OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report AH-2020-001

June 30, 2020

WorkplaceNL

Summary: The Complainant filed a request under the *Access to Information and Protection of Privacy Act, 2015* (*ATIPPA, 2015*) for correction of personal information in a file held by WorkplaceNL relating to his application for compensation. The record in question is the report of a medical practitioner containing his opinions and observations of the Complainant's injury and its impact on his ability to return to work. The record informed WorkplaceNL's decision to deny the Complainant's claim for compensation. Upon receiving the Complainant's request for correction, WorkplaceNL determined that the record in question contained personal health information and was therefore subject to the *Personal Health Information Act* (*PHIA*) and processed the request pursuant to the provisions of that *Act*. WorkplaceNL refused to make the requested correction under section 62 of *PHIA* on the basis that it did not create the record and that the record was a professional opinion or observation within the meaning of section 62. The Complainant disputed the applicability of *PHIA* and applied to the Commissioner for a review of WorkplaceNL's decision, also alleging WorkplaceNL had not discharged its duty to assist under section 13 of *ATIPPA, 2015*. The Commissioner determined, based on a plain reading of the provisions relating to "personal health information" in both Acts that WorkplaceNL had properly interpreted the request as being made under *PHIA*. The application of section 62 was previously discussed by the NL OIPC in Report AH-2014-001. Applying the analysis articulated in the earlier report, the Commissioner determined that WorkplaceNL properly refused to correct the information as it related to a professional opinion or observation. The Commissioner also found that *ATIPPA, 2015* was not applicable and therefore WorkplaceNL could not have been in breach of section 13 of that *Act*.

File #0135-060-19-002

Statutes Cited: *Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2, section 6(2), 63; *Personal Health Information Act* S.N.L. 2008, c. P-7.01, section 4(1)(o), 5(1)(a), 12, 16, 60, 62(1)(b)(i).

Authorities Relied On: NL OIPC Reports AH-2014-001. *United Steelworkers of America v. Butt*, 2002 NLCA 62; Ontario Information and Privacy Commissioner *Royal Victoria Regional Health Centre (Re)*, 2018 CanLII 15279.

I BACKGROUND

[1] This complaint results from a refusal by WorkplaceNL to correct a medical record in the Complainant's file which the Complainant alleges is incorrect. The medical record contains a diagnosis of the Complainant's injury and its impact on his ability to work. The Complainant had previously made a claim for compensation with WorkplaceNL which was denied, in part, on the basis of the medical report at the heart of this complaint. Some years later, the Complainant had medical tests conducted and had these reports added to his file. The Complainant is of the view that these tests contradict the medical report.

[2] The Complainant filed a request for correction under subsection 10(1) of the *Access to Information and Protection of Privacy Act, 2015*. Upon receipt of the request, WorkplaceNL contacted the Complainant to advise that it had reviewed the request and would be processing it as a request for correction under the *Personal Health Information Act* as the record at issue was comprised of the observations and opinions of a medical professional and must therefore be categorized as "personal health information" as defined in paragraph 5(1)(a) of *PHIA* and subsection 6(2) of *ATIPPA, 2015*.

[3] The Complainant was not satisfied with his request being processed under *PHIA* and insisted that it must be processed under *ATIPPA, 2015* as his request for correction was made under that *Act*. WorkplaceNL maintained its position that the request must be processed under *PHIA* and proceeded to do so. Ultimately, WorkplaceNL refused the requested correction under subparagraph 62(1)(b)(i) of *PHIA* on the basis that it did not create the record and that the record is a "professional opinion or observation" as described in subparagraph 62(1)(b)(ii). The Complainant was not satisfied with WorkplaceNL's refusal and filed a complaint with this Office under subsection 42(1) of *ATIPPA, 2015*.

[4] Upon receipt of this complaint, this Office determined that both the initial request and the subsequent complaint should have been filed under the provisions of *PHIA* and, further, that the refusal must be assessed under that *Act* as the information that is the subject of the request is unequivocally personal health information. These positions were communicated to the Complainant early in the informal investigation stage along with the reasons and citations

of the relevant provisions in both *Acts*. The Complainant continues to dispute the applicability of *PHIA* and insists that the request and complaint must be processed under *ATIPPA, 2015* because the request was made under that *Act*. Due to the inability to reach an agreement, informal resolution was unsuccessful, and the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II CUSTODIAN'S POSITION

[5] WorkplaceNL has maintained its initial position that the requested correction relates to personal health information and must therefore be analyzed under *PHIA*. In support of its position, it cites the definition of "personal health information" in section 5 of *PHIA* and section 6(2) of *ATIPPA, 2015* as well as sections 6(1), 12 and 60 of *PHIA*, which govern requests for correction of personal health information.

