

Electronic Health Records-Reflections on the Canadian experience

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Cross-Canada survey of legislative developments

British Columbia

- No comprehensive, stand-alone health information law
- The *E-Health (Personal Health Information Access and Privacy Act)* is narrowly focused
- Commissioner has recommended one is needed
- B.C. Legislative Committee reviewing PIPA has agreed

Alberta

- HIA amended in 2015
- New duty to notify of breaches “*if there is a risk of harm to an individual as a result...*”
- Notification to OIPC, the Minister, the affected patient
- Notice provisions out of sync with PIPA, Bill S-4 (formerly C-12), & revised OECD Guidelines

Saskatchewan

- *Health Information Protection Act (2003)*
- *Health Records Protection Report (April 2014)*
- Bill 164 creates new offence for snooping by employee of a trustee (s. 64 (3.1-3.3))
- Jan 20, 2014 announcement that comprehensive record is “complete” triggering ss. 2, 8 & 18.1
- eHealth Saskatchewan is the EHR agency

Manitoba

- 2013 amendment of the *Personal Health Information Act* (1997) to address snooping (s. 63(2))
- Response to Manitoba Ombudsman investigation of CancerCare employee snooping and resulting July 2012 report
- eChart Manitoba is the EHR agency

Ontario

- *Personal Health Information Protection Act (2004)*
- Bill 78 - *Electronic Personal Health Information Act* tabled in May 2013 but not passed
- ON IPC launched an awareness campaign to address snooping – *Detecting and Deterring Unauthorized Access to [PHI] 2015*
- eHealth Ontario is the EHR agency

Quebec

- New review undertaken of privacy laws in province
- No stand-alone health information law

New Brunswick

- *Personal Health Information Privacy and Access Act (2009)*
- OIPC Interpretation Bulletin with respect to s. 49(2) Privacy Breach Notification
- Health Information Access and Privacy Review underway
- OPOR (“One patient – one record”)

Nova Scotia

- *Personal Health Information Act* (2013)
- Threshold for breach notification is “potential for harm or embarrassment to the individual”
- SHARE (Secure Health Access Record) is the EHR system

Prince Edward Island

- *Health Information Act* awaiting proclamation

Newfoundland & Labrador

- *Personal Health Information Act* (2011)
- Number of snooping cases that involve OIPC investigations, charges and at least 2 class actions
- Healthe NL is the system run by the Centre for Health Information

Yukon

- *Health Information Privacy and Management Act* awaiting proclamation
- Recommendations for legislative change presented by Yukon Commissioner

Northwest Territories

- *Health Information Act* awaiting proclamation



International legislative initiatives

United States

- *The Health Insurance Portability and Accountability Act of 1996 (HIPAA)*
- *Privacy Rules and Security Rules under HIPAA have been supplemented by The Health Information Technology for Economic and Clinical Health Act (HITECH)*

U.S. (2)

- Enforcement done by the Dept. of Health and Human Services Office for Civil Rights (OCR)
- Office of National Coordinator for Health Information Technology
- Average penalties to offending health organizations = \$1.3 million

Australia

- *Personally Controlled Electronic Health Records Act 2012*
- Creates a “voluntary national system” of electronic health records
- Both users and patients must opt in to the EHR system
- A prospective patient must nominate a healthcare provider to be able to register with the PCEHR
- Patient can refuse a record being uploaded

United Kingdom


- No stand-alone health information law so *Data Protection Act, 1998* governs
- EHR system operated by the Health and Social Care Information Centre (HSCIC)
- High profile problems with secondary use and disclosure of electronic health records

U.K. (2)

- Caldicott reviews (2)
- National Data Guardian for health and social care to be “the patient’s champion when it comes to the security of [PHI]”
- Right to object to sharing of PHI for any secondary purpose such as care.data.

New Zealand

- No single national comprehensive EHR system
- Instead smaller EMR systems (*Electronic Shared Care Records*) which have some shared features
- *Health Information Privacy Code 1994* displaces the N.Z. *Privacy Act*
- Oversight by Privacy Commissioner
- Under the Code no general right of veto over disclosure but possible in limited circumstances



Building a stronger privacy culture in healthcare

a stronger privacy culture

- Recognize that snooping and improper use of PHI may be a much bigger challenge than improper disclosure
- Ensure that healthcare workers understand difference between privacy and confidentiality and what is new with stand-alone PHI laws

A stronger privacy culture

- Focus on need to know (& scrap “circle of care”) in orientation and in-service training
- Audit capability is clearly insufficient
- Need for proactive, comprehensive, ongoing audit function which is communicated to all registered users of EHR

A stronger privacy culture

- Education continues to be most important facilitator of compliance but snooping warrants a significant response and penalties
- The motive of the snooper (if having received training and employer has appropriate policies) shouldn't be a primary factor in the employer's official response.

A stronger privacy culture

- For most patients, it will be cold and empty comfort to learn that their PHI has been viewed by someone who had no business doing so but who was not viewing out of malice or for exploitation purposes. The injury is to public confidence and trust in their providers

Questions ?

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