Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INTERIM ORDER PO-1881-I

Appeal PA-000286-1

Ministry of Health and Long-Term Care

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NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (the Ministry) received correspondence from a requester who identified that he had been provided with a "decoded list of services" billed against his Ontario Health Insurance Plan (OHIP) account by an identified doctor (the doctor). The requester noted that the services listed in this record are false. His letter stated that the incorrect services listed in the record included treatment for malignant neoplasms-brain, alcoholism, anxiety neurosis, hysteria, neurasthenia and reactive depression. His letter also sets out that while the doctor had provided some services to him in the past, specifically flu shots and physical examinations, the doctor had not treated him for any of the conditions listed in the record. The requester also stated that he has never had any of these medical conditions, nor has he been treated for them.

The requester asked the Ministry to remove these inaccurate claims from his record.

The Ministry responded to the request, in part, as follows:

> At this time, amendments to your claim file have not yet been actioned due to technical constraints. We are aware of the sensitivity of the situation and are taking steps to ensure that in the future, the claims in question will be flagged to indicate that a statement of disagreement has been filed.
>
> Please be advised that the diagnostic codes recorded by the [Ministry] are used primarily for payment purposes. These codes frequently cover a broad range of diseases and disorders or are of a general character. They should not be confused with the more precise diagnosis appropriate to a clinical record. Under normal circumstances, you would be advised to request your medical information directly from the health care provider(s) involved. The transcript lists a history of claims submitted for payment against a health number and is not a reflection of services rendered.
>
> Please be advised that the information cannot be accessed by anyone without your written consent or in accordance with the *Freedom of Information and Protection of Privacy Act*. In the event that the information is requested and subjected to disclosure, the statement of disagreement will also be identified.

The Ministry's response did not dispute any of the facts as stated by the requester.

The requester (now the appellant), through his counsel, appealed the refusal of the Ministry to correct the information in his OHIP Claims Reference File (CREF).

In his letter of appeal (a copy of which was provided to the Ministry), the appellant identified a number of grounds for appealing the Ministry's decision. They include:

1. The doctor who fraudulently claimed for a series of psychiatric and neurological services to the appellant (which were never performed), pleaded guilty to criminal charges of fraud against him. These charges

included the charges relating to the services which were billed for but not provided to the appellant.

2. In addition to the appellant's records, numerous other individuals' records also included fraudulent billing information by the same doctor.

3. The specific account records which contain the incorrect information are available to a broad range of health providers and Ministry officials, as well as other authorized agencies. Furthermore, insurers routinely seek consent from insured parties to disclose these records to the insurer as a pre-condition to offering coverage or claiming benefits. Once released to a private company, these records are out of the control of the Ministry.

4. The existence of incorrect information about highly sensitive psychiatric treatments in the appellant's file may directly affect the appellant, particularly if the incorrect information came into the possession of health care providers or insurers. Furthermore, their existence could affect many other legal rights including his right to run for or hold elected office, to write a valid will, to travel to other jurisdictions, etc.

5. Because of the nature of the incorrect information, attempts to explain it away or deny its validity, including attaching statements of disagreement to the record, are not acceptable options.

6. In the current system of public medicine, the citizen's CREF is the single comprehensive summary of one's health, and is constantly sought by those seeking to confirm one's health status.

7. The suggested attachment of a statement of disagreement is not sufficient to meet the appellant's concerns. Furthermore, the appellant does not believe that he should be responsible for having to explain inaccuracies in the Ministry's files, particularly if the Ministry is aware of them.

8. Notwithstanding the Ministry's apparent position that the CREF is primarily a billing record, the Ministry is aware that these records are routinely accessed for a wide range of purposes. Furthermore, the appellant cannot withhold consent to the disclosure of the records without being denied a whole range of goods and services.

The appellant also identified the remedies he was seeking, as follows:

- an order requiring the Ministry to remove the fraudulent records from the appellant's CREF;

- an order directing the Ministry to provide the appellant with a record of any exceptional uses to which the CREF has been put, pursuant to sections 46(1)(a) or (b) of the *Act*;

- an order directing the Ministry to provide notification of the correction to anyone to whom the appellant's personal information has been sent pursuant to section 47(2)(c) of the *Act*;

- an order directing the Ministry to notify each of the individuals who also have fraudulent information in their CREF files due to the actions of the doctor of the Commissioner's decision, and offering a process which would permit them to have their information corrected;

- an award of costs to compensate the appellant for bringing forward this public interest appeal.

The appellant also noted concerns that the Ministry was violating sections 7, 8 and 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*), and he sought relief on that basis. Further to his *Charter* claim, the appellant provided a Notice of Constitutional Question to the Attorneys General of Canada and Ontario, as well as to this Office.

Upon receipt of the appeal, the Registrar of this Office contacted the Ministry. The Ministry confirmed that, although some procedural requirements had not been followed, it agreed that the matter could proceed under section 50(1) as an appeal from a decision made by the Ministry under the *Act*.

A Mediator was assigned to the appeal. Despite considerable efforts on her part, the Ministry declined to participate in mediation, and the appeal moved to the adjudication stage. I sent a Notice of Inquiry identifying the issues to the Ministry initially, and also decided to proceed at that time only with the issues raised in the remedies section referred to above, and to defer consideration of any *Charter*-related issues.

After receiving the Ministry's representations, I sent the Notice to the appellant, together with the non-confidential portions of the Ministry's representations. The appellant also submitted representations. I then invited and received reply representations from the Ministry. The Ministry copied the appellant on the reply representations and he provided me with brief comments in response.

RECORDS:

The record the appellant is seeking to have corrected is his CREF – the OHIP Claims Reference File.

