

House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) - Meeting, Feb. 8, 2007 (Chaired by David Tilson)

Notes taken by Tara Berish, CIPPIC Articling Student

**NB: This is not a transcript. We do not guarantee accuracy of these meeting notes. For a transcript of the meeting, see the Committee website.

Witnesses

IMS Health Canada

- Anita Fineberg, Corporate Counsel and Chief Privacy Officer, Canada and Latin America
- Gary Fabian, Vice-President, Public Affairs and Corporate Relations
- Léo-Paul Landry, Member, Medical Advisory Board

National Association for Information Destruction - Canada

- Dave Carey, Chair
- Robert Johnson, Executive Director

Gary Fabian, Vice-President, Public Affairs and Corporate Relations, IMS Health Canada

- World's principle provider of health info and statistics
- National prescription database
- We do not collect etc. personal patient info
- Never had a breach of patient privacy, never had a complaint

Anita Fineberg, Corporate Counsel and Chief Privacy Officer, Canada and Latin America, IMS Health Canada

- Don't have access to the actual prescription record
- Physicians can have access to their individual prescribing information for free
- Want work product info to be explicitly excluded from the definition of personal info
- Is the information IMS receives from pharmacies, related to the prescribing physician, subject to PIPEDA?
- As soon as the Act came into effect, there were two complaints – the Commissioner said prescribing info is work product, not personal info
- Want a clarifying regulation → or more aptly, an amendment
- The Commissioner is not bound by her own precedent – that's why we need the amendment
- BC's Act codifies the Commissioner's finding
- Loukidelis said their definition was good – we should build on the BC legislation

Dave Carey, Chair, National Association for Information Destruction - Canada

- Secure Shredding
- Non-profit trade association for info destruction industry
- Protecting personal info at the end of its life cycle is just as important as protecting it earlier

- Consumer advocates
- Even with PIPEDA, info gets discarded inappropriately – examples given
- Leads to id theft – a lot of which comes from dumpster diving
- Steps must be taken to destroy info before its disposal, and the steps taken must be documented in company policy – this needs to be spelled out in the legislation
- Define it as the physical obliteration of records...
- Recommend that any organization which collects personal info must have a destruction policy
- Also support stronger contracting requirements with 3rd parties – that they must destroy the info appropriately also
- Notification should be required for breaches of security – should be for electronic data put at risk, but also for casual disposal of records
- Criminals will move to where laws are weaker and less well defined
- Georgia passed a shredding law

Comments and Frequently Asked Questions

- The focus of the discussion today was fairly narrow – work product and the destruction of documents. Martin did, however, stray from the topics a little bit, asking for the second time this week about the permanent voter's list legislation being contemplated by Parliament, and bringing up his concerns about the Public Safety Act. As these were not part of the witnesses' areas of expertise, he did not receive very extensive responses.
- At least two MPs asked IMS if anyone would or could object to their proposals regarding work product.
- The discussion of document destruction was unprecedented in this review process, and the Committee's opinions on the recommendations brought forward by the National Association for Information Destruction were not apparent.

Questions and Answers

Pearson: Distinction between personal and work product info. Gets pretty murky when decided on a case by case basis. What is your view? How does this affect your long-term plan?

Fineberg: There's no policy direction from Parliament to figure out how to assess an individual case. This distinction is important, because it decides whether the information is subject to the Act or not. The case by case approach doesn't provide any long-term approach for anybody. Data re: long-term research projects – need to be able to make sure you can keep collecting relevant data. This distinction is already there in the BC leg, clearly.

Vincent: Why do you need these prescriptions? Do insurance companies get access to the prescriptions? How do these go together?

Fabian: For us, work product info has no personal info. If there was, this would be a different question – we don't get the prescription itself.

Vincent: But, if we change the law, won't people just take advantage of it? Could they use the information to unexpected ends?

