

## COMMUNIQUÉ for the Health Industry

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Health Industry Practice Group

*Kathryn Frelick*  
Toronto  
416.595.2979  
kfrelick@millerthomson.com

*Jennifer White*  
Toronto  
416.595.2990  
jgwhite@millerthomson.com

Two highly anticipated initiatives relating to health information privacy have been released and are now available to the public.

### 1. SHORT NOTICES

Under the *Personal Health Information Protection Act* (PHIPA), consent of the individual is required in order for a health information custodian (i.e. a hospital, community care access centre, long term home or health professional) to collect, use or disclose that person's personal health information. That consent must be knowledgeable, that is, it must be reasonable in the circumstances to believe that the person knows the purpose of the collection, use or disclosure and that he or she may withdraw his or her consent. PHIPA provides that consent can be knowledgeable through the use of a notice posted in a conspicuous area which is likely to come to the individual's attention, or through an information handout or brochure.

The use of notice is a new concept in Ontario. Since the enactment of PHIPA, stakeholders have expressed concern about how much information they should include in the notice and what information should be covered. In other words, how should health information custodians achieve the appropriate balance to ensure that individuals are informed about the organization's information practices, but are not overwhelming individuals with too much information? Research performed in the United States, for example, has demonstrated that members of the general public are usually irritated and repelled by excessively detailed posters and pamphlets.

To address these concerns, a Short Notices Committee consisting of representative from the Ontario Bar Association - Privacy and Health Law Groups, the Ministry of Health and Long Term Care, the Ontario Dental Association and the Information and Privacy Commission/Ontario (IPC) was established to develop notices for the health industry. The notices are now available through the IPC.

The notices come in the form of colourful, easy to read posters that can be posted in public places such as waiting rooms. There are three posters entitled, "In Our Hospital"; "In Our Facility" and "In Our Office". Accompanying the posters are brochures for each setting containing more information should a client wish to learn more. A three tiered approach to providing information about health information privacy is recommended as being the most effective method of communicating with clients, including:

- i) a short and compelling poster;
- ii) a pamphlet with additional information; and
- iii) a detailed discussion with the person who is making the enquiry.

In many instances, the short notice itself will be sufficient. These publications can often be used in conjunction with the tailored information developed by health information custodians outlining the specific organization's privacy practices. There may be times where there are significant differences that justify a specific approach.

As stated above, the posters and pamphlets are available through the IPC's Office, 2 Bloor Street East, Suite 1400, Toronto, Ontario M4W 1A8 or by telephoning the Commissioner at 416-326-3333 or 1-800-387-0073. Requests can also be made by e-mail at [ipc.publication@ipc.on.ca](mailto:ipc.publication@ipc.on.ca). Alternatively, copies are available for downloading from the website ([www.ipc.on.ca](http://www.ipc.on.ca)).

## **2. PAN-CANADIAN HEALTH INFORMATION PRIVACY AND CONFIDENTIALITY FRAMEWORK REPORT**

In the late spring of this year, the Office of Health and the Information Highway, Health Canada released a report called the *Pan-Canadian Health Information and Confidentiality Framework*. This Framework was the result of a Federal/Provincial Conference of Deputy Ministers of Health and the work of its Advisory Committee on Information and Emerging Technologies. The objective of the Framework is to establish a set of harmonized core provisions for the collection, use and disclosure of personal health information to inform legislative development and implementation in both the private and the public sectors. The intent is to protect the privacy and confidentiality of individuals' health information while at the same time enabling the flow of information where appropriate to support effective health care.

The report contains a number of core concepts that should form the basis of privacy provisions across jurisdictions, and across the commercial and non-commercial sectors of health care.

A copy of the report can be found at: [http://www.hc.-sc.gc.ca/ohih-bis/pubs/privacy\\_framework\\_e.html](http://www.hc.-sc.gc.ca/ohih-bis/pubs/privacy_framework_e.html) or by contacting Health Canada.

We would be pleased to assist you with the development and implementation of your privacy program or to assist with education for your organization. Please contact Kathryn Frelick or Jennifer White for more information about our services.

### **ABOUT THE AUTHORS:**

Kathryn Frelick and Jennifer White are lawyers practising in our Health Industry Practice Group. In addition to acting as Supervising Counsel for the Legal Retainer Program, Kathryn leads our regulatory practice and provides advice to clients in areas of privacy, consent & capacity, mental health, and health policy issues. Jennifer is General Counsel for the Legal Retainer Program.

*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](http://www.millerthomson.com) or contact one of our regional contacts.*

### **REGIONAL CONTACTS**

#### **Toronto/Markham**

Joshua Liswood  
[jliswood@millerthomson.com](mailto:jliswood@millerthomson.com)

Kathryn Frelick  
[kfrelick@millerthomson.com](mailto:kfrelick@millerthomson.com)

#### **Waterloo-Wellington**

Gregory P. Hanmer  
[ghanmer@millerthomson.com](mailto:ghanmer@millerthomson.com)

#### **Calgary**

Bryan R. Ede  
[bede@millerthomson.com](mailto:bede@millerthomson.com)

#### **Edmonton**

Brian Curial  
[bcurial@millerthomson.com](mailto:bcurial@millerthomson.com)

#### **Vancouver**

David Martin  
[dmartin@millerthomson.com](mailto:dmartin@millerthomson.com)

#### **Montréal**

André Dugas  
[adugas@millerthomsonpouliot.com](mailto:adugas@millerthomsonpouliot.com)

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