

# ARE ONTARIO'S NEW PRIVATE RETAILERS MEETING PRIVACY OBLIGATIONS FOR CANNABIS TRANSACTIONS?

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Private organizations, including Ontario's lucky lottery-winning private retailers, are required to abide by the Canadian federal private-sector privacy law, the Personal Information Protection and Electronic Documents Act ("PIPEDA").

The Office of the Privacy Commissioner of Canada (the "OPC") is responsible for overseeing the legislation and ensuring compliance. In December 2018, prior to Ontario private retailers opening their doors, the OPC released a guide to assist private retailers in planning for cannabis transactions and how to best protect the personal information of customers.

PIPEDA requires that the collection of personal information by private cannabis retailers be limited to that which is necessary for the purpose identified by the organization. Retailers are not entitled to manufacture purposes that best suit them or stretch their abilities under the legislation,



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because “purposes” must be in line with what a reasonable person would consider to be appropriate in the circumstances.

Retailers must be clear on what information they are required to collect, and the purpose they are using it for. It seems reasonable in these circumstances to ask a customer to view their ID to verify their age and determine if they are legally entitled to enter the store or not, given the legal requirement that no one enter the store if they are under 19 years old. In fact, the legislation requires that any individual who appears to be under 25 years old provide a form of identification prescribed for the purposes of subsection 7 (2) of the

Ontario Cannabis Control Act, 2017. However, what if retailers go one step further and try to record or retain that information?

In order to collect any personal information, individuals must be made aware of what information is being collected, to what parties it will be disclosed, the purposes for its collection, and any residual risks of harm. Retailers ought to be aware of their obligations under PIPEDA and how to balance those with their own goals in terms of building a customer list or database.

Many customers waited until purchasing in person (and in cash) was available, before making their

first legal cannabis purchase in Canada. These customers may have taken the OPC’s “warning”, which advised cannabis buyers to purchase in cash to avoid any issues with entry to foreign countries, to heart. The first of Ontario’s private cannabis retailers opened its doors and caused some concern with an ID scan at the front door. Although the ID scan was allegedly programmed not to build a record without a customer’s consent, it came as a shock to customers trying to stay under the radar.

Concerned customers like the ones at that store are entitled to ask questions. Retailers are required to designate someone to ensure compliance with PIPEDA and must provide that information to customers when requested. If a customer feels its information is at risk, that customer ought to make proper inquiries of the retailer and the privacy officer.

For retailers, there are some primary ways to ensure compliance with PIPEDA. This is not a complete list of all measures that retailers can use.

1. Retailers ought to ensure that you are clear about the type of information it needs to collect and ought to be explicit about what that information will be used for;
2. Retailers ought to ensure to implement the least intrusive measures necessary to fulfil goals or meet requirements of the retail legislation;
3. Retailers ought to implement internal policies and practices for the collection and safe storage of personal information that is well known across all staff members handling personal information;
4. Retailers ought to designate a privacy officer and make that privacy officer available for customer questions.

*If you are a retailer who requires assistance with respect to the development of compliant security measures and collection of personal information, please feel free to contact*

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