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A charity law newsletter by Adam Aptowitz LL.B.

Adam Aptowitz, LL.B.
adam@aptlaw.com
Phone 416.712.2218
Fax 416.850.6087
<http://www.aptlaw.com>

Contact [Adam Aptowitz](#)

Welcome to Aptlaw.com's first newsletter

Welcome to the first edition of Aptlaw.com's charity law newsletter. As a Corporate and Tax lawyer working with Toronto based small and midsize charities and not-for-profits, I recognize a need for information to alert groups of this size to legal issues of note. I intend to provide this legal information to charities, not-for-profits and those that advise them through periodic publication of this newsletter. From time to time, I may invite specialists within a particular area of the law to contribute an article of interest. Future newsletters will deal with privacy, income tax, GST, and general corporate issues affecting charities and not-for-profits.

Please feel free to distribute this newsletter to anyone you think may be interested in reading it, or ask him or her to contact me directly so I may add his or her name to the distribution list. Of course, if you are unable to make use of the information in this newsletter yourself, please let me know and I will remove your name from the distribution list.

I welcome comments from you, the reader, on any aspect of this newsletter. If you have any questions or concerns about the information provided here, please contact me.

Regards,

Adam Aptowitz

New Privacy Act Affects Charities

On January 1, 2004, the Federal government's long awaited *Personal Information Protection and Electronic Documents Act (PIPEDA)* comes into force for organizations not connected with Federal government. *PIPEDA* is based primarily on the Canadian Standards Association's ten principles for the collection, storage and use of personal information (later newsletters will cover these different aspects of *PIPEDA* more fully). There is some confusion though as to whether *PIPEDA* even applies to charities and not-for-profits.

Does the Law Affect Charities and Not-for-Profits?

PIPEDA is a federal law that applies to all organizations connected with the federal government, and in those provinces that do not have their own, *PIPEDA*-like, legislation. Currently, none of the provinces except Quebec have qualifying legislation but the prevailing wisdom is that most of the provinces will relatively

soon pass their own laws. In the meantime, *PIPEDA* applies to all organizations that conduct commercial activity, which includes any act or course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists. The question individual charities and not-for-profits must ask is whether their particular organization is involved in any commercial activity.

Unfortunately, the term 'commercial activity' is too broad to determine with certainty which types of activities qualify, but it is only a matter of time before the matter is clarified by the courts. At its broadest (and most cautious) interpretation, any organization that is involved in an exchange of goods or services for value may be subject to *PIPEDA*. For example, groups which carry on a related business (as defined by the *Income Tax Act*), conduct golf tournaments, bake sales, or even car washes may be caught by *PIPEDA* and therefore incur obligations under the Act.

Should Charities and Not-for-Profits put in place privacy guidelines?

As I said above, the application of *PIPEDA* to charities and not-for-profits is unclear. It may take a court case to decide the issue. However, there exist three good reasons for charities and not-for-profits to comply with *PIPEDA*.

- 1) If *PIPEDA* does apply to a particular charity or not-for-profit, but it is relying on the ambiguity in the law to protect itself from the consequences following lack of compliance, it may find itself the subject of a complaint to the privacy commissioner (with all the attendant negative publicity). Also, the organization may have high legal and compliance costs if the matter ends up in court.
- 2) Even if *PIPEDA* does not apply to an organization, there is a good chance that several provinces will pass similar legislation, and in Ontario at least, that legislation will likely include charities and not-for-profits. So compliance with *PIPEDA* now may save the same time and trouble later.
- 3) Finally, most donors already appreciate the privacy of their information and with privacy policies becoming the necessary standard in all commercial and governmental dealings, charities and not-for-profit groups, which do not follow the same policies, may be at a serious disadvantage. The bottom line is that following privacy protocols is good for your supporters and therefore good for business.

Please contact me to discuss this or any of the above issues.

Adam Aptowitz

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