ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2003-002

December 20, 2006

CALGARY HEALTH REGION

Case File Number H0124

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Summary: Calgary Health Region ("CHR" or the "Custodian") collected information from the Complainant in the course of conducting an interview during an investigation for Salmonella under the *Public Health Act* ("PHA"). The next day, the Complainant received a letter from CHR ordering her not to work until certain conditions were met.

The Complainant alleged that CHR breached the *Health Information Act* ("HIA") by collecting information in contravention of section 22(3)(a) of HIA, in that she was not told she would be prevented from working. When collecting health information from an individual, section 22(3)(a) of HIA requires a custodian to take reasonable steps to inform the individual of the purpose of the collection. CHR said it fulfilled its duty under section 22(3)(a) of HIA by telling the Complainant that the purpose of the investigation was to suppress the communicable disease, break the chain of transmission and prevent the spread of disease.

During the Inquiry, the issue arose as to whether the Commissioner had jurisdiction to decide the matter under HIA due to the paramountcy provisions in section 4 of HIA and section 75 of the PHA, which are mechanisms for resolving which legislation applies when two pieces of legislation pertain to the same information. The Inquiry was continued to consider whether HIA or the PHA prevails in the circumstances of this case. CHR and five additional HIA custodians, who were participants at the Continuation of Inquiry, said the PHA was not inconsistent or in conflict with section 22(3)(a) of HIA.

Section 4 of HIA says if a provision of HIA is inconsistent or in conflict with a provision of another Act or regulation, the provision in HIA prevails unless the other Act or an HIA regulation expressly provides that the other Act or regulation or provision of it, prevails. Section

75 of the PHA says that except for the *Alberta Bill of Rights*, the PHA prevails over any enactment that it conflicts or is inconsistent with, including HIA.

The Commissioner took a new approach to the interpretation of the paramountcy provision in section 4 of HIA. This is a situation where another Act expressly provides that it prevails despite HIA. As the PHA prevails over any enactment that it conflicts or is inconsistent with, he found it necessary to decide whether the PHA was in conflict or inconsistent with section 22(3)(a) of HIA. The Commissioner found that there was no inconsistency or conflict between the PHA and section 22(3)(a) of HIA in the circumstances of this case.

The Commissioner found that HIA applied to the information and he had jurisdiction to decide the substantive matter at issue under HIA. The Commissioner held that CHR complied with section 22(3)(a) of HIA by taking reasonable steps to inform her of the purpose of the collection when collecting the Complainant's health information.

Statutes Cited: AB: *Health Information Act,* R.S.A. 2000, c. H-5, ss. 1(1)(f)(iv), 1(1)(i), 1(1)(k), 1(1)(m), 4, 4(a), 6, 11(2)(d), 20(a), 22, 22(3), 22(3)(a), 27(1)(f), 35(1)(p), 80; *Health Information Act*, S.A. 1999, c. H-4.8, s. 123(2); *Public Health Act,* R.S.A. 2000, c. P-37, ss. 20(1), 23, 29(1), 29(2), 29(4), 66.1, 75; *Public Health Act,* S.A. 1984, c. P-27.1, ss. 63(4)(d), 83; *Communicable Diseases Regulation,* A.R. *238/85,* ss. 6(1), 8(1),8(2), Schedule 1, Schedule 4, ss. 1, 2(3), Salmonella Infections: s. 1, Enteric Infections: ss. 1, 2(1), 2(2), 3, 5(1), Foodborne or Waterborne Illness: s. 2; *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, s. 5.

Cases Cited: *Friends of the Oldman River Society v. Canada (Minister of Transport)* [1992], 1 S.C.R. 3, 88 D.L.R. (4th) 1, 1992 CanLII 110 (SCC); *Imperial Investments Ltd. v. Saint John (City)* (1993), 106 D.L.R. (4th) 585 (NB CA); *BPCL Holdings Inc. v. Alberta*, 2006 ABQB 757 (CanLII) (AB QB); *R. v. Goebel*, 2003 ABQB 422 (CanLII) (AB QB); *Beaulne v. Ellenor*, 2000 ABPC 117 (CanLII) (AB PC).

Authorities Cited: Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Markham Ontario: Butterworths, 2002**;** Alberta Health and Wellness, *Health Information Act: Guidelines and Practices Manual*, AHW, 2001.

Orders Cited: AB: HIA: H2004-003; FOIP: F2005-015, F2003-011, 2001-036, 2001-018, 2001-012, 2001-005, 2000-034, 2000-024, 2000-020, 2000-002, 99-034, 98-027, 98-017.

I. BACKGROUND

[para 1] Calgary Health Region ("CHR" or the "Custodian") collected information from the Complainant in the course of conducting an interview for a foodborne investigation for Salmonella under the *Public Health Act*, R.S.A. 2000, c. P-37 ("PHA"). The next day, the Complainant received a letter from CHR ordering her not to work until certain conditions were met.

[para 2] The Complainant alleged that CHR breached the *Health Information Act*, R.S.A. 2000, c. H-5 (the "Act" or "HIA") by collecting information in contravention of section 22(3)(a) of HIA, in that she was not told she would be prevented from working. When collecting health information from an individual, section 22(3)(a) of HIA requires a custodian to take reasonable steps to inform the individual of the purpose of the

collection. CHR said it fulfilled its duty under section 22(3)(a) of HIA by telling the Complainant that the purpose of the foodborne investigation was to suppress the communicable disease, break the chain of transmission and prevent the spread of disease.

[para 3] Mediation was unsuccessful and the matter was set down for a written inquiry (the "Inquiry"). At the Inquiry, CHR provided a written submission and an Affidavit, which was provided to the Complainant. The Complainant later requested that her original complaint letter to my Office be her written submission for the Inquiry. During the Inquiry, the issue arose as to whether I had jurisdiction to decide the matter under HIA due to the paramountcy provisions in section 4 of HIA and section 75 of the PHA, which are mechanisms for resolving which legislation applies when two pieces of legislation pertain to the same information.

[para 4] Section 4 of HIA says if a provision of HIA is inconsistent or in conflict with a provision of another Act or regulation, the provision in HIA prevails unless the other Act or an HIA regulation expressly provides that the other Act or regulation or provision of it, prevails over HIA. Section 75 of the PHA says that except for the *Alberta Bill of Rights*, the PHA prevails over any enactment that it conflicts or is inconsistent with, including HIA. Due to the wording in section 75 of the PHA, I found it necessary to decide whether the PHA is in conflict or is inconsistent with section 22(3)(a) of HIA in this case.