Specifically, he is asking that the listed claims for treatment which he never received, be corrected. As noted earlier, these claims were submitted by an identified doctor who was convicted of criminal charges for submitting fraudulent OHIP billings.

A total of 36 claims are identified by the appellant as being inaccurate. At one stage the Ministry states that 34 of these disputed claims were used as evidence to convict the doctor, while two of them were not used for that purpose.

The appellant is also seeking to have CREFs for all other individuals whose records have been affected by the fraudulent claims of the identified doctor corrected in the same manner.

PRELIMINARY MATTERS:

CHARACTERIZATION OF THE RECORDS

The Ministry takes the position that the appellant's CREF is primarily a claims payment record stored in a database that is used for this specific purpose. The Ministry states:

> The claims payment record is a claims payment database and is not part of the individual's medical record or history. The College of Physicians and Surgeons of Ontario requires that service providers maintain an individual's clinical records.
>
> The claims payment record is, however, the repository of information retained by the Ministry relating to claims submitted on behalf of eligible Ontario residents by health care providers and, as such, does contain limited data which could identify a predisposing medical condition. The database is used in the assessment and processing of claims; it is the only financial record of monies paid to a provider for services billed on behalf of Ontario residents.
>
> The Ministry processes and pays approximately 144 million claims per year for approximately 23,000 service providers.
> ...
>
> The purpose of the records is to provide evidence of a claim being made by a provider in respect of services rendered. The record does not constitute a medical history of the patient. Such information is required to be maintained by the service provider. As an accounting record, section 40(1) provides for the retention of personal information for one year after the information ceases to be used (see section 5(1) of Regulation 460).

However, in its representations the Ministry acknowledges that although "the prime purpose for the record being created is for the assessment and processing of claims ... with the consent of the individual, access to claims record information is provided to third parties." The Ministry also concedes that "incorrect interpretation could result in negative assessment by a third party."

The appellant provided material setting out his concerns about the information contained in his CREF, and the use to which the information is put. Although he acknowledges that the records have billing-related purposes, the appellant states that these same records are used for other purposes as well. He identifies a number of ways in which incorrect information could impact his health or his access to needed services within the health care system, and also raises issues about the possibility of external sources accessing this information. An attachment to the appellant's representations reads as follows:

> An even greater threat to individuals from inaccurate information in the OHIP database comes from access to this information by parties outside the public plan such as employers, insurers, credit granting agencies and others. Individuals can be denied all these benefits based on inaccurate health records. While consent of the individual is usually required to access health records, this consent is often buried in broad authorizations for access buried in applications for credit, insurance coverage, banking services, employment or other benefits.
>
> The Catch 22 of having ... [the right to control access] over one's own medical records or information is that other parties can request authorization for access as a condition for being considered for a service or product or employment. Denying access is interpreted as having something to hide.

The same attachment also states:

> Once inaccurate health records are released to other parts of the healthcare system (e.g. private labs) or external sources, it is often impossible to retrieve and correct. The genie is difficult to get back in the bottle.

I appreciate the detail provided by both parties in this appeal concerning the purposes for which the CREF records are created, and the uses to which they are put. I accept the Ministry's position that the primary purpose for creating these records is billing and accounting. However, the reality (to which both parties agree) is that these records are also used for several other purposes. These purposes include granting other third parties access to this information (with or without consent) to review an individual's health history. Although technically, as the Ministry states, these parties should access health information through other avenues (ie: directly from the service providers, etc.), in reality, due to the comprehensive nature of the CREF database and the information contained on individual CREF records, they are frequently relied upon for purposes that have nothing to do with billing and accounting.

In my view, all purposes to which the CREF records are put need to be taken into account in determining the issues in this appeal. These purposes extend well beyond billing and accounting, to establishing health history and insurance purposes, as identified by the appellant. I will proceed with my examination of these issues below in light of the multi-purpose nature of the CREF records.

DISCUSSION:

PERSONAL INFORMATION

An individual's CREF contains a name, OHIP number, a description of health services billed by various service providers, and the amount of the fee paid to the service provider for each billed service. The service providers are identified by code rather than name.

It is clear that the appellant's CREF contains his personal information. The record identifies him, and describes a series of health services which were billed against his OHIP number. These services are described in words commonly understood by the public as reflecting medical conditions (eg. "malignant neoplasms – brain" and "myopia"). I find that the record falls squarely within paragraph (b) of the definition of "personal information" in section 2(1) of the *Act*, which reads:

> information relating to the education or the **medical**, **psychiatric**, **psychological**, criminal, or employment history of the individual ... [emphasis added]

The Ministry takes the position that, to the extent that the information contained in the CREF is inaccurate, this information does not relate to an identifiable individual and therefore does not constitute personal information.

I do not accept this position.

As the appellant points out, inaccurate information contained on his CREF is nonetheless still information about him. The inclusion of inaccurate information within the scope of the definition of personal information is consistent with the statutory scheme for dealing with privacy protection. For example, one of the factors identified under section 21(2) which a head must consider in determining whether disclosure of personal information would constitute an unjustified invasion of privacy is "the personal information is unlikely to be accurate or reliable." A finding that the information may be inaccurate is a factor that weighs in favour of disclosure (see, for example, Order PO-1731).

It is also significant to note that this appeal stems from a request from the appellant to the Ministry for access to his personal information. Had the Ministry considered inaccurate CREF entries not to be "personal information," presumably it would not have provided this information to the appellant in response to his request. In my view, it is inconsistent for the Ministry, having responded in the way that they did, to now make the technical argument that the inaccuracy of the entries removes them from the scope of the definition of personal information.

