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Business gears up for privacy legislation: 'Going to have an impact': Most companies not prepared for added regulatory burden

OTTAWA - Business is going to be hit next week with stringent new rules on how it manages customer information, and many smaller companies are just now becoming aware of the new law.

The Personal Information Protection and Electronic Documents Act comes into force across most of the country on Jan. 1. This federal legislation has been in place for three years, but only next week will its reach extend to all businesses, except those in Quebec and British Columbia, which have their own privacy legislation.

Previously it applied only to federally chartered companies such as the banks and big transportation companies. But it will now extend into everything from the local video store to payroll processing companies. "It's going to have an impact on all businesses," said Heather Black, Canada's Assistant Privacy Commissioner.

The law requires companies to fully explain what personal information they require and why they need it before obtaining it, allows consumers to refuse to provide any information that is not absolutely necessary, gives individuals the right to demand full disclosure of any personal information a company holds on them, and also allows people to challenge the accuracy or use of their personal information.

That all adds up to an administrative burden for many businesses, for which most are not prepared, said privacy consultant Ian Turnbull.

"A lot of businesses aren't aware that this exists and they need to be ready," he said. "You have a legal obligation to be compliant. More importantly, you want to be compliant for public relations reasons. Otherwise, you are going to be embarrassed by the fact you are not managing personal information properly. You will lose customers and reputation."

The federal privacy commission, which is charged with enforcing the act, says it recognizes many companies are just now waking

up to the implications. "We realize that, particularly in the early days, we're going to run into a fair number of organizations ... that either weren't aware or weren't sure what they have to do," Ms. Black said. "If we get a complaint we're obviously obliged to investigate it, but what we try to do is resolve it. This is an ombuds office."

The commission has no independent enforcement powers and would need to go to court to get an order against anyone, she pointed out, making it clear the office will try to work co-operatively with people. The commission received 102 complaints in 2001, 300 in 2002 and 325 in 2003, and is projecting in excess of 450 in 2004, rising to 700 the next year, she said. The biggest number of complaints so far have been about companies collecting information for one reason and then using it for secondary marketing purposes.

Ms. Black also argues that following the act makes good business sense even if there is an upfront cost to auditing and reorganizing the personal data a company holds and training staff. Someone also has to be designated to handle complaints or requests to see a file. "Consumers are increasingly aware of privacy issues and are increasingly asking organizations they do business with to be privacy sensitive," she said. "You do have to deal with this but it's going to be a business advantage."

That message is still penetrating down to smaller companies, said Sharon Maloney, general counsel of the Retail Council of Canada. "It's fair to say our larger members started to get ready for this back in 2001 when the legislation passed," she said. "Where there's a general lack of information is on the next level down, specifically specialty retailers and mid-sized ones."

She said there has been a lack of marketing from the government to explain the law. "The legislation is not necessarily user friendly for smaller companies. It's challenging for a sole operator to look at and understand," she said. "This is probably one of the most comprehensive pieces of legislation that retailers have been exposed to, and they are generally not federally regulated. It's a first for many of them."

Mr. Turnbull said the same question kept coming up when he paid visits to his human resources clients in 2003. "What's this I hear about new privacy legislation, and what does it mean to me?" Mr. Turnbull decided there was another business begging to be started out of that question, so he founded the Canadian Privacy Institute. He said companies need to realize legal sanctions lie down the road for companies that are not compliant. "This is the reverse of Y2K. This isn't a deadline. It's a starting line."¹

¹ Business gears up for privacy legislation - Friday, December 26, 2003 - National Post Page: FP01 / FRONT, Section: Financial Post, Byline: Ian Jack, Dateline: OTTAWA, Source: Financial Post; Idnumber: 200312260058; Edition: National; Story Type: Business.