

## Short Notices: Pursuit of the Holy Grail Thoughts from the Canadian perspective

- History
- Law and self-regulation
- Informed Consent vs Consumer Burden
- The problem of Knowledge
- The medium
- Core elements
- Conclusions



Overview  
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September 2004

## History The Canadian Standard and PIPEDA

- In 1991 Canada struck a multi-stakeholder committee to draft a management standard for the protection of personal information
- Quebec was drafting a data protection law in the Civil law tradition
- Consumers fought hard for high standards of informed consent
- Business fought hard for workable solutions that minimized liability and consumer burden



History  
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## History : Compromise The Canadian Standard and PIPEDA

### Principle 3: Consent

- 4.3 'The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate'
- 4.3.2 The principle requires 'knowledge and consent'. Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.



History  
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## History : Compromise The Canadian Standard and PIPEDA

- 4.3.5 In obtaining consent, the reasonable expectations of the individual are also relevant. For example, an individual buying a subscription to a magazine should reasonably expect that the organization, in addition to using the individual's name and address for mailing and billing purposes, would also contact the person to solicit the renewal of the subscription. In this case, the organization can assume that the individual's request constitutes consent for specific purposes. On the other hand, an individual would not reasonably expect that personal information given to a health care professional would be given to a company selling health-care products, unless consent were obtained. Consent shall not be obtained through deception.



History  
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## History: Compromise The Canadian Standard and PIPEDA

- 4.3.6 The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is sensitive.



History  
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## History: Compromise The Canadian Standard and PIPEDA

### Principle 8: Openness

- 4.8 An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.



History  
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## History: Compromise The Canadian Standard and PIPEDA

4.8.1 Organizations shall be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization's policies and practices without unreasonable effort. This information shall be made available in a form that is generally understandable.



History  
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## History: Compromise The Canadian Standard and PIPEDA

- 4.8.2 The information made available shall include
- the name or title, and the address, of the person who is accountable for the organization's policies and practices and to whom complaints or inquiries can be forwarded;
  - the means of gaining access to personal information held by the organization;
  - a description of the type of personal information held by the organization, including a general account of its use;
  - a copy of any brochures or other information that explain the organization's policies, standards, or codes; and
  - what personal information is made available to related organizations (e.g., subsidiaries).



History  
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## History: Compromise The Canadian Standard and PIPEDA

4.8.3 An organization may make information on its policies and practices available in a variety of ways. The method chosen depends on the nature of its business and other considerations. For example, an organization may choose to make brochures available in its place of business, mail information to its customers, provide online access, or establish a toll-free telephone number.



History  
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## Quebec: An Act Respecting the Protection of Personal Information in the Private Sector

8. A person who collects personal information from the person concerned must, when establishing a file on that person, inform him
- 1) of the object of the file;
  - 2) of the use which will be made of the information and the categories of persons who will have access to it within the enterprise;
  - 3) of the place where the file will be kept and of the rights of access and rectification.

1993, c. 17, s. 8.



Law  
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7 July 2004

## Quebec: An Act Respecting the Protection of Personal Information in the Private Sector

14. Consent to the communication or use of personal information must be manifest, free, and enlightened, and must be given for specific purposes. Such consent is valid only for the length of time needed to achieve the purposes for which it was requested.

Consent given otherwise than in accordance with the first paragraph is without effect.

1993, c. 17, s. 14.



Law  
11  
7 July 2004

## So What Does Law mean for Short Notices?

- Obligations
  - Informed consent (manifest, free, enlightened)
  - Lengthy list of required items (purpose, who you share information with, retention etc)
  - Accountability requirements (CPO, address, telephone, website)
  - Redress options for the individual
  - Statement of purposes
- Liability
  - Consent is invalid if not informed
  - Misrepresentation
- Oversight
  - Commissioner can investigate
  - Court can rule



Law  
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## Self Regulation?

- Best practice allows more flexibility: What do consumers want to know?
- What are the competitive pressures?
- Small versus large enterprises
- Pressure to limit liability and complaints
- Policies talk about consent, but consent for what?



Self Regulation  
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## What do People Want to Know?

- What
  - Are you collecting
  - Are you doing with it
  - Can I do about it
- Why
  - Statement of purposes
- When
  - How long are you keeping my information
- Where
  - Where does my data go
- Who
  - Is responsible
  - Can help me



W5  
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## Informed Consent vs. Consumer Burden

- Consent is a periodic event
  - Need it at the outset
  - Has to pass the 'Informed' threshold
  - Must be repeated at intervals depending on the situation
- Consumers hate having to sign forms
  - Response is negative
  - Junk mail is reducing response
  - Your liability issues are not my problem
- How much information is enough?
  - What is informed consent?
  - When do I want to know?
  - Do I have to be informed when you want to tell me, or can I choose?



Consumer Burden  
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## The Problem of Knowledge

- Information is only one sector
  - What am I eating?
  - What am I drinking?
  - What am I living next to?
  - Saturation point has been reached
- Public opinion volatility
  - Fads can change opinion rapidly
  - Media like stories about mis-representation
- People do not understand the roots of the Information Society
  - Transactional Data
  - Data Mining and extrapolation
  - Surveillance and lawful access
  - Information rights
  - Persistent data and storage
  - Transborder Dataflow
  - Security threats and risk



Knowledge  
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## Short Notices The Medium IS the Message

- Internet
  - Layered notices no problem
  - Languages easier, especially for global company
  - Help easy to provide
  - Versions easy (basic vs.avatar)
- Paper
  - Expensive
  - Fatigue at first glance
  - Costly and wasteful
  - No way of knowing if consumer understood
- Telephone and oral
  - Has to be short
  - Not likely to be interested
  - Whose time are we spending?
  - Storage inherently surveillant



Medium  
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## Short Notices Core Elements

- Cultural Differences
  - Some consumers want to know more
- Legal Differences
  - Make standardization tricky
  - Defeat comparison
  - Vary sector by sector
  - Will often dictate core elements
- Education, Age and Language
  - Format
  - Nuance
  - Depth
- Common Elements by Sector?



Core Elements  
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## What Use are Short Notices? Conclusions

- We all want world peace
- Devil is in the details
- Need to educate, not confuse
- Food labelling deceptive analogy, not that simple
- Each sector and instance different
- Legal rights must be stated
- Media are totally different
- One size does not fit all



Conclusions  
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