



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
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

VOLUME 3, ISSUE 3

FALL 2019

- ◆ PHIA Court Decision
- ◆ Welcome to Commissioner Harvey
- ◆ Investigating Privacy Breaches
- ◆ Matters Involving Both ATIPPA, 2015 and PHIA
- ◆ Privacy Management Program – Gap Analysis

PHIA Court Decision—Vey v. NL (Pharmacy Board)

A recent decision of the Supreme Court Trial Division dealt with the authority to release personal health information. The decision in *Vey v. Newfoundland and Labrador (Pharmacy Board)*, 2019 NLSC 111, dealt with an Appellant who refused to participate in a community pharmacy practice site assessment sought to be carried out by a pharmacist and employee of the Pharmacy Board. The Appellant argued that the Pharmacy Board has no lawful authority to carry out a practice site assessment and, if one is to be conducted, then it must be done under the auspices of a Quality Assurance Committee appointed by the Pharmacy Board. The Appellant further argued that the provisions of the *Personal Health Information Act* prevented her from disclosing patient information to the Associate Deputy Registrar of Quality Assurance. The Court upheld the findings of tribunal that the disclosure was authorized, as PHIA

provides for dissemination of patient information to bodies such as the Pharmacy Board. The Court stated at paragraph 49:

The purpose of the PHIA is, of course, primarily to safeguard the legitimate privacy interests of consumers of the health care system. However, the Act is clear that personal health information may be shared for various reasons without the patient's consent. The sharing can relate to the informational needs of those who fall within a patient's circle of care or, as in this case, can be a sharing with the regulators of health care providers. The legislation recognizes that, in some circumstances, patient health information needs to be disclosed to, for example, self-governing disciplinary bodies so that those bodies can fulfill their legislated mandates.

WELCOME COMMISSIONER MICHAEL HARVEY



Michael Harvey was appointed as the Information and Privacy Commissioner for Newfoundland and Labrador effective August 5, 2019. Michael joined the Government of Newfoundland and Labrador in January 2006 and his time had been divided between Executive Council (Intergovernmental Affairs Secretariat and Cabinet Secretariat) and line departments (Departments of Children, Youth and Family Services, and Health and Community Services).

His first executive appointment was in 2012 as Executive Director of Planning and Coordination in Cabinet Secretariat. In early 2015, he was seconded from that role to another within Cabinet Secretariat to lead a transition team drawn together to spearhead Government's acceptance of the recommendations of the 2014 Statutory Review of the *Access to Information and Protection of Privacy Act*. These recommendations involved the passage of an entirely new Act, the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* through the House of Assembly and an associated, public-sector wide, change management exercise.

Michael was appointed as Assistant Deputy Minister of Policy, Planning and Performance Management in the Department of Health and Community Services in August 2015, in which role his interest in access to information and privacy continued to grow. In this capacity, among other things, he was responsible for the ongoing statutory review of the *Personal Health Information Act*. He also worked extensively on Government's eHealth agenda, including promoting and facilitating the development of the Newfoundland and Labrador Centre for Health Information (NLCHI) Data Warehouse and Data Lab, increasing data analytics capacity for clinical decision-making and decision support, and advancing virtual care. He was also responsible for the Department's mandate to promote health research in the Province. To advance these objectives he served on the Boards of Directors of NLCHI and the Health Research Ethics Authority.

Michael has lectured in political science and public administration at Memorial University, the University of Guelph and the University of Toronto. He is a graduate of Memorial University, with a BA (Hons) in Political Science; has a MA in Political Studies from Queen's University; and holds an Executive Certificate in Conflict Management from the University of Windsor, Faculty of Law/Stitt Feld Handy Group. He is a father of two, an avid cyclist and skier when conditions allow and an avid swimmer even when they don't.

INVESTIGATING PRIVACY BREACHES

The Commissioner recently discussed what is expected from public bodies where a privacy breach investigation is initiated by this Office in [Report PH-2019-001](#).