I find that inaccurate information contained in the appellant's CREF is information "about the appellant," and falls within the scope of the definition of "personal information" in section 2(1) of the *Act*.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

Introduction

Sections 47(2)(a) and (b) of the *Act* provide for correction requests and statements of disagreement relating to one's own personal information. These sections state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information where the individual believes there is an error or omission therein; [and]
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

In Order 186, former Commissioner Tom Wright set out the requirements necessary for granting a request for correction as follows:

> 1. the information at issue must be personal and private information; **and**
>
> 2. the information must be inexact, incomplete or ambiguous; **and**
>
> 3. the correction cannot be a substitution of opinion.

As well, in Order P-382, Assistant Commissioner Tom Mitchinson applied the requirements set out above, and stated that:

> In my view, an individual who requests correction of personal information must establish that there is an error or omission in the information contained in the record, or that the information is inexact, incomplete or ambiguous.

I will now review each of these three requirements necessary for granting a request for correction, in the context of the personal information at issue in this appeal.

(1) Is the information which is the subject of the correction request personal and private information?

I have already determined that the record contains the appellant's personal information, thereby satisfying the first requirement of section 47(2).

(2) Is the information "inexact, incomplete, or ambiguous"?

The Ministry submits that a determination of whether or not the information is "inexact, incomplete, or ambiguous" depends on how the record is characterized. It is the Ministry's position that the record is correct for billing purposes. In this regard the Ministry states:

> The information requested is a correct claims record. It is exact, complete and unambiguous in that the provider [the doctor convicted of fraud] did bill the Ministry for the amounts and services stated which were claimed to have been provided and was reimbursed for those services. The issue to be considered is the intended purpose of the record. The information is not intended as a health history or record and is not accurate for that purpose as it incorporates information which is not relevant to the individual.
>
> The record is not incorrect. Claims or billing information is part of a 'claims payment' database and is held for the purpose of maintaining auditable records for services that are paid by the government.

However, the Ministry also acknowledges that the record is used for other purposes as well, and accepts that, as a health history record, it is inaccurate:

> The information is not intended as a health history or record and is not accurate for that purpose as it incorporates information which is not relevant to the individual.

The appellant maintains that the information is incorrect, and states that the Ministry itself was aware of the inaccuracy. He then identifies the ways in which the information was determined to be inaccurate, beginning with the Ministry's own Frauds Investigation Branch determination that claims had been made for services which had never been rendered, and continuing:

> This initial determination was confirmed by the [Ontario Provincial Police] OPP forensic audit, the decision of the OPP to refer the matter to the Crown Prosecutor, [the appellant's] statements to the OPP and the Crown Prosecutor that the services were never provided and the Crown Prosecutor's decision to lay and proceed with the charges.

The appellant goes on to identify that the information is relied on by others parties, not only outside the system as discussed above, but also within the health care system:

> The information could be shared ... with a large and expanding number of persons within the health care system. Any or all of these persons could rely on the OHIP file as evidence that [the appellant] suffers from severe neurological and

> psychiatric problems. The sharing of this information could contribute to his misdiagnosis and mistreatment, causing him permanent harm. ...

I accept the Ministry's position that, for billing and accounting purposes, the record is not inexact, incomplete or ambiguous – the record reflects the exact claims submitted for payment, and the CREF substantiates that the Ministry made the payment for the services identified on the claims. However, as discussed earlier, other purposes for which the record is used cannot be ignored – to do so would be irresponsible. When considered from the context of the appellant's health history, which is a common use of the CREF by Ministry staff and outside third parties, this same CREF is both inexact and incomplete. Inexact, in that it contains information that does not reflect actual medical conditions or health services provided to the appellant; and incomplete because without any indication that the claims are fraudulent, it fails to adequately reflect the complete status of the claims entered on the appellant's CREF.

Accordingly, when considered in the context of its uses for purposes other than billing and accounting, I find that the information at issue is inexact and incomplete, establishing the second requirement of section 47(2).

As to which entries are inexact and incomplete, the Ministry submits that:

> Not all of the claims disputed by the appellant were proven false in courts. Of the 36 claims disputed by the appellant, 34 were used to convict the health care provider. The remaining 2 claims were not part of the legal proceedings.
> ...
>
> It is practically impossible to verify that each claim against a specific OHIP number is not false. Even when a provider is convicted of submitting fraudulent claims, only a select number of claims are used for evidence in the conviction.

The appellant submits that:

> ... from the time the Ministry's own Frauds Investigation Branch determined that claims had been made for services which had never been rendered, the [Ministry] was under an obligation, pursuant to section 40(2) to ensure [the appellant's] personal information ... was not used.

The appellant also takes the position that:

> When appellants have demonstrated a pattern of fraud [on the part of a service provider], leading to a criminal conviction, and dispute a claim, which could easily be part of this fraudulent pattern, they have discharged the onus upon them. The [Ministry] must either demonstrate that these two claims are separate from the pattern of fraudulent claims, investigate and substantiate the claim or accept the patient's contention that the claim is false and correct the record.

On this point, the Ministry states that, "until found to be inaccurate by a court or demonstrated by other compelling evidence, the [Ministry] must rely on the provider-furnished information in respect of claims." Later in its representations, the Ministry submits: "Unless the claims are used as evidence in a legal proceeding and proven false, or the owner and provider both agree that the data is false, the Ministry will not know definitely which information is accurate."

I accept that the Ministry is entitled, in the first instance, to rely on the accuracy of provider-furnished information. However, where evidence is subsequently produced which raises significant questions about the accuracy of the provider-furnished information, the Ministry may, depending on the circumstances, have an obligation to take additional steps to determine the accuracy or inaccuracy of the relevant claims.