[para 5] This further issue concerns all custodians who collect health information to conduct foodborne investigations under the PHA. Therefore, I decided to continue the Inquiry and to invite the following HIA custodians to participate as intervenors and provide written submissions at the Continuation of Inquiry:

- Alberta Cancer Board ("ACB")
- Alberta Health and Wellness ("AHW")
- Aspen Regional Health Authority
- Capital Health ("CH")
- Chinook Regional Health Authority ("CRHA")
- David Thompson Health Region ("DTHA")
- East Central Health
- Northern Lights Health Region
- Palliser Health Region
- Peace Country Health

[para 6] At the Continuation of Inquiry, CHR provided a further written initial submission and a further written rebuttal submission. The Complainant did not provide a further submission. Five additional HIA custodians participated as intervenors and provided written submissions. These further submissions were exchanged among all participants at the Continuation of Inquiry.

II. RECORDS AT ISSUE

[para 7] As the issues before the Inquiry concern the manner in which health information was collected, there are no records at issue.

III. ISSUES

[para 8] I have added the following preliminary issue to the issue before me at the Inquiry:

> ISSUE A: Is the *Public Health Act* inconsistent or in conflict with section 22(3)(a) of HIA?

[para 9] The following issue is also before me at the Inquiry:

> ISSUE B: Did the Custodian comply with section 22(3)(a) of HIA when collecting the Complainant's health information?

IV. PRELIMINARY ISSUE

[para 10] During the Inquiry, the question arose as to which version of the *Public Health Act* applies in this case. This question is relevant at the Inquiry, as for example, earlier versions of the *Public Health Act* do not contain a provision that mentions HIA. This question arose because the Notice of Continuation of Inquiry referenced section 83 of the *Public Health Act*, S.A. 1994 [sic], c. P-27.1 as the relevant provision; furthermore, 1994 should have read 1984. In their submissions, AHW and CHR said the relevant version of the *Public Health Act* is R.S.A. 2000.

[para 11] I find it is the *Public Health Act*, R.S.A. 2000, c. P-37 that applies in the circumstances of this case. This version was proclaimed in effect on January 1, 2002, and therefore was in force on July 25, 2002, which is the relevant date based on the facts before me. This means that it is section 75 of the R.S.A. 2000 version of the *Public Health Act*, rather than section 83 of the 1984 version of the *Public Health Act*, which is before me at the Inquiry.

V. DISCUSSION OF THE ISSUES

ISSUE A: Is the *Public Health Act* inconsistent or in conflict with section 22(3)(a) of HIA?

A. General

[para 12] Section 75 of the PHA reads:

75 Except for the *Alberta Bill of Rights*, this Act prevails over any enactment that it conflicts or is inconsistent with, including the *Health Information Act*, and a regulation under this Act prevails over any other bylaw, rule, order or regulation with which it conflicts.

[para 13] Section 4 of HIA states:

4 If a provision of this Act is inconsistent or in conflict with a provision of another Act or of a regulation, the provision of this Act prevails unless

(a) another Act, or

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

[para 14] Section 22(3)(a) of HIA says:

22(3) When collecting individually identifying health information about an individual directly from the individual, the custodian must take reasonable steps to inform the individual

(a) of the purpose for which the information is collected.

B. Argument and Evidence

1. The parties

[para 15] In its further submission, CHR said:

9. Neither the PHA nor the regulations made pursuant thereto are in conflict with the HIA. The legislative scheme set out in the PHA allows a medical officer of health ("MOH") to initiate an investigation where there is reasonable suspicion that a communicable disease or public health emergency is in existence within the boundaries of a health region in which the MOH has jurisdiction.
…..

12. The PHA authorizes, and in some cases mandates, that a MOH conduct an investigation where a communicable disease such as a foodborne illness is discovered; the collection of health information will typically form part of this investigation. The HIA mandates that a custodian of health information, when collecting individually identifying health information about an individual directly from the individual, take reasonable steps to inform the individual of the purpose for which the information is being collected. It is submitted that there is no conflict between these two mandates.

13. Conducting an investigation is authorized or mandated by the PHA. Taking reasonable steps to inform a person of the purpose for which their health information is being collected is mandated by the HIA. It is submitted that conducting a foodborne

illness investigation and informing people who provide health information about themselves that the information is being collected as part of a foodborne illness investigation satisfies the requirements of both acts.

14. Based on the above, it is submitted that there is no conflict between the PHA and section 22(3)(a) of the HIA.

2. *The intervenors*

[para 16] The intervenors were provided with a description of the general issue under section 22(3)(a) of HIA rather than with the detailed facts of this particular case. Therefore, the intervenors provided argument based upon the enactments.

[para 17] In its submission in regard to whether the PHA is inconsistent or in conflict with section 22(3)(a) of HIA, David Thompson Health Region ("DTHR") said that it "supports the views and positions" presented by CHR. DTHR stated: "a) There is no conflict between the *Public Health Act* and the *Health Information Act*, and b) Where and if there is a conflict, the *Public Health Act* prevails". Similarly, in its submission, Chinook Regional Health Authority ("CRHA") said "There is no conflict" between the PHA and section 22(3)(a) of HIA.

[para 18] In its submission, Capital Health ("CH") said, "The Public Health Act is not, on its face, inconsistent with s. 22(3)(a) of the HIA". CH said its conclusion that there is no inconsistency or conflict "assumes that the circumstances that gave rise to the investigation, or the facts regarding other individuals being investigated, need not be disclosed to comply with s. 22(3)(a) of the HIA".

[para 19] In its submission, Alberta Cancer Board ("ACB") said "the *Public Health Act* is not inconsistent or in conflict with section 22(3)(a) of the *Health Information Act*". ACB went on to describe how it complies with both pieces of legislation as a matter of practice, as follows:

> The *Health Information Act* requires custodians to take *reasonable* steps in providing notice to patients as to the purpose of the collection. The Alberta Cancer Board currently takes reasonable steps to inform patients of the purpose for which it collects information by implementing a provincial procedure for the collection of health information, by posting notices of collection and use in patient waiting and registration areas, by including notices on the registration form signed by patients, and by publishing a notice in the Patient Handbook which is given to patients at Patient Orientation.

[para 20] In its submission, Alberta Health and Wellness ("AHW") stated:

> 17. Whether a conflict or inconsistency exists must be examined in light of the circumstances of each situation.
>
> 18. While section 22(3) of HIA does not, on its face, appear to conflict with the PHA investigation provisions, without knowing the specific sections relied upon by the MOH, AHW is unable to comment on this specific case.

