

# **The Effect of Privacy and Anti-Spam Legislation on Charities and Non-Profits**

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## **INTRODUCTION**

The digital age has stimulated concerns surrounding the protection and use of personal information, and organizations should be aware of the obligations and potential risks associated with privacy and anti-spam. This paper will examine privacy legislation (provincially in Alberta and federally in Canada) and the new Canadian Anti-Spam Legislation as it applies to non-profit organizations and registered charities (collectively, “NFPs”), with a goal of creating awareness and understanding of how these two areas may affect the operations and policies of NFPs. Privacy legislation and Canadian Anti-Spam Legislation each require distinct obligations of NFPs, and therefore will be addressed separately in this paper.

The first part of this paper will address the application of both provincial and federal legislation to NFPs. The second part of the paper will focus on Canadian Anti-Spam Legislation and its potential application to NFPs. Lastly, this paper will look at some future considerations and best practices for NFPs with respect to personal information protection and communication practices.

## **PART ONE – PRIVACY LEGISLATION AND NFPs**

### **What is PIPA?**

Alberta’s *Personal Information Protection Act*<sup>1</sup> (“PIPA”) governs the collection, use and disclosure of personal information and personal employee information by private sector organizations in Alberta. This legislation applies to every private organization within Alberta in respect of all personal information, unless otherwise specified in PIPA.<sup>2</sup> Personal information is defined as information about an identifiable individual,<sup>3</sup> including name, address telephone number, email address and picture, among other things. Personal employee information refers to personal information about an potential, current or former employee of an organization, that is “...reasonably required by the organization for the purposes of (i) establishing, managing or terminating an employment or volunteer-work relationship, or (ii) managing a post-employment or post-volunteer-work relationship between the organization and the individual.”<sup>4</sup>

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<sup>1</sup> *Personal Information Protection Act (Alberta)* SA 2003, c P-6.5 [PIPA].

<sup>2</sup> *Ibid*, s 4(1).

<sup>3</sup> *Ibid*, s 1(1)(k).

<sup>4</sup> *Ibid*, s 1(1)(j).

## **Obligations under PIPA**

PIPA balances an individual's right to protect his or her information against a private sector organization's need to collect information to efficiently provide services.<sup>5</sup> PIPA identifies the rights of individuals and the obligations of private sector organizations, including: identifying the occasions when private sector organizations must obtain consent for the collection, use and distribution of personal information; how consent must be obtained; how individuals may request access to and correction of their personal information; how an organization must respond to an individual's request for access to information; how personal information must be protected; and when the Office of the Information and Privacy Commissioner of Alberta ("OIPC") can review complaints.

Individuals can complain to OIPC when they think that their personal information has been inappropriately collected, used or disclosed by a private organization in Alberta or when their request for access to information has not been properly addressed by a private organization in Alberta. The OIPC can investigate and make orders respecting such complaints. Organizations must develop policies and practices for ensuring the organization complies with PIPA<sup>6</sup> and appoint an individual to be responsible for ensuring the organization complies with PIPA<sup>7</sup> and the organization's policy. The OIPC website and the Service Alberta website both offer many brochures and guides to assist organizations in understanding and complying with PIPA.<sup>8</sup>

## **When will PIPA apply to an NFP?**

Whether an NFP is subject to PIPA depends on both the method of incorporation and the activities carried out by the NFP. PIPA does not apply to any 'non-profit organization' (as defined by PIPA), or personal information in its custody and control, unless that 'non-profit organization' (as defined by PIPA) is carrying out a commercial activity.<sup>9</sup> While this statement appears to absolve NFPs from any obligations under PIPA, the statute defines a 'non-profit organization' in a limited manner, as those organizations: (1) incorporated under the *Societies Act*; (2) incorporated under the *Agricultural Societies Act*; or (3) registered under Part 9 of the *Companies Act (Alberta)*.<sup>10</sup> Even if an NFP falls into this limited definition, PIPA will still apply where a 'commercial activity' is conducted by the 'non-

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<sup>5</sup> *Ibid*, s 3.

<sup>6</sup> *Ibid*, s 6(1).

<sup>7</sup> *Ibid*, s 5(3).

<sup>8</sup> See *Publications*, online: Office of the Information and Privacy Commissioner <<http://www.oipc.ab.ca/pages/PIPA/Publications.aspx>>; see also "A Guide for Businesses and Organizations on the *Personal Information and Privacy Act*" (November 2008), online: Service Alberta <<http://servicealberta.ca/pipa/documents/PIPAguide.pdf>>.

<sup>9</sup> *PIPA*, *supra* note 1, s 56(2).

<sup>10</sup> *Ibid*, s 56(1)(b).