

Notebook on Ethics, Legal Issues and Standards for Counsellors
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Personal information Protection and Electronics Documents Act (PIPEDA)

What is PIPEDA?

Federal legislation entitled, Personal Information Protection and Electronics Documents Act (PIPEDA), came into full effect on January 1, 2004. It was implemented in two stages. In 2011 it took effect for federally regulated organizations, but it now applies to all federal government departments and agencies and to all commercial activity in Canada. This Act is administered by the federal Privacy Commissioner, who has the authority to make public statements on violations of the Act and/or refer serious cases to Federal Court. Virtually all provinces in Canada have some type of privacy protection and right to information legislation. The federal Privacy Commissioner may exempt organizations and activities in those provinces if their privacy laws are substantially similar to the PIPEDA. So, even if a province is exempted obligations similar to those outlined here would still apply but under provincial legislation.

What does PIPEDA Say?

It “sets out the ground rules for the collection, use and disclosure of personal information in the course of commercial activities...(and) balances an individual’s right to privacy with an organization’s needs for personal information for legitimate business purposes.”

“Organizations covered by the Act must obtain an individual’s consent when they collect, use or disclose the individual’s personal information. The individual has a right to access personal information held by an organization and to challenge its accuracy, if need be. Personal information can only be used for the purposes for which it was collected. If an organization is going to use it for another purpose, consent must be obtained again.”

“Individuals should also be assured that their information will be protected by specific safeguards, including measures such as locked cabinets, computer passwords or encryption.”

The types of personal information covered by the new rules include:

age, name, ID numbers, income, ethnic origin or blood type;

opinions, evaluations, comments, social status or disciplinary actions;

employee files, credit records, loan records, medical records, existence of a dispute between a consumer and a merchant, intentions (for example, to acquire goods or services, or to change jobs.)

Source: *Privacy Commissioner of Canada*, <http://www.privcom.gc.ca>

How Does PIPEDA Apply to Counsellors?

The legislation applies to all counsellors working in private practice. This is so because it applies to all commercial activity but not to activities in the public domain. For example, it does not apply to public educational institutions, hospitals, local governments and so forth.

What Must Counsellors in Private Practice Do to Comply with PIPEDA?

Fortunately, the standards set by our CCA Ethical Code and Standards of Practice are equal to and, in most areas, higher than those expected by PIPEDA. For example, the principles of informed consent and confidentiality are central to our professional conduct. So, counsellors should have no difficulty achieving compliance with this Act. However, all private practitioners should review their practices to ensure that they do so by being familiar with the requirements as stated here and more fully on the website provided in this Notebook. Clients have a right to know what private information is being collected and why, how it will be used, to give consent to its use and transmission, to correct information in their file, to have their questions answered, and to know who to contact if they have a related complaint.

If private practitioners have receptionists, business managers, and so forth, they must act to ensure that these same privacy rights are extended to their employees with respect to their personal information. When counsellors are employed by private agencies or organizations they should also follow the PIPEDA policies and procedures that such employers are required to establish.

Two Problem Areas with PIPEDA

There are two problem areas for counsellors (private practitioners) if they are expected to achieve full compliance with PIPEDA.

Firstly, although PIPEDA states that service providers do not have to disclose personal information that could endanger a third party, it does not extend such an exemption to the disclosure of information in a counselling file that may be harmful to a client. Rather, it requires full disclosure of client personal information. As members know, under our Ethical Code we have an obligation to protect clients from disclosure of personal information that is likely to cause them harm, such as, information that is likely to prompt them to engage in self-destructive or self-injurious behavior.

Secondly, it appears that under PIPEDA counsellors (private practitioners) could be expected to disclose to clients information about psychological tests they may have taken, such as scoring keys and the like, disclosure of which could violate the integrity of such psychometric instruments and compromise fair trade practices for companies that produce and sell psychological tests. Such disclosure would be inconsistent with our practice standards and with Canadian case law (see Notebook, Cognica, volume 33, No. 1 for a case law example).

I suspect that these are unforeseen difficulties with this legislation. CCA will be writing to the Canadian Privacy Commissioner to inform him of the need to address those problematic provisions. In the meantime, we are advising you to be in touch with our CCA Ethics Committee should you encounter a request to comply with a client request in either of these problematic areas.