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NEW RULES FOR USING SOCIAL INSURANCE NUMBERS: PRIVACY LEGISLATION PLACES LIMITS ON SIN

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Credit-related decisions, at least with respect to credit for individuals, often depend upon access to personal information. Over the years, credit bureaus and many credit grantors have grown to use the government-issued social insurance number (SIN) as a convenient individual identifier. In a database of thousands of "John Smiths", the SIN is a helpful tool for distinguishing one person from another. The routine use of the SIN for this purpose is likely coming to an end and credit grantors who do not understand the new legal rules are at very high risk of running afoul of federal law.

Canada's new federal privacy law will come into effect for the provincially-regulated private sector in Atlantic Canada on January 1, 2004. It has already governed the federally-regulated private sector since 2001. The *Personal Information Protection and Electronic Documents Act* or "PIPEDA" fundamentally changes how organizations may collect, use and disclose personal information in connection with commercial activities. Among the fundamental principles of PIPEDA is that an organization requires the knowledge and consent of an individual for the collection, use and disclosure of their personal information. Related to this principle is the following rule:

4.3.3 An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.

This rule prohibits an organization from requiring personal information that is not necessary for the organization's legitimate, specified purposes. For credit-grantors, it is now prohibited under PIPEDA to require that an applicant supply their social insurance number as part of a credit

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application. This may appear straightforward, but applying this rule requires significant employee.

The Office of the Privacy Commissioner has already had a number of occasions to consider complaints related to the social insurance number. In Case #166,¹ the Commissioner considered the complaint of a couple about the mandatory collection of social insurance numbers in connection with a loan application. The bank indicated to the couple that their application could not be processed with the SIN. Once the couple provided their SINs, the application was promptly processed, but the couple complained to the Commissioner. The Commissioner's investigator was informed that it was the bank's policy not to require the SIN, but the customer service representative did not carry out this policy. From the published finding:

Following the investigation, the Commissioner determined that the bank was not in compliance with Principle 4.3.3 [quoted above] because the SIN was not required for the loan application. As for subsection 5(3) of the Act [which states that an organization may collect, use, or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances], the Commissioner deems it unacceptable that the bank requires customers to provide a SIN to negotiate a loan. In addition, the bank did not correctly apply its policy according to which the SIN is optional and is not a condition of service.

This finding also underscores that training is a critical matter for privacy compliance. Despite a policy that made the SIN optional, front-line staff was inadequately trained to implement the policy. One mistake it all it takes for your company to be the subject of a complaint and an adverse finding under the law.

In another recent decision the Commissioner reviewed a credit application form used by another bank. In Case #184, the Commissioner determined that the bank was not in compliance with the law because, in part, it did not clearly indicate that providing a social insurance number was optional:

As for the matter of providing SINs, the Commissioner referred to another recent finding with respect to a different bank's credit card application form. In that case, the focus was on the fact that this form did not clearly indicate that providing the SIN for identification purposes was optional. It was determined that bank had not made a reasonable effort to ensure that the customer was adequately informed of this and, as a result, was not obtaining valid, meaningful consent.

¹ Available online: http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030423_e.asp.

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In light of this finding, the Commissioner determined that the bank in this particular case is similarly not obtaining meaningful consent and is therefore in contravention of Principles 4.3 and 4.3.2.

No law precludes a credit grantor from asking for a SIN for the purpose of making sure that the correct credit bureau report is obtained, but this area is a potential minefield in light of the disclosure and consent requirements of PIPEDA. For credit grantors, the SIN may be of great assistance, but the previous Privacy Commissioner was correct in calling it the "perennial privacy headache."

Given the new requirements of PIPEDA, any organization that collects, uses or discloses personal information – such as the social insurance number – should have their forms, practices, training and procedures reviewed by legal counsel with experience in advising on the dictates of the new privacy law.

The McInnes Cooper PIPEDA Team

McInnes Cooper's Privacy Law Practice Group is comprised of lawyers throughout Atlantic Canada with expertise in advising business on PIPEDA. If you have any questions, please contact any of the following:

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