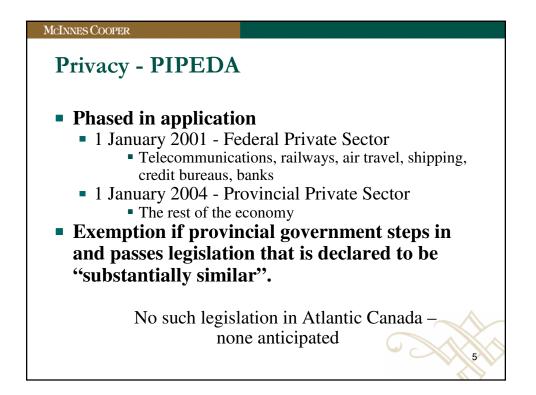
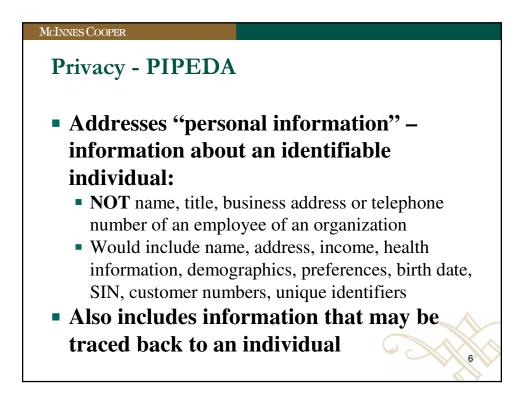


# **PIPEDA – Purpose**

3. The purpose of this Part 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 that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.





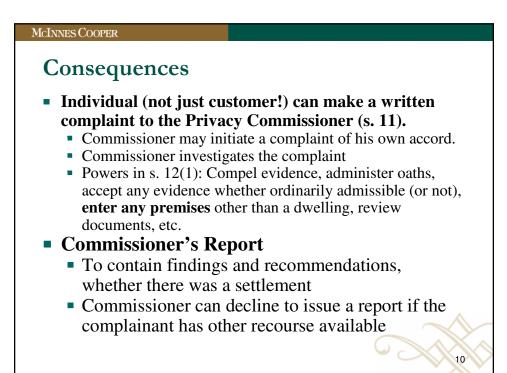
# **Privacy Principles**

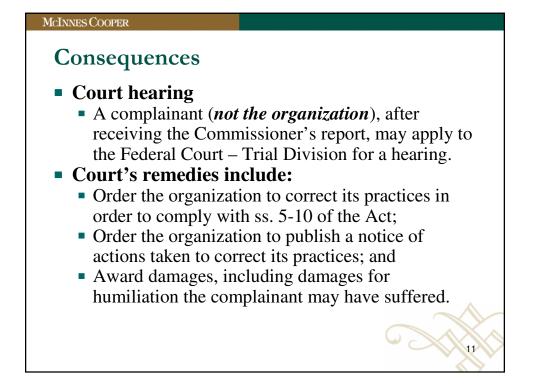
- Based on the principles of the Canadian Standards Association Model Code for the Protection of Personal Information:
- **1.** Accountability
- 2. Identifying purposes
- 3. Consent
- 4. Limiting collection
- 5. Limiting use, disclosure and retention
- 6. Accuracy
- 7. Safeguards
- 8. **Openness**
- 9. Individual access
- 10. Challenging compliance

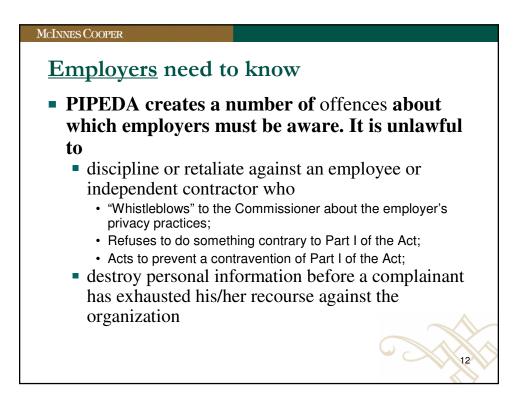


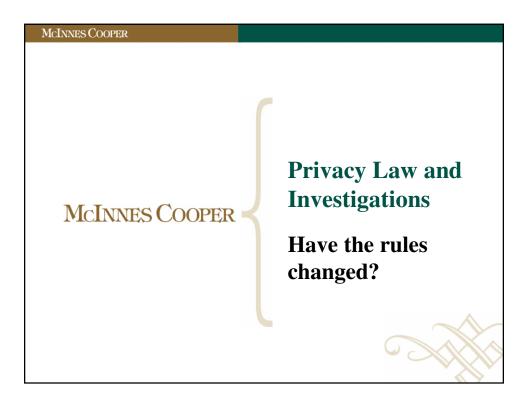
# What about employees?

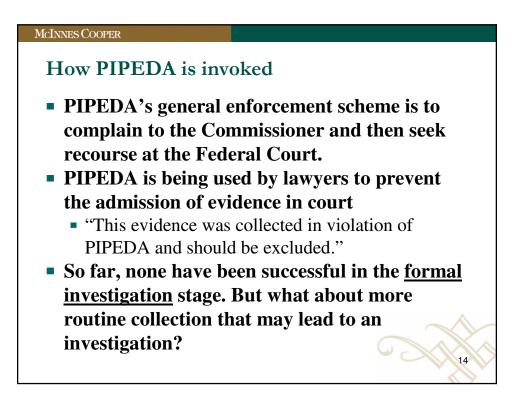
- PIPEDA only applies generally to employee information in the <u>federally-regulated</u> private sector
- Employee information is only covered in the provincially-regulated private sector if it is used in a commercial way
- But, even employers who are not subject to the law are experiencing a "privacy chill"
- Employees *believe* they have rights