19. Absent evidence that there is a conflict or inconsistency between PHA and HIA provisions, AHW submits that public health officials should be required to comply with both enactments.

20. In that event, AHW also submits that the Commissioner has jurisdiction to review any complaint made in respect of compliance with the relevant HIA obligations.

[para 21] In its submission, AHW also said the "presumption of coherence" applies to the interpretation of these provisions. AHW stated:

> 10. It is well-established that there is a presumption of coherence with respect to enactments of the same legislature. Where possible, courts should interpret statutes in a manner that ensures harmony between them. Pierre-Andre Cote, *Interpretation of Legislation*, 2nd ed., [Les Editions Yvon Blaine, Inc, 1991] at 288. Tab A
>
> 11. Furthermore, statutory provisions should not be deemed to conflict or be inconsistent unless one is "*so inconsistent with or repugnant to the other that the two are incapable of standing together*". Cote, supra at 295 [*emphasis added*]
>
> 12. Without this type of conflict or inconsistency, it has been long held that both provisions should be permitted to operate. That is, where there are different obligations imposed by multiple enactments but both can be met, both sets of obligations operate. Cote, supra at 294-295

C. Application

[para 22] In order to determine whether the PHA conflicts or is inconsistent with section 22(3)(a) of HIA, I will first consider whether the information that was collected from the Complainant falls under both the PHA and HIA, that is whether these two pieces of legislation both pertain to the same information.

1. Information under the PHA

[para 23] The relevant provisions that were in force on July 25, 2002 under the PHA are as follows:

> 20(1) Every person who knows or has reason to believe that the person is or may be infected with a communicable disease prescribed in the regulations for the purposes of this subsection shall immediately consult a physician to determine whether the person is infected or not, and if the person is found to be infected, shall submit to the treatment directed and comply with any other conditions prescribed by the physician until the physician is satisfied that the person is not infectious. …
>
> 23 Where an examination of a specimen derived from a human body reveals evidence of a communicable disease, the director of the laboratory conducting the examination shall,

(a) in the case of a disease prescribed in the regulations for the purposes of this clause, notify the medical officer of health of the regional health authority

(i) by the fastest means possible in the case of a prescribed disease that is designated in the regulations as requiring immediate notification, or

(ii) within 48 hours in the prescribed form or by telephone, in the case of any other prescribed disease. …

29(1) A medical officer of health who knows of or has reason to suspect the existence of a communicable disease within the boundaries of the health region in which the medical officer of health has jurisdiction may initiate an investigation to determine whether any action is necessary to protect the public health.

29(2) Where the investigation confirms the presence of a communicable disease, the medical officer of health

(a) shall carry out the measures that the medical officer of health is required by this Act and the regulations to carry out, and

(b) may do any or all of the following:

(i) take whatever steps the medical officer of health considers necessary

(A) to suppress the disease in those who may already have been infected with it,
(B) to protect those who have not already been exposed to the disease,
(C) to break the chain of transmission and prevent the spread of the disease, and
(D) to remove the source of infection;

(ii) by order
…..

(B) prohibit a person from engaging in the person's occupation,
…..

for any period and subject to any conditions that the medical officer of health considers appropriate, where the medical officer of health determines that the person's engaging in that activity could transmit an infectious agent. …

29(4) The jurisdiction of a medical officer of health extends to any person who is known or suspected to be

(a) infected with a communicable disease,
(b) a carrier,
(c) a contact, or
(d) susceptible to and at risk of contact with a communicable disease,

whether or not that person resides within the boundaries of the health region.

[para 24] In its further submission, CHR refers to some of the following provisions in the *Communicable Diseases Regulation*, A.R. 238/85 ("CDR") under the PHA. The CDR sets out the duties of medical officers of health ("MOH") that pertain to specific notifiable communicable diseases, including Salmonella. The references to sections of the PHA in the relevant version of the CDR create some confusion, as it appears that there was a lag time before the CDR was updated to correspond to the new section numbers in the R.S.A. 2000 version of the PHA.

[para 25] For example, the CDR amendments that were subsequently filed on June 8, 2005 in A.R. 96/2005, struck out some of the previous PHA section references and substituted the current PHA section references. For example, section 31(1) became section 20(1), section 39(1) became section 29(1), section 39(1)(b) became section 29(2) and section 34 became section 23 of the PHA; section 8(2) of the CDR was repealed. Nevertheless, the relevant provisions in the CDR, which were in force as of July 25, 2002 as best I can determine, read:

> 6(1) The diseases set out in Schedule 1 are the diseases prescribed for the purposes of sections 31(1) [my comment - section 31 was amended to section 20(1)] and 33(1) of the Act.
> …
>
> 8(1) A medical officer of health shall, in accordance with Schedule 4, investigate all occurrences of notifiable diseases to establish the cause, the mode of transmission and the probable source and to identify others who may be at risk.
>
> 8(2) In addition to the specific provisions of Schedule 4,
>
> (a) a medical officer of health shall take whatever steps are reasonably possible
>
> (i) to suppress disease in those who may already have been infected with a communicable disease,
> (ii) to protect those who have not already been exposed,
> (iii) to break the chain of transmission and prevent spread of the disease, and
> (iv) to remove the source of infection,
>
> (b) where a medical officer of health determines that a person engaged in any occupation involving the preparation or handling of food to be consumed by persons other than persons who are members of his immediate family could transmit an infectious agent in the course of his employment, the medical officer of health may by order prohibit that person from engaging in the occupation for any period and subject to any conditions that the medical officer of health considers appropriate.

[para 26] Schedule 1 of the CDR lists the notifiable communicable diseases that fall under section 20(1) of the PHA, which includes Salmonella Infections. The note at the end of Schedule 1 says that the requirements for Salmonella include the requirements that are set out in Schedule 4 for the categories of Enteric Pathogens, Foodborne Illness, Gastroenteritis, Epidemic and Waterborne Illness.

[para 27] Schedule 4 of the CDR sets out the following general duties for medical officers of health, which pertain to all categories of communicable diseases that fall under section 29(2) of the PHA:

> 1 For purposes of section 39(1)(b) [my comment - section 39(1)(b) was amended to section 29(2)] of the Act, a medical officer of health shall, unless this Schedule provides to the contrary, take all reasonable steps to ensure that the provisions of this Schedule respecting Investigation of Contacts and Source of Infection, Isolation Procedures, Quarantine and Special Measures are complied with. …
>
> 2(3) Where this Schedule indicates that modified isolation procedures are applicable, the medical officer of health may carry out any measures and make any orders respecting enteric precautions, respiratory isolation, secretion or contact precautions and blood and body fluid precautions that are necessary in his opinion to prevent the spread of the communicable disease.