In circumstances where the evidence consists of a conviction of fraudulently billing the Ministry for health services that were not provided, as in this appeal, the Ministry clearly has an obligation to take further steps. There can be no question or doubt that the appellant's CREF billings, used in a court of law as evidence to sustain the conviction against the doctor contain inaccurate information about the appellant. That being the case, section 40(2) of the *Act* requires the Ministry to act. This section states:

> The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Also, in my view, once a fraud conviction has been imposed by the court it is reasonable for the Ministry to conclude that there may be other claims submitted by the doctor during the time period covered by the fraud investigation and prosecution, even though not used for the criminal prosecution, which are also inaccurate. In my view, the fraud conviction is itself sufficient to impose a responsibility on the Ministry to take additional steps to ensure the accuracy of all reasonably related billings contained on the appellant's CREF which were made by the doctor.

The Ministry's own representations suggest that there are various ways of confirming accuracy. I will not attempt to put any parameters on what would constitute appropriate investigative steps, which clearly lies within the area of the Ministry's expertise. Suffice it to say that the Ministry has an obligation to make reasonable efforts to either substantiate or reject the veracity of each payment claim relating to the appellant where it has reason to suspect that services billed by the doctor, as reflected on the appellant's CREF, were not actually provided.

(3) Would a correction be a substitution of opinion?

Once it has been determined that a billing entry on the appellant's CREF record is fraudulent. The correction of this inaccurate information cannot accurately be characterized as a substitution of opinion. Opinion implies that more than one interpretation of a situation is reasonably possible. Fraud, as determined by criminal conviction, is an objective finding of fact. In my view, once a determination of fraud has been made, only one interpretation of the situation is reasonably possible.

Therefore, I find that the appellant's contention that his CREF contains incorrect and inaccurate information is not simply his differing opinion of the situation. This establishes the third and final requirement of section 47(2).

Accordingly, I find that the appellant has demonstrated that he has a valid request under the *Act* for the correction of his CREF.

I must now determine the most appropriate way of implementing this correction request in the circumstances of this case.

WHAT IS THE APPROPRIATE REMEDY?

The appellant's representations identify two methods of correcting his personal information which would meet with his approval. His "preferred method" is to transfer the inaccurate information to a separate database. His "less preferred method" is to identify on each inaccurate entry that the claim is for a "service that was not delivered." For its part, the Ministry submits that the appropriate remedy would be to attach a statement of disagreement to the disputed records. However, in its reply representations, the Ministry also referred to alternative methods of flagging the appropriate files with indicators identifying whether a particular claim is "disputed" or "false."

In Order P-448, former Adjudicator Asfaw Seife made the following comments with respect to the question of the most appropriate way to implement a correction. He stated:

> In my view, the appropriate method of correction of personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and what would be the most practical and reasonable method in the circumstances.

I agree. Since section 50 of the *Act* provides me with the authority to review a head's correction decision, I must now determine which method of correction would be the most practical and reasonable in the circumstances of this case.

Option 1: Attaching a statement of disagreement

The Ministry submits that it followed the requirements set out in the *Act* for situations when an individual believes that a record is inaccurate, by offering to attach a statement of disagreement to the record. The Ministry submits that it is under no obligation to correct the disputed information, and states that:

> Notwithstanding that section 47(2) gives to individuals a right to request correction of personal information which the individual believes to be in error, there is no complementary obligation on the part of the institution to accede to the request. Section 47(2) ... provides the procedure to follow in the event that a

> request is not granted: the attachments of the individual's statement of disagreement to the record which must be disclosed whenever request for disclosure of the record is made.

I agree that an institution is not required to correct a record just because a requester disputes its accuracy. Section 47(2) establishes a process for institutions to follow in these circumstances. One option available to the Ministry in this case, had it agreed with the appellant that the information was inaccurate, would be to correct it under section 47(2)(a). The Ministry instead took the position that the information was accurate, and offered the appellant the opportunity to attach a statement of disagreement to his CREF. The fact that this option was not satisfactory to the appellant in the circumstances should come as no surprise since, from his perspective, the fraudulent entries were clearly inaccurate.

The appellant states in his initial letter of appeal that, because of the nature of the incorrect information, attempts to explain it away or deny its validity, including attaching statements of disagreement to the record, are not acceptable options. In his representations he describes the option of attaching a statement of disagreement as a "totally ineffective, if not counterproductive" remedy. He takes this position not only based on the nature of the inaccurate information, but also based on his view that it should not be the appellant's obligation to attempt to explain to others the existence of information relating to him, which is contained in his file held by the Ministry, and which the Ministry knows to be false.

I agree with the appellant.

The CREF is a document used for a number of purposes. I determined earlier that it contains an individual's health history, and is relied on by various parties. I also found that the fraudulent claims are incorrect, inaccurate and present an incomplete health history. In my view, to simply give the appellant the opportunity to identify for other parties that he disagrees with the contents of his CREF, when the Ministry knows it contains fraudulent information submitted by the doctor, is not an adequate response.

The remedy of attaching a statement of disagreement implies that there is a reasonable difference of opinion between an institution and a requester regarding the accuracy of the content of a record – the institution says it is accurate, the requester disagrees. Anyone looking at such a record in future knows that there is a dispute regarding its accuracy and can take that into account in assessing the reliance placed on the content of the record. That may be a suitable remedy in many, if not most, instances, but not in the circumstances faced by this appellant. As stated earlier, the appellant's situation involves the correction of records which have been clearly proven, on an objective basis, to be fraudulent and, therefore, incorrect. In my view, simply attaching a statement of disagreement in these types of circumstances does not sufficiently reflect the reality of the situation, particularly when the potential harm associated with relying on this information can be as serious and significant as the appellant describes.

