

# FOIP FOLIO

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August 2004

Upcoming Conference!

## Privacy Laws and Health Information: Making it Work



October 27 and 28, 2004 will see a collection of some of Canada's foremost experts on privacy and health information offering advice and tips on how to comply with the Saskatchewan *Health Information Protection Act* (HIPA).

Confirmed speakers include:

- **Ms. Carrie Bourassa** (First Nations University of Canada)
- **Mr. Randy Brunet** (Lawyer, MacPherson, Leslie & Tyerman)
- **Ms. Katherine Choptain** (Chief Privacy Officer -- Winnipeg Health Region)
- **Dr. Anne Doig** (Saskatchewan Medical Association, Saskatoon)
- **Mr. Nick Giesinger** (Director, Technical Architecture and Database Services, Saskatchewan Health)
- **Mr. Rick Hischebett** (Crown Counsel, Saskatchewan Justice)
- **Ms. Noela Inions** (Professor of Nursing, Lawyer, Author and *Health Information Act* lead in Office of Alberta Information and Privacy Commissioner)
- **Mr. Rick Klumpenhower** (former *Health Information Act* Coordinator for the Calgary Health Region)
- **Mr. David Loukidelis** (British Columbia Information and Privacy Commissioner)
- **Ms. Hilary Lynas** (Director of Access and Privacy -- Alberta Government Services)
- **Dr. Barry McLellan** (Chair of University of Saskatchewan Bio-medical Research Ethics Committee)
- **Mr. Mitchell Miller** (Lawyer, IR, FOI, Privacy, Saskatchewan Government Insurance)
- **Mr. Duane Mombourquette**, (Director, Health Planning, Saskatchewan Health)
- **Ms. Renata Neufeld** (Policy Analyst, Manitoba Health)
- **Ms. Bonnie Orizny** (General Counsel, Saskatchewan School Boards Association)
- **Ms. Gail Perry** (Manager, Compliance Review, Access and Privacy)
- **Ms. Wendy Robillard** (Team Leader, Health Information and Policy Support, Alberta Health and Wellness)

## Privacy Laws and Health Information: Making it Work (con't)

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Confirmed speakers include (continued from Page 1):

- **Ms. Jane Steblecki** (Program Director, Health Law Institute at the University of Alberta and former *Health Information Act* Coordinator for Capital Health Region in Edmonton with Legal and Nursing background)
- **Ms. Jennifer Stoddart** (Privacy Commissioner of Canada)
- **Mr. Barry Tuckett** (Manitoba Ombudsman)
- **Mr. Brad Vance** (Lawyer, MacPherson, Leslie & Tyerman)
- **Mr. Evert Van Olst** (Legal Counsel, Saskatoon Health Region)
- **Mr. David Wilson** (Executive Director, Information Technology, Regina Qu'Appelle Health Region)
- **Mr. Frank Work** (Alberta Information and Privacy Commissioner)

Learn about the best practices developed in other provinces to deal with health information laws. Find out how new regulations under HIPA will work in practice. Registrants will be provided with checklists, forms and material useful in ensuring HIPA compliance in Saskatchewan “trustee” organizations.

Find out what has resulted from formal reviews done in Manitoba of *The Personal Health Information Act* and in Alberta of *The Health Information Act* and valuable lessons learned in those two provinces.

There will be sessions of particular interest to social workers, psychologists, educators and non-profit agencies that will focus on the privacy laws that impact their work.

The registration fee is a bargain - \$100 per person for a two day conference including luncheons on both days. The registration form is attached.

### Public Registries and Privacy

In Saskatchewan, and most other Canadian provinces, public registries such as land titles, motor vehicles and property tax rolls have been completely exempted from access to information and protection of privacy laws. In other words, the public has ready and inexpensive access to considerable personal information without the checks and balances provided for in *The Freedom of Information and Protection of Privacy Act*.



## Public Registries and Privacy (con't)

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When public registers were kept mostly on paper in fixed locations in registry offices, the practical barriers to accessing bulk information effectively provided privacy protection. Modern technology is now profoundly affecting the administration of those public registries and in the process seriously undermining privacy and facilitating identity theft. That same personal information can now be collected in bulk, sorted and matched with other personal information to easily build data profiles of citizens.