[para 28] Schedule 4 of the CDR creates the following duties specific to Salmonella Infections:

> 1 Individual occurrences (cases and carriers) are reportable by laboratories to the medical officer of health within 48 hours (see section 34(a)(ii) [my comment - section 34 was amended to section 23] of the Act).

[para 29] Schedule 4 of the CDR says that the requirements for Enteric Infections apply to Salmonella Infections, as follows:

> 1 Individual occurrences (cases and carriers) are reportable by laboratories to the medical officer of health within 48 hours (see section 34(a)(ii) [my comment - section 34 was amended to section 23] of the Act). See also specific diseases.
>
> 2(1) The medical officer of health shall ensure that appropriate laboratory tests are conducted with respect to household members who are symptomatic or work in occupations involving food handling, patient care or the care of young children, elderly people or dependent people.
>
> 2(2) The medical officer of health shall attempt to determine the sources of infection and modes of transmission unless he considers it unnecessary to do so.
>
> 3 Modified (enteric) isolation procedures apply to cases during the period of infection.
> …
>
> 5(1) The medical officer of health shall order that an infected person shall be excluded from occupations involving food handling, patient care or the care of young children, elderly people or dependent people until 2 swabs, specimens or cultures taken from the infected person not less than 24 hours apart and at least 48 hours after the cessation of chemotherapy are reported as negative, unless the medical officer of health is satisfied that the risk of transmission is acceptably low.

[para 30] Schedule 4 of the CDR says that the requirements for Foodborne or Waterborne Illness apply to Salmonella Infections, which read:

> Note: The requirements of section 1 to 5 are in addition to the requirements under the heading Enteric Infections. …
>
> 2 The medical officer of health shall
>
> > (a) conduct an investigation of any instance of illness which appears to be foodborne or waterborne to determine the cause of the illness, the number of persons affected, the nature of contamination of the food or water, defects in food handling and preparation or in the water treatment process, distribution of the food or water and any other pertinent epidemiologic information,
> > (b) attempt to identify all implicated food and water, and to recover it for testing and disposal, and
> > (c) attempt to identify others exposed to the implicated food and water, and follow up according to the infectious agent involved.

[para 31] In its further submission, CHR said that the PHA authorizes and in some cases requires, an investigation to be conducted when a communicable disease is discovered and that the collection of health information will typically be part of the investigation. Also in its submission, CHR says it collected the information from the Complainant when conducting a Foodborne Investigation ("FBI") for a communicable disease in the course of fulfilling its duties under the PHA.

[para 32] The Affidavit of the Foodborne Illness Investigator of the Environmental Health ("EH") Division of CHR says that EH contacted the Complainant after receiving a lab report indicating that the Complainant had tested positive for a foodborne illness caused by the Salmonella organism. In her submission, the Complainant says CHR contacted her due to her positive test result for Salmonella in order to initiate an investigation into where she contracted the Salmonella.

[para 33] It is not in dispute that the information CHR collected from the Complainant was gathered in order to conduct a foodborne investigation of a communicable disease or that CHR collected the information in the course of fulfilling its obligations under the PHA. Therefore, I find that the information CHR collected from the Complainant falls under the PHA.

2. Health information under HIA

[para 34] Section 1(1)(k) of HIA says that "health information" includes "diagnostic, treatment and care information". "Diagnostic, treatment and care information" includes information about the physical and mental health of an individual, a health service provided to an individual or information derived from the testing or examination of a bodily substance and "includes any other information about an individual that is collected when a health service is provided to the individual" (HIA, section 1(1)(i)).

[para 35] Section 1(1)(m) of HIA says that a "health service" includes a service that is provided to an individual that is at least partially paid for by the Department for the purpose of protecting and promoting and maintaining physical health and for preventing illness and for diagnosing and treating illness. I find that the service at issue was a health service under HIA as the service was provided to the Complainant for these above-described purposes, albeit also for other purposes such as protecting the health of other individuals.

[para 36] In its submissions, CHR says it collected "health information" from the Complainant during an interview. CHR says it collected the information following the receipt of a positive laboratory report for the Salmonella organism and as part of a FBI under the PHA where the purpose was "to suppress the communicable disease in question, to break the chain of transmission and thus to prevent the spread of disease".

[para 37] In her submission, the Complainant says the interviewer contacted her due to her positive test result and requested information to initiate an investigation into where she would have contracted the Salmonella. The Complainant said, "She asked me questions such as where I had recently eaten, where I was employed, my husband's employer and if my pets were healthy."

[para 38] I find that the information collected from the Complainant was "diagnostic, treatment and care information" under section 1(1)(i) of HIA and was therefore "health information" under section 1(1)(k) of HIA.

3. Interpretation of section 4 of HIA

[para 39] I have found that the information collected from the Complainant falls under both the PHA and HIA. The issue then is whether the PHA or HIA applies to the information, which requires that I first consider section 4 of HIA as it pertains to inconsistencies or conflicts between legislative provisions.

[para 40] Ruth Sullivan in *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Markham Ontario: Butterworths, 2002 ("Sullivan"), discusses the basis of interpretive strategies developed by the courts to resolve conflicts between legislative provisions, as follows:

> It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.
>
> The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other (pp. 262, 263).

[para 41] As also discussed by Sullivan, interpretive strategies to resolve conflicts are subject to any express solutions provided by the legislature. To resolve conflicts between legislative provisions, the legislature sometimes enacts a "paramountcy" provision, which allows one legislative provision to prevail over another legislative provision, by excluding the application of that other legislative provision.

[para 42] Section 4 of HIA is a "paramountcy" provision. It sets out two rules. In my view, the first and second rules in section 4 of HIA should be read independently of each other.

[para 43] The first rule in section 4 of HIA is that when a provision of HIA is inconsistent or in conflict with a provision of another Act or regulation, the provision of HIA prevails. An inconsistency or conflict is resolved by applying the provision of HIA, rather than the provision of the other Act or regulation.

[para 44] However, on the other side of the coin, under the first rule, when there is no inconsistency or conflict between a provision of HIA and a provision of another Act or regulation, the provision of HIA does not prevail. When there is no inconsistency or conflict, the provision of HIA and the provision of the other Act or regulation both apply.

[para 45] The second rule in section 4 of HIA is that another Act or a regulation under HIA may expressly provide that the other Act or regulation or a provision of it, prevails despite HIA. This second rule is independent of the first rule and does not require an analysis of whether the provisions are inconsistent or in conflict. Under the second rule, the other Act or regulation or a provision of it, applies according to its own terms.

