

***Ontario Bar Association***  
**Lunch with the**  
**Information and Privacy**  
**Commissioner of Ontario**

**Brian Beamish**  
**Sherry Liang**  
**David Goodis**

**April 29, 2015**



Information and Privacy  
Commissioner of Ontario  
Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

# Mandate and Role

- IPC provides **independent** review of government decisions, practices concerning access and privacy
- Brian Beamish appointed for 5 year term last month
- renewed focus on:
  - helping institutions address privacy/access concerns
  - Ontario-based issues
  - efficient/effective tribunal



# Oversee Three Acts

- ***Freedom of Information and Protection of Privacy Acts (FIPPA/MFIPPA)***
  - right of access to government records; appeal to IPC, binding orders
  - privacy rules for government; complaints to IPC – investigations may lead to recommendations or orders
- ***Personal Health Information Protection Act (PHIPA)***
  - privacy rules for PHI; right of access to that information
  - complaints to IPC – reviews may lead to orders



# IPC Structure

- **Tribunal**
  - mediation, investigation, adjudication
  - led by Assistant Commissioner Sherry Liang
- **Policy, Health Policy, Legal, Communications, Administration**
  - research, advice, comment on proposed programs, legislation that impact access/privacy
  - represent IPC in court
  - led by Assistant Commissioner David Goodis

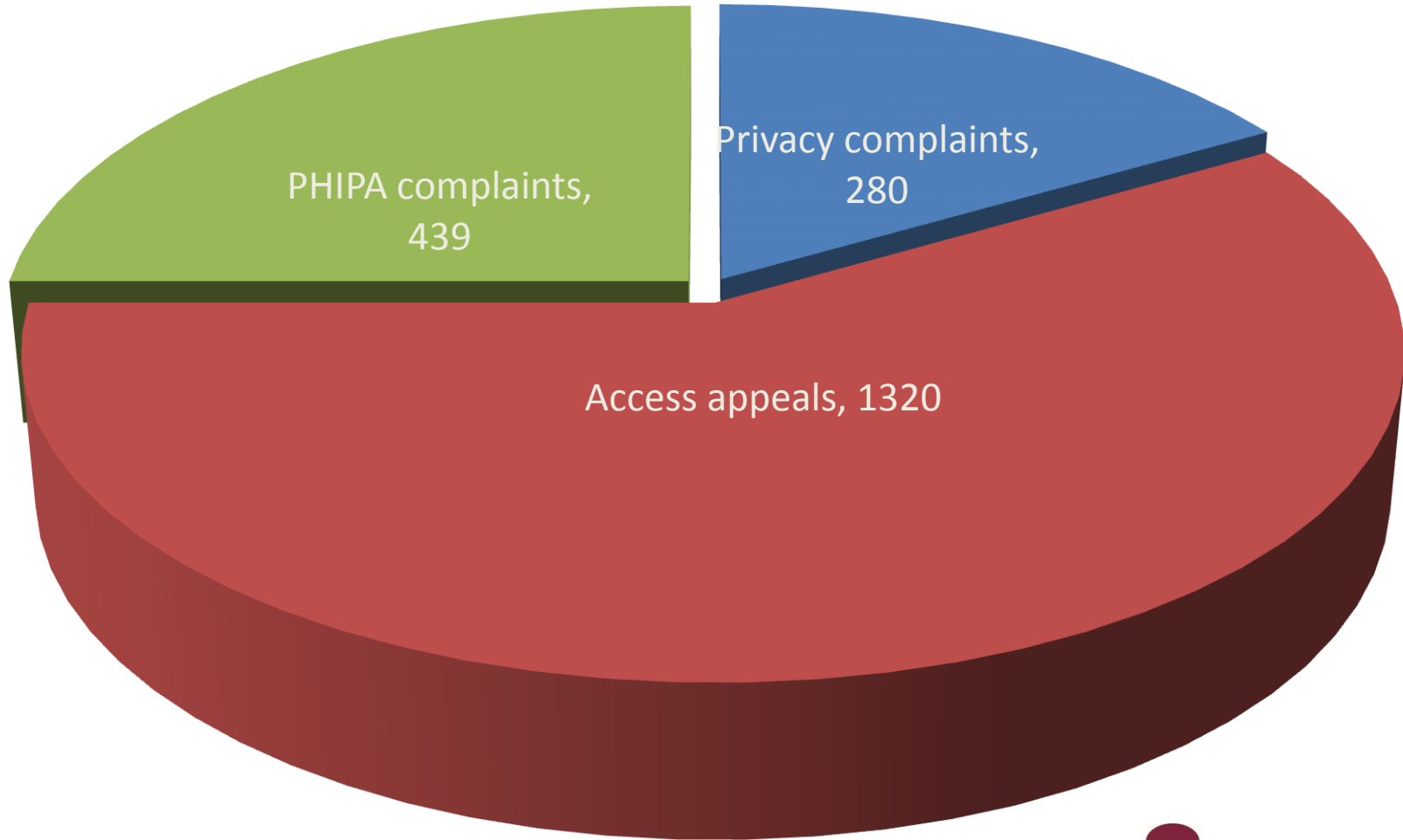


# An Introduction to Tribunal Services

- Who we are
- A typical day in the Registrar's office – what comes through the door?
- Some statistics