[6] With respect to whether it should have made the requested correction, WorkplaceNL maintains its refusal to make the requested correction under paragraph 62(1)(b)(i) because it did not create the record and that the record is exempt from a correction request as it is a "professional opinion or observation" as described in paragraph 62(1)(b)(ii).

III COMPLAINANT'S POSITION

[7] The Complainant maintains his position that his request for correction must be analyzed under section 63 of *ATIPPA, 2015* as his request was made under section 10 of that *Act*. No authority or argument was provided for this position. Following notification of this Office's position that the request must be assessed under *PHIA*, the Complainant was advised of WorkplaceNL's reliance upon paragraphs 62(1)(b)(i) and (ii) and invited to make submissions with respect to their applicability. He declined to make any submissions on this point.

IV ISSUES

[8] There are three issues to be resolved with respect to this complaint. The first two issues are inextricably linked. First, we must address the question of whether this request is

governed by *ATIPPA, 2015* or *PHIA*. Once we have determined the applicable legislation, we must then determine whether WorkplaceNL was justified in refusing to make the correction. The second issue cannot be addressed until the first issue is resolved.

[9] The other issue to be addressed is the Complainant's allegation that WorkplaceNL failed to discharge its duty to assist under section 13 of *ATIPPA, 2015*. This analysis will only be necessary if it is determined that the Complainant's original request should have been processed pursuant to *ATIPPA, 2015*.

V DECISION

[10] "Personal health information" is defined in *PHIA* at section 5:

> 5. (1) *In this Act, "personal health information" means identifying information in oral or recorded form about an individual that relates to*
>
> (a) *the physical or mental health of the individual, including information respecting the individual's health care status and history and the health history of the individual's family*;

[11] The information the Complainant sought to have corrected is contained within a report created by a medical doctor in which the doctor makes a number of observations regarding the individual and reaches a conclusion as to the nature and presence of the reported injury. As the information relates to the Complainant's "physical or mental health", it falls squarely within the definition of personal health information in *PHIA*. This definition is adopted in *ATIPPA, 2015* at subsection 6(2).

> 6. (2) *For the purpose of this section, "custodian" and "personal health information" have the meanings ascribed to them in the Personal Health Information Act.*

[12] As can be seen from the following analysis, both Acts provide clear direction that *PHIA* applies to personal health information to the exclusion of *ATIPPA, 2015*. Both *Acts* contain provisions to this effect.

[13] Section 12 of *PHIA* states:

> 12. (1) *The Access to Information and Protection of Privacy Act, 2015 does not apply to*
>
> (a) *the use, collection, disclosure, storage, disposition or any other dealing with personal health information by or in the custody or control of a custodian;*
> (b) *a request for access to or correction of a record of personal health information in the custody or control of a custodian;*
> (c) *a complaint to the commissioner respecting*
>
> *(i) a denial of access to or correction of a record of personal health information by a custodian,*
> *(ii) a request for review or appeal of a denial of access to or correction of a record of personal health information by a custodian*
>
> ...

[14] Section 6 of *ATIPPA, 2015* states:

> *6. (1) Notwithstanding section 5, but except as provided in sections 92 to 94, this Act and the regulations shall not apply and the Personal Health Information Act and regulations under that Act shall apply where*
>
> *(a) a public body is a custodian; and*
> *(b) the information or record that is in the custody or control of a public body that is a custodian is personal health information.*
>
> *(2) For the purpose of this section, "custodian" and "personal health information" have the meanings ascribed to them in the Personal Health Information Act.*

[15] Both sections require that, for *PHIA* to apply, the information must be personal health information and it must be in the custody or control of a "custodian". The definition of a "custodian" is provided at section 4 of *PHIA* and adopted under *ATIPPA, 2015* at subsection 6(2), reproduced above.