Public bodies must be mindful that where an investigation of a privacy breach is conducted by this Office, we must be able to review the investigation conducted by the public body, including any records which were created during that investigation. Where an internal investigation is ongoing at the time our Office initiates its investigation, public bodies should provide a detailed description of the investigation to-date, with an explanation of what work remains to be done in the investigation and a timeframe for the conclusion of the investigation. The oversight mandate of this Office and the power to compel documents under sections 69-71 of the [Personal Health Information Act](#) (“PHIA”) requires public bodies to provide these records.

This Office expects public bodies to provide, if requested, a detailed response including its full investigation documents, its investigative report and its investigation conclusions. It is not sufficient for public bodies to reiterate their conclusions about whether a breach has occurred, or to state that an investigation has occurred. Where possible, public bodies should identify the root cause of the breach if such is determined during its investigation. The names, titles, and contact information of anyone involved in the investigation, included those individuals who were interviewed, should be provided. If the public body determines that no breach occurred, it should provide details of how allegedly inappropriate actions were determined to be valid and any corroborating evidence of same.

MATTERS INVOLVING BOTH ATIPPA, 2015 AND PHIA

Section 12(2) of the [Personal Health Information Act](#) (“PHIA”) discusses how requests for personal health information should be handled by custodians who are also public bodies. Where an individual requests records containing personal health information or a combination of personal health information and personal information from a public body that is not a custodian, the *ATIPPA, 2015* would apply to such a request and the accompanying disclosure, if any.

Where a custodian that is also a public body receives a request for personal information contained in a record which also contains personal health information, the *ATIPPA, 2015* would apply to the request and the accompanying disclosure, if any. Disclosure of the requested personal information would only occur where the requested information can reasonably be separated from the record; the personal health information would only be released in accordance with a request for that information under the *PHIA*. This process can be applied to the one request.

PRIVACY MANAGEMENT PROGRAM – GAP ANALYSIS

The [Gap Analysis document](#) is intended to assist custodians with developing and implementing a robust privacy management program. It has been adapted from a document developed by the Information and Privacy Commissioner for Nova Scotia.

This Gap Analysis document provides detailed information about each of the elements of a privacy management program. The goal of the Gap Analysis is to identify shortcomings in the program. The Gap Analysis results should then be used to develop a privacy oversight and review plan that addresses each of the identified gaps.

An overview of the elements of a robust privacy management program is contained in Privacy Management Program: Step-By-Step Guidance for Public Bodies and Custodians on [How to Implement an Effective and Accountable Privacy Management Program](#).

Step 1: This Gap Analysis tool reviews four major categories: Getting Started; Organizational Commitment; Program Controls; and Ongoing Assessment and Revision. Within each category are a series of requirements and a list of essential elements. For example, the Organizational Commitment category lists three elements for establishing "Demonstrate Senior Management Commitment and Support". Record your evaluation of each element by describing the current state of affairs in your organization. Be as honest and critical as you can. The goal here is to accurately state your organization's current status.

Step 2: Once you have described the current state of affairs for an element, rate your organization's compliance on a scale of 1 to 3 using the rating scale provided. Feel free to give partial points.

Step 3: Average the score for the elements of each requirement to come up with an overall rating that you will record in the Overall Rating row.

Step 4: Assign a colour to the Overall Rating using the color rating scale. Record the colour in the Gap Analysis Summary.

Step 5: Continue until Gap Analysis Summary is completed. This will serve as a one page visual summary of your Gap Analysis results. Your goal is then to develop a privacy oversight and review plan outlining the actions and resources needed to move all of your ratings to green.

Sample – Gap Analysis Summary	
PMP Requirement	Overall Gap Analysis Rating
PMP Foundation	
Foundation	2.3
Organizational Commitment	
Demonstrate Senior Management Commitment and Support	1.9
Designate and Empower a Privacy Officer	2.2
Establish Compliance Reporting Mechanisms	2.7
Program Controls	
Inventory of Personal Information	1.3
Policies	1.8
Training	2.0
Breach Management Response Procedures	2.7
Privacy and Security Risk Assessment Tools	2.1
Information Sharing Agreements	1.4
Transparent Communication with Individuals	1.5
Ongoing Assessment and Revision	
Develop Oversight and Review Plan	2.0
Assess and Revise Program Controls	1.6