



**Submission in Response to the Privacy Commissioner of  
Canada PIPEDA Review Discussion Document**

**CREDIT UNION CENTRAL OF CANADA**

- September 2006 -

Credit Union Central of Canada (Canadian Central)<sup>12</sup> is writing in response to the federal Privacy Commissioner's "PIPEDA Review Discussion Document" released in July 2006. It is our understanding that the discussion document will inform the upcoming Parliamentary review of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) and possibly result in legislative amendments to the Act.

The evolution of PIPEDA is of great interest to the credit union system since the activities of some parts of our system fall directly under PIPEDA. Credit unions are directly impacted in the provinces that have not introduced substantially similar privacy legislation. Furthermore, Canadian Central recognizes that the evolution of PIPEDA will likely have a strong impact on provincial privacy legislation that, in turn, will directly impact credit unions. Canadian Central appreciates this opportunity to respond to the questions contained in the discussion document and we hope our comments are of assistance to Office of the Privacy Commissioner.

The credit union system recognizes that our members/customers set a high priority on the protection of their personal information and credit unions have a long standing commitment to protecting the privacy of our members. In fact, Canadian Central was a contributing member of the Canadian Standards Association (CSA) Technical Committee on Privacy that worked on drafting the "Model Code for the Protection of Personal Information" (Model Code). The model code eventually formed the basis for PIPEDA.

Canadian credit unions work to prevent their member's personal information from being used in a manner that has not been consented to. Credit unions also endeavor to prevent such information from being used in any kind of financial crime such as identity theft, deceptive telemarketing and debit and credit card theft or money laundering. This commitment to member privacy is enhanced through employee training programs, strong internal policies and procedures, member awareness programs and through continuing cooperation with provincial and federal governments and law enforcement agencies.

## **GENERAL**

In general, the credit union system is of the view that PIPEDA serves Canadians well in protecting personal information collected, used and disclosed by private sector organizations. The Act and similar provincial legislation has provided business organizations – including credit unions – with a practical framework to formalize policies and procedures aimed at protecting the privacy of their members/customers.

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<sup>12</sup> Canadian Central is the national trade association and central finance facility for the credit union system in Canada. It is regulated under the federal *Cooperative Credit Associations Act* and provides system representation for its owner associations in national organizations such as the Canadian Payments Association and Interac. It also provides the system with national representation to the Federal Government. Currently there are 506 credit unions in the Canadian Central affiliated credit union system serving approximately 4.9 million Canadians. The credit union system employs over 24,000 people and an additional, 4,200 Canadians participate as volunteers on credit union boards across Canada.

Canadian Central recognizes that there may be a few areas where amendments to the Act can provide consumer benefits. However, Canadian Central recommends that the Federal Government proceed cautiously with changes to the Act since Canada is only two years into the full application of *PIPEDA* and it is likely too early to properly judge the effectiveness or shortcomings of the current legislation.

That being said, if changes to *PIPEDA* are to be recommended, we are of the view that, beyond addressing real shortcomings in the legislation, any changes should work toward greater harmonization between federal and provincial privacy legislation. Consideration should also be given to select the easiest and most cost effective approach to achieve the objective of each change.

The following section will outline Canadian Central's perspective on specific questions outlined in the Privacy Commissioner's discussion document. The responses were developed in consultation with credit union system representatives with experience in the area of privacy protection.

## **RESPONSES TO SPECIFIC QUESTIONS**

### **Re. Commissioner's Powers**

#### **Question 3.1**

*Is the existing ombudsman model effective or ineffective at protecting the privacy rights of individuals and addressing the legitimate interest in personal information of organizations engaged in commercial activities? In what ways? What, if anything needs to be changed?*

#### **Comments:**

Canadian Central believes that the existing ombudsman model has been effective in protecting the privacy rights of individuals and garnering the compliance of organizations that are subject to complaints. The current ability to publish the names of offending organizations has been effective in inspiring compliance as most organizations value their reputation. Once again, it is important to consider that Canada is only two years into the full application of *PIPEDA* and that as consumer and business awareness of privacy issues grows the effectiveness of the legislation will likely also expand.

### **Re. Consent**

#### **Question 3 a. 1.**

*Should *PIPEDA* be amended to remove the consent requirements in relation to personal employee information? If so, is the "reasonable person" test an appropriate alternative?*

**Comments:**

Canadian Central believes that the employee consent requirements currently found in PIPEDA are working well to protect personal employee information and thus do not require amendment. However, if the Federal Government desires to amend PIPEDA to remove such requirements, the “reasonable person” approach found in the Alberta and British Columbia legislation should be appropriate with respect to the use of employee information.

**Question 3 a. 2.**

*Should employee consent be addressed by a specific exception in Section 7 for the employment relationship, subject to conditions? If so, what should be the conditions?*

**Comments:**

Canadian Central does not believe it is necessary to include additional exceptions under Section 7.

**Question 3 a. 3.**

*Should the collection of some types of employee data be prohibited altogether? If so, what would be the criteria for prohibiting collection?*

**Comments:**

Canadian Central considers the current framework to be working well to protect employee privacy rights. There does not appear to be a need for blanket prohibitions in regard to the collection of specific types of employee data.

## **Re. Collection and Disclosure for Law Enforcement and National Security Purposes**

### **Question 3 b. 1.**

*Is it appropriate for private sector organizations to act as personal information collection agents for the government? Is it appropriate for records to be created solely for the purpose of providing them to the government?*

#### **Comments:**

Canadian Central strongly opposes the idea that private organizations can be deputized to act as data collection agents for the state. A trend in this direction can be seen in the financial transaction reporting requirements found in recent money laundering and terrorist financing legislation. Canadian Central considers current reporting requirements to be adequate and cannot support the addition of further information gathering and reporting requirements.

