Veterinarians throughout Canada will be aware that the manner in which professional veterinary services are provided to the public is subject to a plethora of laws and regulations; there are a number of existing rules which specifically address veterinary medicine and others of general business application. To this latter group, the federal government has recently added new laws governing the manner in which veterinarians can collect, use and distribute personal information they obtain in the day-to-day management of their clinics. The Personal Information Protection and Electronic Documents Act (“PIPEDA”) became effective on January 1, 2004. It recognizes that Canadians have a right of privacy with respect to their personal information. While the profession has always been subject to strict rules of confidentiality, the prudent practitioner or veterinary hospital manager will ensure that he or she gains an understanding of the new legislation and an appreciation of its impact to ensure compliance.

Legislative Review

Section 3 of the PIPEDA dictates that the objective of the new law “...is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner which recognizes the right of privacy of individuals” in commercial activities, including the practice of veterinary medicine. One must recognize that the information which is protected by the legislation is limited to “personal information” which is broadly defined as any information about an identifiable individual which presumably would include the identity, colour, education, home address, home phone number or other personal media address including home email. This is to be contrasted with commercial information, including the name, title, business address or telephone number, or any other business-related information, which is not covered by the statute.

There are a number of fundamental privacy principles reflected in the PIPEDA including accountability for the collection and disclosure of personal information, identifying the purpose of such collection, the need to obtain the consent of the individual, principles governing the limiting of collection, use, disclosure and retention of
information, ensuring accuracy of information, the implementation of information management policies and access to such policies and the need for remedial action in the event that the principles are breached. While every veterinary hospital must ensure compliance with all of the provisions of the legislation it is appropriate to consider some selected principles as follows:

**Accountability**

Every veterinary hospital is responsible for personal information under its control and must designate an individual within the practice to undertake to ensure compliance the legislation.

**Purpose**

The purpose for the collection of the personal information must be identified at or before the time the information is collected; for instance, if a new client is required to disclose the names and ages of all family members then the reason for requiring that information must be provided within the clinic's Information Policy.

**Consent**

The knowledge and consent of an individual are required for the collection, use and disclosure of personal information. This obligation differs from the general obligation to maintain a confidential relationship regarding a client or patient in that the new privacy obligation extends to the "collection and use" in addition to the "disclosure" of such information. Not unlike other common situations where consent to treatment is required prior to providing veterinary treatment, the form of consent for the collection, use and disclosure of personal information may vary depending on the sensitivity of the information and the reasonable expectations of the client. Generally speaking, personal information regarding an animal given to a veterinarian would be subject to a high standard for obtaining consent. A clinic should generally seek express consent when the information would be considered sensitive while consent may be implied if the information is less sensitive. As in the case in obtaining informed consent to treatment, a formal written consent to the collection, use, and disclosure of information would be preferred over an oral consent.
Accuracy

It is necessary for the veterinary hospital to ensure that the information that it has access to is accurate, complete and up-to-date as necessary for the purpose it was collected. To this end, you should ensure that all personal information is reviewed with the client regularly to fulfill this obligation.

Safeguards

The veterinarian must now take appropriate steps to make sure that any personal information it collects is protected by appropriate safeguards relative to the sensitivity of the information. This could generally be accomplished by physical measures such as locked filing cabinets or by organizational measure such that not all staff would have access to all information. The use of computer encryption and passwords also fulfills this obligation.

Applying the Law

Given the complexity of the PIPEDA and its recent enactment, there is little jurisprudence upon which we can rely to indicate the scope of its application in a veterinary context. A couple of examples may be of assistance.

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Fantasy Animal Hospital

Personal Information Consent

At Fantasy Animal Hospital we respect your right to privacy and will not collect, use or disclose any personal information regarding you or your pet without your consent. The information we seek from you is obtained so that we can provide a high quality of veterinary service and ensure that you are fully aware of our actions. In all cases, we will only disclose personal information about you in circumstances where we believe that it will be beneficial to the continued good health of your pet. Please indicate below whether or not you will permit us to disclose personal information in those situations.

☐ I hereby consent to Fantasy Animal Hospital collecting, using and disclosing personal information about me.

☐ I prefer that Fantasy Animal Hospital not collect, use or disclose personal information about me.

Date: _________________________

Signature: ______________________________
Professional Confidentiality

There may be some confusion about the need to protect and maintain personal information under the new laws and the time-honoured tradition of maintaining confidentiality as required by veterinary ethical codes. While both relate to the “disclosure” of confidential information, the PIPEDA also relates to the collection and use of such information. In addition, the duty of confidentiality for disclosure purposes would include all information including business information. Given the high respect that the profession has for the duty of confidentiality it is suggested that the veterinarian will have little difficulty in complying with the new privacy laws.

Non-Compliance Remedies

Failure to comply with the provisions of the PIPEDA can lead to a number of remedial actions including the right of an individual to complain to the federal Privacy Commissioner with respect to any aspect of the clinic’s non-compliance with the principles governing the legislation. The Privacy Commissioner is given the power to receive and investigate complaints and to attempt a resolution of the dispute. Any unresolved dispute may be the subject matter of legal proceedings before the Federal Court of Canada; this could result in a court order for the clinic to correct its privacy
protocols and award damages to a complainant including punitive damages for any humiliation that the complainant may have suffered.

Beyond the legislative framework of remedial action, the adverse public reaction to an allegation of the veterinary hospital's failure to protect personal information of a client should, for most practitioners, serve as a significant incentive to ensure compliance with the new laws.

A Call to Action

With the introduction of the PIPEDA the veterinary professional in Canada is faced with additional duties to clients and patients. The implementation of a privacy policy and the appointment of a clinic Privacy Officer will assist in ensuring compliance with the new laws. For assistance in the development of an appropriate hospital privacy policy the College of Veterinarians of Ontario has published a helpful “checklist” on its website at www.cvo.org.

As a framework to commence your clinic's compliance plan, you might consider the immediate implementation of the following:

1. Select a staff member or staff members to acts as the Privacy Officer for your clinic;
2. Start preparing a Privacy Policy for the hospital including the circumstances and reasons for the collection and use of personal information within the clinic;
3. Establish a security system for the protection of personal information by way of locked cabinets or computer encryption or passwords;
4. Publish a brief summary of your clinic's Privacy Policy so that it is available for review by clients;
5. Determine the manner in which you will maintain and retain personal information and the destruction of records policies for the clinic;
6. Conduct an in-house seminar for your staff to remind them of both their duty to maintain confidentiality and educate them about the new privacy laws; and
7. Visit the Department of Justice website at www.canada.justice.gc.ca for more information about the new privacy requirements.

Of primary importance is the need to approach the disclosure of personal information with caution and, in most cases, only with the express consent of the client. In this manner, the already high ethical standards of the veterinary profession will continue to be honoured and enhanced.
Douglas C. Jack is a lawyer with his own practice in Fergus, Ontario dedicated to the law as it relates to veterinary medicine and a founding member of the American Veterinary Medical Law Association.

CVMA members can submit their questions on privacy issues in a veterinary context through the VetLaw Online advice column on the CVMA website at www.canadianveterinarians.net (Feb. 2004)