Fineberg: But again, we aren't talking about that info – none of the info would identify the patient, the victim. We would want documents, memos, opinions etc. that are authored by employees in an organization. Not personal info about people like their medical info or their religious views. It's more like a report of how many widgets a salesperson would like to buy.

Fabian: Info that we collect on the doctor is also not personal – we don't collect on their religious views.

Vincent: I get you, but what I'm worried about is – there's an accident victim. He wants his insurance. Can't the insurance company say it's work product (the med info) – give it to us?

Landry: In this case, it's in the interest of the accident victim to give his authorization to access his personal info.

Vincent: ...

Landry: I haven't heard the insurance industry's witnesses. All I know is we don't collect that kind of information – that's not what we're talking about.

Question: Trans-border transfer of info – there are some jurisdictions that will not allow data to be transferred to jurisdictions where there aren't comparable protections.... Also, is there ever a case where the pharmaceutical and biotech companies want to know from you things about claims about certain types of drugs etc. Is that one of the kinds of services you offer?

Fabien: Yes, we offer comparative data.

Question: Well, what about for commercial interests?

Fabien:...

Johnson: On notification – our position is that it's not only important as a protection for the person whose data has been breached. But, it's also a deterrent... As far as the trans-border issue – it cropped up with the EU and the US, and with Can. and the US re: the Patriot Act. It's common sense that personal info belonging to citizens should not be allowed to enter a jurisdiction where there are no protections.

Question: That could effectively halt the flow of a lot of information.

Carey: There could be a safe harbour agreement.

Johnson: Individual companies could agree to abide by specific rules.

Fineberg: On the transborder issue... Commissioner ruled...

Question: Recommendation on p. 34 of your submission – definition of work product info – it does not include personal information about an identifiable individual... From a practical point of view, who are we really talking about here?

Fineberg: If you have a prescription – it's info that was prepared by a physician. But, if the patient's name is still in it, then it's about an identifiable individual who did not prepare or disclose it. So it's not work product – it's not excluded. But, if none of the personal info appears, then it's work product.

Question: Commissioner's track record on these types of issues – do they follow precedent?

Fineberg: There was the finding on the complaints in the IMS situation. Then last year, there was a finding on real estate agents, and that was considered personal information. Some said this overruled the IMS decision.

Question: Carey – in regards to the breaches you describe, were these brought before the OPC?

Johnson: Each of these were handled at the provincial level.

Question: Was that recourse somehow not sufficient? PIPEDA already includes provisions against that kind of release.... How they go about protecting it is their responsibility. But you're suggesting we have to lead them by the hand and tell them what to do with it.

Johnson: While there is direction, we are asking for clearer direction. The reason is that the current level of protection falls short of what actually has been shown in the world to have an effect. This is standard operating procedure...

Dhaliwal: Some say that the search can be narrowed to a patient or doctor. What is your view on that?

Fineberg: Certainly from the IMS perspective, we're very strong advocates of patients' privacy rights. Clearly it would be illegal to collect, use disclose without consent. There was work done in the US which says you could identify individuals through public info. This was done in the US where they don't have laws which prohibit certain public lists etc. A researcher in Canada couldn't replicate that study. We have had a code of practice in place for years, which sets out how we deal with this stuff. It's transparent, on our website, and we're independently audited every year.

Dhaliwal: Is BC and Alta. better than PIPEDA?

Fineberg: These represent the 2nd generation of privacy laws, and perhaps we should take some direction of what was learned over time. Also, when the Commissioner was here, Tilson asked her if there was anything in the Qc. leg to take, and she responded that we should look to BC and Alta.

Dhaliwal:...

Fineberg: The National Association of Pharmacy... they have a position. Their bylaw, in BC, is quite old, and it was forced upon them. They have since voted to amend it, but that has not yet been approved.

Wallace: I used to be in the info management area. Did PIPEDA make a difference in terms of legislation? Are your companies in storage and destruction? And did PIPEDA make a change to the other guidelines?

Carey: We store and destroy, but the majority are destroy only.

