October 8, 2004

The Honourable Archie Campbell, Commissioner
The SARS Commission
180 Dundas Street, 22nd Floor
Toronto, Ontario
M5G 1Z8

Dear Justice Campbell:

**Re: SARS Commission**

The SARS Commission is investigating how the SARS virus came to Ontario, how it was spread and how it was dealt with. Your Commission is also looking at what lessons have been learned and what improvements should be made and we are pleased that you have invited us to speak to you in this regard.

As you know, in my role as Freedom of Information and Protection of Privacy Commissioner/Ontario my office has a mandate under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) and the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) to provide independent review of the provincial government's decisions and practices concerning access and privacy and to safeguard those rights. We also have a mandate to educate the public about Ontario's access and privacy laws, to conduct research on access and privacy issues, and to provide advice and comment on proposed government legislation and programs. The Ontario government introduced the *Personal Health Information Protection Act, 2004* (*PHIPA*) in December that will safeguard the privacy of Ontarians' health information thereby expanding the mandate of our office to a very important facet of the private lives of the citizens of this province.

An obvious concern arising from the SARS tragedy was whether the responsible officials were able to collect, use and disclose personal information, in order to carry out their public health responsibilities. From time to time, there appears to be a misperception that privacy legislation acts as a barrier to the sharing of information in emergency situations affecting public health and safety. In my recent remarks at Management Board Secretariat's Annual Access & Privacy Conference, I referred to one such situation which occurred this year in British Columbia. A

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student took her own life in late February, one month after being hospitalized for a suicide attempt. Although hospital administrators and university staff were aware of the suicide attempt, the student's mother had not been informed of her daughter's problems. As one would expect, the mother was distraught at not having been so informed and having been denied an opportunity to intervene and possibly save her daughter's life. By way of explanation, both the hospital and the university said that privacy laws had prevented them from releasing the student's medical information to her mother. This apparently legalistic and uncaring approach was widely commented on in the media, and, for a short while, privacy received a black eye. Fortunately, British Columbia's Information and Privacy Commissioner, David Loukidelis, acted quickly to refute the position taken by the university. He pointed out that British Columbia's access and privacy legislation contained sufficient authority for university and hospital officials to share information with the student's parents in order to ensure her health and safety.

To me, nothing is worse than using privacy as a shield to hide behind and I would like to point out that *PHIPA*, like the B.C. legislation, allows for the sharing of health information by health care providers in similar circumstances. The law states that health care providers may disclose personal health information, if the provider believes that the disclosure is necessary for the purpose of eliminating or reducing significant risk of serious bodily harm to a person or group of persons. This ability to disclose to prevent or reduce significant risk of bodily harm is not subject to veto by the individual to whom the personal health information relates.

On rare occasions, the government has been of the view that the regularly used provisions in either *FIPPA* or *MFIPPA* that allow the indirect collection of personal information by the government (sections 39 and 29 respectively) are insufficient in the circumstances. In those cases, they have come to me to request authorizations for indirect collections. I have the power to authorize such indirect collections of personal information otherwise than directly from the individual under section 59(1)(c) and 46(1)(c) of *FIPPA* and *MFIPPA*, respectively. I am attaching for your ease of reference, an example of one such authorization that was issued last year to the Ministry of Municipal Affairs and Housing (Authorization 2003-01), which allowed that Ministry to collect personal information indirectly for the purpose of the Ministry's administration of the SARS Assistance Program. These authorizations can be dealt with quickly when matters are urgent.

The IPC is planning to undertake a joint project with the British Columbia IPC to ensure that the public is aware that privacy legislation need not present a barrier to disclosure, where the disclosure of personal information is necessary to prevent harm to any individual. The end product of this project should be available this fall.

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In summary, it is our view that the appropriate sharing of personal information, including personal health information, has been addressed in all of the above-noted legislation. Each of the Acts not only provide its own rules for the sharing of information by government institutions and health information custodians, but also permits sharing where it is permitted under another Act of Canada or the Legislature. If there is a problem, it could very well be that it is more one of perception than actual substance. For more information, please see our enclosed chart of permitted collections, uses and disclosures.

Thank you again for including us in this process.

Sincerely yours,

Ann Cavoukian, Ph.D.
Commissioner

Enclosures (2)