> *4. (1) In this Act, "custodian" means a person described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with the performance of the person's powers or duties or the work described in that paragraph:*
>
> *...*
> *(o) the Workplace Health, Safety and Compensation Commission;*
> *...*

[16] As the administering body of the *Workplace Health, Safety and Compensation Act* under the direction of the Workplace Health, Safety and Compensation Commission, WorkplaceNL

qualifies as a custodian under paragraph 4(1)(o). The information in question is in the custody and control of WorkplaceNL as part of an application for compensation, the determination of which falls within WorkplaceNL's statutory duties under section 19 of the *Workplace Health, Safety and Compensation Act*:

> *19. (1) The commission has exclusive jurisdiction to examine, hear and determine matters and questions arising under this Act and a matter or thing in respect of which a power, authority or distinction is conferred upon the commission, and the commission has exclusive jurisdiction to determine*
>
> *(a) whether an injury has arisen out of and in the course of an employment within the scope of this Act;*
> *(b) the existence and degree of impairment because of an injury;*
> *(c) the permanence of impairment because of an injury;*
> *...*

[17] As the information at issue in this complaint is personal health information held by WorkplaceNL which is both a public body subject *to ATIPPA, 2015* and a custodian subject to *PHIA*, the above sections in both *Acts* require that both the original request and this complaint be processed, analyzed and resolved pursuant to the provisions of *PHIA* relating to requests for correction.

Correction Under PHIA

[18] *PHIA* provides a means for individuals to request correction of their personal health information at section 60:

> *60. (1) Where a custodian has granted an individual access to a record of his or her personal health information and the individual believes that the record is inaccurate or incomplete, he or she may request that the custodian correct the information.*
>
> *(2) A request under subsection (1) may be made orally or in writing.*

[19] Additionally, *PHIA* includes right to seek correction of personal information as one of its purposes at section 3:

> *3. The purposes of this Act are*
>
> *(a) to establish rules for the collection, use and disclosure of personal health information that protect the confidentiality of that information and the privacy of individuals with respect to that information;*
> *(b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;*
> *(c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;*

[20] Notably, *PHIA* includes the caveat that correction is "subject to limited and specific exceptions set out in this Act." These exceptions are enumerated under paragraph 62(1)(b) and are discussed later in this report.

[21] The *Act* also imposes a duty on custodians to ensure the accuracy of personal information.

[22] *PHIA* states at section 16:

> *Before using or disclosing personal health information that is in its custody or under its control, a custodian shall*
>
> *(a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purpose for which the information is used or disclosed;*
> *(b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information; and*
> *(c) make a reasonable effort to ensure that the person to whom a disclosure is made is the person intended and authorized to receive the information.*

[23] *PHIA* further qualifies the degree of accuracy as that which is "necessary for the purpose for which the information is used or disclosed". In the instant case, the purpose for which the information was used was the determination of eligibility for compensation.

Limitations on Correction Under PHIA

[24] *PHIA* specifically sets out three situations in which a custodian **may** refuse to correct personal health information at section 62:

62. (1) In its response under section 61, the custodian

(a) shall grant the request for correction where the individual making the request under subsection 60(1)

(i) demonstrates to the satisfaction of the custodian that the record is incomplete or inaccurate for the purposes for which the custodian uses the information, and
(ii) gives the custodian the information necessary to enable the custodian to correct the record; or

(b) may refuse the request for correction where

(i) the record was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record,
(ii) the information which is the subject of the request consists of a professional opinion or observation that a custodian has made in good faith about the individual, or
(iii) the custodian believes on reasonable grounds that the request is frivolous, vexatious or made in bad faith.

[25] In its response, WorkplaceNL relied upon subparagraphs 62(1)(b)(i) and 62(1)(b)(ii). For the reasons that follow, we have determined that WorkplaceNL was entitled to refuse the requested correction on the basis of 62(1)(b)(ii).

Record Not Created by the Custodian

[26] Where a custodian has custody of personal health information that it did not itself create, it may refuse to make a correction if it lacks "sufficient knowledge, expertise and authority to correct the record." Although WorkplaceNL cited subparagraphs 62(1)(b)(i) in its submission, in order to rely on this provision to refuse to make a correction, it must establish that 1) the record was not originally created by the custodian and 2) the custodian does not have sufficient knowledge, expertise and authority to correct the record. While it is apparent that WorkplaceNL did not create the record, it did not advance argument or evidence to explain why it does not have sufficient knowledge, expertise and authority (all three) to correct the record.

Professional Opinion or Observation

[27] A custodian may exercise its discretion to refuse to correct a record of personal health information under subparagraph 62(1)(b)(ii) provided two conditions are met: the record must be a professional opinion or observation and it must be made in good faith.