For these reasons, I find that the option of attaching a statement of disagreement to the CREF does not address the issues raised by the appellant, and is not an acceptable remedy in these circumstances.

Option 2: Deleting the inaccurate information

Both parties acknowledge that deleting the inaccurate information may not be an appropriate remedy in the circumstances, since the entries which are inaccurate in the context of the appellant's health history and other related purposes, are nonetheless accurate from a billing and accounting perspective. Although the doctor who billed for services not actually provided was later convicted of fraud, the record does confirm the amounts billed and paid for the fraudulent claims.

The Ministry is concerned that the provisions of the *Act* relating to the requirements for the retention of personal information continue to apply to the record. The Ministry states:

> The purpose of the records is to provide evidence of a claim being made by a provider in respect of services rendered. The record does not constitute a medical history of the patient. Such information is required to be maintained by the service provider. As an accounting record, section 40(1) provides for the retention of personal information for one year after the information ceases to be used (see section 5(1) of Regulation 460). Indeed, such records are maintained for seven years as is the standard for retention of financial records set out in the *Income Tax Act* (except for once in a lifetime services which are retained indefinitely). Further, Regulation 459 provides that personal information may be destroyed only with the consent of the Minister.

The Ministry continues:

> ... Claims or billing information is part of a 'claims payment' database and is held for the purpose of maintaining auditable records for services that are paid by the government. The head has refused to delete the disputed entries to the payment record. Deletion of any entry from that record would compromise the accuracy or completeness of the payment record, removing the Ministry's evidence for suspected fraud or inappropriate billing by a provider, precluding the prosecution of a provider suspected of fraud, the referral of a provider to his or her regulatory college, or a Ministry response to the appeal of a provider convicted of fraud.

The appellant submits that:

> Because the erroneous information, relating to [the appellant], remains his personal information, it cannot be suppressed.

It appears that the Ministry and the appellant both agree that deleting the inaccurate claim entries is not an acceptable remedy in the circumstances. That is my view as well. Both parties to this

appeal accept the fact that the records are indeed used for accounting purposes and that, for those purposes, and those purposes alone, the information is accurate and should be retained.

Option 3: Removing the fraudulent claims from the CREF record

In his appeal letter, the appellant requested that this Office issue an order requiring the Ministry to remove the fraudulent records from the CREF. In his representations he identifies suggested ways of doing this:

> Because the erroneous information, relating to [the appellant] remains his personal information, it cannot be suppressed. Instead [the appellant] proposes as his preferred remedy, pursuant to the broad remedial powers vested in the Commissioner by s. 54(1) of the *Act*, that the fraudulent records relating to him be removed from the OHIP file and moved to a separate database, containing fraudulent billings or fraudulent billings and other material which does not include a record of the non-fraudulent services provided to Ontario residents. This is [the appellant's] preferred option because it would not require that fraudulent service claims be provided to health care providers without consent, or to others who can compel him to consent to the release of his health care records. Neither group would have an interest in seeking his personal information relating to fraudulent claims made for services allegedly performed on him. He would therefore have no onus of explanation placed upon him and yet he would retain all his rights to access his own personal information, without the absolute suppression proposed by the Ministry.

In its reply representations, the Ministry identifies that, for records dated after April 1996, the Ministry can create a new database, and move fraudulent claim entries from the CREF database to this new one. The Ministry also suggests that access to the new database could be limited within the Ministry to a small group of authorized employees, and that the database would not be used for ongoing daily business.

However, the Ministry identifies a problem with this option. It submits that, notwithstanding whether or not the information is segregated into a separate database, if the information is still referable to an individual and still part of a record, it remains that individual's personal information, and would need to be produced if a request for the appellant's personal information is made either by that person or others. The Ministry suggests that if personal identifiers are removed from records transferred to the separate database, then records residing in the new database would no longer be identifiable and not responsive to a request for access to the individual's personal information. However, the Ministry then refers to certain issues which could arise as a result of that modification as well.

I appreciate the options put forward by both parties. It is clear that each of them has benefited from the opportunity to review the other party's representations. I can't help but note that, had the Ministry participated in our attempts at mediation, the issues under appeal and the options for remedy could have been narrowed considerably.

After reviewing the various options, in my view, the "most practical and reasonable" remedy is to permanently remove all fraudulent claim entries from the CREF database, as well as other claim entries where the Ministry has determined that services were not provided, and store them in an entirely separate database. For ease of reference, I will call this new database the Services Not Provided (SNP) database. Once these claims are removed from the CREF database, in my view, it would not be necessary to remove all personal identifiers from these records, as long as it is made clear that the database contains fraudulent claims and/or claims for which services were not provided. Should an insurance company or other third party requester seek access, with an individual's consent, to that person's "OHIP record" or other such descriptor that would point the Ministry to the CREF file, it is my expectation that the Ministry would not need to identify entries moved to the SNP database as responsive records. At the same time, keeping these fraudulent billing records in identifiable form has two benefits: it permits the Ministry to retain these records in an unaltered state for billing and accounting purposes; and it also allows individuals the right of access to these records under Part III of the *Act*.

HOW DOES THE MINISTRY IMPLEMENT THE REMEDY?

Due to the complexity of the issues raised by the appellant, a number of implementation issues need to be addressed. They relate to the scope and application of the remedy, and to the fact that the Ministry has different data storage methods for CREF information depending on whether it relates to claims filed before or after April 1996. Claims records created since April 1996 are stored in the CREF database, while pre-April 1996 claims are stored on microfiche.

