



CONTACT INFORMATION

Office of the Information
and Privacy Commissioner
3rd Floor, 2 Canada Drive
Sir Brian Dunfield Building
P.O. Box 13004, Station A
St. John's, NL A1B 3V8
Tel: (709) 729-6309
Fax: (709) 729-6500

Toll Free in
Newfoundland
and Labrador:
1-877-729-6309

E-mail:

commissioner@oipc.nl.ca

www.oipc.nl.ca

"Thus, at least in part, medical records contain information about the patient revealed by the patient, and information that is acquired and recorded on behalf of the patient. Of primary significance is the fact that the records consist of information that is highly private and personal to the individual. It is information that goes to the personal integrity and autonomy of the patient."

- Justice La Forest
*McInerney v.
MacDonald*, [1992] 2
SCR 138 (SCC)

SAFEGUARD

A QUARTERLY NEWSLETTER PUBLISHED BY THE
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ACTING COMMISSIONER APPOINTED

Welcome Commissioner Woodworth-Lynas

Victoria was born and raised in Cupids. She received her Bachelors degree from Memorial University in 2004.

Her career has been primarily focused on privacy and access to information. Victoria has worked with the Government of Newfoundland and Labrador since 2011. Most recently, she served as the Director of Legislative Renewal, with the Department of Municipal Affairs and Environment. While in this role, she undertook a review of municipal legislation governing the province's cities and municipalities. Prior to this, she held the position of Director of Access to Information and Protection of Privacy with the ATIPP Office in the Department of Justice and Public Safety.

Before starting her career with government, Victoria worked in the private sector in Alberta with the Real Estate Council of Alberta

where she served as a case presenter and as the company's privacy officer.

Victoria was appointed Acting Information and Privacy Commissioner of Newfoundland and Labrador by the Honourable Perry Trimper, Speaker of the House of Assembly, effective March 21, 2019.



DISCLOSURE OF QUALITY ASSURANCE INFORMATION

In accordance with section 58 of *PHIA*, custodians are not permitted to allow an individual to access a record of their personal health information where the information was created or compiled for:

1. **a quality assurance committee or a quality assurance activity committee or review by a quality assurance committee.** Quality assurance committees are established and maintained by the regional health authorities and are responsible for monitoring and reporting on the quality of health services carried out, provided or undertaken by or under the authority of the regional health authority. They also consider and make recommendations to the board of trustees respecting patient safety and quality improvements. Quality assurance activity committees are established to carry out activities in order to maintain or improve the quality of health services carried out, provided or undertaken by or under the authority of the regional health authority. Under section 41(2) of *PHIA* custodians are permitted to disclose personal health information without the consent of the individual who is the subject of the information to quality assurance and quality assurance activity committees for peer review or quality assurance activities.
2. **preparing or providing a report of a close call or an occurrence in accordance with section 4 of the *Patient Safety Act*.** An occurrence is an undesired or unplanned event that does not appear to be consistent with the safe provision of health services. A close call is a potential occurrence that did not actually occur due to chance, corrective action or timely intervention.
3. **preparing or providing a notice by a regional health authority of an adverse health event or any occurrence that involves multiple patients or multiple regions in accordance with section 7 of the *Patient Safety Act*.** An "adverse health event" means an occurrence that results in an unintended outcome which negatively affects a patient's health or quality of life; or
4. **a body with statutory responsibility for the discipline of health care professionals or for the quality or standards of professional services provided by health care professionals.**

Furthermore, once information has been provided to a quality assurance or quality assurance activity committee it becomes quality assurance information in accordance with section 2(s)(i) of the *Patient Safety Act*. Section 10(3) of the *Patient Safety Act* prohibits an individual from accessing quality assurance information, even where it contains his or her personal health information, except as permitted under the *Patient Safety Act*.

Under the *Patient Safety Act*, the only permitted disclosure of quality assurance information to an individual is where the individual is affected by an adverse health event. In these instances, a regional health authority must disclose the following information to the affected patient:

- i) the facts of the adverse health event and any new or otherwise unknown facts as they become known;
- ii) the consequences to the patient as they become known;
- iii) the details of the health services provided to the patient as a result of the adverse health event; and
- iv) any recommendations from quality assurance activities respecting the adverse health event.

CIRCLE OF CARE — HUMBOLDT BRONCOS

Earlier this year the [Saskatchewan Office of the Information and Privacy Commissioner](#) found that six people (5 physicians and 1 employee) had inappropriately accessed the electronic health records of Humboldt Broncos team members involved in a bus crash last April.

In making this finding the Commissioner highlighted that the Saskatchewan *Health Information Protection Act* does not contemplate a “circle of care” in respect of authorized access and disclosure, but rather permits access only on a need-to-know basis where the information is necessary to provide immediate care. The Commissioner found that physicians were relying on the circle of care concept based on their understanding of the term, rather than educating themselves on their obligations under the legislation.

Some of the physicians who accessed the information had provided emergency care to the team members at the time of the accident, but were no longer caring for the individuals. In other instances the access occurred because the team member was or was believed to be a past patient of a physician and there was concern for their well-being.

The Privacy Commissioner's Report recommended, amongst other things, that individuals comply with the need-to-know principle mandated by the legislation.

In this Province, the “need to know” principle is captured by the term “circle of care” as defined in section 24(3) of *PHIA*. That definition is absent from Saskatchewan’s law. In this province, the circle of care only includes those who are currently involved in the care of a patient, not those who have been involved in care in the past if there is no ongoing participation in caring for the individual.

SECURE DISPOSAL OF RECORDS

Section 15 of *PHIA* requires custodians to take reasonable steps to ensure that records containing personal health information in its custody or control are disposed of in a secure manner such that the reconstruction of the record is not reasonably foreseeable in the circumstances. This obligation extends to both original and duplicate copies of records that are in the custody or control of a custodian.

