OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

PH-2023-001

March 8, 2023

Key Assets

Summary: A number of psychologists and social workers ended their contracts with Key Assets, a social services organization, and requested their clinical files. When the organization refused to transfer the files, the clinicians filed a complaint under the *Personal Health Information Act* with our Office. The Commissioner found that the clinicians individually, not Key Assets, are the custodians of the personal health information of clients in the disputed clinical files. The clinicians therefore have the right and the responsibility under the *Act,* to secure and protect the records and to control access to, use and disclosure of the information. The Commissioner therefore recommended that the clinicians take steps to ensure an orderly transfer of the records to their own custody.

Statutes Cited:

Personal Health Information Act, SNL 2008 c. P-7.01,

Access to Information and Protection of Privacy Act, 2015, SNL 2015, c. A-1.2,

Authorities Relied On:

NL OIPC Report P-2017-001

NL OIPC *PHIA Compliance Checklist*

File # 0215-070-22-001

BACKGROUND

[1] Key Assets ("KA" or the "Agency") is a private social services organization that, among other things, operates staffed homes and foster care homes in Newfoundland and Labrador. A division of KA, called Key Solutions Clinical Services/Professional Services, groups a number of clinicians (registered psychologists and social workers) who provide therapeutic services to clients. Those clients are children, youth and adults with issues such as anxiety or depression, sometimes resulting from trauma, from stress or from harassment at work.

[2] In the fall of 2021, all of the clinicians terminated their contracts with KA. When the clinicians subsequently requested possession of their active and closed clinical files from KA, the Agency sent them a letter refusing to transfer the files, on the grounds that the files are the property of KA and that KA is the custodian of the files under the *Personal Health Information Act* ("*PHIA*")*.* The clinicians filed a group complaint with our Office under section 66(3) of *PHIA.*

[3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 67 of *PHIA*.

ISSUES

[4] The single issue in this complaint is whether KA, or each individual clinician (collectively, the "Clinicians") is the *PHIA* custodian of the clinical files. The positions of the Clinicians and the agency have been elaborated over the course of the investigation, and will be referred to as necessary below.

DECISION

[5] We have concluded that the Clinicians, not KA, are the custodians of the clinical files. Our interpretation is that the Clinicians are independent contractors, that the therapeutic relationship in fact is between the clinician and the client, and that relationship, legally and in

practice, is regulated and overseen, not by KA, but by the clinicians' own regulatory bodies under the *Psychologists Act, 2005* and the *Social Workers Act*, as well as by *PHIA*.

Factual Findings

[6] Our Office has engaged in a lengthy investigation process, including extensive interviews with the Clinicians. We have received documentation and substantial submissions from both the Clinicians and KA. We sent initial assessments to both parties and received additional submissions, all of which were considered in reaching the conclusions in this Report.

[7] KA has offices in a building in St. John's, with some management and daytime staff. The Clinicians work mainly in the evenings, providing counselling to clients in one-on-one or group settings. The Clinicians schedule these sessions in offices or meeting rooms in the building, provided by KA as part of their contract, and booked for the purpose.

[8] The Clinicians work varying numbers of hours in this arrangement – some have full-time positions with other organizations. They schedule their sessions with clients, mainly in the evenings, in rooms provided by KA as part of their contract. KA provides support staff including a business support person/receptionist and an intake coordinator for the Clinicians. The Clinicians' files (all paper files) are kept in a cabinet in the support staff space. The business support person/receptionist, intake coordinator, and the individual clinicians have access to the files, but no one else does. KA management occupies a separate part of the building with their own administrative staff and separate filing system.

[9] Many clients are referred to the Clinicians by the provincial Public Service Commission ("PSC") through the government's employee assistance program. Others are referred by physicians, by the Department of Children, Seniors and Social Development ("CSSD") from child protection and youth services, or sometimes by other operations of KA (for example children who are in KA care or KA employees under their own employee assistance program). Some referrals are self-referrals by clients requesting a particular therapist.

[10] It would not be unusual for an agency to call the clinician first, to discuss the needs of the client, and then to call KA to book an appointment. It is also common for PSC or CSSD to call the KA receptionist and ask for an appointment for a particular clinician. The Clinicians have all been vetted and approved by PSC for the purpose of referrals. Inclusion on the CSSD referral list is primarily a result of professional registration and reputation.

