

## CANADIAN BANKERS' ASSOCIATION STRENGTHENS PRIVACY CODE

The Canadian Bankers' Association (CBA) has thoroughly revised its 1987 Model Privacy Code for Individual Customers resulting in a 1990 version with stronger provisions, greater detail and clarity. The Code, released on December 20th 1990, is intended to be used as a guideline for individual banks when they develop their own statements of practice. The CBA supports the Canadian Government's adherence to the OECD Guidelines and has made these revisions after comments from several sources, including an OECD meeting in Paris, Canada's Federal Privacy Commissioner and Justice Department. The banks realize that in a climate of increasing public concern, it makes good business practice to strengthen their privacy policy commitments.

### Definitions & Scope

The model privacy code applies the OECD Guidelines to the collection, possession, protection, use, disclosure, verification, and correction of personal information by the banks in Canada.

The privacy code has been extended to cover both automated and manual data and all personal information, not just factual information. This includes, but is not limited to, an individual's home address, age, identification number, assets, liabilities, income, name of third parties to whom information was disclosed, whether or not credit was extended, payment records and the opinions and judgements of the bank. A retroactive clause has been added extending coverage to all personal information, regardless of when it was acquired.

The code is not intended to be used for employee data. There is also specific mention in this version, unlike the previous code, that not covered by the code are commercial and corporate clients, the business accounts of individuals carrying on business in sole proprietorships, in partnerships and in other associations.

### Collection, Quality & Purpose Specification

Collection of information may be made only by lawful means and for specific purposes, primarily from customers but also from external sources such as credit granters, credit bureaux, income sources and personal references.

Data quality provisions have been added to ensure that personal information on file is accurate, complete and up to date and, when no longer required, is disposed of safely.

At or before the time of data collection, banks advise their customers on how they will use personal information and obtain their consent to verify and supplement the personal information from external sources.

### Use Limitation

A new clause has now been added to ensure that if banks were considering using personal information for purposes which were not previously

disclosed (or are now incompatible with these purposes), "they will obtain their customers' consent." Other safeguards are:

- a) personal information no longer required will be destroyed or made anonymous
- b) Disclosure of information may be made to third parties only under the following four circumstances:-
  - i) With customer consent (exceptions are explained in the code)
  - ii) when under legal obligation e.g. court or government orders. But banks have a duty to protect customers' interests by ensuring that these demands comply strictly with the laws under which they are issued, and that only the personal information requested is provided and nothing more.
  - iii) when protecting the banks' interests e.g. court procedures requiring account information as evidence
  - iv) in the course of public duty e.g. when fraud is being investigated "in matters of significant public interest" eg. "laundering" of the proceeds of organized crime.

### Security

The code states that banks take comprehensive security measures to "protect against unauthorized access to personal information, and to protect against unauthorized use, alteration, destruction, or disclosure of this personal information." In addition, the new code specifies the employee's duty of confidentiality as a condition of employment rather than merely a job requirement.

The disclosure of personal information to third parties for specific purposes (see above section) has now been made much safer, as the new code requires that the banks include in contracts with other businesses e.g. cheque printers, a clause requiring the third party to treat customers' personal information with the same high degree of confidentiality as it is treated in the bank, or as regulated by law.

Personal information disclosed with customer consent to third parties, such as lenders and credit information bureaux, is protected by "comprehensive procedures and/or contractual agreements and, in the case of credit bureaux, by credit reporting legislation."

### Individual Participation

The old version merely implied, but the new code lays down the rights of the customer to access, challenge, and be given reasons for denial of his own personal information. Each bank will establish its own procedures on access and its own policy on access fees. The guiding principle is that information "will be provided in understandable form within a reasonable time

and at a reasonable cost." Customers have the right to their own personal information on them held by their bank, "except for opinions and judgements." Incorrect or incomplete records must be amended, and "any differences as to correctness or completeness will be noted." If erroneous personal information had been conveyed to third parties, banks will use their "best efforts" to convey corrections to them.

