



September 26, 2006

Office of the Privacy Commissioner of Canada
PIPEDA Review
112 Kent Street
Place de Ville
Tower B, 3rd Floor
Ottawa ON K1A 1H3

Submitted by Email: consultation@privcom.gc.ca

Dear Commissioner:

Independent Financial Brokers of Canada (“IFB”) is pleased to provide the following comments on the *Personal Information Protection and Electronic Documents Act (PIPEDA) Review Discussion Document* for your consideration.

To lend context to our remarks, IFB is a professional, not-for-profit association representing approximately 4,000 financial advisors across Canada. The majority of these advisors are licensed to sell life/health insurance, mutual fund and securities products. Our members must be ‘independent’ in that they must be free to offer a range of products from a variety of providers. They act as both a sales intermediary and advocate between insurance and financial companies and their clients. Most are small business people actively engaged in their local communities. In the course of their business activities financial advisors, like our members, are required to manage a great deal of personal, often highly sensitive information.

Parliament’s stated objective in PIPEDA – to recognize the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for reasonable purposes – is a laudable goal, and we are fully in support of such an endeavour. Indeed, IFB has provided ongoing education to its members and others in the financial services industry on the subject of provincial and federal privacy legislation. These sessions by lawyers and government officials highly

conversant on this topic provide licensed financial advisors with the knowledge they need to serve their clients in a professional and knowledgeable way and in keeping with the changing regulatory environment.

Our comments, therefore, will be directed at how PIPEDA could be improved to assist businesses, like those of our members, understand their obligations and to reduce some of the confusion which we believe currently exists.

In reviewing PIPEDA, we urge Parliament to resist the urge to ‘shore up’ real or perceived deficiencies in the existing legislation by adding additional layers of regulation. In general, IFB finds the privacy legislation adopted in B.C. and Alberta (which we will refer to collectively as the ‘Western model’) to be easier to comprehend and often more inclusive.

Specifically, we believe that the Western model has effectively addressed many of the areas outlined in the *Review Discussion Document*. It is our view that many of the problems with PIPEDA are deficiencies of language rather than intent.

In the Western model some terms are more clearly defined, and the legislation is therefore more easily understood and, by extension, more easily complied with. For example, in the Western model:

- “Personal Information” includes “employee personal information” and specifically excludes “contact information” and “work product information”.
- “Contact Information” is defined in terms of what it includes, rather than the list of exclusions contained in PIPEDA. Business email address and business fax number are specifically defined as business information.
- “Work Product Information” is clearly defined and a distinction is drawn between ‘work product information’ and ‘business information’.
- “Business Address” is specifically referenced in the Western model and permits sharing this information as long as it is for the purpose of contacting the individual in his or her role as an employee.

Consent

Again, we look to the Western model, where forms of consent are clearly defined and “personal information” and “personal employee information” are considered separately. We believe that many of the difficulties arising from PIPEDA could be remedied by the adoption of a clear, ‘plain language’ approach to terms and definitions. This is particularly true in the case of employer/employee relationships where the rights of the employee and the rights of the business owner must be balanced.

It is our view that the “reasonable purpose” test is an appropriate alternative to the existing consent requirements in relation to personal employee information, and that a business should be relied upon to make sound decisions that are in the best interest of both its business and its employee.

Investigative Bodies

We support the Western model, which provides a definition of the term “investigation” rather than defining “investigative body”.

Blanket Consent

IFB has provided its members with guidance in crafting an effective Privacy Policy for their own practices. Because of the nature of the services IFB members provide to their clients, they are often custodians of large amounts of highly sensitive personal, medical, and financial information. In the course of transacting business with their clients, IFB members are obliged to complete and present to their clients as many as a dozen different documents relating to privacy, compensation disclosure, risk tolerance, and more.

We believe that ‘blanket consent’ is a valuable tool in advisor/client relationships where a wide variety of information is voluntarily disclosed to a trusted financial professional over many years.

Disclosure of Personal Information before Transfer of Businesses

IFB members are small businesspeople for whom a client base – also called their ‘block’ of business – is their main asset. The Western model permits disclosure of personal information for the purposes of conducting due diligence reviews and the transfer of personal information on closing provided that there is a stringent non-disclosure agreement in place between the seller and prospective buyer. The Western model also includes a safety provision governing the use and treatment of this information in the event the transaction does not proceed.

We believe that this model provides the consumer with adequate protection, while allowing business to continue unimpeded.

Duty to Notify

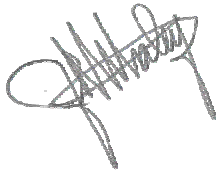
IFB does not support the introduction of a legislated ‘duty to report’ requirement for loss or breach of information. As is noted in the *Discussion Document*, security breaches can take many forms and can be of differing levels of severity depending on the situation. IFB believes that, in such an event, the decision should be left to the business to determine the most appropriate course of action.

Transborder Flows of Personal Information

Under the current rules, PIPEDA applies to all inter-provincial and cross-border commercial activities that involve the transfer of personal information. IFB submits that when this activity takes place between two provinces which have received exemptions for substantially similar legislation, that the ‘home’ province’s legislation should govern. For example, a business in B.C. wishes to acquire a business in Alberta. We propose that the rules governing the use of any personal information, in a case like this, would be subject to B.C.’s PIPA. This would simplify the process for all parties while still ensuring the protection of such information.

We trust our comments will be of assistance to you and we look forward to participating further in the consultation period related to the parliamentary review of this legislation. It is our view that PIPEDA would be a stronger and more effective tool for safeguarding the personal information of Canadians if it were crafted as a short, clear statute based on the Western model.

Yours truly,

A handwritten signature in black ink, appearing to read "John Whaley". The signature is stylized with a large initial "J" and a long, sweeping underline.

John Whaley
Executive Director