pdf>

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](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](http://www.cucentral.ca/SEPTEMBER_2006)