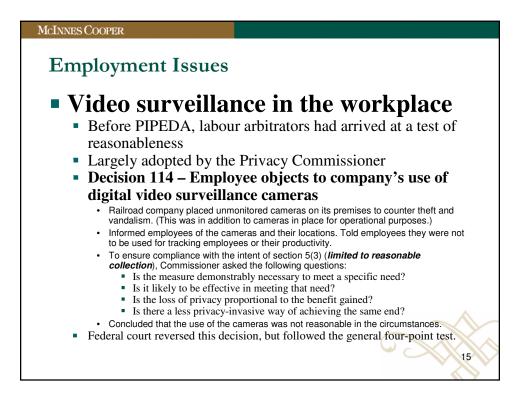




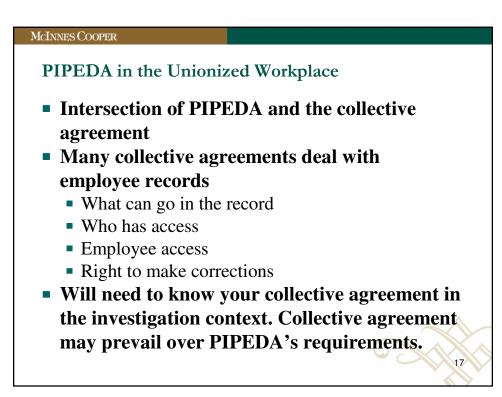


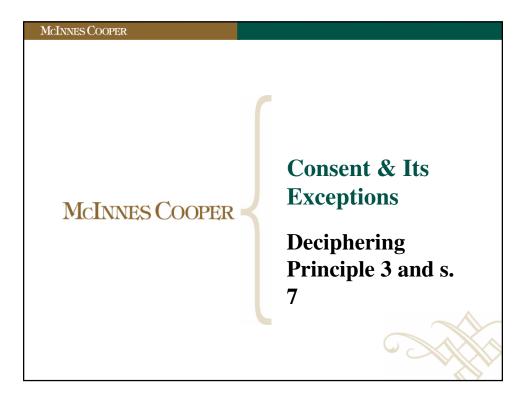






McInnes Cooper
Monitoring E-mail and Internet Use
Common concern - Collection of personal
information
Privacy Commissioner has taken a negative
view of the practice
General principles depend on the reasonable
expectations of the employee
Is there notice of rules of use?
Is there knowledge of the monitoring?
Are the restrictions reasonable?
Baseline reasonableness requirement in s. 5(3)
<ul> <li>Commissioner will probably use the same four</li> </ul>
point test for reasonableness.

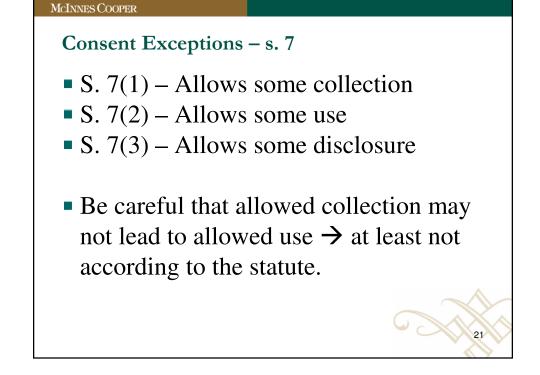




# The General Rule

4.3 Principle 3 -- Consent The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, *except where inappropriate*.

# MUNNES COOPER Consent Exceptions Section 7 of PIPEDA sets out the allowed exceptions to the general consent rule Warning: Not very easy to follow. May not allow you to do what you want. Adult supervision required!



McInnes Cooper
Consent Exceptions
<ul> <li>Consent exceptions are very dangerous</li> <li>Virtually all circumstances are fraught with risk:         <ul> <li>Clearly in interests of individual and consent cannot be obtained in a timely way.</li> <li>Investigation</li> <li>Journalistic or artistic purposes / scholarly purposes</li> <li>Publicly available information</li> <li>Emergency</li> <li>To a lawyer</li> <li>Collecting a debt</li> <li>Subpoena</li> <li>To government institution for national security, defense of Canada, etc.</li> <li>Investigative body, government institution</li> </ul> </li> <li>Permissive exceptions, not mandatory</li> <li>S. 7 allows you to do things that would otherwise be unlawful under</li> </ul>
PIPEDA does not force you to do so.

# **Consent Exceptions**

- S. 7(1)(b) "it is reasonable to expect that the collection with the knowledge or consent of the individual <u>would</u> compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province."
  - Can be <u>collected</u> and <u>used</u>
  - Has been used and upheld by bank in the course of fraud investigation
  - The employment "contract" is an agreement. A legitimate investigation is likely an investigation of a breach of that agreement or of a legal violation.
  - Professional codes of practice may fall within this section.

### McINNES COOPER

# **Consent Exceptions**

- S. 7(3)(c) "may disclose information … if required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records"
  - Allows <u>disclosure</u> to a body that can compel the documents.

# **Consent Exceptions**

- S. 7(3)(d) "made on the initiative of the organization to an investigative body, a government institution or a part of a government institution and the organization
  - (i) has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or
  - (ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;"
  - Allows <u>disclosure</u> to police, investigative bodies
  - Made on the initiative of the organization
  - "Investigative body" is defined in the regulations.

## McINNES COOPER

# **Investigative Bodies**

- Many professional regulators think they need to be an "investigative body" to continue to do their investigative work.
- Not so....
- For many, IB status doesn't help in a meaningful way.
- Section 7(3)(b) allows someone to disclose to an IB on their own initiative. There is no authority to collect without consent, except within the confines of the law.