[28] The issue of what comprises a "professional opinion or observation" was discussed at length by this Office in Report AH-2014-001 wherein the Commissioner at that time adopted the reasoning of the Alberta Information and Privacy Commissioner with respect to the nature of a "professional opinion or observation":

> *[38] The Commissioner stated (at paragraphs 47-48 of Order H2005-006):*
>
> > *I have previously said that "professional" means of or relating to or belonging to a profession and "opinion" means a belief or assessment based on grounds short of proof, a view held as probable. "Observation" means a comment based on something one has seen, heard, or noticed, and the action or process of closely observing or monitoring (Order H2004-004, para 19). The opinion or observation is that of the author or the writer of the information at issue.*
> >
> > *Opinions and observations are subjective in nature. Opinions, even those based on the same set of facts, can differ. Dr. X may see a patient and form the opinion that the patient has the flu. Dr. Y may see the same patient and form the opinion that the patient has a cold. HIA does not compel custodians to resolve these differences of opinion by forcing physicians to change their opinions under the guise of correction. For example, in Order H2004-004, I said the physician's notations of "paranoid" and "personality disorder" were professional opinions and the physician's notation of "unable to get along with people" was a professional opinion or observation that the physician could refuse to correct (para 24).*
>
> *[39] If the information is a professional opinion or observation, that information would not be subject to correction or amendment, since under paragraph 13(6)(a) of HIA a custodian can refuse to make a correction or amendment regardless of whether there may be an error or omission.*

[29] The above passage clearly lays out definitions of "professional opinion" and "observation" and explains the rationale for allowing custodians to refuse to correct medical opinions or observations. This rationale is discussed further at paras 67 and 68 and similarly applies to a request to correct a record which was not created by a custodian:

> *[67] This situation illustrates perfectly the dilemma faced by custodians when confronted with such requests for correction of the record, and it illustrates why the legislatures in Newfoundland and Labrador, in Alberta and in other jurisdictions have chosen to direct that custodians handle such requests in a different way. Rather than treating a request for correction as a kind of adversarial trial proceeding, in which the custodian (or the Commissioner at the complaint stage) must determine, on the basis of evidence presented to it, which version of events is most likely to be true, the legislature has chosen to create a procedure that focuses instead on both the integrity and the transparency of the clinical record-keeping process.*
>
> *[68] It focuses on integrity by insulating health care professionals from outside interference in formulating and recording their professional observations and diagnostic opinions (subject, as indicated above, to the requirement of good faith). It accomplishes this by permitting custodians to refuse to agree to requests for correction of such observational and opinion information. It simultaneously ensures transparency, by mandating a correction process that requires that in either case, the record will always contain both the original content and the information about the requested correction. The only difference is that in the case of a correction, the custodian labels the original information as incorrect, and clearly states what it considers the correct information to be. Conversely, where the custodian refuses to correct the record, the annotation must state what the requested correction is, that it has refused to make it, and why.*

[30] As the information at issue in the present case is a diagnosis of the cause and degree of the Complainant's medical condition based on information received from the Complainant, the doctor's observations of the patient, and an assessment of diagnostic imaging of the Complainant, it falls squarely within the above definition of "professional opinion or observation."

[31] Subparagraph 62(1)(b)(ii) requires that the "professional opinion or observation" must be made in "good faith" to fall within the exception to correction. The concept of "good faith" was discussed the Newfoundland and Labrador Court of Appeal in *United Steelworkers of America v. Butt*:

> *[56] In R. v. Devereaux (1996), 1996 CanLII 11047 (NL CA), 147 Nfld. & P.E.I.R. 108, Steele J.A. of this Court considered the meaning of the term "good faith". He said, in part:*
>
> > [32] *The term "good faith" in legal parlance is one of those familiar terms that does not have a precise definition, not quite self-*

> *explanatory, yet is an expression that instantly connotes honesty in a relationship. In law it is a term that acquires its legal meaning from the context of the subject in which it appears, both in civil and criminal law. For example, in labour law, upon certification of a union there is a duty placed on all parties to "bargain in good faith". The expression "bad faith" also has a prominent place. Labour lawyers describe "good faith" within the framework of collective bargaining. In the law of defamation, one hears of "fair comment" and an honest belief in the truth of the facts on which the comment is made; further, that the comment or opinion must be asserted honestly and in "good faith"*
> *…*
> *[35] The Canadian Law Dictionary by John A. Yogis, Q.C. describes "good faith" by saying that "to act in good faith, one must act openly, fairly and honestly, …". If there is one word that delineates or characterizes the expression "good faith", it is "honesty".*

