

### NEW FEDERAL PRIVACY LEGISLATION AND ITS IMPACT ON OPTICIANS

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*This article was written to provide information only and should not be relied on as legal advice.*

As of January 1, 2004, new federal privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), applies to all opticians. It requires significant and rigorous changes to the manner in which opticians currently collect, use and disclose personal information. According to the Act, every person who knowingly contravenes the Act faces fines of up to \$10,000 on summary conviction and \$100,000 for an indictable offence. (To date, Ontario has not implemented its own privacy legislation and, as a result, all organizations must comply with the federal Act. It is anticipated that the Ontario Act will provide clearer guidelines for health care professionals than the federal Act).

Essentially, PIPEDA requires every organization (sole proprietorships, limited partnerships and corporations) that collects, uses and discloses personal information<sup>1</sup> for a commercial activity to comply with 10 fundamental principles. Personal information includes information such as age, sex, income, family status, property, ethnic background, education, health, personal activities or views.

The 10 principles that must be complied with are as follows:

1. Accountability
2. Identifying Purposes
3. Consent
4. Limiting Collection
5. Limiting Use, Disclosure and Retention
6. Accuracy
7. Safeguards
8. Openness
9. Individual Access
10. Challenging Compliance

As an optician, what does all of this mean? PIPEDA requires that you or your organization shall:

1. Appoint a privacy officer, a senior person in the organization, who is responsible for the organization's compliance with the Act ;
2. Draft a privacy policy that refers to:
  - a. The purpose for which the information is used, collected and disclosed;
  - b. The amount and type of information required;
  - c. The retention of personal information including minimum and maximum retention periods;
  - d. The destruction of personal information;
  - e. A complaint and inquiry process;
  - f. Safeguards taken to protect personal information such as passwords and encryption;
3. Implement the privacy policy;
4. Draft materials such as brochures or memos that contain these policies and providing them to the public (e.g. by way of a website) or by providing them as requested;
5. Draft materials to obtain express written consent and/or ensure that implied consent was given for the use, collection and disclosure of personal information;
6. Train staff in these policies and practices;
7. Implement safeguards such as locked filing cabinets, password encryption etc.;
8. Respond in a timely and appropriate manner to complaints and inquiries; and
9. Periodically, review compliance with your privacy policy and make changes as necessary.

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<sup>1</sup> Personal information is defined as "information about an identifiable individual".

Keep in mind that when personal information is collected, opticians must inform their clients of the purpose for which their personal information will be used. For example, personal information may be used to provide recommendations for "treatment", obtain payment from third parties (such as insurance companies), and the day-to-day operations of the practice. In addition, clients' consent, express (written) or implied, must be obtained for the collection, use and disclosure of her personal information. Based on the list of requirements above, the consent form should contain information on the name of the privacy officer, how to obtain a copy of the privacy policy, who to contact regarding an inquiry or complaint, how the consent may be revoked, and what third parties information may be disclosed to. Furthermore, opticians should review the type of information that is being collected during the initial client meeting. Unfortunately, there are no guidelines at this time of what is appropriate and what is not appropriate.

If an inquiry or complaint is made, an organization must respond within 30 days. If the matter is not resolved, the complainant may file a complaint with the Privacy Commissioner of Canada. Interestingly, complaints can be made by anyone to the Privacy Commissioner of Canada – anyone who thinks or believes that your organization does not comply with PIPEDA. The Privacy Commissioner will investigate the complaint and come to a decision. If the decision is not satisfactory, the complainant or the Privacy Commissioner can appeal the decision to the Federal Court of Canada for an order that the organization correct the personal information, an order that the organization publish a corrective notice or an award for damages for humiliation of the complainant.

In theory, the Act is supposed to increase the public's confidence in organizations and their confidential and careful collection, use and disclosure of personal information. It is likely that most opticians already abide by these principles even though they may not be in writing. Complying with these principles (i.e. reviewing current privacy practices, drafting a privacy policy from scratch, revising consent forms, training staff, drafting materials and implementing safeguards) may cost hundreds of dollars and take countless hours. Despite these costs, failing to comply is not an option as it bears significant consequences.

In conclusion, PIPEDA requires that opticians re-evaluate their current privacy practices and implement written policies to ensure the privacy of all personal information used for commercial activities. Despite the initial complexity of the Act, once a privacy policy has been drafted, it should be fairly straightforward to implement and comply with PIPEDA.

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