[para 46] My interpretation of section 4 of HIA in this Order differs from previous Orders issued from my Office in which paramountcy provisions were at issue, such as Order H2004-003. This is the first Order in which I have revisited the approach to interpretation of a paramountcy provision. I am satisfied that the interpretation in this Order better gives effect to the legislative intent of section 4 of HIA.

[para 47] The PHA is "another Act" for the purposes of section 4(a) of HIA. The PHA expressly provides that except for the *Alberta Bill of Rights*, it prevails over any enactment, including HIA. Consequently, the second rule in section 4 of HIA applies in the case before me; the PHA applies according to its own terms.

4. Interpretation of section 75 of the PHA

[para 48] In order to decide whether section 75 of the PHA conflicts or is inconsistent with section 22(3)(a) of HIA, I must interpret the words "inconsistent" or in "conflict" in section 75 of PHA.

[para 49] In previous Orders of my Office, such as Order 99-034 under section 5 of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP") (which is a parallel provision to section 4 of HIA), the term "inconsistent or in conflict with" was interpreted to refer to a situation where two enactments cannot stand together; that is, compliance with one law involves breach of the other: see *Friends of the Oldman River Society v. Canada (Minister of Transport* [1992] 1 S.C.R. 3; 88 D.L.R. (4th) 1; 1992 CanLII 110 (SCC), on appeal from the Court of Appeal of Alberta); *Imperial Investments Ltd. v. Saint John (City)* (1993), 106 D.L.R. (4th) 585 (NB CA).

[para 50] Other Orders previously issued by my Office under FOIP have consistently utilized the above definition when interpreting the phrase "inconsistent or in conflict with". See, for example: Orders 98-017 (para 9), 98-027 (paras 54-55), 2000-002 (paras 21-22, 91), 2000-020 (para 59), 2000-024 (para 20), 2000-034 (paras 12-13, 74), 2001-005 (paras 10, 21), 2001-012 (paras 11-12, 25), 2001-018 (paras 21-22, 28), 2001-036 (paras 11, 16), F2003-011 and F2005-015 (paras 12-36).

[para 51] Sullivan describes the preferred approach to inconsistency or conflict for enactments that are within the purview of a legislature, as follows:

> In effect, the statute book constitutes the complete text of every legislative provision. The presumptions of coherence and consistency apply not only to Acts dealing with the same subject but also, albeit with lesser force, to the entire body of statute law produced by a legislature. The legislature is presumed to know its own statute book and to draft each new provision with regard to the structures, conventions, and habits of expression as well as the substantive law embodied in existing legislation. …
>
> It is presumed that the legislature does not intend to contradict itself or to create inconsistent schemes. Therefore, interpretations that avoid the possibility of conflict or incoherence among different enactments are preferred. … Statutes enacted by a legislature that deal with the same subject are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject (pp. 323-324).

[para 52] Sullivan discusses the approach in the jurisprudence to the interpretation and resolution of "conflict" as follows:

> *Defining conflict*. The courts do not resort to the conflict avoidance strategies at their disposal unless there is a genuine conflict. For this purpose, conflict is narrowly defined. In *Tabernacle Permanent Building Society v. Knight*, Lord Halsbury said that so long as the Acts under review can "stand together and both operate without either interfering with the other", there was no inconsistency or conflict. In *Toronto Railway Co. v. Paget*, Anglin J. said:
>
> > It is not enough to exclude the application of the general Act that it deals somewhat differently with the same subject-matter. It is not "inconsistent" unless the two provisions cannot stand together.
>
> In *Friends of Oldman River Society v. Canada (Minister of Transport*), La Forest J. noted the similarity between this approach and defining conflict in the constitutional law context:

> There is also some doctrinal similarity to the principle of paramountcy in constitutional division of powers cases where inconsistency has also been defined in terms of contradiction - i. e., "compliance with one law involves breach of the other"; see *Smith v. The Queen*.

> Normally when overlapping provisions have different purposes, or are concerned with different aspects of a matter, they are not found to conflict with one another (p. 265).

[para 53] Justice La Forest of the Supreme Court of Canada has described the approach taken by the courts when determining whether there is an inconsistency or conflict between enactments in the *Oldman River* case, as follows:

> However, as a matter of construction a court will, where possible, prefer an interpretation that permits reconciliation of the two. "Inconsistency" in this context refers to a situation where two legislative enactments cannot stand together; see *Daniels v. White*, [1968] S.C.R. 517. The rule in that case was stated in respect of two inconsistent statutes where one was deemed to repeal the other by virtue of the inconsistency. However, the underlying rationale is the same as where subordinate legislation is said to be inconsistent with another Act of Parliament -- there is a presumption that the legislature did not intend to make or empower the making of contradictory enactments (CanLII at 22).

[para 54] When interpreting the PHA, the courts in Alberta have acknowledged the prevailing provision and interpreted the PHA and its subordinate legislation in a manner that allows the PHA to stand together with other enactments. See, for example, *BPCL Holdings Inc. v. Alberta*, 2006 ABQB 757 (CanLII) (AB QB); *R. v. Goebel*, 2003 ABQB 422 (CanLII) (AB QB); *Beaulne v. Ellenor*, 2000 ABPC 117 (CanLII) (AB PC).

[para 55] In its submission, AHW said:

> 13. AHW submits that the express wording used in section 75 shows an intention by the legislators that both the PHA and the HIA are to operate *unless* a conflict or inconsistency precludes it. Therefore, if the PHA permits collection, use or disclosure of information, absent a specific obligation or authority in the PHA which makes it impossible for a custodian to comply with the HIA obligations, then the custodian should be required to comply with both the PHA and the HIA.
>
> 14. What then follows logically, from a jurisdictional standpoint is that, unless there is a conflict or inconsistency between the two statues [sic] such that a custodian is "incapable" of complying with the provisions of both, the Commissioner should have oversight over any obligations that remain operative under the HIA.
>
> 15. If there is a conflict, there are two ways of resolving the conflict:
>
> (a) reconciling the provisions in some manner; or
>
> (b) granting propriety to one provision over the other. Cote, supra at 297
>
> 16. AHW submits that the wording of section 75 makes it clear that, in the event of a conflict or inconsistency, the legislators intended that the PHA take priority and govern. In that situation, the Commissioner would have no jurisdiction to consider complaints in relation to actions taken under sole authority of the PHA.

