Patient privacy is one of the fundamental tenants of the practice of medicine. Mutual trust and confidentiality form the basis of the physician-patient relationship and have been recognized as sacred from the beginning of the medical profession. In Canada, healthcare falls under the jurisdiction of the provinces, which are able to assess and accommodate their own unique healthcare needs. Today, privacy of personal information is a top priority of governments, as personal information gains more significance in the applications it can have. Health records are no exception to this; information such as family history of congenital disorders, psychiatric conditions and financial information are being included in patient records and the drive to protect this from being shared with undesirable parties is escalating. This drive however must be balanced by the needs of healthcare professionals who require the information to properly treat patients. After many recommendations and failed attempts to provide a comprehensive legislation, on November 1, 2004, Ontario passed the Personal Health Information Privacy Act [PHIPA]. The effectiveness of PHIPA will not be readily apparent for some time given its recent enactment, however the struggle to provide the adequate balance between the protection of personal information and allowing healthcare professionals ease of access to facilitate patient care will ultimately determine the effectiveness of this new Act.

Who owns medical records?
The ability of physicians to share medical records hinges upon the ownership of the records. This question was addressed in the 1992 landmark Supreme Court decision of McInerey v. MacDonald. The principle behind this case is that the information contained within the health record belongs to the patient, but the record itself is property of the medical institution. As such, legislation must then provide a framework establishing the rights of both the patient and healthcare professionals in regards to the use, collection and distribution of healthcare information.

The Development of Health Information Privacy in Ontario
In 1977, the Royal Commission of Inquiry, lead by Mr. Justice Krever was established to investigate and make recommendations on the privacy of health information. This commission was created in response to allegations of police access to patient records in OHIP and healthcare facilities without obtaining prior consent. At this time, no overarching legislation for the protection of privacy and health information had
been established and each healthcare facility was subject to their own practices. After reviewing the seventy-seven statutes and numerous regulations that were in place, it concluded that many aspects of health information were not clearly covered under any legislation. The Krever Report identified for the first time the discrepancies in the practices of healthcare institutions, healthcare professionals and the ambiguity in the legislation governing privacy and health information. It also recognized that the implementation of legislation to provide a universal provincial framework for privacy and health information should not be so cumbersome to impede the effective and timely delivery of healthcare.

With these suggestions, the Ontario government attempted to update and clarify the existing legislation to provide clearer guidelines for healthcare institutions and healthcare professionals and reflected the growing role of patient autonomy and privacy. However, no one piece of legislation provided a comprehensive approach. The Krever Report, recognized that the many pieces of legislation were not sufficient to encompass all the aspects of privacy and health information, since each Act dealt with separate issues, targeted to specific populations and sectors of society. Many gaps in how patient health information was handled remained.

**Two Failed Attempts**

The Ontario Ministry of Health attempted to create guidelines in June 1996 with the paper, *A Legal Framework for Health Information*. If this initiative was successful, Ontario would be the only province to implement comprehensive rules for personal health information. In November of 1997, the Ministry of Health created the *Personal Health Information Protection Act, 1997*. The ambitious draft provided clear guidelines on the collection, use and disclosure of health information, the rights of patients to access their information, the procedure for the correction of health records. The scope of this draft was large and encompassed territory that had not been covered in previous legislation. Therefore, much debate was generated and in the end, the legislation was not made law.

In the wake of the failed attempt of the *Personal Health Information Protection Act, 1997*, Bill 159, *An Act respecting personal health information and related matters* was introduced to the legislature on December 7, 2000. The bill was not well received and found to be lacking the adequate balance sought by healthcare professionals and patients.

**Federal Legislation and the Romanow Report**

The provincial governments have the authority to regulate the delivery of healthcare but must do so in accordance with the Canadian Charter of Rights and Freedoms. The Charter does not explicitly protect privacy, but the Supreme Court of Canada has established that privacy is a constitutionally protected right.

In 2001, The Committee of the Canada Privy Council appointed the Honourable Roy Romanow, Q.C, as Commissioner to review and enquire to the future of Canada’s healthcare system. The results of the review, released in 2002 and popularly referred to as the *Romanow Report*, made many recommendations in regards to health information privacy that were similar to the Krever Report. Issues raised were the rights of patients’ access to medical records, concern over the misuse of information found in these records, the critical needs for patients to have access to their own information, and the need for health information to provide adequate treatment. Unlike the Krever Report, which made recommendations for the province, the Romanow Report called for clear and consistent privacy rules across Canada.

In April 2000, the federal government passed the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, which was limited to entities under federal jurisdiction, such as banks. However, if by January 2004, a province did not have its own privacy act that was substantially similar, *PIPEDA* would apply to all organizations within the province that collect, use or disclose personal information, including personal health information. *PIPEDA* was intended for commercial activities, and its
application to the health sector neither reflected the needs of the healthcare system nor provided a detailed framework for health professionals to use.\textsuperscript{5} This would be the catalyst for the provincial government to draft comprehensive privacy legislation for health information that would better suit both the patients’ and healthcare professionals’ requirements in Ontario.

In December 2002, the Ministry of Consumer and Business Services and Ministry of Health and Long-Term Care, released a draft called Privacy of Personal Information Act, 2002 (POPIA).\textsuperscript{14} The purpose of this legislation was to meet the criteria of being substantially close to PEPIDA and relieve the pressure of Ontario health organizations from having to comply with the federal legislation. Unfortunately, POPIA was far from ideal; it contained two separate sets of rules, one pertaining to personal health information, and the other that regulated personal information in the private sector.\textsuperscript{5} Although the pressure to introduce POPIA was strong, with the 2004 deadline of the PIPEDA approaching, the bill failed.

Privacy Legislation Introduced at Last!
On November 1, 2004, Ontario passed the Personal Health Information Privacy Act (PHIPA).\textsuperscript{15} This legislation would provide an all-encompassing framework for the protection of personal health information.

PHIPA creates a set of rights and obligations relating to the collection, use, and disclosure of personal health information within Ontario.\textsuperscript{16} One of the overarching goals of PHIPA is to strike an appropriate balance between (a) protecting privacy rights and (b) facilitating the effective delivery of healthcare services. Other objectives include providing individuals with the right to: access health records and correct erroneous information, request and independent review and resolution of complaints relating to the handling of health information, and obtain remedies for contraventions of the Act.

PHIPA applies primarily to ‘health information custodians’ (HICs), which include professionals and organizations usually involved with the provision of healthcare services. One of the most salient features of PHIPA is its treatment of an individual’s consent to the use of disclosure of health information. A patient’s consent can either be express or implied. Typically, consent will be implied when a healthcare provider discloses health information to another party within the patient’s ‘circle of care’. Express consent is necessary however when the provider discloses information to a party not classified as an HIC including, for example, a personal trainer.\textsuperscript{17} It is important to note that a request to hold health information confidential nullifies any implied consent which was presumed in the past.

Conclusion
The development of legislation to protect health information privacy in Ontario has been a long process, influenced by the federal and provincial governments and many healthcare and patient advocates. The effectiveness of PHIPA will not be readily apparent for some time given its recent enactment; however the struggle to provide the adequate balance between the protection of personal information and allowing healthcare professionals ease of access to facilitate patient care will ultimately determine the effectiveness of this new Act.

(The website of the Information and Privacy Commissioner includes basic information, developments, and orders relating to the interpretation of the Act and serves as an invaluable resource to practitioners and administrators concerned with health privacy. For more information visit www.ipc.on.ca)

References
1. Advise to a Physician-Haly Abbas (Persian Code, 10 century AD).


