

New PHIPA Mandatory Reporting Requirement

Wednesday, November 29, 2017

As of October 1, 2017, health information custodians are required to notify the Information and Privacy Commissioner ("IPC") when they have reasonable grounds to believe there has been a breach of the *Personal Health Information Protection Act, 2004* ("PHIPA"). This represents a change from prior legislation that afforded institutions more discretion.

Under subsection 6.3(1)(1) of the regulations and 12(4) of PHIPA, a health information custodian will be required to notify the Commissioner where it has reasonable grounds to believe that personal health information in its custody or control "was used or disclosed without authority by a person who knew or ought to have known" that he or she did not have permission to do so. In particular, notification will be required in cases of snooping or reckless handling of personal health information.

Custodians are also required to notify the Commissioner where they have reasonable grounds to believe that personal health information has been stolen under subsection 6.3(1)(2), where there was or will be further disclosure of personal health information that was lost, used or disclosed without authority under subsection 6.3(1)(3), or where there has been a pattern of similar losses of personal health information or of unauthorized use or disclosure. For example, notification would be required if a custodian experienced a series of inadvertent disclosures or losses due to a fax machine error or other systemic issue.

The purpose of these regulations is to require notification to the Commissioner in nearly all situations where there is a privacy breach which required patient notification. At least initially, this will likely generate a significant increase in the number of notifications to the Commissioner.

[For further information please see BLG's full summary of the requirements here.](#)

AUTHORS

[Roberto Ghignone](#)

T 613.369.4791

RGhignone@blg.com

[Logan Crowell](#)

T 416.367.6179

LCrowell@blg.com

BLG OFFICES

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T +1.403.232.9500
F +1.403.266.1395

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T +1.514.954.2555
F +1.514.879.9015

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T +1.613.237.5160
F +1.613.230.8842

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2017 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.