The European Commission Working Party on the Protection of Individuals with Regard to the Processing of Personal Data has stated:

*The computerisation of data and the possibility of carrying out full-text searches creates an unlimited number of ways of querying and sorting information, with Internet dissemination increasing the risk of collection for improper purposes. Furthermore, computerisation has made it much easier to combine publicly available data from different sources, so that a profile of the situation or behaviour of individuals can be obtained...[P]articular attention should be paid to the fact that making personal data available to the public serves to fuel the new technologies of data warehousing and data mining. Using these technologies, data can be collected without any advance specification of the purpose and it is only at the stage of actual usage that the various purposes are defined.*

*This is why it is important to check, on a case-by-case basis, what the negative repercussions on individuals might be, before taking any decision on computerised dissemination. In some cases, a decision will have to be taken on either not to release certain personal data, to let the data subject decide, or to impose other conditions."*

In response to this new threat to privacy, the Office of the Victorian Privacy Commissioner in Australia has just published a set of guidelines – *Public Registers and Privacy- guidance for the Victorian Public Sector*. This useful tool is accessible at <http://www.privacy.vic.gov.au>.

These guidelines involve a number of key questions such as:

- What is the purpose of a public registry?
- Should certain personal information be masked?
- Should individuals be asked at the time of registration whether they consent to use of their person information for other purposes such as direct marketing of goods or services?
- Should bulk registry data be disclosed only for certain purposes or at all?
- Before a public registry is put 'online', have privacy enhancing measures been considered?

[Thanks to Ian Zaharko, Legal Counsel of the Alberta Office of the Information and Privacy Commissioner for alerting us to this development]

## Patient Data Theft and Internet Pharmacies

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In early August there were media reports that a Florida-based company was soliciting buyers for the names and drug information of more than 32,000 patients who had purchased prescription drugs online through CanadaDrugs.com. The suspicion was that a former aggrieved employee had taken the data and was behind the advertisement.



This kind of news serves to remind us of the vulnerability and the significant “market value” of personal health information.

### USA Patriot Act

The USA Patriot Act is the short title for the law for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. When this was passed after September 11, 2001, concerns were raised that U.S. companies operating anywhere in the world could be required by this law to hand over confidential information about clients/patients/customers to the FBI. Mr. David Loukidelis, British Columbia Information and Privacy Commissioner, launched an investigation and solicited submissions on the possible implications of the USA Patriot Act for personal information involved in outsourcing of public services to US-linked service providers.

These submissions are available at:

[http://www.oipc.bc.ca/sector\\_public/usa\\_patriot\\_act/submissions.htm](http://www.oipc.bc.ca/sector_public/usa_patriot_act/submissions.htm).

We particularly encourage you to read the thoughtful analysis of this issue by the Privacy Commissioner of Canada, dated August 16, 2004 and available on that website. The Commissioner, Ms. Jennifer Stoddart, reminds us that the concern about the impact of that U.S. law is just part of a much broader issue -- the extent to which businesses in Canada share personal information of Canadians with foreign nations for commercial purposes and the extent to which foreign governments may be able to access that information. Commissioner Stoddart lists a number of measures that Canadians can take to protect their personal information. This includes letting organizations know that there is a concern about personal information being processed outside of Canada and by reminding companies in Canada of their legal obligation to take appropriate measures to prevent the disclosure of personal information in foreign countries.

## Review of Alberta Health Information Act

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On August 5, 2004, Alberta's Information and Privacy Commissioner, Frank Work published his submission to the MLA Review Committee considering amendments to the 3 year old *Health Information Act*. The Commissioner offers 10 recommendations for change. These include:



- Not expanding the scope to make local public bodies and departments other than Health and Wellness, health information “custodians”;
- Expand the scope to include as a custodian “corporate entities” such as medical clinics, medi-centres and Local Primary Care Initiatives;
- Amend the definition of “custodian” who cease to practice to avoid ‘orphan records’;
- Expand the definition of custodian so it captures health services provider paid by sources other than the health care insurance plan;
- Amend the definition of “diagnostic, treatment and care information” to include genetic information;
- Amend the definition of “health service” so it includes services not paid by health care insurance plan;
- Amend the definition of “custodian” to include a custodian who remains a custodian but transfers health records;
- Amend the provision to create explicit authority for Commissioner to publish a summary of approved research projects; and
- Establish an explicit auditing power that expressly authorizes the Commissioner to conduct audits

We expect that the Report from the MLA Committee undertaking the Alberta review may be available in October or November 2004. For more information on the consultation visit <http://www.assembly.ab.ca/HIARReview/index.htm>.