Custodians must develop and implement retention and destruction policies. These policies should speak to the method of destruction, with due consideration of the sensitivity of the information and the medium in which the information is stored.

Custodians do not have to carry out the disposal of records themselves, but rather may contract with a service provider for record destruction services so long as a contract is in place with the provider. The contract should discuss how the records will be collected, and transported, if applicable, from the custodian’s facility; the method of destruction; the storage of the records if the records will be stored with the provider for any period prior to destruction, including the maximum storage period; the requirement for confirmation of destruction; and include a

(continued on next page...)

SECURE DISPOSAL OF RECORDS (continued)

confidentiality provision requiring oaths and privacy training for the providers and its employees.

Best practices would include:

- cross-cut shredding of paper records;
- disposing of personal information stored on electronic devices by using a wipe utility to remove the original information and physically damaging the item prior to discarding it;
- ensuring machines such as photocopiers, fax machines, scanners or printers with storage capabilities are overwritten or erased, and records destroyed when the machines are replaced, maintaining a destruction log describing the precise records which are destroyed and the date and method of destruction; and
- auditing the disposal of records to ensure employee and service provider compliance with policies and legislation obligations.

Custodians must not recycle records containing personal health information or place them in the trash as a method of secure disposal.

DIRECT-TO-CONSUMER GENETIC TESTING

PHIA does not apply to direct-to-consumer genetic testing (health-related, ancestry, paternity or maternity testing) companies. However, the federal [*Genetic Non-Discrimination Act*](#) prohibits any person from requiring an individual to undergo a genetic test or to disclose the existing results of genetic tests. The collection, use and disclosure of genetic test results cannot occur without the individual's written consent.*

Nevertheless, individuals should still be cautious and cognizant of their actions when submitting to such testing. Individuals should review the privacy policies and statements of the testing company, along with the contents of any form they are required to complete, to satisfy themselves in relation to the protection and storage of their information; the permitted disclosures and uses of their information; and their access rights. Different companies may offer different levels of privacy protection, and it is recommended that buyers do their research and compare. Individuals should also be aware that there is no regulation of this industry and the results they receive are not guaranteed to be accurate. This is of particular importance if the individual has consented to the disclosure of their results.

Furthermore, if you consent to have your information used or disclosed for research or other purposes, you may not be able to prevent additional future uses or disclosures. Even if your information is anonymized, individuals should consider the possibility of that it may be re-identified in the future. Even if you consent, it is worth considering that this is still a new field and all of the potential risks of disclosing genetic information may not be fully known or understood.

The federal Privacy Commissioner has also [discussed the privacy risks of these tests](#).

*It should be noted that certain portions of this Act were found to be unconstitutional by the Quebec Court of Appeal on the basis that they are outside of the Parliament of Canada's jurisdiction over criminal law and consequently, an individual's rights in respect of their genetic testing information may change in the near future.

PROVINCIAL eHEALTH MODEL*

In today's modern health care environment, health services are becoming more and more reliant on technology and innovation to support patient care, patient safety and the decision-making process.

The Newfoundland and Labrador Centre for Health Information (NLCHI) is excited to be leading a provincial initiative to bring together all eHealth functions of the four regional health authorities and NLCHI under the organization's mandate.

eHealth is all of the electronic, communication and technology tools used to share health and administrative information throughout the health system. Like most industries, health care is in the midst of massive technological innovation and advancement. Newfoundland and Labrador has a wealth of knowledge in this speciality area and by combining these resources into one team, it will enable the significant advancement of this sector.

The objectives of the Provincial eHealth Model are to:

- Leverage and focus provincial eHealth resources
- Enable improved health care delivery, access & patient safety
- Enhance provincial data/information collection and availability
- Align technology adoption for front line clinical care
- Address geographical challenges for clinicians and patients
- Increase security and privacy protection
- Create efficiencies and standardize policies and procedures
- Enhance system reliability
- Improve coordination of care
- Allow provincial specialization in areas like decision support.

Currently, NLCHI is establishing the leadership team that will lead the organization through the transition period and into the transformation phase that will shape the future of eHealth in Newfoundland and Labrador.

The primary goals while working through the transition are to maintain current services being delivered by all five organizations; continue to support safe, timely and quality care for patients and clients; and, to leverage existing resources to streamline a provincially focused eHealth system.

NLCHI is a Crown agency of the Provincial Government that supports improved health through quality health information. Please visit www.nlchi.nl.ca

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OIPC REMINDERS AND UPDATES

Searching the OIPC Website

Coordinators are reminded that the OIPC website is searchable using free-form text/Boolean searches. The search feature is located under the [Reports menu](#). Additional search features will be added to our website in the near future.

Search results will capture all .pdf documents contained on the website including, but not limited to, Commissioner’s Reports, guidance documents, annual reports, and presentations.

OIPC Workshop—April 1, 2019

The April OIPC Workshop discussed the development of Privacy Management Programs (PMPs). Analyst Ruth Marks discussed the importance and role of policies and procedures in instituting a PMP and creating a protection of privacy culture. We examined necessary policy topics and essential discussion points.

A copy of the presentation is available on our [website](#) along with our previous PMP presentations and guidance.



We are approximately one year away from the next APSIM Conference. Be certain to mark your calendars for April/May 2020 and stayed tuned to the OIPC website for updates as they become available.

Practice Tip – Computer Time-outs

After a period of inactivity custodian computers should “time-out” making the computer inaccessible until a password is entered.

Computers may use a default time-out period; however, you should consider whether a particular computer, if it is located in an area accessible to other staff, may require a shortened time-out period. This is particularly important where computers are used to enter or access sensitive personal information.