FOI-ables
Answers to hospital questions about FIPPA

BLG received the following question in response to Issue 3 of its FOI-ables Bulletin on delegation of the head’s power and duties:

**QUESTION:**
Does the reference to “officer” in section 62(1) of FIPPA restrict delegation of the head’s powers and duties to an “officer” within the meaning of the Corporations Act?

**ANSWER:**

Section 52(1) of FIPPA provides:

A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

The term “officer” is not defined in FIPPA, however there are several bases on which to interpret the term as referring to a person in a position of responsibility or authority within a hospital rather than an officer appointed or elected under the Corporations Act (referred to below as an Officer).

Not all institutions subject to FIPPA are corporations and the term “officer” would have no meaning in such organizations were it synonymous with Officer. The Information and Privacy Commissioner/Ontario (IPC) made the same point in regard to sections of FIPPA which permit her to appoint “one or two officers of … her staff to be Assistant Commissioners” and to delegate a power or duty granted or vested in her to “an officer or officers employed by the Commissioner”. Taking a purposive approach to the interpretation of section 62(1), it would make little sense for the chair of the board to delegate his or her powers or duties to an Officer, as an Officer would be no better placed to oversee the day-to-day administration of FIPPA within the hospital. It is also of note that section 56(1), cited above, refers to “officers employed by the Commissioner”.

In a 1991 report (http://www.ipc.on.ca/English/Resources/Reports-And-Submissions/Reports-And-Submissions-Summary/?id=229), the IPC...
examined the meaning of the term “officer” in sections 4(4), 8(1), 56(1) and 62(1) of FIPPA. The report points out that in the context of these sections of FIPPA, “there does not appear to be any reason for the distinction among the staff of the Commissioner or an institution” and that Blacks Law Dictionary, defines “officer” as, “Person holding office of trust, command or authority in corporation, government, armed services, or other institution or organization”. The report notes that the distinction between officers and employees does not apply in other areas of the law, outside of corporate law, and that the distinction between “officers” and “employees” in FIPPA may be the result of a drafting convention that is no longer in use.

Finally, the term “officer” is used in the Public Hospitals Act (PHA) to refer to physician administrators. In section 34 of the PHA, the term “officer of the medical staff” is used to refer to the chief of the [medical] staff and heads of medical departments. Accordingly, within the context of the legislation governing public hospitals in Ontario, the term “officer” is used to refer to individuals with administrative responsibilities who are not Officers.

Despite the absence of a definition in FIPPA, for all of these reasons, there is a sound basis upon which to interpret the term “officer” in section 62(1) of FIPPA to mean an individual in a position of responsibility and authority rather than an Officer.

PRACTICAL TIPS

For information and practical tips on delegation by the head, see FOI-ables, Issue 3, dated May 9, 2011, available here.

COMMENTS OR QUESTIONS

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