### **Question 3. b. 2.**

*Is the authority to collect personal information without the knowledge or consent of the individual in Section (7(1)(e)) broader than necessary? If so, how might the provision be amended to limit the authority for organizations subject to PIPEDA to collect information?*

#### **Comments:**

Canadian Central believes that the current framework is adequate and appropriate.

## **Re. Investigative Bodies**

### **Question 3 c. 1.**

*Should provisions in PIPEDA relating to investigative bodies be changed? If so, in what way?*

#### **Comments:**

Canadian Central supports efforts to simplify the process associated with designating investigative bodies, however, the benefits of the existing process should also be considered. In particular, the current regulatory approach results in the generation of a list of approved “investigative bodies” with which information can legally be shared and this provides stakeholders with a greater degree of certainty and predictability when sharing information.

Canadian Central supports the recommendation that there be a definition for “investigation” within the legislation – especially one that will include “fraud prevention” activities. It may also be necessary to provide some guidance on the meaning of the phrase “breach of an agreement” since the interpretation of this phrase could be quite broad for the purposes of an investigation.

Canadian Central also believes that it would be beneficial if designated investigative bodies performing similar functions were allowed to share information with one another. For example, the Credit Union Office for Crime Prevention and Investigation should be able to share information with other investigative bodies such as the Bank Crime Prevention and Investigation Office for the purposes of fraud prevention. Along with this, the current framework should be clarified to identify when and how information sharing should take place between investigative bodies. Specifically, what is an appropriate response to a request for information from another investigative body? This guidance may not have to be provided through legislation or regulation but rather through the issuance of guidelines.

### **Question 3 c. 2.**

*Whether the provisions are changed or not, can the transparency and accountability relating to the activities of investigative bodies be further enhanced? What measures would accomplish this?*

#### **Comments:**

Once again, the effectiveness of PIPEDA would be enhanced if guidance is provided on when and how information can be shared among investigative bodies. Such guidance may not have to be embedded in legislation or regulation but might take the form of a guideline issued by the Office of the Privacy Commissioner.

### **Re. Attempted Collection without Consent**

#### **Question 3 d. 1.**

*Should PIPEDA be amended to regulate willful attempts to collect personal information without consent?*

#### **Comments:**

Canadian Central suggests that this problem be best addressed by strengthening the Criminal Code in regard to issues like identity theft. A strengthened Criminal Code in this area would act as more of a deterrent to individuals bent on stealing personal information for criminal purposes or with criminal intent.

## **Re. Exceptions to consent requirements**

### **Question 3 e. 1.**

*Are the circumstances beyond those now identified in Section 7 of PIPEDA where collection, use, or disclosure without knowledge or consent should be permitted for the legitimate benefit of an individual or his or her family or the greater public? If so, what are those circumstances?*

#### **Comments:**

Canadian Central believes that the current framework is adequate to deal with most situations and does not support changes to PIPEDA.

## **Re. Blanket Consent**

### **Question 3 f. 1.**

*Should PIPEDA be amended to deal with “blanket consent”? If so, what should be the nature of those amendments?*

#### **Comments:**

Canadian Central believes that no changes are necessary to the legislation to deal with blanket consent.

## **Re. Disclosure of Personal Information before Transfer of Business**

### **Question 3 f. 2.**

*Should PIPEDA be amended to allow the transfer of personal information from an organization to a prospective purchaser or business partner?*

#### **Comments:**

Canadian Central supports an amendment to consent requirements to permit the disclosing of information in the event of a business purchase, merger or mortgage securitization. However, such disclosures should only take place when there are adequate confidentiality agreements in place. Furthermore, such agreements should include provisions to ensure that information is either returned or destroyed if a transaction is not completed.

## **Re. Duty to Notify**

### **Question:**

*Should organizations that suffer loss or theft of personal information have a legal duty to report the loss or theft? If so, under what conditions, and to whom should they report?*

### **Comments:**

Canadian Central considers the current framework to be adequate and appropriate, however, if the Government of Canada determines that further legislation is required in this area there should be thresholds established before a notification is required. For example, there should have been a determination that there is a clear “risk of fraud” before a notification is considered necessary.

Canadian Central would be pleased to participate in future consultations aimed at establishing such notification thresholds.

## **Re. Transborder Flows of Personal Information**

### **Question:**

*Does the current accountability principle in PIPEDA sufficiently protect personal information when it crosses borders?*

### **Comments:**

Canadian Central acknowledges growing concerns about the protection of personal information when it crosses international borders in, for example, situations where the management of information is outsourced. Canadian Central welcomes proposals that seek to deal with such situations; however, when attempting to establish audit, inspection and access rules in regard to outsourcers, the Federal Government should be sensitive to the difficulties small businesses may face when trying to deal with large outsourcers. For example, small institutions can have difficulties in making contractual demands on large outsourcers and suppliers. It is possible that large outsourcers will simply refuse contracts with small institutions if they are expected to comply with a plethora of accountability requirements.

## **Re. Sharing Information with other Data Protection Authorities**

### **Question:**

*Should PIPEDA be amended to explicitly permit the Privacy Commissioner to share information and cooperate in investigations with counterparts in other countries and other provincial counterparts in provinces that do not have “substantially similar” legislation?*

**Comments:**

Canadian Central considers existing channels allowing for the flow of information for investigative purposes between countries to be adequate thus we see no need to change PIPEDA in this manner.

**CONCLUSION**

To conclude this submission, Credit Union Central of Canada wishes to express its appreciation for the opportunity to provide comments on the PIPEDA discussion document. Please feel free to contact Rob Martin, Senior Policy Advisor in the Government Relations Department at Credit Union Central of Canada (613-238-6747 ext. 327) if you have any further questions.