[32] The concept of "good faith" as it relates to a "professional opinion or observation" in the context of access and privacy legislation was considered by Adjudicator Daphne Loukidelis of the Ontario Information and Privacy Commissioner's Office in *Royal Victoria Regional Health Centre (Re)* which dealt with the Ontario Act's equivalent of subparagraph 62(1)(b)(ii) at paragraphs 13 and 14:

> [13] *Section 55(9) of PHIPA sets out the two exceptions to the obligation to correct records. The relevant exception in this complaint is section 55(9)(b), which states:*
>
> > *Despite subsection (8), a health information custodian is not required to correct a record of personal health information if, …*
> >
> > *(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.*
>
> [14] *As the wording indicates, a health information custodian is not required to correct PHI if it consists of a professional opinion or observation that a custodian has made in good faith about the individual. Where a custodian claims that section 55(9)(b) applies, as here, the custodian bears the burden of proving that the PHI at issue consists of a "professional opinion or observation" about the individual. However, once this is established, the onus is on the individual seeking a correction to establish that the "professional opinion or observation" was not made in good faith. If the exception applies, it does not matter whether or not the individual has met the onus in section 55(8) because even if the applicant satisfies this office that the information is incorrect or inaccurate under section 55(8), a finding that the exception in section 55(9)(b) applies will resolve the complaint.*

[33] As can be seen from the above excerpt, the wording of the Ontario provision at issue in *Royal Victoria College Health Centre, (Re)* is virtually identical as regards the exception to correction where the record "consists of a professional opinion or observation that a custodian has made in good faith about the individual". Given the close similarity in the wording and purpose of the respective provisions, we adopt the test articulated in *Royal Victoria College Health Centre, (Re)* at para 24:

> *[24] The determination of whether the exception at section 59(9)(b) applies involves a two-part analysis. The first question is whether the PHI consists of a "professional opinion or observation." The second question is whether the "professional opinion or observation" was made "in good faith." This office's approach to the interpretation of section 55(9)(b) of PHIPA in the form of a two-part test was established in PHIPA Decisions 36 and 37 by Adjudicator Jennifer James. The test in those decisions has been adopted in subsequent decisions, and I do so here.*

[34] Having established that the information in question qualifies as a "professional opinion or observation," we must determine whether the opinion and accompanying observations were made in "good faith." Again, we adopt the analysis of Adjudicator Daphne Loukidelis of Ontario's Information and Privacy Commissioner's Office on this branch of the test. With respect to the onus of establishing "good faith," Adjudicator Loukidelis states at para 31:

> *[31] According to decisions by the courts, a finding that someone has not acted in good faith can be based on evidence of malice or intent to harm another individual, as well as serious carelessness or recklessness. The courts have stated that individuals are assumed to act in good faith unless proven otherwise. Therefore, the burden of proof rests on the individual seeking to establish that a person has acted in the absence of good faith to rebut the presumption of good faith. In the context of section 55(9)(b) of PHIPA, the burden rests on the individual seeking the correction to establish that the custodian did not make the professional opinion or observation in good faith.*

[35] As the above passage establishes, the onus of proving the absence of good faith falls upon the party seeking to correct the professional opinion or observation, in this case the Complainant. The Complainant has relied on the differing conclusions reached in the medical report in question and subsequent medical reports from other medical professionals. However, the potential for differing conclusions is implicit in the use of the word "opinion". The issue of good faith in this context refers to the state of mind of the medical professional making the observation. In the absence of evidence to the contrary, good faith is presumed.

While the existence of differing medical opinions could, in certain circumstances, impugn the accuracy or reliability of the medical opinion, it is not, on its own, evidence of the absence of good faith.

[36] As there is no evidence upon which it can be concluded that the medical opinion in question was made with "malice or an intent to harm another individual" or with "serious carelessness or recklessness," the presumption of good faith has not been displaced.

[37] As the above analysis establishes that the record in question consists of a professional opinion or observation made in good faith, we conclude that WorkplaceNL was justified in refusing to make the requested correction under subparagraph 62(1)(b)(ii).

