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Personal Information Security in the News

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In January, 2003, a little-known company in Saskatchewan found itself in headlines around the world. Ironically, the theft of a piece of equipment that originally cost around \$100 has cost the company much more than that. The piece of equipment was a computer hard-drive. According to the media reports, this module small enough to fit in a purse contained tax records for tens of thousands of businesses and details of hundreds of thousands of clients of one of Canada's largest investment firms. The company in question had to inform three-quarters of a million people their personal information may have been compromised. The CEO of one of Canada's largest insurance companies appeared on national television to apologize to each of its customers. A suspect has been arrested and the company is the subject of a class-action lawsuit brought by individuals whose data was allegedly on the disk.

THE LEGAL ENVIRONMENT

As of January 1, 2004, all businesses in the Atlantic provinces will be required by law to establish adequate security systems to protect any personal information in their possession. The deadline and obligation are both imposed by the *Personal Information Protection and Electronic Documents Act* (PIPEDA), legislation that will apply to provincially-regulated private sector businesses beginning New Year's Day, 2004.

PIPEDA contains stringent restrictions on how companies can acquire, deal with and disclose personal information. Personal information is defined very broadly to include any information about an identifiable individual, except for the name, title and business address of an employee of an organization. Based on the Canadian Standards Association Model Code for the Protection of Personal Information, PIPEDA requires that all businesses that acquire, deal with or disclose personal information appoint a privacy officer, put in place privacy policies and ensure the accuracy of the information they hold.

Notably, businesses are also responsible for the security of the personal information in their possession. Principle 7 of the CSA Model Code reads:

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Safeguards - Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

For any business that is subject to the Act, PIPEDA creates an unprecedented legal duty to protect personal information against a wide range of security-related disclosure risks. The commentary for Principle 7 recites a range of risks that must be mitigated:

- loss,
- theft,
- unauthorized access,
- disclosure,
- copying,
- use, or
- modification

Not only must these basic protections be provided for personal information, PIPEDA requires that the safeguards be appropriate to the sensitivity of the information. Health or financial information, for example, must be accorded a high level of protection. Information that may place an individual at risk or may be abused also requires greater protection.

Prudent businesses will take advantage of the time leading up to January 1, 2004 to carry out a full compliance audit of their personal information holdings. Not only should companies examine what information they have and the circumstances under which it was collected, a company's physical and technological security environment deserves very close scrutiny.

Businesses need to consider a daunting range of risks. Malicious crackers may be very real threats, but studies have shown that employees pose the greatest risk for the compromise of personal information. Recent computer viruses have surfaced that send randomly selected documents from the victim's computer to everyone in their address book. The portability of personal digital assistants and laptops also make them very easy to steal, complete with any personal information they contain. This range of threats needs to be addressed by physical and technological security, in addition to prudent corporate policies.

THE MCINNES COOPER METHOD

We have devised a standardized protocol to help our clients determine areas where current practices may not be in compliance with the Act. We will identify vulnerabilities and rank them in order of risk. We can then address any problem areas in order of priority.

Our standardized protocol involves three phases:

- (i) preliminary screening,
- (ii) comprehensive risk assessment, and
- (iii) implementation.

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The protocol can be applied enterprise-wide or to a particular business line. The members of the McInnes Cooper PIPEDA team are skilled in providing training for key managers and employees, raising awareness of PIPEDA and providing instruction on compliance. Clients with internal training programs, can take advantage of our abilities to "train the trainer." We have resources such as model policies and checklists to save clients the time and expense of building systems from the ground up. As a continuing source of value, our clients will have access to regular updates as this new area of regulation evolves.

THE MCINNES COOPER PIPEDA TEAM

McInnes Cooper has assembled a Privacy Working Group, comprised of lawyers with expertise in advising business on PIPEDA. If you have any questions, please contact any of the following:

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