Wallace: Are there not already laws in other areas requiring destruction, and has that changed?

Johnson: There are still legal retention requirements, and you want to keep it for as long as it's useful. But there's no requirement to get rid of them after a period of time, and there never has been.

Wallace: It has been referenced that Alta and BC have laws – do they have destruction requirements in them?

Johnson: Alta's Act is a bit more clear, but not much. But there are no definitions of destruction.

Wallace: Do you have actual wording of what you would like to see?

Johnson: We can do that if you want.

Wallace: You have private records of people in storage. So these breaches you've talked about – none of them have happened from a storage company?

Johnson: It's in our best interests...

Lavallée: Work product – where is the definition of work product?

Fabian: 42 in French, 34 in Eng.

Lavallée: Which suggestion do you prefer?

Fineberg: No, it's not a choice, the two parts must work together. The first part has an exclusion, and in order to accomplish that, we need a definition of work product. That's what the second part of the amendment is.

Lavallée: Who could be against this kind of definition?

Fabian: Anyone who thought their info could be put in peril – but it won't happen. Doctors could.

Lavallée: Do doctors oppose this?

Answer: Some don't understand what happens when we collect this

Lavallée: Why?

Landry: They don't understand the services we provide. When we have a chance to explain it to them, they are happy with it, and actually ask for our services.

Van Kesteren: You're quite satisfied with the Act as it stands, other than your one request?

Fineberg: We're generally happy with it, other than this.

Van Kesteren: That's what we've heard, other than the chicken little evidence.

Carey: We're looking for a formal definition of "get rid of it".

Johnson: Unless you spend as much time as us in the industry, you won't realize how much destruction can mean. We will provide language.

Martin: When the Public Safety Act was introduced, which allows private sector organizations to act as agents of the state... Is that a concern you have heard raised in the field?

Fineberg: I have heard it raised, but I defer to other experts.

Martin: It's of great concern to the public – we've really gone somewhere we haven't gone before, in terms of the Patriot Act...

Johnson: I would say that as long as they properly destroy it at the end of its life, I'm ok.

Martin: I know it's not your expertise, but this was passed without a lot of fanfare...

Carey: As a personal citizen, I would be concerned, and as a member of the destruction business, I would have a hard time being deputized to go through private records.

Martin: Where do you think your loyalties would lean?

Carey: Obviously we are committed to privacy, but the law...

Question:

Fineberg: There are a number of ways to ensure that the wrong information is not collected. We have contractual provisions, etc. As we have said, we strongly support patients' right to privacy, and we would expect that any organization engaging in that activity...

Question: But who could possibly object to what you're asking for?

Fineberg: Nobody I've heard of. All the witnesses seem to support the decision.

Question: My only question is whether the amendment is the way to do it. It's very different from BC.

Fineberg: It's not – it has a little wording to capture the Commissioner's finding, but there's a wide scope of work product which affects a wide variety of businesses.

Question: Does anyone have any suggestions about the precise wording of the amendment?

Tilson: The Commissioner's coming – she might have a suggestion.

Johnson: Dumpster diving is the primary source of information leading to id theft.

Wallace: Notification – you want to extend that... The Commissioner has come to tell us that the notification system we have right now is adequate. Have you actually surveyed your members to let them know that they will be more liable if we change this? In my mind, a lot of records in this country are stored in your warehouses. So I want to be sure that I can say your members agree with this.

Johnson: I think one of the things that's great here and in Europe is that we don't always make the best decision only in terms of economics, but also we're strong consumer advocates. I have not taken that survey. But, if I would go to them, they would definitely see the benefits to the consumers, and to the industry...

Wallace: Let's say somebody breaks in, steals some boxes, if they find out from where, it would hurt the business considerably.

Kerry: We have an internal notification policy ourselves.

Tilson: I represent a community with a whole lot of little villages and towns, and everybody knows everything about everyone. So, you say it's anonymous, and it may be in the big city – but could people piece the info together?