[para 56] The AHW guidelines describe how the legislation that governs specific aspects of the publicly paid health sector is intended to work with HIA, as follows:

> A conflict or inconsistency may occur when access to information in another act is more restrictive than it is under the *Health Information Act*. For example, under the *Human Tissue Gift Act*, information about a recipient or donor cannot be disclosed. The conflict or inconsistency between the two acts has been resolved by making section 11(1) of the *Human Tissue Gift Act* prevail over the *Health Information Act*.
>
> Conversely, a conflict or inconsistency may occur when the rules regarding disclosure of health information in the *Health information Act* are more restrictive than a provision in another act, such as the *Child Welfare Act*. Section 3 of that Act requires the reporting of information regarding a child in need of protection. Section 4 of the *Health Information Regulation* expressly states that section 3 of that Act prevails despite the *Health Information Act*.
>
> On the other hand, a paramountcy provision is not needed where there is no conflict or inconsistency between a provision of the *Health Information Act* and a provision in another act (Alberta Health and Wellness, *Health Information Act: Guidelines and Practices Manual*, AHW, 2001, p. 18).

5. My decision

[para 57] Historically, the PHA has prevailed over all provincial enactments that it was inconsistent or in conflict with, except for the *Alberta Bill of Rights* (see, for example, section 83 of the *Public Health Act*, S.A. 1984, c. P-27.1). In order to maintain the status quo, when HIA was proclaimed in force, the PHA was amended to prevail over HIA, to the extent of an inconsistency or conflict with HIA.

[para 58] The authorities say that a conflict or inconsistency is narrowly defined and applies to situations where two provisions cannot stand together; where compliance with one law means breach of the other law. Consequently, I should read the PHA and section 22(3)(a) of HIA in a manner that attempts to avoid conflict and apply both provisions to the extent that each statute is capable of operating and standing together without interfering with each other.

[para 59] The provisions in the PHA and section 22(3)(a) of HIA should be interpreted as parts of a functioning whole that harmonizes the components of the legislation, minimizes internal inconsistency and favours coherence between the provisions. In my view, the PHA and section 22(3)(a) of HIA permit reconciliation; they are compatible provisions.

[para 60] This is not a situation where compliance with one law entails breach of the other law. I find that the PHA and section 22(3)(a) of HIA fit logically together and work together as parts of a functioning whole, as follows.

[para 61] The PHA and section 22(3)(a) of HIA apply to different aspects of the publicly paid health sector. The PHA applies to the administration and delivery of

public health services whereas HIA applies to the access and privacy of health information. The PHA and section 22(3)(a) of HIA both pertain to the same subject matter, which is the collection of the health information that is required for the delivery of public health services. The PHA and HIA were enacted by the same Legislature and share the same government ministry.

[para 62] The PHA prevails over HIA in some circumstances, but only to the extent of a conflict or inconsistency with HIA. An example of the intended interface between the PHA and HIA is evident in the consequential amendment made in the *Health Information Act*, S.A. 1999, c. H-4.8, where section 123(2) repealed the research provision in section 63(4)(d) of the *Public Health Act*, S.A. 1984, c. P-27.1. The former research provision in the PHA was no longer required when the issue was addressed within the comprehensive access and privacy scheme that was established in HIA.

[para 63] The PHA is silent about general rules for collection of health information as well as specific rules for direct collection, including the duty to inform individuals of the purpose for which their information is being collected. In contrast to the PHA, section 22 of HIA sets out detailed rules for the direct collection of health information. Section 22(3)(a) of HIA specifically creates the duty of custodians to take reasonable steps to inform individuals of the purpose of the collection when directly collecting their health information.

[para 64] Furthermore, some provisions in the PHA indicate that the PHA was intended to work together with other legislation in Alberta rather than intended to stand in isolation. For example, section 66.1 of the PHA protects medical officers of health from actions for damages while carrying out duties or exercising powers under other enactments.

[para 65] Similarly, provisions in HIA show that it was intended to work together with other enactments. In particular, see section 6 of HIA, which says that custodians who collect, use or disclose health information pursuant to another enactment must comply with HIA.

[para 66] See also HIA section 11(2)(d) (custodians must refuse access if disclosure is prohibited by other enactments); section 20(a) (custodians are allowed to collect health information if expressly authorized by other enactments); section 27(1)(f) (custodians are allowed to use health information for purposes authorized by other enactments); and section 35(1)(p) (custodians are allowed to disclose health information if authorized or required by other enactments).

[para 67] For all of the above reasons, I find that the PHA is not inconsistent or in conflict with section 22(3)(a) of HIA. This finding means that I have jurisdiction to apply HIA and to decide the substantive issue before me at the Inquiry, which is whether CHR complied with section 22(3)(a) of HIA.

ISSUE B: Did the Custodian comply with section 22(3)(a) of HIA when collecting the Complainant's health information?

A. General

[para 68] Section 22(3)(a) of HIA says that "when collecting individually identifying health information about an individual directly from the individual, the custodian must take reasonable steps to inform the individual of the purpose for which the information is collected".

B. Argument and Evidence

[para 69] The Complainant says CHR breached its duty to inform under section 22(3)(a) of HIA by not telling her that she would be prevented from working at the time when it collected her health information. CHR disagrees and says that it fulfilled its duty to take reasonable steps to inform the Complainant about the purpose for which her health information was collected under section 22(3)(a) of HIA.

[para 70] In her submission, the Complainant says:

> I was diagnosed with a salmonella infection a couple of weeks ago, and was contacted by [name of individual] in the CHR public health office on July 25, 2002. She informed me that she was contacting me due to a positive test result for salmonella, which was forwarded to her department by the [name of laboratory]. She requested from me information to apparently initiate an investigation into where I would have contracted salmonella. Being a Registered Nurse I felt it important to determine where the salmonella came from, thus I answered all her questions, although I felt they were inappropriate. She asked me questions such as where I had recently eaten, where I was employed, my husband's employer and if my pets were healthy. Upon answering her questions, she implied that she would now initiate an investigation. Instead of this occurring, I received a letter from CHR the next day ordering me not to work. They also sent a letter to my employer indicating the same. When I was initially contacted I was not advised of any legislation that would deny me to work.

[para 71] The above-described letter from CHR was entitled "Order of the Medical Officer of Health" and states:

> Under the authority delegated by the Medical Officer of Health, you are hereby ordered to refrain from working in occupations involving food handling or client care at the [name and address of facility] as of July 24, 2002 until you have 2 negative stool culture results, taken 24 hours apart, and at least 48 hours after completion of antibiotic treatment if prescribed. You must refrain from working in occupations involving food handling, patient care or the care of young children, elderly people or dependent people until you have clearance from us.
>
> Laboratory testing has confirmed that you have an enteric illness caused by the organism SALMONELLA. This organism can be easily passed on to others through contaminated hands of food handlers, health care and childcare providers, household members and other close contacts.