Individual disclosure records are not maintained for routine actions. These would include the return of Not Sufficient Funds items (when a cheque is presented for payment and there is insufficient money in the account for the payment to be made), T5 forms (which inform the income tax office the sum of money the individual has received in interest over the year), periodic updates of credit information etc. Records of other disclosures will be kept, including the nature of each disclosure, the date and the identity of the party to whom the disclosure was made, and will be made available to the customer if requested.

### Accountability

The new code requires all senior management, ultimately the President and the Chairman of the Board, to take responsibility for privacy protection, if necessary, delegated to specific and named staff members. Each bank will identify and make known the officer responsible for privacy practices.

### Openness

"Each bank has procedures in place to receive and deal with customers' questions or concerns." Customers take their grievances through their bank's "complaint resolution process," which must be "made known" to them. If customers are dissatisfied with their bank's handling of their privacy complaints, they may take them to the Office of the Superintendent of Financial Institutions.

-----

### Privacy Laws & Business Comment

The six member banks on the CBA's Privacy Task Force have spent two years working to overcome the evident weaknesses of the 1987 version, which we indicated in our report (PL&B August '88 p.22). The new code shows a much greater willingness to engage the content and spirit of privacy legislation, clearly the result of extensive feedback from privacy authorities.

We would make the following observations:

1. The new code is clearly stronger on enforcement. The former code stated: "Ultimate responsibility for privacy protection rests with the banks' senior management," which has now been replaced by recognition of the need for an external appeals procedure.
2. This policy is strengthened by the fact that all 66 domestic and foreign owned chartered banks in Canada are required to belong to the CBA. This situation avoids the weaknesses of trade associations' codes in other sectors not encompassing all the companies in an industry.

3. Furthermore, the CBA is restricted to banks. Other financial institutions have their own separate associations. This means that the CBA code could be precisely targetted to the needs of the banks.
4. The definition of personal information covered by the code has expanded from "factual information" to any "data that identify and relate to a specific individual." Although the code does not say so, the CBA has explained to PL&B that this formula means: "Any personal information, including bank opinions and judgements, held by a bank about an individual will be governed by the principles of the model privacy code." The sole exception is that, as stated in the section on Individual Participation, individuals do not have a right of access under the code to their bank's data on opinions and judgements on themselves.
5. The code leaves to member banks whether they should charge a fee for customers seeking access to their files. The code does not give a typical nor a maximum fee. Clearly, if some banks set fees which are too high, this policy would act as a barrier to its effective working.
6. The CBA has "released" the code but not "published" or promoted it with a fanfare of publicity. We understand the reason as the CBA not wishing to build up consumer demands that the member banks are not yet ready to fulfill. The CBA code is a model for individual banks to use when developing their own privacy policies and practices. Release of bank privacy codes to individual consumers will be done by the banks when they complete implementation of their own individual codes. Obviously, the code can be seen to be effective only when a significant proportion of bank customer know of its existence and its provisions. This problem could be overcome by a commitment to publicize the CBA model code or the banks' individual codes from a certain date.

Overall, the 1990 CBA Model Privacy Code is stronger, more specific and offers much clearer guidelines than the previous model. Its success will not be measured only by its acceptability to the Canadian public. An important factor will be the way that it is regarded by the Data Protection Authorities in Europe and by the Commission of the European Communities when the Data Protection Draft Directive is implemented and banks wish to transfer personal information to Canada from member states with data protection laws.

Part of the International Data Transfer Scenario at the Privacy Laws & Business annual conference in July in Cambridge will deal with precisely this question.

**The CBA's Model Privacy Code for Individual Customers is available from:  
the PL&B office or from the CBA.**

**Contact: Mrs. Linda J. Routledge, Advisor, Consumer Affairs,  
The Canadian Bankers' Association,  
Suite 600, The Exchange Tower, P.O. Box 348, 2, First Canadian Place,  
Toronto, Ontario, Canada, M5X 1E1.  
Telephone: (416) 362 6092 Fax: (416) 362 7705**