

BILL 200: MANITOBA'S PERSONAL INFORMATION PROTECTION ACT

By Brian T. D. Bowman and Melanie R. Bueckert

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Brian T. D. Bowman and Melanie R. Bueckert of Pitblado LLP have been pleased to provide legal assistance in regard to the drafting of Bill 200, *The Personal Information Protection Act* of Manitoba. As part of their involvement in this important legislative initiative, this publication has been prepared to provide plain language answers to questions regarding Bill 200 including its potential impact on Manitoba businesses, consumers and employees.

On January 1, 2004, the federal government's private sector privacy legislation, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), came into full force. PIPEDA regulates private sector collection, use, retention and disclosure of personal information throughout Canada except where "substantially similar" provincial legislation applies. Bill 200 is intended to serve as "substantially similar" private sector privacy legislation in the Province of Manitoba.

Why do we need Bill 200?

PIPEDA has created considerable privacy protections in the Canadian private sector. However, it does not apply to employees of provincially-regulated businesses. PIPEDA only has limited application to non-commercial organizations, such as not-for-profit entities and charities. It has also been criticized for lacking clarity in terms of privacy compliance obligations. Enacting Bill 200 provides an opportunity to clarify PIPEDA's complexities, thereby making it easier for organizations to comply with privacy obligations and for individuals to understand and enforce privacy rights. Arguably, this would result in lower compliance costs for organizations, thus increasing the incentive to comply while enhancing the privacy protections within the Province of Manitoba.

What would Bill 200 do?

If the Province of Manitoba enacts Bill 200, the privacy obligations of organizations would not change dramatically. PIPEDA has already created privacy obligations for most private sector organizations in Manitoba in respect of customer information. Such privacy rights would simply be extended to employees of those organizations, since Bill 200 would regulate how organizations manage personal information of both their customers and employees. Privacy rights are currently not available under PIPEDA to the vast majority of Manitoba employees. As a result, Bill 200 would provide such employees with access to the type of protections currently available under PIPEDA to employees of federally-regulated organizations.

What would Bill 200 regulate?

Bill 200 would apply to "personal information", which is any information about an identifiable individual. Business contact information, and other information that is publicly available, would not be considered "personal information". Bill 200 would apply

to "organizations", which includes corporations, partnerships, sole proprietors, unincorporated associations, unions and certain trusts. It would apply to non-profit organizations, such as charities, clubs, religious organizations and amateur sport associations. Bill 200 would not apply to the public sector or government activities already regulated by applicable legislation such as Manitoba's *Freedom of Information and Protection of Privacy Act* ("FIPPA").

When would PIPEDA apply?

PIPEDA is federal legislation. It has applied to federally-regulated organizations, like banks and telephone companies, since January 1, 2001. Even if Bill 200 were enacted, PIPEDA would still apply to those organizations. However, PIPEDA would also continue to apply to cross-border exchanges of personal information (inter-provincial or international) in the course of commercial activities by provincially-regulated organizations.

How would Bill 200 be enforced?

Provided Bill 200 is further amended, there are many ways in which it could be enforced. The Province of Manitoba may choose to assign that responsibility to an Information and Privacy Commissioner, creating a new office. Alternatively, it could be enforced by the existing Manitoba Ombudsman's Office.

What have the other provinces done?

The Provinces of British Columbia, Alberta and Quebec have each enacted "substantially similar" provincial privacy legislation to PIPEDA. On November 1, 2004, Ontario's *Personal Health Information Protection Act, 2004* came into force. It has also been deemed to be "substantially similar" to PIPEDA, thus exempting from PIPEDA certain health information custodians (as defined in the Ontario legislation) in respect of the collection, use and disclosure of personal health information that occurs within the Province of Ontario in the course of commercial activity.

About the Authors

Brian T. D. Bowman is a corporate/commercial lawyer with PITBLADO LLP, with a specialty in privacy, access to information, information technology and intellectual property law. He acts as legal counsel to private, public and non-profit organizations on a national and local basis and is a frequent speaker, media commentator and author. Brian is a member of the Privacy Law Group of PITBLADO LLP, currently serves as Secretary of the National Privacy and Access Law Section of the Canadian Bar Association and writes a regular column in the *Winnipeg Free Press* entitled "On The Cutting Edge", which discusses current business issues dealing with privacy, information technology and intellectual property. He can be reached at 204.956.3520 or bowman@pitblado.com.

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