

**Addendum to the Submission to the
Select Special Health Information Act Review Committee**

**By
Frank Work, Q.C.
Information and Privacy Commissioner**

**August 24, 2004
Edmonton, Alberta**

**Office of the Information and Privacy Commissioner
of Alberta**

Further to my submission dated August 5, 2004, and the extension of the submission deadline until September 10, 2004, I am providing this addendum, which contains one additional recommendation. I am recommending that Section 93 of HIA be amended to provide authority for extra-provincial consultation, agreements and delegations of authority.

This point would logically fall as the final and eleventh recommendation at the end of the Table of Contents in the main submission, as follows:

Commissioner Powers (Part 7, Division 3)

1. HIA Section 84: Establish an explicit audit power that expressly authorizes the Commissioner to conduct audits (last recommendation in main submission)
2. HIA Section 93: Establish the authority for the Commissioner to consult extra-provincially, enter into agreements with other commissioners and to make and accept extra-provincial delegations (additional recommendation in addendum to main submission)

This addendum should be read as an additional part of the main submission, as the abbreviations and general comments in the main submission are applicable.

HIA Section 93: Establish the authority for the Commissioner to consult extra-provincially, enter into agreements with other commissioners and to make and accept extra-provincial delegations

There is overlap in the application of privacy legislation, with both federal and provincial privacy legislation sometimes applying to the same fact situation and the same health information. For example, both the federal office and the Alberta office are currently doing parallel investigations under their respective legislation for an issue that arose from the same fact situation and from the same disclosure of health information.

In order to minimize the administrative burden for custodians, to manage the legislative interface and to assist in harmonizing the implementation of these privacy regimes, the Alberta Commissioner and the Federal Commissioner have entered into a practical arrangement to coordinate issues that arise under their respective privacy legislation. The objective is to avoid custodians having to deal with more than one investigation for the same incident.

HIA establishes general powers for the Commissioner (e.g., s. 84) as well as a general delegation power for the Commissioner to delegate any duty, power or function, except the power to delegate (s. 93). It could be argued that the Commissioner already has the authority under HIA to consult, enter into

agreements with other commissioners and delegate extra-provincially by virtue of these provisions. However, these provisions do not explicitly authorize the Commissioner to consult extra-provincially, enter into agreements with extra-provincial commissioners or to make or accept extra-provincial delegations.

The amendment would need to provide explicit authority for disclosure of the necessary information required for the consultation, agreements and delegation. HIA contains prohibitions on disclosure of health information including a general prohibition (s. 91). HIA currently does not expressly allow the Commissioner to disclose health information to another commissioner, even when the disclosure is considered appropriate for consultation, agreements or for handling investigations, reviews or inquiries.

The silence of HIA regarding these powers is in contrast to other privacy legislation such as PIPEDA. PIPEDA has a provision that expressly creates the authority for the Federal Commissioner to consult and enter into agreements with persons with similar powers and duties in the provinces (s. 23(1)). PIPEDA explicitly authorizes the Federal Commissioner to consult and to enter into agreements to coordinate the activities of the office including complaint handling mechanisms in mutual complaints and model contracts for the protection of information that is collected, used or disclosed interprovincially or internationally (s. 23(2)).

The same issue that exists under HIA for the authority to conduct extra-provincial consultation, agreements and delegation is also an issue under PIPA, the private sector legislation in both Alberta and British Columbia. The same type of amendment that is being requested under HIA has been requested and is being contemplated under both PIPA regimes due to the interface of the federal and provincial privacy legislation.

Explicit extra-provincial consultation, agreement and delegation power is important for reasons of clarity, transparency and openness in the Act. This power would address the interface between the federal, provincial and territorial privacy regimes and enable the Commissioner to coordinate oversight activities with the benefit of minimizing the administrative burden for custodians.

I recommend that the Act be amended to create the explicit authority for the Commissioner to conduct extra-provincial activities including consultation, entering into agreements and making and accepting delegations.

Recommendation - HIA Section 93: Establish the authority for the Commissioner to consult extra-provincially, enter into agreements with other commissioners and to make and accept extra-provincial delegations