[11] We have concluded that KA management plays no role in the selection of a clinician for the client and plays no role in the treatment plan for the client. Under the Associates Contract between the Clinicians and KA (which will be examined in more detail below) the agency makes no commitment as to the number of assignments of work, and is under no duty to offer work to the clinician. Similarly, the clinician is under no contractual obligation to accept work from KA, and is free to work elsewhere.

[12] There is no overlap between the work of the Clinicians and the work of the KA foster home staff, and there is no working relationship between them. The work of the Clinicians has always been separate from any of the other activities of KA. If a KA resident participated in individual or group clinical sessions, they might be brought to the session by a KA staff person, but the clinical notes would not be shared with the KA staff.

[13] KA management also plays no role in the treatment plan for the client. KA knows nothing about the client except for the small amount of business and contact information held by the receptionist. No one at KA discusses the work plan for the client, and the Clinicians do not make reports to KA management on their work with clients, which is confidential. By contrast, it would not be uncommon for a clinician to give an update to their referring contact at CSSD or to a referring physician, as that person would be considered to be part of the circle of care. A clinician might also sometimes consult with a colleague or another health care professional on a case, but without identifying the client.

[14] On a number of occasions, clinicians have attended professional development workshops organized by KA. A portion of the one-third share of the fees allocated to KA (see further, below) covered the cost of attendance at these workshops, and the workshops included other participants beyond Key Solutions clinicians. Clinicians have also received subsidies for other

professional development training through these funds. Such professional development activities have, however, been chosen by the clinician depending on their own interests and any continuing education requirements of their professional organizations and are not required by the agency.

[15] The professional fee for service was established collectively by the Clinicians at $150 per hour, and the clinicians provided that information to KA. The Clinicians also agreed collectively to accept employee assistance program referrals from PSC at $110 per hour. The fees were not determined by KA. Clinicians are also free to reduce fees or provide service free of charge at their own discretion in specific circumstances.

[16] Under the Clinical Services Contract with clients (described further, below), all payments are made to KA, via the business support person/receptionist, who does the bookkeeping for the Clinicians. The mode of payment varies with the client. Some programs provide a monthly payment covering all bookings. Individual clients might pay by cash, debit, credit or e-transfer. Each clinician then gets a monthly direct deposit from KA, consisting of the total fees with a percentage deducted by KA to cover administrative costs.

[17] The amount paid to the Clinicians is set at two-thirds of the amount billed, and KA keeps one third of the amount as its share. KA does not withhold tax from the amount paid to the Clinicians, nor does KA provide benefits of any kind. Each clinician is expected to provide his or her own liability insurance.

[18] Management at KA during the period covered by this investigation have themselves been social workers, some of whom were formerly CSSD staff (not unusual in the private practice social work community). The staffed home employees, and child and youth care workers, are not social workers. There is a training program for child and youth care workers, and they have an association, though it is not a regulatory body. They are hourly paid workers who work shifts.

<u>Contractual Issues</u>

[19] The KA Clinical Services Service Contract is signed by individual clients when they first enter into the relationship with a clinician. It is a standard form that sets out the fee, the nature of the services to be provided, and some terms and conditions, such as the cancellation policy.

[20] It states on its face that it is a contract between the client and Key Assets Clinical Services. However, it is actually signed by the client and by the clinician, not by a KA management or staff person. Because the service contract purports to be between the client and the agency, it might be concluded that the clinician signs this contract <u>on behalf of</u> KA, the agency.

[21] However, the KA Clinical Services/Professional Services Associates Contract, between KA and the clinicians, plainly precludes that interpretation. This contract, which all of the Clinicians have signed, and which governs the relationship between them and KA, is stated to be between the "Company" (defined in the contract as Key Assets Newfoundland and Labrador) and the "Contractor". The Contractor is defined in the contract as a "self-employed associate providing clinical and/or professional services under the Company name Key Assets Newfoundland and Labrador".

[22] The Associates Contract further states, in the section entitled "3. Relationship between the Parties":

> *3.1 It is agreed and recognized between the parties that the Contractor is and <u>will remain at all times an independent contractor</u> who will provide Services.*
>
> *3.2 Nothing in this Agreement shall be construed as constituting a partnership between the Contractor and the Company or as constituting either party as the agent or employee of the other for any purpose.*
>
> *3.3 At no time shall the Contractor represent him/herself or hold him/ herself out to any contracting authority or third party as an employee of the Company.*
>
> *3.4 Both parties consider the Contractor to be in business on his/her own account.*
>
> *3.5 The Contractor shall not hold him/herself out as an agent of the Company, and shall not have any authority to act on behalf of the Company.*
>
> (emphasis in original)

[23] Other sections of the Associates Contract reinforce these provisions. The “Assignments” section emphasises that the clinicians organize their own workloads, and that KA has no right to control how the work is done. Either party may terminate the Agreement upon notice.