This order is issued under Section 39(1) of the Public Health Act of Alberta: A medical officer of health who knows of or has reason to suspect the existence of a communicable disease within the boundaries of the health region in which he has jurisdiction may:

(a) initiate an investigation to determine whether any action is necessary to protect the public health, and

(b) where the presence of a communicable disease is confirmed, carry out any measures prescribed in the regulations in respect of that communicable disease.

And, in Section 8(2)(a)(b) of the Communicable Diseases Regulation under the Public Health Act:

(a) a Medical Officer of Health shall take whatever steps are reasonably possible
  (i) to suppress disease in those who may already have been infected with a communicable disease,
  (ii) to protect those who have not already been exposed,
  (iii) to break the chain of transmission and prevent spread of the disease, and
  (iv) to remove the source of infection.

[para 72] In its written initial submission, CHR says:

4. The CHR conducted an interview with the Applicant and collected health information during this interview. The CHR advised the Applicant that the information collected during the interview would be used as part of a Foodborne Investigation ("FBI"). The CHR also informed the Applicant that the purpose of an FBI is to suppress the communicable disease in question, to break the chain of transmission and thus prevent the spread of disease.

5. The HIA does not stipulate that custodians must, when collecting health information from an individual, inform the individual of any and all possible consequences that might result from the collection of the information and the use thereof. The requirement in section 22(3)(a) of HIA is only to take reasonable steps to inform the individual of the purpose for which the information is collected.

6. The CHR informed the Applicant of the purpose for which the health information was being collected and the CHR informed the Applicant how the information would be used.

7. The nature of the health information collected during a FBI will determine exactly what, if any, action is to take place as a result of the investigation. Therefore, the CHR can not know all the possible ways the health information will be used until it is first provided with the health information. Any attempt to provide an individual with any and all possible consequences that might result from a FBI would be speculative at best. As such, it is submitted, that the CHR took all the steps required by section 22(3)(a) of HIA. …
9. In conclusion, it is submitted by the CHR that it advised the Applicant that the information collected during her interview would be used as part of a Foodborne

> Investigation and that the CHR also informed the Applicant that the purpose of an FBI is to suppress the communicable disease in question, to break the chain of transmission and thus prevent the spread of disease. The conducting of an FBI is exactly how the health information was used.
>
> 10. Based on the foregoing, the CHR submits that it took all reasonable steps to inform the applicant of the purpose for which her health information was being collected. Therefore, the CHR submits that it has complied with both the letter and the spirit of section 18 and section 22(3)(a) of HIA.

[para 73] In his Affidavit, the Foodborne Illness Investigator in the EH Division of CHR, said:

> 3. It is EH's standard practice to advise people being interviewed that the interviewer is an employee of EH and that the interview is part of a follow up on a lab report as part of a FBI. It is standard practice in EH to advise the interviewee that the purpose of the interview is to suppress the communicable disease in question, to break the chain of transmission and thus to prevent the spread of disease.
>
> 4. I have no reason to believe that EH deviated in any way from the standard practice when [blank] was interviewed. Furthermore, it is not the practice of EH to suggest to an interviewee that the FBI would be limited to identifying the source of the illness. Again I have no reason to believe that EH deviated from this practice when [blank] was interviewed.

[para 74] In its further submission, CHR says:

> 10. In the course of a foodborne illness investigation, the MOH is permitted to collect information, including health information where required, in order to determine whether or not any action is required to be taken [PHA s. 29(1)]. The MOH is also permitted to take the necessary steps to suppress the disease in those that may already be infected [PHA s. 29(2)(b)(i)].
>
> 11. In the case of a foodborne illness such as Salmonella, the MOH is mandated to conduct an investigation to determine the cause of the illness, the number of persons affected and the nature of the contamination [CDR, Schedule 4]. The MOH must also take whatever steps are considered necessary to suppress the disease, to break the chain of transmission, to prevent spread of the disease, and to remove the source of infection. [PHA s. 29(1)].

[para 75] In its submission as an intervenor, Chinook Regional Health Authority ("CRHA") noted that the phrase, "the purpose for which the information is collected", is not defined or further explained in HIA and that HIA does not expressly say whether or not this duty requires custodians to advise individuals of potential outcomes. CRHA cautioned that the section 22(3)(a) duty to inform should be construed as set out in HIA and should not be interpreted as being broader in scope.

[para 76] CRHA said the MOH and designates have "broad investigative and directive powers in response to public health nuisances and sweeping powers in relation to a public health emergency". In its submission, CRHA stated:

> 5. It is respectfully submitted that Public Health Investigations may be compromised in protecting the public's health if the medical officer of health ("MOH") or their designates were required to anticipate/inform an individual of all possible outcomes in an investigation. It is our opinion that this would place an onerous unrealistic burden on the MOH or their designate and may hinder such an investigation.

[para 77] In its submission, Capital Health ("CH") said the scope of the duty to inform in section 22(3)(a) of HIA has a "limited scope" that only requires the individual to be advised of the purpose of the collection. CH said that informing an individual of the purpose for which their information is collected under section 22(3)(a) of HIA does not include information about "the circumstances that gave rise to the investigation, or the facts regarding other individuals being investigated".

[para 78] In regard to the scope of the duty to inform under section 22(3)(a) of HIA, in its submission, Alberta Cancer Board ("ACB") said:

> Neither the *Health Information Act* nor the *Public Health Act* requires the custodian to provide detailed notification to the patient beyond what is reasonable. It is not reasonable to anticipate the specific purpose of mandatory reporting requirements of the *Public Health Act*, especially since it arises relatively infrequently in the care of cancer patients. Furthermore, *Health Information Act* section 22(3) refers only to the collection of information; it requires custodians to inform individuals of the purpose for which the information is collected. It does not refer to disclosure and does not require notification of the results of medical tests.

[para 79] Also in its submission, ACB commented on how it addresses the ethical dilemma that arises for health professionals when complying with the mandatory reporting duty under the PHA for communicable diseases. ACB states:

> It is not reasonable to consider that a custodian is able to anticipate all future uses and disclosures and therefore cannot in detail provide notice of all such potential uses and disclosures to patients. Where possible and when the Alberta Cancer Board health care provider is faced with the situation involving mandatory reporting, in an effort to be transparent, when he or she informs the individual about the information (test results), the care provider also provides notice about the mandatory reporting requirement. In this way, the health care provider has addressed the ethical dilemma of disclosing information under the *Public Health Act* without prior detailed notice of that collection purpose.