Fraudulent claims or claims billed for services not provided involving the appellant and the convicted doctor – post-April 1996 records

The appellant has confirmed that the doctor did in fact provide certain medical services to him in the past, such as providing a flu shot. Claim entries of this nature, as confirmed by the appellant, should remain part of his CREF record.

Perhaps the next most straightforward category of claims are those involving the appellant that were used as evidence to obtain a criminal conviction of fraud against the doctor. The appellant maintains, and the Ministry acknowledges, that 34 of the 36 claims identified by him fit into this category. Entries relating to these fraudulent claims should be removed in their entirety from the appellant's CREF and placed into the proposed SNP database.

As with many criminal matters involving multiple incidents of the same or similar activity, not all instances are necessarily used in obtaining a criminal conviction. The two remaining entries identified by the appellant may fit within this category. However, simply because it was not necessary to use claims of this nature to successfully prosecute the doctor, does not mean that these claims were correctly billed. In my view, section 40(2) of the *Act* imposes a responsibility on the Ministry to take the appropriate steps for determining whether other claim entries involving the doctor also relate to services that were not provided to the appellant. The Ministry's Frauds Investigation Branch presumably has policies and protocols for making such a

determination. If it is demonstrated, to the Ministry's satisfaction, by "other compelling evidence" that any of these claims reflect services that were not provided, then they should also be removed from the appellant's CREF and placed into the SNP database. If a determination of this nature is not possible for any specific claims, then a flag entry should be placed against these claims in the appellant's CREF record. The issue remains as to what this flag should read.

The appellant's suggestion that the flag reads "service not provided" is not, in my view, the answer. All claims, where a conclusion has been reached that the service was not provided, should be transferred to the new SNP database. On the other hand, the Ministry's suggestion that these claims be flagged as "disputed" is not, in my view, a strong enough signal to users of these records that there is a distinct possibility that they may be incorrect. A more appropriate flag entry in these circumstances is "service provider convicted of fraud – claim disputed." This entry should be placed on every claim submitted by the doctor over the time period covered by the conviction, unless it falls within the category of claims that should be moved to the SNP database, or is confirmed as accurate.

In my view, subject to my separate discussion regarding the pre-April 1996 records which follows, this series of actions once taken by the Ministry should satisfactorily address the appellant's concerns regarding his CREF. All fraudulent claims or claims billed for services not provided will be permanently removed and placed in the SNP database; all valid claims remain in his CREF, with no flag; and for those entries where a determination of whether or not the service was provided cannot be made, a clear indication of potential concern regarding these entries will be evident to anyone who accesses the CREF in future from the wording of the flag attached to these claims.

Fraudulent claims or claims billed for services not provided involving *other* patients and the convicted doctor – post-April 1996 records

Throughout this appeal the appellant has requested that all other individuals affected by the doctor's fraudulent billings be notified and provided with the opportunity to have their CREFs corrected as well.

The remedies ordered with respect to the appellant's CREF can and should apply equally to all other individuals whose CREF records were actually used in the criminal proceedings. If claims involving other patients of the doctor were used as evidence to obtain the criminal conviction, then these claims should be removed from the CREFs of each of these patients and placed into the SNP database. In the case of individuals who would not otherwise be notified in the context of other remedial steps, the Ministry should notify those individuals of the steps taken with respect to their CREFs.

However, unlike the appellant, who received a copy of his CREF and was able to identify questionable billing claims, other patients of the doctor may be in the same position as the appellant but have no idea that he was fraudulently billing the Ministry for non-existent health services involving them. Based on the representations provided to me, I am satisfied that the prejudicial impact of having inaccurate information in one's CREF is significant enough to

impose an obligation on the Ministry to address this situation. For this reason, the Ministry should insert a flag against any claim submitted by the doctor indicating "service provider convicted of fraud," and should then proceed to notify these individuals and make them aware of the possibility that claims for services that may not have been provided could be contained on their CREF records.

If after receiving notice from the Ministry, an individual requests a copy of his or her CREF and disputes the accuracy of any entries, the Ministry must then take the appropriate action to determine the accuracy or inaccuracy of the disputed claims. If it is determined that claims were billed for services not actually provided by the doctor, they should be removed and placed in the SNP database; if confirmed as accurate, they should remain in the CREF with the flag removed; and if a definitive determination cannot be made, the flag on any such claims should be changed to read "service provider convicted of fraud – claim disputed."

The remedy I have just outlined affects a number of individuals who were not party to this appeal. It is important to state that nothing in this order precludes these other individuals from pursuing their own remedies under the *Act*.

Pre-April 1996 records – microfiche

In its representations the Ministry identifies that, unlike claims records created since April 1996 which are stored in the CREF database, pre-April 1996 CREF records are stored on microfiche.

All 36 of the appellant's disputed claims are post-April 1996, and it may be that pre-April 1996 claims are not relevant in the circumstances. However, because the remedies I have outlined above relate to all claims involving the doctor for the period covered by the fraud conviction, I must also determine the application of the remedies to pre-April 1996 claims.

In its first representations the Ministry states:

> The Ministry currently flags disputed claims on the post-April 1996 claims payment record. The pre-1996 records are on microfiche or tape and cannot be amended. The system could allow suppression [ie. deletion] of the post-April 1996 record.

