

# Privacy Issues & Your Patient's Chart: A Practical Refresher

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# Personal Health Information (the Chart)

“Personal Health Information”: means identifying information about an individual in oral or recorded form, if the information relates to:

- (a) the physical or mental health of the individual, including information that consists of the health history of the individual’s family;
- (b) the provision of health care to the individual, including the identification of a person as a provider of health care to the individual;
- (d) payments or eligibility for health care in respect of the individual;
- (f) the individual’s health or insurance number;
- (g) the identity of an individual’s substitute decision maker; and
- (h) identifying information contained in an individual’s health record or dental record.

**The Act does not permit disclosure to any individual or body without the patient’s clear consent**

# Improper Disclosure and Previous Regulatory Regime

- In the past disclosure could result in potential complaint to the Privacy Commissioner;
- Privacy Commissioner would investigate complaint/draft a report
- Rarely resulted in any financial consequence
- Perhaps legal defence costs
- This is no longer the case

## *Jones v. Tsige* 2012 ONCA 32

The Court recognized a new tort entitled “Intrusion upon Seclusion”

Damages may now be claimed in Civil Court for a breach of privacy

Question remains as to whether you need to go to Privacy Commissioner before suing.....

# Potential Pitfalls – Practical Problem

- Unintended disclosure of patient information to insurer:
  - Dentist receives request for information for Insurance Auditor/Administrator;
  - Insurer may contact by telephone or in writing;
  - May indicate that the patient has previously provided consent for disclosure of all or some of the chart

## Where could this go?

- Potential Lawsuit for “Intrusion upon Seclusion” if Patient suffered damage (likely Small Claims Jurisdiction) and not covered by PLP;
- Potential Complaint to the Privacy Commissioner; and
- Legal costs or opportunity cost of responding to the process

# Mitigation of Risk

- Obtain patient consent in writing for all types of anticipated disclosure when they join your practice or on an annual basis; and
- Contact the CDPA for peer to peer advice to protect yourself and mitigate risk of a proceeding; and
- Possible legal advice