

COMMUNIQUÉ

For the Health Industry

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Group

BILL 31: HEALTH PRIVACY UPDATE

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We are pleased to provide you with the following "unofficial" update about the status of Ontario's Bill 31, the *Health Information Protection Act, 2003*.

TIMELINES

As previously indicated, Bill 31 passed first reading on December 17, 2003 and was referred to the Standing Committee on General Government on December 18, 2003. Public hearings of the Committee were held in Toronto the week of January 26, 2004 and in Sault Ste. Marie, Kingston and London the week of February 2, 2004. Written submissions were due by February 6, 2004.

Given the tight timelines, we are advised that the government was unable to consider written submissions before the Committee's clause by clause consideration on February 9, 2004. There were more than 100 recommended changes that were passed on this date.

Significantly, it is proposed that Bill 31 now come into force on **January 1, 2005**. It is anticipated that any associated regulations will be in place by this time as well, although none have been drafted to date.

It is anticipated that the Bill will be reintroduced for second reading in late March of this year, soon after the Legislature resumes on March 22, 2004. There will be another clause by clause consideration of the Bill and meetings of the small committee. It is our understanding that written submissions received to date will be specifically addressed.

The Ontario Government will be seeking "substantially similar" designation, to be exempted from the application of the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

Note:

This *Communiqué* is provided as an information service and is a summary of current legal issues of concern to the Health Industry. *Communiqués* are not meant as legal opinions and readers are cautioned not to act on information provided in this *Communiqué* without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome. Please direct them to: healthretainer@millerthomson.ca

PROPOSED CHANGES

Some of the provisions where significant concern has been expressed by a number of stakeholders have been changed. For example, one of the most contentious areas related to fundraising activities by health information custodians. Bill 31 required express consent for the collection, use or disclosure of personal health information for fundraising activities. This section has now been replaced with the following:

Fundraising

31.(1) ... a health information custodian may collect, use or disclose personal information about an individual for the purpose of fundraising activities only where,

- (a) the individual expressly consents; or
- (b) **the individual consents by way of an implied consent and the information consists only of the individual's name and the prescribed types of contact information.**

While the prescribed types of contact information have not been determined, they will likely include demographic information only.

As indicated, it is anticipated that there will be another opportunity for public input following second reading, however, this will be quite limited. We would be pleased to assist you in this regard.

GOING FORWARD

Miller Thomson LLP is following the status of this draft legislation very closely. Given its current momentum and the existing alternative, in particular, federal privacy legislation, we are proceeding on the basis that this draft legislation will become law. We suggest that the health industry should be proactive in preparing for provincial privacy legislation.

Provided that the legislation follows its expected course, our Health Industry Practice Group will be hosting an educational session in the fall of 2004. This program will look at the broad, practical application of the legislation, as well as implications for the health industry as employers and charitable organizations. We will keep you informed.

As always, we are pleased to assist health industry clients as you prepare for new legislation. Please feel free to contact us for assistance with the development of a privacy implementation framework, privacy audits, policy and procedure development and for development of contracts, forms and notices.

ABOUT THE AUTHOR:

Kathryn Frelick is a lawyer practising in our Health Industry Practice Group and is general counsel for the Legal Retainer Program. She is particularly interested in administrative law, regulatory law and health policy issues.

Our National Health Industry Practice Group is dedicated to providing comprehensive and integrated legal services to health industry clients. For more information about our group, visit our website at www.millerthomson.com or contact one of our regional contacts listed below.

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