The appellant argues that section 47(2)(b) entitles him to require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made, and he states that "no exceptions, including exceptions based on a degree of technical difficulty, are contemplated by the legislation." The appellant's representations go into considerable detail as to possible methods by which microfiche records can be amended. In an attachment to his submissions, the appellant also identifies an alternate approach which, in his view, would be less costly but produce the same results. The appellant submits that, by using and modifying the information contained in the index to the microfiche records, it would be possible to ensure that

the erroneous portions of the record "be blacked out or overridden with an entry stating 'services not provided'."

After reviewing the appellant's representations, the Ministry's reply submissions state:

> When requested, the Ministry links a statement of disagreement to a claim residing on fiche. It is a manual process ... the statement of disagreement will be linked and any disclosure will contain the appropriate flag.
>
> The Ministry must still comply with [the *Act*] and disclose, with consent, all personal records relating to the appellant. The disclosure would also link to the statement of disagreement by means of a flag.
>
> The Ministry is reviewing alternate methods of converting pre-1996 fiche into electronic form and would be willing to ... [move towards] similar segregation, where warranted.

Based on the representations provided by the parties, I am able to apply a series of remedies for pre-April 1996 claims that would, in my view, closely parallel the remedies already discussed for records stored on the CREF database.

The Ministry acknowledges that it is able to link notations to specific microfilm records by means of a flag. Accordingly, the Ministry should identify all pre-April 1996 OHIP billings claims used as evidence to obtain the fraud conviction against the doctor, and attach a flag to these entries stating "fraudulent claim – not part of CREF record." The Ministry should then identify all other billings made by the doctor over the time period covered by the fraud conviction, and insert a flag against all such claims indicating "service provider convicted of fraud." The Ministry should then notify all individuals associated with these billings and make them aware of the possibility that claims for services that may not have been provided could be contained on their pre-April 1996 CREF record.

If after receiving notice from the Ministry, an individual requests a copy of his or her pre-April 1996 CREF record and disputes the accuracy of any entries, the Ministry must then take the appropriate action to determine the accuracy or inaccuracy of the dispute claims. If it is determined that claims were billed for services not actually provided, the flag on claims of this nature should be changed to read "fraudulent claim – not part of CREF record;" if confirmed as accurate, the flag should be removed; and if a definitive determination cannot be made, the flag on any such claim should be changed to read "service provider convicted of fraud – claim disputed."

Should an insurance company or other third party requester seek access to an individual's "OHIP record" or other such descriptor that would point the Ministry to the pre-April 1996 microfiche records, and have the required consent of the individual to access this information, it is my

expectation that the Ministry would not need to identify entries containing the flag notation "fraudulent claim – not part of CREF record" as responsive records.

I have one final comment on the correction issue.

The Ministry identifies a possible change to the OHIP claims payment system which it feels might assist in making determinations of fraud. In this regard, the Ministry states "the implications of implementing the capacity by the consumer to verify, at the point of service, that a service was rendered, is being assessed by the Ministry." Although this approach may have merit, and I would certainly encourage the Ministry to investigate its feasibility, it is important that any solution of this nature identified by the Ministry be made on the basis of a comprehensive privacy impact assessment in order to ensure that the full range of potential privacy issues have been fully addressed in the system design.

OTHER ISSUES

Sections 46(1)(a) and (b)

The appellant has asked me to issue an order directing the Ministry to provide him with a record of any exceptional uses to which his CREF has been put, pursuant to sections 46(1)(a) or (b) of the *Act*.

Sections 46(1)(a) and (b) read:

> A head shall attach or link to personal information in a personal information bank,
>
> (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45(d); and
>
> (b) a record of any disclosure of that personal information to a person other than a person described in clause 45(e).

The Ministry's submissions state: "At this time, there is no known exceptional use of this record."

The appellant's response states:

> The [Ministry] states that at the time the submission was prepared, no exceptional uses of [the appellant's] file had been recorded. In the absence of assurances that

> no uses will be permitted, the [Commissioner] is respectfully requested to grant the order requested.

In my view, the legislation clearly spells out the requirements imposed on institutions with respect to the maintenance and use of personal information banks and, in the absence of any indication of non-compliance with the requirements of section 46(1), it would not be appropriate for me to address this issue in my order.

Section 47(2)(c)

The appellant also asks me to order the Ministry to provide notification of the correction of his CREF to anyone to whom the appellant's personal information has been sent, pursuant to section 47(2)(c) of the *Act*.

Section 47(2)(c) reads:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

The obligation to notify persons to whom information has been disclosed of the correction is clearly set out in section 47(2)(c), and will be addressed in the order provisions.

Costs

The appellant's appeal letter asks for an award of costs to compensate him for bringing forward this public interest appeal.

The Ministry's position on the issue of costs is as follows:

> In view of the absence of any expressed or implied jurisdiction of the Commissioner under [the *Act*] to levy costs, the Ministry respectfully declines to make any submissions on the issue.

In his representations, the appellant states:

> It is submitted while there is clearly authority indicating the Commissioner lacks jurisdiction to make the costs order requested, there is also persuasive authority

> suggesting the matter remains open. It is acknowledged that there has not been a case to date in which the Commissioner has granted an award of costs.

However, the appellant also refers me to human rights cases in which costs are awarded to successful complainants, and goes on to make the following submissions:

> Another rapidly changing area of costs jurisprudence is public interest litigation. Legal realists recognize that unless litigants who act in the public interest can expect to recover costs there will not be any public interest litigation. These are not cases for which legal aid is available, nor is this currently an area in which legal clinics are prepared to offer their services. As a result persons of modest means will not be able to litigate challenging legal issues, or litigate in the public interest. Courts and tribunals are increasingly facing up to the issue of unequal resources between litigants and the public good which is served by awarding costs in appropriate circumstances to those who litigate in the public interest.

