



February 6, 2007

Mr. Ron Harper, Chairman
Standing Committee on Intergovernmental Affairs and Infrastructure
Rm 239 Legislative Building
REGINA SK S4S 0B3

Dear Mr. Harper:

Further to my presentation to the Standing Committee on Intergovernmental Affairs and Infrastructure yesterday, I had undertaken to provide a written list of proposed amendments to Bill 20 for your consideration.

Those proposed amendments are as follows:

1. Defer passage of Bill 20 until the regulations have been developed so we know exactly what section 6 will mean and what will be exempted under section 7(e). The power in section 7(c) to permit regulations “prescribing any other information that must be disclosed to the local police service” is exceedingly broad. It challenges the right of the citizen to a reasonable expectation of privacy in respect of his person, of his medical condition and services that he is or expects to receive.

Those holes or gaps are substantial. Until we know how they will be filled, it is tough if not impossible to know what the impact will be on the privacy of individuals. There are already plenty of questions about how Bill 20 will affect patients and providers. Why compound that uncertainty by deferring these kinds of decisions for a later date?

2. If the Committee has already addressed the constitutional issues
 - (1) Is Bill 20 criminal law and therefore beyond the jurisdiction of a provincial legislature? and
 - (2) Is Bill 20 contrary to the *Charter of Rights and Freedoms*?and resolved them to its satisfaction, then I would encourage the Committee to at least eliminate the stab wound provision. Restrict the Bill to only gunshot wounds. In this respect I note that the Ontario Emergency Medicine Section of the Ontario Medical Association (OMA) was a strong advocate in that province for mandatory gunshot wound reporting. Interestingly though, that same OMA opposed reporting injuries from stabbings and provided reasons for doing so. This is evident in the article from the Executive of the Section on Emergency Medicine of the OMA that appeared in the April 13, 2004 Canadian Medical Association Journal (Tab 12 in your binder):

We specifically argued against reporting injuries from stabbings and beatings in our paper and provided several reasons, mainly that this type of behaviour is less lethal; a stray punch or knife will never come through the wall of a house and kill a man watching television with his wife and child as a stray bullet did in Toronto recently.” [emphasis added]

We will be the only jurisdiction in Canada that requires health care facilities to disclose stabbing wounds. It extends the net too wide, too far and would capture far too many minor or innocent injuries that should not be part of a police database. Mr. Chairman, in the example of your stab wound, I simply don't think that information belongs in a police database that is effectively beyond the reach of independent oversight.

3. If the Committee is not persuaded to restrict Bill 20 to gunshot wounds, you might consider the Alberta approach i.e. making the disclosure a discretionary decision of the regional health authority and not a mandatory decision. With appropriate training, the care provider is better able to screen out the accidental stab or puncture wounds from those the Justice Minister is concerned about. Why make this mandatory and remove the ability to exercise appropriate judgement on the particular facts of any injury? I provided to the Committee a copy of section 37.3 of the Alberta *Health Information Act* (HIPA) at Tab 6.
4. If the Committee resolves to proceed with Bill 20, in spite of the concerns raised by our office, I invite the Committee to consider a requirement that the hospital advise persons entering hospital for gunshot or stab wounds that there is a mandatory reporting to police requirement. This would be consistent with section 9 of HIPA. That provides as follows:

9(1) An individual has the right to be informed about the anticipated uses and disclosures of the individual's personal health information.

(2) When a trustee is collecting personal health information from the subject individual, the trustee must take reasonable steps to inform the individual of the anticipated use and disclosure of the information by the trustee.

(3) A trustee must establish policies and procedures to promote knowledge and awareness of the rights extended to individuals by this Act, including the right to request access to their personal health information and to request amendment of that personal health information.

Transparency is a key element of privacy legislation.

5. If the Committee resolves to proceed with Bill 20, in spite of the concerns raised by our office, I invite the Committee to ensure that hospitals provide timely notice to patients that certain personal health information has been shared with police. This would be in the spirit of section 10 of HIPA. This notice should detail the precise information provided to police. The innocent victim would at least know that the police now have information about him or her and an injury he or she has received that they would not otherwise have had access to. This may already be captured by section 10 but it should be explicit in Bill 20.
6. If the Committee resolves to proceed with Bill 20, I encourage you to ensure that municipal police forces and municipal police commissions are explicitly defined as local authorities for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act*. Currently, the RCMP when performing municipal policing services are subject to the federal *Access to Information Act* and the federal *Privacy Act*. There is no equivalent protection for citizens when their personal health information is collected by their municipal police force.

That means different standards in privacy protection depending on where you live in Saskatchewan. It also means that, unlike I think every other jurisdiction in Canada, except for PEI, my office has no jurisdiction to oversee the collection, use or disclosure of personal information under FOIP, LA FOIP or personal health information under HIPA when that information is in the custody of a municipal police force. With other Saskatchewan public bodies our office can oversee how long they keep personal information, how they keep it secure and ensure only those with a legitimate need to know can see the information, how and when it will be destroyed.

7. For the last three years, both Saskatchewan Health and our office have been engaged in a major training focus on regional health authorities for HIPA compliance. Regional Health Authorities have been developing policies and procedures to ensure that every hospital and health care facility under their control is compliant with HIPA. To be consistent with HIPA, I recommend that if the Committee elects to proceed with Bill 20 in its present form, that it substitute “Regional Health Authority” for “hospital” wherever that appears in the bill.

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If the Committee has any questions with respect to the foregoing proposed amendments, please call me.

Yours truly,

A handwritten signature in black ink, appearing to be "R. Gary Dickson", written on a light gray background.

R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner

cc: Ms. June Druade, Deputy Chair, MLA Kelvington Wadena
Ms. Margaret A. Woods, Clerk Assistant