



Employment Law Solutions for the Canadian Workplace

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new and noteworthy

- **Personal Information Protection Laws:** This update consists of revisions to Tab VI of this guide, which addresses the requirements of federal and provincial privacy protection laws, as they apply in the employment context in Canada. The entire content of Tab VI has been reviewed to ensure all sections are current.

highlights of this release

- **Tab VI-2.A The Federal Law—Application:**
 - Section VI.2.A.4, Whistleblowers: Citations have been revised and a clarification has been provided regarding rights of whistleblower employees.
- **Tab VI-2.B The Federal Law—Structure:**
 - Section VI.2.B.1, Key Definitions: The discussion of the “business contact information” exception to the definition of “personal information” under the *Personal Information Protection and Electronic Documents Act (PIPEDA)* has been clarified and expanded. Also, a discussion of PIPEDA Case Summary #2007-382 has been added under the concept “disclose,” to illustrate when disclosure of employee information may be justified.
- **Tab VI-2.C The Federal Law—Principles of Substance:**
 - Section VI.2.C.2, Principle 3: Consent: The purpose of communicating with the next of kin or authorized representative or an injured, ill or deceased individual has been added to the list of conditions under which information may be disclosed to a government institution without consent.
- **Tab VI-2.D The Federal Law—Principles of Process:**
 - Section VI.2.D.1, Principle 1: Accountability: A discussion of PIPEDA Case Summary #2008-394 has been added to illustrate how an organization can act transparently and responsibly in handling personal information that may come into the hands of foreign third-party service providers.
- **Tab VI-3.A Provincial Laws—The Quebec Law:** Several useful clarifications have been added in the text. Also, a note has been added to alert readers to the introduction, before the Quebec National Assembly, of Bill 64, *An Act to modernize legislative provisions as regards the protection of personal information*, which would significantly amend the *Act respecting the protection of personal information in the private sector (QPSA)*.

release notes

please review

- **Tab VI-3.B Provincial Laws—The British Columbia Law:** The discussion has been reviewed to ensure it is current, and clarifications have been added as warranted.
 - Section VI.3.B.1, Scope: A note has been added citing a recent case in which an unincorporated voluntary association of members under a registered federal political party's constitution was found to be an "organization" under the B.C.'s *Personal Information Protection Act (BCPIPA)*. Also, the recent case of *Surrey Creep Catcher* is discussed, in which B.C.'s Office of the Information and Privacy Commissioner (OIPC) did not accept the organization's argument that its "interviews" with alleged child predators, that were live streamed and archived, were collected for journalism purposes.
 - Section VI.3.B.3, Definitions: A clarification of the term "personal information" has been added, citing a recent OIPC decision concluding that the term includes information collected and compiled about someone even if it is not recorded.
 - Section VI.3.B.4, Requirements Surrounding Collection, Use, and Disclosure of Personal Information: A discussion of the recent case of *Mary-Helen Wright Law Corporation*, has been added, in which OIPC found there was deemed consent under *BCPIPA* for the disclosure of personal information within the context of a B.C. Human Rights Tribunal complaint.
 - Section VI.3.B.5, Duties and Obligations in Collecting, Using, and Disclosing Personal Information: A discussion has been added of the case of *Construction Maintenance and Allied Workers Local 2423 (Re)*, in which a union failed to follow its own administrative safeguards and was found to have not have made reasonable security arrangements to protect the members' personal information.
 - Section VI.3.B.7, Other Considerations: A discussion has been added regarding the arbitration case of *Rehn Enterprises Ltd. v. United Steelworks, Local 1-1937 (Medical Information Grievance)*, in which the abitrator found that employees were "under no obligation" to communicate private medical information to an agent retained by the employer, even if the same information would be otherwise required had the employer requested it to be provided directly. Also, the case of *CUPE (British Columbia Regional Office)* is discussed, in which an applicant requested access to her personal information under the control of the union, but this was denied on the basis of solicitor-client privilege.
 - Section VI.3.B.8, Enforcement: The discussion of the B.C. Supreme Court decision in *Facilities Subsector Bargaining Association v. British Columbia Nurses' Union* has been expanded to include the Court's affirmation that a civil claim for damages can be brought against an organization only after the privacy commissioner has made an order under *BCPIPA* and the order has become final.
- **Tab VI-3.D Provincial Laws—Other Provinces and Territories:**
 - Section VI.3.D.4, Ontario: The discussion has been updated to note that changes introduced through Bill 188, *The Economic and Fiscal update Act, 2020*, substantially strengthen Ontario's *Personal Health Information Protection Act, 2004 (PHIPA)*. The changes include an enhanced administrative penalty regime and potential doubling of monetary penalties, as well as new administrative and individual rights, as in force as of March 25, 2020. Bill 188 also includes technology-related changes that are not yet proclaimed into force. Further, the discussion notes the initiative of the Ministry of Government and Consumer Services to solicit public input to inform and influence new provincial privacy legislation for Ontario's private sector.

- **Tab VI-3.E Provincial Laws—Other Legislation:** The discussion has been reviewed to ensure it is current, and clarifications have been added as warranted.
 - Section VI.3.A.1, Principle 1: Accountability: A discussion of PIPEDA Case Summary #2008-394 has been added to illustrate how an organization can act transparently and responsibly in handling personal information that may come into the hands of foreign third-party service providers.

did you know?

- **BLG's COVID-19 Resource Centre:** To keep businesses informed on emerging issues related to COVID-19, the law firm authoring this guide continues to provide regularly updated resources online at <https://www.blg.com/en/insights/covid-19>. The website includes articles addressing labour and employment law.



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