[24] The Contract explicitly states that each clinician is “at all times an independent contractor” and is not an employee of KA, but is in business on his or her own account. The contract also explicitly states that neither party is the agent or employee of the other for any purpose. Therefore the Service Contract with the client cannot be signed by a clinician as the agent of KA. Rather, the Service Contract must be deemed to be an agreement between the individual clinician and the client, for the provision of clinical services to the client.

[25] For the same reason the services thereafter provided by the clinician to the client are not provided by or on behalf of KA. It is explicitly agreed that the clinicians are not acting on behalf of the Agency, but to be in business on their own account.

Conclusion on the Contractual Relationship

[26] It is clear that the Clinicians are not employees of KA, but are in the business of providing professional clinical services on their own account. There are several consequences of this definition of the relationship.

Interpretation – PHIA

[27] As stated above, the issue in this complaint is whether Key Assets or each of the Clinicians is the *PHIA* custodian of the clinical files. To determine whether the Clinicians or the Agency are the custodian, it is necessary to examine how some terms in the *Act* apply in the present case.

[28] First, it is clear that the clinical therapies that are provided to the clients meet the *PHIA* definition of “health care” in section 2(1)(h):

> *(h) "health care" means an observation, examination, assessment, care, service or procedure in relation to an individual that is carried out,*

provided or undertaken for one of the following health-related purposes:

(i) the diagnosis, treatment or maintenance of an individual's physical or mental condition,

(ii) the prevention of disease or injury,

(iii) the promotion of health,

(iv) rehabilitation,

[29] It is also clear that the Clinicians are all registered social workers or psychologists, under their respective statutes, and therefore they are “health care professionals” as defined in section 2(1)(j):

(j) "health care professional" means a person, including a corporation, that is licensed or registered to provide health care by a body authorized to regulate a health care professional under one of the following enumerated Acts but does not include an employee of a health care professional when acting in the course of his or her employment:

(xiv) Psychologists Act, 2005,

. . .

(xvi) Social Workers Association Act;

[30] *PHIA* defines different kinds of “custodian” in section 4(1):

(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:

(a) an authority;

(b) board, council, committee, commission, corporation or agency established by an authority;

(c) a department created under the Executive Council Act , or a branch of the executive government of the province, when engaged in a function related to the delivery or administration of health care in the province;

(d) the minister, where the context so requires;

(e) a health care professional, when providing health care to an individual or performing a function necessarily related to the provision of health care to an individual;

(f) a health care provider;

(g) a person who operates

(i) a health care facility,

(ii) a licensed pharmacy as defined in the Pharmacy Act, 2012 ,

(iii) an ambulance service, or

(iv) a centre, program or service for community health or mental health, the primary purpose of which is the provision of health care by a health care professional or health care provider;

(h) the Provincial Public Health Laboratory;

(i) the Centre for Health Information;

(j) with respect to Memorial University of Newfoundland, the Faculty of Medicine, the School of Nursing, the School of Pharmacy and the School of Human Kinetics and Recreation;

(k) the Centre for Nursing Studies;

(l) the Western Regional School of Nursing;

(m) a person who, as a result of the bankruptcy or insolvency of a custodian, obtains complete custody or control of a record of personal health information, held by the custodian;

(n) a rights advisor under the Mental Health Care and Treatment Act ;

(o) the Workplace Health, Safety and Compensation Commission; and

(p) a person designated as a custodian in the regulations.

Of all of the possible enumerated categories, paragraphs (e) and (f) could apply:

(e) a health care professional, when providing health care to an individual or performing a function necessarily related to the provision of health care to an individual;

(f) a health care provider;

[31] A custodian may be either a health care professional or a health care provider. The clinicians meet the definition of “health care professional”. Does Key Assets Newfoundland and Labrador meet the definition of a “health care provider”? That is defined in section 2(1)(k):

(k) health care provider" means a person, other than a health care professional, who is paid by MCP, another insurer or person, whether directly or indirectly or in whole or in part, to provide health care services to an individual;

[32] It must be noted that these two definitions are mutually exclusive. A person (which under *PHIA* is defined broadly enough to include a corporation) may be a health care professional or a health care provider, but not both.