Fineberg: We have had our data examined for this kind of concern. The expert answer is no – you can't put this back together. There are provisions in place to make sure that employees don't let this happen.

Tilson: The problem is, people guess.

Dhaliwal: When it comes to long-term planning...how are you helping the small communities?

Fabien: That's exactly where the IMS data... we've done extensive work in the research community... we provided the small community with research about how to lower infections etc. They couldn't tell without our information whether people's habits were changing etc. We're the only ones that have that info, and we need to do empirical research with it.

Lavallée: Does this definition correspond to the work product you have?

Johnson: Our members provide service in a relatively amoral and antiseptic environment. We have no concern what's on it.

Lavallée: But, the docs you get still contain info collected, used, disclosed etc. So isn't that your definition of work product?

Johnson: I don't think that the work product definition applies to us, because we have no regard to what is on the materials. Our employees don't look at it.

Carey: We would also destroy material that does not contain that kind of info.

Johnson: We also destroy work product.

Lavallée: Does each pharmacy give you info? Do some refuse? Can they?

Fabian: Some do – and they can.

Lavallée: You get info from pharmacists, doctors, dentists...

Fabian: Not dentists

Lavallée: You can identify the doctors etc?

Fabian: Yes, but we also have aggregate info, to minimize that – at least 30 (?).

Tilson: The BC pharmacists have passed a resolution that they would not reveal info.

Fineberg: That's a bylaw that was passed in 1997. The College was mandated by the Health Minister at the time to prohibit the disclosure of anything that identifies the physician. Since then, the college has voted to remove it 3 times, but that has to be approved by the gov't, which it hasn't been. From a legal perspective, the PIPA exclusion takes precedent, but there are also practical realities of doing business.

Martin: They want to change the permanent voters list. It would now contain date of birth, name, address. As privacy experts, do you have any comment?

Johnson: When we propose data protection legislation – date of birth comes up a lot. But we think that also a phone number is dangerous. It's about the aggregation of information, how much you can add up.

Martin: Isn't this a recipe for id theft?

Johnson: It could aid and abet

Fineberg: The only thing to do is to tightly control what happens to that extra piece of info once it's used.

Martin: Coming back to the BC privacy Commissioner's testimony – sale of business – sometimes the customer list is the most valuable part. In BC, that's guarded. Should PIPEDA be amended in that way? Should customers be notified? Ie, I don't want Lockheed-Martin getting my info.

Johnson: I would like to think more about this – I could see how people could be concerned. I could see why people would want to be aware of who has my information.

Martin: What if I'm openly hostile to a given company – shouldn't I be able to withdraw my info?

Johnson: On a human rights perspective, the individual should have the right to decide where their info goes.

Fineberg: In Bc and Alta.... sometimes a company can't legally disclose that there's a deal in the making...

Dhaliwal: When you get the info, can you distinguish between the purposes for which it's used?

Fabien: Pharmaceutical companies need to develop their strategies, what will be needed in the future. They need to enlist doctors for clinical trials. That's the clear distinction you can make between the antibiotic usage, and...

Fineberg: You can't often draw that bright line between research purposes and purely commercial purposes for collecting information. These days, a lot of research info is collected by the private sector.

Dhaliwal: What would happen if work product was not in the Act?

Landry: Work product and privacy serve to different purposes – work product informs the provider of information. Those who realize the value of this product would be at a loss if we weren't able to continue this.

Tilson: Quotation from business law journal, 2006, Austin – other side of the coin from your position. P31-32 – despite the Commissioner's position that this gives little info about physicians, the pharmaceutical companies want it because it does. Many physicians object. Comments?

Landry: That's not reality in Qc. The whole medical profession in Qc. knows exactly what we do. I can understand that some might not like that, but on the other hand, physicians don't like to be approached by a whole bunch of pharmaceutical representatives that have nothing to do with their area of practice. Doctors have a relationship with pharmaceutical reps, and get info from them.

Tilson: Thank you.

End of Meeting