C. Application

[para 80] The three criteria in section 22(3)(a) of HIA are:

- There must be health information,
- The health information must be directly collected from the individual, and
- The custodian must take reasonable steps to inform the individual of the purpose for which the information is being collected.

1. Health information

[para 81] I have previously found that the information collected from the Complainant was "diagnostic, treatment and care information" under section 1(1)(i) of HIA and therefore was "health information" under section 1(1)(k) of HIA. Therefore, I find that the first criterion under section 22(3)(a) of HIA is met.

2. Direct collection

[para 82] It is clear from the submissions of the parties that health information was directly collected from the individual during the interview that was conducted by CHR. Consequently, I find that the second criterion under section 22(3)(a) of HIA is met.

3. Reasonable steps to inform

[para 83] It is not at issue that CHR is a regional health authority and thus a "custodian" as that term is defined in section 1(1)(f)(iv) of HIA. The sole matter at issue at the Inquiry under section 22(3)(a) of HIA is the scope of the CHR's duty to inform. In particular, did CHR "take reasonable steps to inform the individual of the purpose for which the information is being collected" when collecting the Complainant's health information?

[para 84] In its submission, CHR said that section 22(3)(a) of the Act pertains only to the duty to notify the individual during the collection of health information, rather than subsequent duties that pertain to the use and disclosure of health information. I agree with CHR on this point and therefore I do not find it necessary to consider the arguments that pertain to use and disclosure of health information.

[para 85] The Complainant says that when collecting her health information, CHR should have told her that she would not be able to work. It is not in dispute that CHR informed the Complainant during the interview that her information was being collected for the purpose of conducting a FBI. CHR says its duty to inform was met as the Complainant was also told during the interview that the purpose of the interview was to suppress the communicable disease, break the chain of transmission and prevent the spread of disease.

[para 86] I accept CHR's evidence that during the telephone interview, the Complainant was told of the above-described purposes for collecting her health information. I accept CHR's statement in its Affidavit that providing this description of purposes was standard practice; this was standard information that was routinely provided to individuals when conducting interviews for FBIs. This position is consistent with the description of purposes reiterated in the standard form letter that was sent from CHR to the Complainant following the interview.

[para 87] What consists of "reasonable steps" to inform the individual in the circumstances of this case? This question must be answered keeping in mind the surroundings that color the words; for example, the information was collected in the context of conducting a FBI under the PHA. The scope of the duty to take reasonable steps to inform the individual of the purpose of the collection in section 22(3)(a) under HIA must be ascertained by examining the circumstances of each case.

[para 88] CHR informed the Complainant that it was collecting the information in order to conduct a FBI, with the goal of suppressing the disease in question, breaking the chain of transmission and thus preventing the spread of disease. Preventing the spread of disease logically encompasses removing the source of infection as well as protecting those not already exposed. In my view, providing the Complainant with the above-described information in the circumstances of this case amounted to taking reasonable steps to inform the individual of the purpose for which the information is being collected within section 22(3)(a) of HIA, for the following reasons.

[para 89] The provisions of the PHA and CDR that pertain to FBIs are a key consideration when determining what constitutes reasonable steps to inform under section 22(3)(a) of HIA. The Complainant was informed about the general purposes for which her health information was being collected during the interview, as those purposes are described in section 29(2)(b)(i) of the PHA, section 8(2)(a) of the CDR and in the Schedules under the CDR.

[para 90] In my view, what constitutes reasonable steps to inform the individual of the purpose for which information is collected under section 22(3)(a) of HIA, does not include setting out every possible outcome or consequence. Additionally, the purpose of collecting the information during the interview was not to prevent the Complainant from working, even though that was a consequence of the decisions that were later made during the FBI. Furthermore, at the time the information was collected, it was neither reasonable nor possible to anticipate or speculate about all of the possibilities that could arise for the Complainant out of the use of the information collected.

[para 91] It seems to me that there is a sequence of steps in a FBI, even though the steps may occur in rapid succession. Those steps may include the following: 1., EH Division of CHR receives the laboratory report; 2., Investigator conducts an interview of the individual; 3., MOH and staff considers the information gathered as it pertains to carrying out duties under the PHA; 4., Decision made regarding necessary follow-up and sanctions; and 5., MOH communicates sanctions to the individual.

[para 92] The FBI interview may well be the first direct contact between an individual and an investigator. Before the interview is conducted, the investigator may well have limited information about the individual, perhaps not much more than the lab test result and basic contact information. I have no evidence before me to suggest that the investigator even knew the Complainant's occupation beforehand; there is no evidence the investigator knew that the Complainant was a Registered Nurse. The

Complainant says the investigator asked her where she worked during the interview, so it is clear that the investigator did not have that workplace information beforehand.

[para 93] Every possible consequence and limitation that might be subsequently imposed on an individual following the completion of a FBI cannot be known to the investigator at the time the interview is conducted. For example, relevant factors that may affect the outcome and be gathered during the interview, include the individual's general type of occupation or work and details of the work setting such as the amount of direct contact with other individuals and the risk and vulnerability of other individuals.

[para 94] For all of the above reasons, I find that in the circumstances of this case when collecting the Complainant's information, CHR took reasonable steps to inform the individual of the purpose for which the health information was being collected in accordance with section 22(3)(a) of HIA. Therefore, I find that the third criterion of section 22(3)(a) of HIA is met. As all three criterion in section 22(3)(a) of HIA are satisfied, I find that CHR fulfilled its duty to the Complainant under section 22(3)(a) of HIA.

[para 95] The purposes of collection of health information during an initial interview should not be confused with all possible sanctions and outcomes that follow the completion of a FBI under the PHA. However, from a practical as well as from a public health perspective, there is no question that individuals ought to be told at the earliest possible opportunity when they will not be able to work.

VI. ORDER

[para 96] I make the following Order under section 80 of HIA:

- I find that the PHA is not inconsistent or in conflict with section 22(3)(a) of HIA in the circumstances of this case. Therefore, I have jurisdiction to apply HIA and to decide whether CHR complied with section 22(3)(a) of HIA; and

- I find that CHR complied with section 22(3)(a) of HIA when collecting the Complainant's health information, as CHR took reasonable steps to inform the individual of the purpose for which the health information was being collected.

Frank Work, Q. C.
Information and Privacy Commissioner