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# Protection and Electronic Documents Act (PIPEDA)

The Personal Information Protection and Electronic Documents Act (PIPEDA) seeks to protect individuals' information from organizations that wish to collect that information. It achieves this through its fundamental principle of consent. PIPEDA was founded on principles that are thought to be malleable in any situation. There are concerns that organizational models have been rapidly changing from the inception of PIPEDA’s drafting and the viability of getting meaningful consent. The reason for these concerns has arisen due to the fact that PIPEDA precedes smartphones and cloud computing meaning that the act does not cover the data collection which is handled by these sources.

It has become increasingly difficult for individuals to understand how their personal information is being used, and some organizations would prefer abolishing the current consent model for other alternatives such as accountability, ethics, or risk-based approaches. However, adverse groups would advocate for strengthening consent, like transparency and control over what data is collected. Arguing that if consent were to be terminated it would compromise individual rights and protections.

The Office of the Privacy Commissioner (OPC) has acknowledged that the PIPEDA consent model needs to be amended. They have put forth a discussion paper as a calculated effort to prioritize the Economics of Privacy. It focuses on the current landscape, highlights key issues, and offers solutions to the consent issue. The goal is to reinforce the privacy of individuals while accepting the challenging landscape of technology and data use.

Consent plays a vital role in PIPEDA, allowing individuals to protect their privacy by having control over data collection, use, and disclosure by organizations. This is pivotal to a democratic society and the dignity of individuals. Professor Alan Westin, in his 1967 book “Privacy and Freedom” stressed that privacy is an expression of individual antimony, a fundamental principle underpinning democratic society. He also described privacy as the desire of an individual to decide how much of their information they will share with the public. The view aligned with a report which was written by the Department of Communications and Justice Task Force on Privacy and Computers which stated that all information about an individual belongs to them, they can choose to share it to gain a benefit, but they maintain the primary control on what happens to there information and who can see it. This was later reinforced by Justice Gerard La Forest, who stressed the importance of privacy for an individual's well-being and personal freedom.

In the drafting of PIPEDA, they focused primarily on individual freedoms. They avoided categorizing information as “sensitive” because they realized that sensitivity could vary among people and contexts. Consent allows individuals to decide what they deem to be sensitive. Although not intrinsically mentioned in the Canadian Charter of Rights and Freedoms, it unintendedly affords privacy protection along with section 7 which guarantees the right to life, liberty, and security of the person.

The primary purpose of PIPEDA, as mentioned above, is to protect the collection, use, and disclosure of individuals' information, while legitimizing that the organization needs to collect, use, and disclose some information for reasonable purposes. These organizations must notify individuals on how their information will be collected, its intended use, how it will be disclosed, and for what purpose. This ensures that individuals understand the nature, purpose, and consequence of data collection. This empowers the individual by not allowing their personal details to be extracted without their knowledge.

However, acquiring consent is not always suitable, and PIPEDA includes exceptions to the knowledge and consent requirements. Information may be used or disclosed without consent in emergencies threatening an individual’s life, health, or security. Other exceptions include breaches of agreements and violations of laws, where consent could hinder an investigation. When consent is not required, statutory obligations under subsection 5(3) of PIPEDA, like limiting organization data collection prevent inappropriate handling of personal data. It also mandates transparency when collecting personal data. Organizations are not allowed to deny service to individuals who refuse to disclose their personal information beyond what is legitimately needed.

I chose this topic because I have always found it interesting how much information companies love to collect. Data collection is needed when it comes to tailoring services towards consumers or gathering necessary information from individuals like order information, etc. Data collection is prevented in every facet of our lives, but where do we draw the line? I have always found it scary how you could be talking about a product and then you go on to Facebook, Youtube, or some platform and you see an advertisement for something you literally spoke about five seconds ago. I don’t know whether this applies to what I wrote about above, however, I do feel like my privacy was invaded a bit when that happens. Yes, it reminds me sometimes that I wanted the thing that they showed me, but it's also a little weird.

One thing I don’t understand about what I wrote about is why some would want to get rid of the consent. Why would you want to gather all the information about someone, like I understand gathering a small amount of necessary information but in an age where all your information could be snatched due to a security breach, that makes me very uncomfortable.

# References

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