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Privacy Laws – the Basics

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# Privacy laws

- Alberta and BC have provincial privacy laws for the private sector - PIPA
- All other jurisdictions are under the federal law - PIPEDA.
- Privacy: All privacy laws deal with the collection, use and disclosure of personal information (helpful to use those terms).
- Security: All laws require the securing (protection) of personal information.

# A good rule of thumb:

- First, inform people as to why you are collecting their personal information.
- Then, when you use or disclose that information, be consistent with that purpose of collection.
- If you want to use it or disclose it for an inconsistent purpose – get consent.
- The Alberta and BC laws let you make certain assumptions in this regard, but this rule will work generally.

# A good rule of thumb:

- Up front:
  - Inform of why you collect, how you use, how you disclose.
  - Get consent as to who you may disclose to ie in case of emergency.
  - Be clear about who you will disclose to.
  - Get specific consent for “touchy” disclosures, ie for marketing.

# Generally

- The privacy rules (as opposed to the security rules) are mostly complaint-driven.
- Have a privacy policy (required by the BC and Alberta laws).
- Have a designated person to deal with privacy complaints.
- Make sure staff know who that is and how to reach them (nothing worse than being given the “run around”).

# Generally

- Have a process for dealing with complaints.
- Make sure staff know who the privacy officer is and how to reach them (nothing worse than an already annoyed person being given the “run around”).
- Mediate, arbitrate, negotiate.

# Privacy laws

- An effective complaint resolution process can pay off.
- For example, under the Alberta PIPA, (section 46.3) the Commissioner can defer complaints to another resolution process.
- That would be your process.
- In my experience, most Commissioners are prepared to allow this process to operate in the first instance: it reduces their workload.

# Privacy laws

- Under the Alberta and BC Acts, a person whose complaint against an organization has been upheld may seek damages.
- Some provinces(BC) have created privacy torts, which allow a person to sue for damages.

# Breaches

- Privacy laws have provisions dealing with loss of personal information (Alberta PIPA s. 34.1, BC ss. Yy, Federal – Principle 7 of the Schedule to PIPEDA.)
- Only in Alberta must you notify the Commissioner where the breach presents a real risk of significant harm.

# Breaches

- Have a breach management team.
- Have a process in place to deal with breaches.
- Make sure staff know about it.
- Act fast in order to limit the damage and protect information assets.
- Inform the relevant Commissioner as soon as possible.

# Breaches

- It is sometimes important not to publicize the breach while investigation/mitigation is being undertaken.
- Inform the Commissioner of this and why it is necessary.
- In my experience, most will agree to hold off while the investigation/mitigation is underway.
- Keep them informed of progress.

# Breaches

- Don't wait until your own investigation is done before reporting to the Commissioner.
- If word gets out, the Commissioner has to act, may have to audit, investigate while you are trying to do the same thing.
- It is better if the Commissioner can say "We know and we are working with the organization."

# Resources

- Privacy Commissioner of Canada has all kinds of resources, checklists, etc.
- Alberta and BC as well.