

Submission to the Standing Committee on Alberta's Economic Future

RE: The Personal Information Protection Act Review

Presented by:

The Calgary Chamber of Voluntary Organizations (CCVO)

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The Calgary Chamber of Voluntary Organizations (CCVO) is pleased to provide this submission in response to the recent call issued by The Standing Committee on Alberta's Economic Future for the purpose of conducting a comprehensive review of PIPA. With a membership base of 350 Alberta nonprofit organizations, CCVO works to strengthen nonprofits and charities and provides leadership on issues that have a broad impact on the charitable and nonprofit sector. This submission responds to question 21, outlined in the discussion guide as: ***Is the application of the Act to non-profit organizations appropriate, or should all non-profit organizations be subject to PIPA in all of their activities? Please explain why or why not and provide suggestions.***

BACKGROUND

When PIPA was reviewed in 2006-07, CCVO was actively engaged in working to understand the legislation and its implications for the nonprofit sector. More recently, we gathered input through focus groups with Calgary-based organizations to explore whether issues and concerns have changed since that time. Through research and the solicitation of input from the nonprofit sector, CCVO has developed an understanding around the potential effect full inclusion under the legislation would have on nonprofits and charities. This understanding forms the basis of our recommendations.

SUMMARY

CCVO's recommendations attempt to balance the underlying tension between what is widely believed to be good business practice and a fear that complying with the requirements of full inclusion will be overly burdensome on nonprofit organizations. CCVO believes that much of this fear is a result of misunderstanding around how onerous complying with this legislation is, and the extent to which organizations will be penalized. If nonprofits become fully included under the legislation, the transition should be preceded by a robust education and training process that includes positioning the OIPC as a resource for organizations to help them interpret their obligations under the act and improve practices.

REASONS FOR SUPPORTING FULL INCLUSION OF NONPROFITS UNDER PIPA

There is increasingly a public expectation that personal information is collected and handled with due regard for privacy. The public does not have different standards around how their information is handled for the nonprofit sector, nor should it. They expect that the information nonprofit organizations collect is regarded with a certain professionalism, and that nonprofit clients, members and patrons receive the same standard of privacy as they would receive in other sectors. This belief has led some nonprofit organizations to operate in full compliance with the legislation voluntarily.



One of the disadvantages of the current exemption is that the Privacy Commissioner has no mandate to address issues that may arise involving organizations that are excluded from the legislation. Ultimately, this prevents the Privacy Commissioner from addressing concerns raised by members of the public, clients, volunteers or employees around the collection, retention and disclosure of information. This limits the opportunity for OIPC to work with organizations, in a constructive manner, to improve their practices.

There is also concern, for organizations that are currently exempt from any form of privacy legislation, that the collection, storage and disclosure of employee and volunteer information is not protected under any legislation. This is a disadvantage for volunteers and employees as it prevents the Privacy Commissioner from intervening and resolving any type of privacy complaint that is brought forward.

There is considerable support to amend PIPA so that it fully applies to all nonprofit organizations, based on the reasons outlined above.

CONCERNS WITH THE FULL INCLUSION OF NONPROFITS UNDER PIPA

The largest perceived barrier with the extension of PIPA to all nonprofit organizations and activities is the potential resources that will be required to comply, and whether that will cause undue administrative burden for some organizations. The concern around capacity to comply is heightened for the thousands of grassroots volunteer-run organizations.

Many organizations, by virtue of who they are funded by or the type of data they collect, already comply with other pieces of privacy legislation including the Health Information Act (HIA) and Freedom of Information and Protection of Privacy Act (FOIP). These organizations have concerns related to their need to comply with multiple pieces of legislation, including those listed above. There is a broader concern that PIPA is yet another set of rules they will be required to track and abide by. The lack of common terms of reference across different pieces of legislation (e.g. the definition of “commercial activity” under PIPA and Canada’s Anti-Spam Legislation) creates an added layer of complexity for organizations. This further adds to the belief that PIPA will be onerous to interpret and comply with.

Effective implementation of any and all PIPA amendments will require an understanding and consideration of the diversity and unique experiences of nonprofit organizations. Nonprofits range from large professionalized organizations with hundreds of staff to small volunteer-driven organizations. Moreover, there is a wide range in the nature of activities organizations engage in, and the types and quantity of personal information they collect. If PIPA is extended to include the entire range of nonprofit organizations, there must be sensitivity as to how organizations of all sizes will adapt. Education and training will need to address how the legislation will apply in particular circumstances. Examples include:

- Collecting consent from people who, for a variety of reasons (e.g. mental health issues, chemically altered state) might be incapable of providing informed consent.
- Applying the test of “reasonableness” to a scaled-up organization vs. a grassroots group. Small nonprofit organizations will need to be assured that they don’t need to have the same systems in place as large organizations.



- The use of personal information for research purposes.

The education and training that precedes and accompanies the implementation of PIPA amendments, should The Act be extended to all nonprofits, must address these situations and circumstances directly. We strongly recommend that the extension to all nonprofits not be contemplated without provision for an adequate education program.

These concerns, and potential opposition to this Act, largely stem from a lack of understanding and erroneous perceptions that OIPC is first and foremost a punitive mechanism. These concerns can be mitigated by deliberately engaging and educating the nonprofit sector before the amendments are introduced, through the transition period, and beyond. OIPC should take this opportunity to connect with this critical audience in order to help the sector understand the intent and application of the legislation.

RECOMMENDATIONS

- 1. PIPA should be amended to apply fully to all nonprofit and charitable organizations and activities, subject to an 18 month transition period that includes ample training and education opportunities.**
- 2. The Office of Information and Privacy Commissioner implement a robust education and training program and work with umbrella organizations to learn more about the educational needs of nonprofits and charities. Education and training should include plain language explanations around:**
 - a. information collection, retention, and disclosure;**
 - b. definitions of reasonableness; and**
 - c. a checklist to track where organizations are compliant.**
- 3. The Government of Alberta should strive for consistent terminology across similar legislation in order to simplify interpretation.**

In closing, we thank you for your consideration. In planning the implementation of the amendments that result from this review, please consider CCVO as a resource and partner. I am also available, at your convenience, to respond to any questions you might have regarding this submission.

Sincerely,

Katherine van Kooy

President and CEO

cc: Randy Paquette, chair of CCVO Board of Directors
Janet Brown, chair of Public Policy and Government Relations Committee