[33] KA invoices the clients or their referring agency for the services provided to the clients, and receives the payments for those services. However, KA does not "provide health care services to an individual". The reality of the clinical relationship between the Clinicians and the clients, as described above, is that it is each clinician as a "self-employed associate", not KA, who is the provider of the health care services to the client.

[34] KA's role in the overall arrangement is that for a fee (one third of the clinicians' billings) it provides a number of services, not to the client, but <u>to the Clinicians</u>, including office and meeting room space, reception and appointment-booking services, and bookkeeping, invoicing and marketing services. While KA may have the outward appearance of a health care provider, the essence of the relationship between KA and the Clinicians is that KA is simply an administrative facilitator of the work of the clinicians. It is therefore the individual clinician who is the custodian who, in the words of *PHIA*, "…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…."

[35] It should be noted that these conclusions are not intended to apply to the relationship between KA and clients in other branches of the Agency's operations. It may be that in other divisions of KA, the staff are employees of the Agency. It may also be that in those other operations, the Agency is a health care provider within the meaning of *PHIA,* and in those other operations the agency might be deemed to be the custodian of personal health information. However, that is not the case with the Key Solutions Clinicians.

[36] As a consequence, it might be the case that in those other operations, the Agency itself, and not the staff, would be deemed to be the custodian of the personal health information of any clients. This would be a consequence of the fact that *PHIA* enumerates some restrictions on the definition of "custodian". One such restriction is in section 4(2):

> *(2) Except as otherwise provided in this Act or the regulations, a person described in one of the following classes shall not be considered to be a custodian in respect of personal health information he or she may collect, use, disclose or dispose of while performing the powers or duties described:*
>
> *(a) an employee of a custodian when acting in the course of his or her employment;*

[37] While that provision may apply to staff employees of KA in other areas, it has no application to the Clinicians, who are not employees of the agency.

Duties and Responsibilities of a Custodian

[38] Section 8 of *PHIA* applies to "...personal health information collected, used or disclosed by a custodian or in the custody or control of a custodian." *PHIA* goes on to set out in great detail the rules that govern that collection, use or disclosure of personal health information. In Part II it prescribes practices to protect personal health information:

> *13.(1) A custodian that has custody or control of personal health information shall establish and implement information policies and procedures to facilitate the implementation of, and ensure compliance with, this Act and the regulations respecting the manner of collection, storage, transfer, copying, modification, use and disposition of personal information whether within or outside the province.*
>
> *(2) The information policies and procedures referred to in subsection (1) shall include policies and procedures to*
>
> *(a) protect the confidentiality of personal health information that is in its custody or under its control and the privacy of the individual who is the subject of that information;*
>
> *(b) restrict access to an individual's personal health information by an employee, agent, contractor or volunteer of the custodian or by a health care professional who has the right to treat persons at a health care facility operated by the custodian to only that information that the employee, agent, contractor, volunteer or health care professional requires to carry out the purpose for which the information was collected or will be used;*
>
> *(c) protect the confidentiality of personal health information that will be stored or used in a jurisdiction outside the province or that is to be disclosed by the custodian to a person in another jurisdiction and the privacy of the individual who is the subject of that information; and*

> *(d) provide for the secure storage, retention and disposal of records to minimize the risk of unauthorized access to or disclosure of personal health information.*

[39] There are numerous other provisions of *PHIA* which apply to the handling of personal health information. However, it is clear from the above provisions of section 13 that the legal responsibility for the control of, access to, protection, and security of confidential client files, and therefore the authority to make decisions about the storage and retention of those files, rests with the custodian. Section 15 of *PHIA* goes on to further provide:

> *15. (1) A custodian shall take steps that are reasonable in the circumstances to ensure that*
>
> *(a) personal health information in its custody or control is protected against theft, loss and unauthorized access, use or disclosure;*
>
> *(b) records containing personal health information in its custody or control are protected against unauthorized copying or modification; and*
>
> *(c) records containing personal health information in its custody or control are retained, transferred and disposed of in a secure manner.*

[40] In the present case, we have concluded that the custodian of those confidential client files is the individual clinician who has provided the clinical services to that client. Even though the client files have physically resided in the office of KA, the clinician is ultimately responsible. It follows that in the event of termination of the contract between the Agency and a clinician, the clinician continues to be responsible for the files. It is the responsibility of the clinician to decide whether the files which they control should be moved to another appropriate location.