# About 2000 Appeals and Complaints in 2014



# What's New, What's Coming in Tribunal Services?

- Some new faces
- Looking ahead: PHIPA Process Review



# What the Tribunal has been doing

- Recent orders and court decisions of interest:
  - Order PO-3461 (public interest override; DNA samples)
  - *Christopher's Law* decision (SCC) and subsequent Order PO-3429 (postal codes)
  - Family Responsibility Office (ON CA)





# What the Tribunal has been doing

- Ministry of Finance [Order PO-3365]
  - Records of expert panel advising the government on reform to auto insurance covered by *FIPPA*
- Thunder Bay District Catholic School Board [Order MO-3141] and others
  - Records of school board transportation consortiums within custody or control of constituent boards



# What the Tribunal has been doing

## Privacy investigations

- City of Vaughan [Privacy Report MC13-67]
  - online posting of PI in minor variance applications under *Planning Act*
- Guelph Police Services Board [Privacy Report MC13-49]
  - Use of *Youth Criminal Justice Act* information for purpose of police reference check not permitted



# What the Tribunal has been doing

## Health privacy and access

- London Health Sciences Centre [*PHIPA* Order HO-014]
  - fees for “access” and “disclosure” are the same
  - based on **reasonable cost recovery**
- Rouge Valley Health System [*PHIPA* Order HO-013]
  - hospital staff **snooping** into “new baby” records for purpose of marketing RESPs
  - hospital’s privacy policies, training deficient



# Policy/Legal: Law enforcement

- **Police record checks**; continuing privacy concern
  - checks now routine for many jobs, volunteer positions
  - growing concern that employers obtain irrelevant information, particularly **non-conviction** info
- IPC calls for legislative reform, consistency
  - IPC worked with OACP, MCSCS to develop solution
  - province now says it is considering **legislation**



# Policy/Legal: Law enforcement

- **Crossing the Line** investigation report [2014]:
  - Toronto woman denied entry to US at Pearson Airport due to mental health concern
  - 2012 suicide attempt on **CPIC** due to 911 call
  - US border officials have direct, instant CPIC access
- IPC finds police uploading info about suicide attempt/threat is improper disclosure [*FIPPA*, s. 42]
  - disclosure permissible only where valid public safety concern



# Policy/Legal: Law enforcement

- **Crossing the Line** investigation report [2014]
  - most police services comply
  - but Toronto Police refuse
  - IPC brings application for judicial review, asks Divisional Court to order compliance
  - hearing expected in fall 2015



# Law enforcement

- body worn cameras

- working with Toronto Police on pilot project
- important accountability tool, but privacy must be respected
- F/P/T Commissioners' **guidelines** (Feb 17)
- mission creep concern: combine with facial recognition technology?



# Privacy Impact Assessments

- critical component of project management
  - helps to ensure regulatory compliance
  - MGCS guidelines work well for larger institutions such as ministries; OPS focused
- IPC will soon issue user-friendly **PIA guidelines** for *M/FIPPA* institutions
  - e.g., smaller municipalities, police, school boards
  - adaptable to broad range of programs, information systems (private sector also)





# Guidance Document on Snooping



Detecting and Deterring  
Unauthorized Access to  
Personal Health Information



- benefits and risks of electronic health records
- impact of “snooping”
- reducing the risk of unauthorized access

# Survey Guidelines



Best Practices for Protecting  
Individual Privacy in  
Conducting Survey Research

- updated from 1999 version, co-authored with OPS
- changes reflect use of online survey tools, use of mobile devices

# Guidelines for Posting PI

- stemming from Vaughan privacy report re: disclosing PI under *Planning Act*
  - IPC will shortly release guidelines for municipalities for online posting of personal information
  - advice will include measures to reduce likelihood of PI being revealed by search engines



# Privacy Class Actions

- *Hopkins v. Kay*, 2015 ONCA 112
  - Ontario Court of Appeal affirms patients' right to sue hospitals for **invasion of privacy tort** (*Jones v. Tsige*)
  - court says limiting right to cases where IPC issues *PHIPA* order too restrictive
  - IPC intervenes, argues in favour of common law right, since IPC will exercise discretion not to conduct review/issue order, for wide variety of reasons (SCC leave application)



# Time Extensions: Federal Court Intervention

- *Canada (Information Commissioner) v. Canada (National Defence)*, 2015 FCA 26
  - National Defence extends 30-day time limit to respond to request under federal *ATIA* by **1,110 days**
  - Information Commissioner asks court to find ND in “deemed refusal”
  - FC rules government time extension not reviewable
  - on appeal, FCA reverses: time extensions require **independent review** by Commissioner, court; IPC intervened to assist court



# Open Government

- *Open by Default* report [Open Government Engagement Team, 2014]
  - province has more work to do to create **culture of openness**
  - recommended updates to *FIPPA/MFIPPA*, “one stop” open government platform/app, fees reform
- IPC will issue **guidelines** to help institutions advance open government agenda
  - focus on small steps -- can be a daunting task
  - will engage with individual institutions to identify their needs, give advice on how to move forward



# How to Contact Us

**Information and Privacy Commissioner of Ontario**

**1400-2 Bloor Street East**

**Toronto, Ontario M4W 1A8**

**Phone: (416) 326-3333/1-800-387-0073**

**Web: [www.ipc.on.ca](http://www.ipc.on.ca)**

**E-mail: [brian.beamish@ipc.on.ca](mailto:brian.beamish@ipc.on.ca)**

**[sherry.liang@ipc.on.ca](mailto:sherry.liang@ipc.on.ca)**

**[david.goodis@ipc.on.ca](mailto:david.goodis@ipc.on.ca)**

