

WorkplaceNL

Health | Safety | Compensation

**Submission to the Personal Health Information
Review Committee**

February, 2017

1. WorkplaceNL collects, uses and discloses personal health information in the course of administering the *Workplace Health, Safety and Compensation Act* (WHSCA).

Section 39

2. Section 39 of the Personal Health Information Act (PHIA) states in part:

“(1) A custodian may disclose personal health information without the consent of the individual who is the subject of the information

(a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an Act of the province or of Canada and funded in whole or part by the government of the province or of Canada; ...”

3. Although implicitly included in the first part of this provision, WorkplaceNL is excluded from this provision by virtue of the requirement *“and funded in whole or part by the government of the province or of Canada”*. WorkplaceNL is not funded by the government, but by legislated mandatory assessments imposed upon employers in the province. WorkplaceNL has a separate fund, known as the Injury Fund, which is not part of Government’s consolidated revenue fund.
4. WorkplaceNL questions whether its exclusion from this provision was an oversight as it appears to describe WorkplaceNL’s investigative and adjudicative processes. For example, WorkplaceNL is authorized by s. 62 of the WHSCA to order an independent medical examination where a worker has applied for benefits and there is an issue requiring further medical opinion. In such a case, WorkplaceNL discloses relevant medical information to the assessor to assist in the independent medical process. This would appear to be the very sort of disclosure intended to be covered by s. 39 of PHIA.
5. In the 2012 Legal Review of the WHSCA submitted to the 2013 Statutory Review Committee appointed by government, the technical advisors noted that:

“While the commission is identified as a “custodian”, it is unclear whether s. 39 (1) of the Personal Health Information Act permits the exchange of a worker’s medical information with healthcare providers involved in the worker’s treatment in the management of the claim by the commission. This stems from the fact that workers compensation in NL is not funded in whole or part by the government and s. 39 (1) of the PHIA only applies to medical information exchange under government funded healthcare programs. (Note: this may well be a drafting error in the PHIA as it seems it was intended for s. 39 (1) to apply to the commission but that is not its literal effect.)”

6. WorkplaceNL recommends amending s. 39(1)(a) to include the words "*or by the Workplace Health, Safety and Compensation Commission*" after the word "Canada".

Section 90

7. Please note that s. 90(1)(m) makes a reference to s. 46(3) when that reference should be to s. 45(3).

I would like to thank the Committee for the opportunity to provide this submission on behalf of WorkplaceNL in relation to the statutory review of the *Personal Health Information Act*. Please do not hesitate to contact our office should you or the Committee members have any questions or concerns in relation to this submission.



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