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CALLER ID, CALL CENTRES AND PERSONAL INFORMATION: RECENT DECISION BY THE PRIVACY COMMISSIONER MAY SIGNIFICANTLY AFFECT CUSTOMER SERVICE

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In April, 2003, the Privacy Commissioner released a finding under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) that requires careful consideration by businesses operating in the customer care sector.

PIPEDA is Canada's new private sector privacy legislation. It came into force on January 1, 2001 for the federally regulated private sector and will be binding upon the provincially regulated private sector on January 1, 2004.¹ It places strict limits on how organizations can collect, use, disclose and retain personal information.

The finding in question deals with the use of Caller-ID by a chartered bank, presumably to provide more efficient and better service to its customers. The complainant, who was a customer of the bank, called a branch of the bank to pose a general question. The bank's phone system used Caller-ID, which displayed the number and name of the caller. Consequently, at one point during the conversation, the customer service representative referred to the caller by name. The caller had assumed she was anonymous, partially because she had an unlisted phone number. The caller asked the bank employee how she knew her name and was told that callers' names and numbers appear on the call display screen. The bank representative also told the caller that she then accessed the complainant's account information, but that she did so with the intent of providing good customer service.

The caller filed a complaint with the federal Privacy Commissioner, alleging that the actions by the bank employee violated PIPEDA in two ways: first, by providing inadequate security for her personal information and, second, by using her personal information without her consent.

The Commissioner's findings are very brief, but appear to follow this logic: On the issue of inadequate security, the complainant alleged that the customer service representative did not take adequate steps to ensure the caller's identity before using her personal information. The

¹ A quick test of whether a company is federally or provincially regulated is to ask whether the company is subject to the *Canada Human Rights Act* and the *Canada Labour Code*. If the answer is yes, the company is most-likely federally regulated for the purposes of PIPEDA .

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requirement to implement adequate security is contained in the seventh principle of PIPEDA's Schedule I:

Principle 7 – Safeguards

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

The Commissioner reviewed the policies put in place by the bank for safeguarding the personal information of the bank's clients. He concluded that they were sufficiently robust, but were not followed in this case. The employee assumed the identity of the caller and this was confirmed when the caller did not contradict apparently innocuous facts from the customer's file. Under bank policy, employees are supposed to confirm the identity of callers and not use a process of elimination. The commissioner cited the risk of revealing sensitive customer information if proper procedures are not followed. Although no harm was done in this particular case, the complaint was found to be well founded.

The second portion of the caller's complaint addressed whether it was a violation for the bank employee to open the customer's file during the course of answering her queries. Ultimately, she argued that she did not consent to the employee using her personal information during the call. Principle 3 addresses consent:

Principle 3 – Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Principle 3 is at the heart of PIPEDA, along with Principle 5:

Principle 5 – Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.

It was unquestioned that she had provided consent to the bank for the collection and use of her personal financial information incidental to her banking activities. It can also be inferred that she would implicitly consent to the use of her information to answer her specific queries about her accounts. But the Privacy Commissioner placed considerable emphasis on the expectations of the complainant. She said that she was calling with a general question that would not require any

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reference to her personal information. Furthermore, she said she expected she would be anonymous, particularly as she had an unlisted phone number. The finding reads:

It was clear, by the nature of her question and the fact that she did not intentionally identify herself, that she was not anticipating that a bank representative would call up her account. Had she called regarding a specific issue related to her account, the act of calling could be construed as implied consent, and once she was properly identified, her account could have been accessed. As it stood, however, her identity was not verified, and her question, even by the bank's own admission, was a general one – one which the Commissioner thought would not likely merit accessing the account. In the Commissioner's view, if the representative called up the account for the purpose of providing good customer service, she should have extended that service by seeking the complainant's consent before accessing the account. He therefore found the bank in contravention of Principle 4.3.

The Commissioner's findings suggest that simple access to an individual's personal information – in this case information about bank accounts – can only be carried out with the consent of the individual in question. While customer service professionals will likely be pleased that consent does not always have to be explicit, it must be reasonably inferred. In addition, the caller's identity must be confirmed.

Companies providing phone-based customer service should review their policies to ensure that adequate safeguards are in place to protect information against access and disclosure if the identify of a caller is not confirmed. Customer service representatives should also be cautioned not to access customer files if such access is not necessary to respond to the particular query.

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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