[41] It would appear that this result is the most appropriate from the standpoint of continuity of care. It is not the Agency, but the clinician, with whom the client has developed a therapeutic relationship. If a clinician discontinues his or her relationship with the agency, it would be appropriate for the clinician to make arrangements to continue working with the client at another location. If the client at any time wishes to end the relationship with the clinician, it would be the responsibility of the clinician, as custodian, to ensure that the confidential client

file is protected and provided to any successor. None of those responsibilities would fall to KA, nor are they assigned to KA through any contractual terms.

[42] This result is consistent with other provisions of *PHIA*. In particular, section 4(3) provides:

> *(3) Except as otherwise provided in subsections (4) and (5), a custodian does not cease to be a custodian with respect to a record of personal health information until complete custody and control of the record, where applicable, passes to another person who is legally authorized to hold the record and the duties imposed by this Act and the regulations on a custodian with respect to personal health information shall continue to apply until the passage of custody and control of the record.*

[43] Even if a clinician were to retire from professional practice, he or she would still be responsible for the safeguarding of confidential client files until they made arrangements for that responsibility to be passed to another custodian. These responsibilities would apply equally to active files and closed files.

[44] Similarly, even if the Agency could be formally deemed to be an "information manager" under section 2(1)(l) of *PHIA,* with responsibility for storage of the files, that would not change these conclusions, simply because under section 4(2)(h) an information manager is not a custodian.

<u>Specific Issues Raised by the Agency</u>

Report PH-2017-001 – Morneau Shepell

[45] KA has argued that our 2017 Morneau Shepell ("MS") Report is applicable to the present case. However, the facts of that case are quite different. MS was a company that provided occupational health services, such as fitness reports and return-to-work plans, under contract to employers. The examining doctor, contracted on a case-by-case basis by MS, examined the employee and sent a clinical report to MS. MS, in turn, through its in-house professional employees, used the doctor's reports to provide health care advice to the employer. In that case, this Office determined MS to be a health care provider, and therefore a custodian.

[46] In the present case, the Clinicians, unlike the MS examining doctor, have an ongoing therapeutic relationship with their clients. The Clinicians, however, send no reports, either about the status of the client, or about the nature or results of the therapy, to KA. The Clinicians are not required to provide, and do not provide, updates of any kind on clients to KA. The Agency, in turn, has no access to, and does not use, the personal health information of the clients for any purpose. Unlike MS, KA is not a health care provider, and is not a custodian.

The Circle of Care

[47] KA has suggested that it, as an agency, is included in the “circle of care” of the client as defined in section 24 of *PHIA:*

> *(3) For the purpose of subsection (2), the expression "circle of care" means the persons participating in and activities related to the provision of health care to the individual who is the subject of the personal health information and includes necessarily incidental activities such as laboratory work and professional consultation.*

[48] From all of the available evidence I conclude that it is only the client, the treating clinician, and possibly family members that are part of the circle of care. Neither KA staff, nor KA as an organization, is part of the circle of care. This is essentially private practice – no one else is involved in the treatment plan, even as a consult. The only exception might be if the client were a KA foster child referred to the clinician, in which case there could be a case conference with CSSD, which might be attended by KA staff from the home. However, even in such cases there is no participation by KA management or other staff, and no report to them.

The *ATIPPA, 2015* Definition of Employee

[49] KA has argued that the definition of “employee” in *ATIPPA, 2015* is applicable to *PHIA.* We conclude that it is not. That definition encompasses both the “master and servant” and the “independent contractor” relationships, but only for the specific purposes of *ATIPPA, 2015.* That *Act* includes independent contractors who are providing services to the public body, in the definition of employee, for the limited purpose of permitting disclosure of some of their personal

information in response to an access request under that *Act*. The definition applies only under that *Act,* and only to employees of public bodies.

KA Forms and Documents

[50] KA has argued that its "Human Resources Policy and Procedures" policy is applicable to the present case. However, that policy is explicitly stated to govern only the relationship between KA and employees. The central Associates Contract between KA and the Clinicians explicitly and plainly says they are not employees. Therefore the HR policy would have no application to the Clinicians.

[51] Other KA documents, such as the "Clinical Services Contract", the "Confidentiality Form" or the "Consent to Release" might well be relevant in some other context. However, those other documents carry no weight in determining the central issues here. Whether it is KA or the Clinicians that are the health care provider, and therefore the custodian of the files, has to be determined by the application of the *Act.*

CONCLUSION

[52] *PHIA* sets out in detail the rules that govern the collection, use and disclosure of personal health information. In Part II, it prescribes practices to protect personal health information. It is clear from the provisions of section 13 that the legal responsibility for the control of, access to, and protection and security of confidential client files, and therefore the authority to make decisions about the storage and retention of those files, rests with the custodian.