Noting the Refused Correction on the Record

[38] Section 63(2) of *PHIA* sets out the requirements of a custodian wishing to refuse a request for correction of personal health information:

> *63 (2) Where a custodian refuses to grant a request for correction under paragraph 62(1)(b), he or she shall*
>
> *(a) annotate the personal health information with the correction that was requested and not made and, where practicable, notify a person to whom the information was disclosed within the 12 month period immediately preceding the request for correction of the notation unless the custodian reasonably expects that the notation will not have an impact on the ongoing provision of health care or other benefits to the individual or the individual requesting the correction has advised that notice is not necessary; and*
>
> *(b) provide the individual requesting the correction with a written notice setting out the correction that the custodian has refused to make, the refusal together with reasons for the refusal, and the right of the individual to appeal the refusal to the Trial Division under Part VII or request a review of the refusal by the commissioner under Part VI.*

[39] Paragraph 63(2)(a) imposes two duties upon a custodian where he or she refuses to grant the requested correction. First, the custodian must make a notation on the record of the requested and refused correction. Second, the custodian must then determine if the record with respect to which the correction request was made has been accessed within the prior 12

months and, where practicable, notify the individual(s) who accessed the record or the requested and refused correction. This second duty is fettered by the qualification that the notification be made "where practicable". The duty to notify under paragraph 63(2)(a) is also conditional upon the custodian's determination of whether the fact of the requested correction will "have an impact on the ongoing provision of health care or other benefits to the individual" to whom the information relates.

[40] During the our initial investigation, it was determined that WorkplaceNL had not annotated the record in question as required by paragraph 63(2)(a) and was unaware of its obligation to do so. Upon being advised of its obligation, WorkplaceNL noted the requested correction on the record and determined that the record had not been accessed during the preceding 12 months. As WorkplaceNL annotated the record with the requested and refused correction, it is unnecessary to determine whether the notation of the requested correction would "have an impact on the ongoing provision of health care or other benefits to the individual".

[41] With respect to the requirement under paragraph 63(2)(b) that the individual be notified in writing of the refusal, reasons for refusal and their right of appeal, we find that WorkplaceNL discharged its obligation. Following receipt of the request for correction, WorkplaceNL contacted the Complainant to explain that it would be processing the application under *PHIA* and explained its reason for doing so. The Complainant did not accept WorkplaceNL's explanation and continued to insist that the request be processed under *ATIPPA, 2015*. WorkplaceNL proceeded to process the request under *PHIA* and notified the Complainant of its refusal, with reasons, and of the right of appeal in its final response.

Duty to Assist

[42] In his complaint to this office, the Complainant alleged WorkplaceNL failed to discharge its duty to assist under section 13 of *ATIPPA, 2015.* As the above analysis has established, WorkplaceNL was correct in interpreting the request as a request for correction under *PHIA* and applying the provisions of that Act. There is no equivalent provision to section 13 of *ATIPPA, 2015* in *PHIA.*

[43] Broadly speaking, however, as there are obligations in *PHIA* requiring custodians to respond to requests for access and correction, it is reasonable that a certain very basic duty to assist is implied, at least sufficient for members of the public to be able to avail of and enjoy these rights. It stands to reason that an Act such as *PHIA* cannot function unless custodians provide a basic level of assistance to members of the public in making such requests. Although WorkplaceNL erred at one stage of the process by not annotating the record as part of its refusal of the correction request, we do not find that WorkplaceNL failed to respond appropriately and provide reasonable assistance to the Complainant.

VI RECOMMENDATIONS

[44] As WorkplaceNL was authorized to refuse to make the requested correction under section 62(1)(b)(i) and 62(1)(b)(ii) of *PHIA*, I do not recommend that WorkplaceNL correct the record as requested by the Complainant.

[45] With respect to its duty to annotate the record at issue with the requested and refused correction, I recommend that WorkplaceNL develop a policy or procedure to ensure that refused correction requests are noted on the relevant record and that persons who have accessed the record in the previous 12 months are notified of the request and refusal, where required by paragraph 63(2)(a) of *PHIA*.

[46] Therefore, pursuant to subsection 73(1) of *PHIA* I hereby advise the Complainant that he has the right, within 30 days of his receipt of this Report, to appeal WorkplaceNL's refusal to correct the record, under section 83 of *PHIA*, to the Supreme Court of Newfoundland and Labrador.

[47] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30th day of June 2020.

Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador