

Canadian Institute Privacy and Security Compliance Forum

Snooping – Rights and Responsibilities

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January 31, 2017



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario



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Harm caused by health information snooping

- discrimination, stigmatization, psychological or economic harm
- individuals avoiding testing or treatment
- individuals withholding or falsifying information
- loss of trust or confidence in the health care system
- cost and time in dealing with privacy breaches
- **legal liabilities** and proceedings



Legal consequences for **wrongdoers**

- employee discipline (termination, suspension)
- professional regulatory discipline (eg health profession colleges)
- offence prosecutions, fines (*FIPPA*, *PHIPA*, *Securities Act* [Rouge Valley 5 convictions])
- statutory (*PHIPA*) or common law tort proceedings (eg *Jones v. Tsige*, *Hopkins v. Kay*)



IPC investigations

- Rouge Valley Order HO-013 (December 2014)
 - two staff gathered “new baby” information, sold to RESP providers
 - hospital had deficient audit measures to detect, deter snooping
 - IPC makes it clear that hospital liable for actions of its “rogue” staff



IPC investigations

- Rouge Valley Order HO-013
 - IPC ordered hospital to upgrade its systems to permit auditing, detection of snooping
 - hospital appeals to Divisional Court
 - first ever appeal of IPC health decision
 - but matter **resolved**, hospital agrees to upgrade systems as required by order (limited to number of key databases)



Offence prosecutions

- offence to wilfully collect/use/disclose personal health information contrary to *PHIPA* [up to \$100k fine]
- in deciding whether to refer to Attorney General, IPC considers:
 - were actions **wilful**
 - recent privacy training
 - recently signed confidentiality agreement
 - privacy warnings on the system ignored
 - large number of occurrences
 - motive
 - disciplinary action taken, or complaint to professional college
 - interests/views of the patient
 - contrition



Offence prosecution referrals

- **2011** nurse at North Bay Health Centre
 - dismissed for delay
- **2015** two radiation therapists at UHN
 - convicted, \$2,000 fines
- **2015** social worker at a family health team
 - trial pending
- **2016** registration clerk at a regional hospital
 - 443 patients, convicted, \$10,000 fine
- **2016** regulated professional at a Toronto hospital
 - recent referral, no action yet



Health privacy **class actions**

- ***Rowlands v Durham Health*** 2012 ONSC 3948
 - public health nurse lost USB stick with PHI of 83,524 individuals
 - class action certified, settlement approved
- ***Hopkins v Kay*** 2015 ONCA 112
 - plaintiffs allege privacy of 280 patients breached when their records intentionally and wrongfully accessed at the Peterborough Regional Health Centre
 - proposed class action continues -- counsel indicates action is proceeding to the certification stage



Professional **discipline** by regulatory colleges

- *College of Physicians and Surgeons of Ontario v Brooks*
 - doctor accessed electronic records of two people (not his patients) many times over course of a decade – doctor and his wife had a close personal relationship with them
 - included psychiatric, addictions-related, obstetrics information
 - college finds he committed **professional misconduct** considered disgraceful, dishonourable, or unprofessional
 - reprimanded, suspended for 5 months
 - also required to complete 6 months of individualized instruction in medical ethics



Professional discipline by regulatory colleges-

- *College of Nurses of Ontario v Smith*

- nurse, in relationship with another hospital employee, accessed the electronic records of employee's spouse (not her patient)
- spouse and employee in divorce proceedings; nurse shared the spouse's health information with employee on several occasions
- college finds she committed **professional misconduct**, failed to meet the standards of practice of the profession, engaged in disgraceful, dishonourable or unprofessional conduct
- reprimanded, suspended for 6 weeks
- required to provide copy of penalty order to any future employers for period of one year



Health information: snooping

- how can we prevent it?
 - better system controls, audits
 - employee discipline/regulatory college sanctions
 - *PHIPA* offence prosecutions (MOHLTC/MAG)
 - better training/education



IPC Guidance on Snooping



Detecting and Deterring
Unauthorized Access to
Personal Health Information

- benefits and risks of electronic records
- impact of unauthorized access
- **reducing the risk of unauthorized access**

PHIPA Amendments

Bill 119 (now mostly in force)

- provisions to enable provincial electronic health record
 - rules for collection, use, disclosure
 - processes by which individuals can implement consent directives
 - processes for individuals to access their health records



PHIPA Amendments

Bill 119

- will require health privacy breaches to be **reported to Commissioner** and relevant regulatory **colleges**
- removes requirement that prosecutions be started within six months of the offence
- doubles fines for offences to \$100,000 for individuals, \$500,000 for organizations