### Paying to See Your Own Health Record

In an August 9, 2004 story, the Ottawa Citizen reported that a record storage company in Ontario is charging some patients fees as much as \$250 to access their personal medical files. The only requirement regarding fees in Ontario's *Health Information Protection Act*, which comes into force on Nov. 15, 2004, is that they be “reasonable”. The Ontario Medical Association has a guideline for record retrieval but that doesn't bind third-party companies. In Alberta, *The Health Information Act*, prescribes fees which consist of a basic fee of \$25, with provision for additional fees for certain services if a detailed estimate has first been provided to the patient.



## Paying to See Your Own Health Record (con't)

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In Saskatchewan, *The Health Information Protection Act* (HIPA) provides that a trustee may “charge a reasonable fee not exceeding the prescribed amount to recover costs incurred in providing access to a record containing personal health information.” [section 39] The draft HIPA regulation described below would allow a flat fee of \$25.00 or a fee of \$15 per half hour if more than 30 minutes are spent in searching for a record or preparing it for disclosure. There is provision for additional costs provided that if they will exceed \$100, the trustee must provide an estimate of cost before processing the access request.

### Draft Regulations for Saskatchewan’s Health Information Protection Act



Saskatchewan Health has now published draft regulations under HIPA. These are available on the Saskatchewan Health website: [www.health.gov.sk.ca](http://www.health.gov.sk.ca). Public submissions are invited by Saskatchewan Health until September 30, 2004. If you are a health information trustee it is important that you carefully review this document. These regulations have the force of law and will directly impact your activities.

These regulations address the following:

- Exempting Archives Board from HIPA rules for certain kinds of records
- Record retention
- Designation of archives for trustees
- Disclosure without consent for purpose of professional disciplinary hearings
- Disclosure without consent re: condition reports of individuals by trustees
- Disclosure without consent to Saskatchewan Cancer Agency
- Disclosure without consent to ambulance operators
- Disclosure without consent to Department of Learning
- Fees for access to personal health information
- Prohibiting disclosure of prescription practice information by pharmacists
- Disclosure of patient information for fundraising purposes

Our office will be formally responding to the proposed amendments and a copy of our response will be available on our website later in September, 2004.

## Gone Phishing

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Now that everyone is returning from summer holidays, you may be sitting down to scroll through the hundreds of e-mails that have accumulated in your absence. You may receive what appears at first glance to be an official looking e-mail from a familiar business you have made purchases from on-line or from your bank or a credit card company. Messages usually state that there is a problem or your account requires an update that, if not addressed immediately, will result in some negative consequence such as having your account frozen. Most of these sites offer a link that will take you to an official looking website where you are to verify your identity by entering your personal information such as your birth date. In reality, this is a phoney site, and someone may have just stolen your identity.



If this has happened to you, you have been phished. “Phishing” pronounced as fishing is a term used for a specific type of internet identity theft as described above. If you have any doubts as to the legitimacy of these e-mails and websites, don’t respond via your computer, rather pick up the phone and call a number you know to be valid. This may take a little more time, but is certainly preferable to dealing with the aftermath of identity theft.

### Future Events

- October 4** – *Health Privacy: New Compliance Requirements and Best Practices*, Calgary ([www.insightinfo.com](http://www.insightinfo.com) for conference details)
- October 14** – *Privacy Laws in a Nutshell*: Saskatchewan Legal Education Institute, Saskatoon. ([www.sklesi.org](http://www.sklesi.org) for seminar details)
- October 15** – *Privacy Laws in a Nutshell*: Saskatchewan Legal Education Institute, Regina. ([www.sklesi.org](http://www.sklesi.org) for seminar details)
- October 27 & 28** – *Privacy and Health Information – Making It Work*, Hotel Saskatchewan, Regina ([www.oipc.sk.ca](http://www.oipc.sk.ca) for conference details)
- December 1 & 2** – *Electronic Health and Medical Records*, Vancouver, British Columbia ([www.insightinfo.com](http://www.insightinfo.com) for conference details)

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