[53] In the present case, we have determined that the custodian of those client files is the individual clinician who has provided the clinical services. Even though the client files have physically resided in the office space provided by the Agency, each clinician is ultimately responsible. It follows that in the event of termination of the contract between the agency and the clinician, the clinician continues to be responsible for the files. It is the responsibility of the clinician to decide whether the files which they control should be moved to another appropriate location.

[54] It is unfortunate that the question of custody of the records was not addressed by the Clinicians when they first entered into a contractual relationship with the Agency. Had the Associates Contract contained a clause making clear that the clinician, not the Agency, is and continues to be the custodian of the records, and responsible for their management and protection, perhaps this dispute could have been entirely avoided. Both the Agency and the Clinicians appear to be responsible for this contractual shortcoming. However, the Clinicians are health care professionals who are governed by their respective statutory regulatory bodies, as well as custodians who are bound by the requirements of the *Personal Health Information Act.* They therefore have the primary responsibility to ensure that they meet those requirements in carrying out their work.

[55] At the very least, this means that every health care custodian ought to have written policies and procedures, tailored to their specific work environment, to ensure that the requirements of the *Act* are met, and in particular to ensure protection of the personal health information under their control. Such policies and procedures are necessary, whether a clinician is practicing their profession independently on their own account, or in some other association, partnership or contractual arrangement. As this complaint investigation demonstrates, a failure to clearly determine statutory responsibilities at the outset can lead to problems later. Assistance and training are available to help custodians develop policies and other measures appropriate to their needs.

[56] It is appropriate, therefore, that the individual Clinicians, the Complainants in this matter:

(a) make all necessary arrangements to accommodate the storage and protection of their clinical files in their own custody, in compliance with the *Act*, and

(b) make all necessary arrangements for the orderly transfer of their files from the Agency into their own custody.

[57] It should be noted that the above have been set out below as formal recommendations under section 72 of the *Act*, requiring a response under section 74.

[58] It should also be noted that section 88 of the *Personal Health Information Act* reads as follows:

> *88. (1) A person who wilfully*
>
> *(a) obtains or attempts to obtain another individual's personal health information by falsely representing that the person is entitled to the information;*
>
> *(b) makes a false statement to, or misleads or attempts to mislead, the commissioner or another person performing duties or exercising powers under this Act;*
>
> *(c) obstructs the commissioner or another person performing duties or exercising powers under this Act; or*
>
> *(d) destroys or erases personal health information with the intent to evade a request for access to the information,*
>
> *is guilty of an offence and liable, on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term not exceeding 6 months, or to both.*

[59] If any of the parties to the present complaint should require assistance in interpreting or in carrying out these recommendations our Office is always available to help. Alternatively, individuals may contact the appropriate regulatory body for support.

RECOMMENDATIONS

[60] Pursuant to section 72(2)(c)(iv) and (d) of the *Personal Health Information Act* I recommend that the Clinicians make all necessary arrangements for the storage and protection of the clinical files in their own custody, in compliance with the *Act,* as soon as conveniently possible, but in any event within 60 days of receiving this Report.

[61] Pursuant to section 72(2)(c)(iv) and (d) of the *Personal Health Information Act* I recommend that the Clinicians make all necessary arrangements for the orderly transfer of each clinician's confidential client files, including closed files, from the Agency to the custody of the clinician, in compliance with the *Act,* as soon as conveniently possible, but in any event within 60 days of receiving this Report.

[62] Pursuant to section 72(2)(c)(iv) and (d) of the *Personal Health Information Act* I recommend that Key Assets cooperate with the Clinicians in facilitating arrangements for the orderly transfer of each clinician's confidential client files, including closed files, to the custody of the clinician, in compliance with the *Act,* as soon as conveniently possible, but in any event within 60 days of receiving this Report.

[63] As set out in section 74 of the *Personal Health Information Act,* each clinician must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 15 business days of receiving this Report.

[64] As set out in section 74 of the *Personal Health Information Act,* Key Assets must give written notice of its decision with respect to these recommendations to the Commissioner and to any person who was sent a copy of this Report within 15 days of receiving this Report.

[65] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8th day of March 2023.

Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador