

CANADIAN
PSYCHOLOGICAL
ASSOCIATION



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FEDERAL PRIVACY LEGISLATION AND YOU

The Federal privacy legislation may apply to you. If it does, you can find attractive materials (brochure, poster, information sheet) on the CPA web site to download to give to your patients and clients to help you comply with the legislation.

What is PIPEDA, the Federal Privacy Legislation?

All psychologists in private practice must be aware of the privacy legislation known as PIPEDA (Personal Information Protection and Electronics Documents Act). It came into effect January 1, 2004. CPA and several other associations (Canadian Medical Association, Canadian Nurses Association, Canadian Healthcare Association, Canadian Dental Association and Canadian Pharmacists Association) were asked by the Federal Government (Health, Justice, Industry, Privacy Commissioner in consultation with the provinces/territories) to help craft questions and answers to make PIPEDA clearer for private practitioners.

PIPEDA is federal privacy legislation originally designed to protect personal information gathered during or for commercial activities such as electronic banking. It is designed to protect the individual from unintended use, sale or disclosure of this information.

Some provinces (Québec, Manitoba, Saskatchewan, and Alberta) have provincial privacy legislation. It applies to private practitioners as well and takes precedent over the federal PIPEDA.

Does PIPEDA Apply to You?

Why just private practitioners? PIPEDA only applies to commercial activities. It does not apply to universities, municipalities, governments, hospitals, etc., in other words, any activities that take place in the public sector.

How Will PIPEDA Affect My Practice?

In most cases, the standards set by the psychology regulatory bodies, the CPA Canadian Code of Ethics for Psychologists and standards of practice are higher than the standard set by PIPEDA. For example, psychology has always operated on the principal of expressed consent, a higher standard than implied consent required by PIPEDA. So, for psychology it is mostly business as usual.

There are, however, some issues to be aware of. For more detailed information, please see the PIPEDA section on the CPA web site, contact your regulatory body and/or visit the Government of Canada web site at <http://e-com.ic.gc.ca/english/privacy/health/>.

It is required under PIPEDA to inform each patient/client of a number of rights. They include, for example, the right to know how private information will be used, to whom it can/will be disclosed, to agree or refuse the transmission of information, to correct information on a chart, and so on. For a complete list of requirements, see the Government of Canada web site <http://e-com.ic.gc.ca/english/privacy/health/>.

This information about their privacy rights can be given to the client or patient in written form, posted on a poster or discussed with them. Please see the CPA web site for downloadable brochures, posters and handouts.

If clients and patients have questions about the use and/or transmission of their personal information, you are required to answer those questions fully. If they have a complaint, you are required to inform them they can contact the regulatory body, the provincial privacy commissioner if there is one, or the Federal Office of the Privacy Commissioner.

Problems for Psychologists with PIPEDA!

Danger to Self: There are a couple of problems. PIPEDA requires a practitioner to disclose all personal information on the file even if it is harmful to the client or patient. This is an unforeseen difficulty with the legislation. There is no provision to withhold information. Doing so is grounds for a complaint to the Federal Office of the Privacy Commissioner. On the other hand, psychologists have a responsibility to ensure the wellbeing of a patient or client. This may mean, for example, not disclosing information that might lead to the person killing or injuring themselves. This conflict between PIPEDA and the regulatory standards, ethical principles and standards of conduct will need to be clarified in the future. In the meantime, if faced with a request for information that you deem to be injurious to the patient, contact the CPA/CPAP pro bono legal advice service, your regulatory body and/or CPA directly. It is interesting that PIPEDA states that the provider does not have a responsibility to disclose personal information that might endanger a third party.

Test Materials: Another contentious issue is PIPEDA and psychological tests. Currently, PIPEDA may require psychologists to give a client or patient the raw scores, scoring templates and questions to psychological tests. To date CPA and others have resisted this in court. We will continue to do so in order to protect the integrity of the tests. This is in the best interests of the public. CPA is working with the test publishers to rectify the situation. In the meantime, it is

recommended that you inform the client/patient that you will be consulting prior to complying with their request, and that you contact CPA immediately.

Consult the CPA web site for more information and watch future editions of Psynopsis.