

Frequently Asked Questions

10. We are an American company expanding into Canada. Our accountants are recommending that we seek legal advice about complying with Canadian privacy requirements. Why?

Residents of Canada, whether they are consumers, suppliers, employees or otherwise, have certain privacy rights that may differ from those in the U.S. Depending on your activities and the personal information that you collect, use and disclose, your policies and procedures may need to be adapted to comply with Canadian requirements.

Where personal information is collected, used, and disclosed in the course of commercial activities, the applicable federal law is the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). In provinces that have adopted similar privacy legislation (as of mid-2015: Ontario, Alberta and British Columbia), the provincial law applies to personal information that is collected, used and disclosed only within that province. Otherwise, PIPEDA applies throughout Canada. Other legislation protects personal information provided to governments and government agencies, and personal health information.

Under PIPEDA, "personal information" ("PI") means information about an identifiable individual. Every organization that collects, uses or discloses PI in the course of commercial activities, whether or not the organization is based in Canada, is required to give the individual notice of how it will collect, use and disclose the PI and obtain the individual's consent in advance. While there are some exceptions (e.g. where information is disclosed to a governmental authority for the purpose of enforcing a law), individuals have the right to provide informed consent to the collection, use or disclosure of their PI. Consent may be provided for in a Privacy Policy or in other documents, such as an employment agreement or an agreement of purchase and sale. The Privacy Policy or other agreement may provide that, after the company has given information about the PI it intends to collect, use and disclose, the individual's consent will be deemed to be given by taking certain actions, such as making a purchase.

Many companies collect e-mail addresses from customers, suppliers and others. In some cases, the e-mail addresses may be "personal information" subject to PIPEDA or other privacy legislation. Use of those e-mail addresses to send commercial electronic messages may be subject to and need to comply with *Canada's Anti-Spam Legislation* ("CASL"). More detailed general information about CASL's requirements is available on the Resources page at www.caobrienlaw.com. For additional information about the specific application of CASL and privacy laws to your situation, contact Carol Anne O'Brien at caob@caobrienlaw.com or (416) 640-7270.