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COMMUNIQUÉ for the Health Industry

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DISCLOSING CLIENT INFORMATION TO ELECTIONS ONTARIO

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In preparation for the upcoming provincial general election, health industry clients may be receiving requests from Elections Ontario to disclose client lists in order to update the permanent register of electors. Information requested may include names, date of birth, room numbers and location of individuals in a health facility.

Pursuant to the *Personal Health Information Protection Act* ("PHIPA"), personal health information ("PHI") relating to individuals may only be disclosed with an individual's consent when the disclosure is necessary for a lawful purpose or as permitted or required under PHIPA. Section 43(1)(h) of PHIPA provides that a health information custodian ("HIC") may disclose PHI about an individual, if the disclosure is permitted or required by law, which includes another statute.

The statutory authority for HICs to disclose client PHI is found under paragraph 2 of section 17.1(4) of the *Election Act* which provides that the Chief Election Officer may obtain information from "any source that he or she considers reliable" to establish and maintain a permanent register of electors. It is our view that "any source" would include long-term care homes, nursing homes and hospitals. Section 17.1(4) is *permissive* and allows the health facility to disclose this information to Elections Ontario, but it is not *required* to disclose. Given the purpose of the request, which is meant to ensure that individuals who are receiving care in health facilities have the right to vote, it is our view that organizations should comply with these requests if at all possible. Given the limited scope of the PHI being provided, we believe the risk to the organization is minimal, for most client populations.

Nevertheless, there are some additional measures that health industry organizations can take to minimize any potential risk. With respect to the preparation of client listings we would recommend that organizations post notices and/or provide a handout to clients and/or their substitute decision makers regarding the disclosure of PHI to Elections Ontario and provide them with the opportunity to discuss any questions or concerns they may have. Alternatively, although not required, the organization may wish to obtain the individual's verbal or written consent to the disclosure. The individual may choose not to allow the disclosure of their PHI if they wish.

We hope this is of some assistance in the upcoming weeks. Please contact our Health Industry Practice Group for more information or for specific advice in relation to responding to requests for information.

ABOUT THE AUTHORS

Janela Jovellano and *Kathryn Frelick* are lawyers practising in our Health Industry Practice Group.

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:

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