



SCG Legal Healthcare Session



Healthcare's Key Challenge: Keeping
Patient Information Private and Secure

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Presented by

Penny A. Washington

paw@bht.com / 604.641.4876

Federal

- *Access to Information Act and Privacy Act* (collectively, “ATIP”)

Provincial – Public Bodies

- *Freedom of Information and Protection of Privacy Act (B.C.)* (“FOIPPA”) or equivalent in other provinces.

Private Sector

- *Personal Information Protection Act (B.C.)* (“PIPA”) or equivalent in other provinces.

PROVINCE	PRIVATE SECTOR	PUBLIC SECTOR	HEALTH
British Columbia	Personal Information Protection Act	Freedom of Information and Protection of Privacy Act	E-Health (Personal Health Information Access and Protection of Privacy) Act
Alberta	Personal Information Protection Act	Freedom of Information and Protection of Privacy Act	Health Information Act
Saskatchewan	Personal Information Protection and Electronic Documents Act	Freedom of Information and Protection of Privacy Act Local Authority Freedom of Information and Protection of Privacy Act	Health Information Publication Act
Manitoba	Personal Information Protection and Electronic Documents Act	Freedom of Information and Protection of Privacy Act	Personal Health Information Act
Ontario	Personal Information Protection and Electronic Documents Act	Freedom of Information and Protection of Privacy Act	Personal Health Information Protection Act
Québec	Act Respecting the Protection of Personal Information in the Private Sector	Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information	

What records are covered by ATIP / FOI?

- “custody or control”
- “personal information” which is essentially information from which one can identify an individual
- Includes service providers to public bodies (physicians and corporations)

Access

- Patients have a right to their own information (and to correct same) unless release to them threatens their own or another’s safety or health (s.19)

Freedom of Information and Privacy Act ("FOIPPA")

Protection of personal information

- 30** A public body must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Nobody is perfect...

Privacy commissioner's office loses sensitive data

Unencrypted hard drive is believed to have gone missing in February

By Emily Chung, CBC News Printed Apr 25, 2014 12:50 PM ET | Last Updated Apr 25, 2014 2:56 PM ET

The Office of the Privacy Commissioner of Canada has lost an unencrypted hard drive containing salary information of about 800 current and former employees.

"This is humbling" said Chantal Bernier, interim privacy commissioner



Storage and access must be in Canada

•**30.1** A public body must ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada, unless one of the following applies:

(a) if the individual the information is about has identified the information and has consented, in the prescribed manner, to it being stored in or accessed from, as applicable, another jurisdiction;

(b) if it is stored in or accessed from another jurisdiction for the purpose of disclosure allowed under this Act;

Unauthorized disclosure prohibited

•**30.4** An employee, officer or director of a public body or an employee or associate of a service provider who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.

Use of personal information

- 32** A public body may use personal information in its custody or under its control only
- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
 - (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
 - (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

Disclosure of personal information

•**33** A public body may disclose personal information in its custody or under its control only as permitted under section 33.1, 33.2 or 33.3.

Disclosure inside or outside Canada

•**33.1 (1)**

(l) for the purposes of licensing, registration, insurance, investigation or discipline of persons regulated inside or outside Canada by governing bodies of professions and occupations;

(m) if

(i) the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, and

(ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety;

(m.1) for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur;

(n) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;

(o) in accordance with section 36 (disclosure for archival or historical purposes);

Disclosure inside or outside Canada

•**33.1 (1)** Continued...

(p) the disclosure

(i) is necessary for

(A) installing, implementing, maintaining, repairing, trouble shooting or upgrading an electronic system or equipment that includes an electronic system, or

(B) data recovery that is being undertaken following failure of an electronic system

that is used in Canada by the public body or by a service provider for the purposes of providing services to a public body, and

(ii) in the case of disclosure outside Canada,

(A) is limited to temporary access and storage for the minimum time necessary for that purpose, and

(B) in relation to data recovery under subparagraph (i) (B), is limited to access and storage only after the system failure has occurred;

Penalties

s.74.1 unauthorized disclosure of personal information or storage outside Canada inappropriately by a service provider

- Liable to fines against individuals up to \$2,000
- Partnerships liable up to \$25,000
- Corporations liable up to \$500,000

- Smart phones in the OR and elsewhere
 - recent case of physician being disciplined for taking a photo of an unconscious patient on smart phone and sending to third party.
 - see guidelines to use of personal devices in the workplace produced by Canada, Alberta and BC
www.oipc.bc.ca
- Electronic Health Records
- Information Sharing Agreements and Privacy Impact Statements

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1800 – 510 West Georgia Street
Vancouver, BC
V6B 0M3

T 604.687.6575
F 604.641.4949
www.bht.com

BHT.COM