The appellant goes on to state that the issue of costs is linked to the *Charter* issues raised in his letter of appeal.

The issue of whether the Commissioner has legal authority to award costs to a party to an appeal has been considered in a number of previous orders. In Order P-1312, former Assistant Commissioner Irwin Glasberg stated as follows:

> In Orders P-604 and P-724, I considered the issue of whether the Commissioner's office has the legal authority to award costs to a party to an appeal. I observed that, as a general principle, an administrative tribunal possesses only those powers which it has been granted by its enabling statute, by necessary implication or through some statute of general application.
>
> I then reviewed the relevant provisions of the *Act* and concluded that they do not provide the Commissioner or his delegate with either the express or implied authority to award costs to a party in an appeal. I also found that there is no statute of general application, to which the *Act* is subject, which provides the Commissioner with this power. I went on to conclude that the Commissioner's office does not possess the requisite authority to make an award of costs.
>
> For the same reasons that I expressed in the previous two orders, I find that the Commissioner's office lacks the authority to award costs in the present appeal.

(See also PO-1715)

I have considerable sympathy for the appellant's position, and it is clear that the appellant has raised an issue of systemic application to all Ontario residents who are victims of fraud in the hands of unscrupulous health care service providers. It is also significant to note that the Ministry appears to already have instituted significant and positive modifications to its process during the course of this appeal, in no small measure due to the suggestions made by the appellant, in the course of addressing the issues. The Ministry has also acknowledged that "without a doubt, the issues raised as a result of this case will be included in any future redesign of the claims system."

However, having reviewed the past orders of this Office and applying the reasoning in them, in my view, I must conclude that I simply do not have the jurisdiction to make an award of costs in this appeal. The *Act* does not grant the express power to make an award of costs, nor is this power available by necessary implication or through some statute of general application.

The appellant's arguments regarding costs in the context of the *Charter* issues is, as he acknowledges, not before me at present in this inquiry. The appellant is free to raise these issues in the context of any subsequent inquiry dealing with these *Charter* claims.

In his representations provided after reviewing the reply representations of the Ministry, the appellant makes the following statement regarding the costs issue:

> [The appellant] is out of pocket $20,000 for legal fees. ... [The appellant] has pointed out how he has undertaken this case to assist his neighbours. He has already exposed his lengthy psychiatric record for all to see. Now the Ministry is admitting that [the appellant's] efforts have benefited all the people of Ontario. Regardless of whether an award of costs is made, either at this stage or in the subsequent [*Charter*] hearing, [the appellant] requests that the Commissioner address in her decision the issue of whether or not common decency requires that the Minister compensate [the appellant] for his real costs in carrying the matter forward.

Nothing in this order would preclude the Ministry from considering or granting the appellant's request in this regard. In light of the fact that the issues raised by the appellant have a direct bearing on the health records of all Ontarians, and will be reflected in the future design of the OHIP claims system, the Ministry may well wish to give the appellant's request careful consideration.

INTERIM ORDER:

Provisions relating to the appellant – post-April 1996 records

1. I order the Ministry to create a new database for fraudulent claims and other claims where the Ministry has determined that services were not provided, and to transfer all claims of this nature involving the appellant and the doctor to this new database.

2. I order the Ministry to take the appropriate steps, pursuant to its responsibilities under section 40(2) of the *Act*, to determine whether there are any other fraudulent claims or other claims involving the doctor that relate to services not provided to the appellant, and to transfer all claims of this nature to the new database.

3. For all claims on the appellant's CREF where the Ministry has been unable to determine whether they are fraudulent or relate to services not provided to the appellant by the doctor, I order the Ministry to attach a flag to these claims indicating "service provider convicted of fraud – claim disputed."

Provisions 1, 2 and 3 must be complied with by the Ministry by **April 23, 2001**.

Provisions relating to *other* individuals subject to claims by the doctor – post-April 1996 records

4. I order the Ministry to identify all other fraudulent claims and other claims where the Ministry has determined that services were not provided involving the doctor and individuals other than the appellant, and transfer all claims of this nature to the new database. If any of these individuals are not otherwise notified under Provision 6, I order the Ministry to notify them of the actions taken pursuant to Provision 4.

5. I order the Ministry to identify all individuals other than the appellant who are the subject of claims submitted by the doctor over the time period covered by the fraud conviction, and to insert a flag against all such claims indicating "service provider convicted of fraud."

6. I order the Ministry to notify all individuals identified in Provision 5, advise them of the possibility that claims for services provided to them by the doctor may not have been provided, and offer these individuals an opportunity to request a copy of their CREF, free of charge.

7. If, after receiving a copy of their CREF, any individuals advise the Ministry that they dispute the accuracy of any entries, I order the Ministry to take the appropriate steps, pursuant to its responsibilities under section 40(2) of the *Act*, to determine whether there are any other fraudulent claims or other claims involving the doctor that relate to services not provided to these individuals and to transfer all claims of this nature to the new database. In cases where it has been determined that the services were provided, the flag should be removed from the claim entry.

8. For all claims on any individual's CREF referred to in Provision 7 where the Ministry has been unable to determine whether they are fraudulent or relate to services not provided to the individual by the doctor, I order the Ministry to change the flag on these claims to read "service provider convicted of fraud – claim disputed."

Provisions 4, 5 and 6 must be complied with by **May 22, 2001**. Provisions 7 and 8 must be complied within 60 days of receiving a notification of dispute from any individual who received notice from the Ministry under Provision 6.

Pre-April 1996 records – microfiche

9. I order the Ministry to identify all pre-April 1996 fraudulent claims and other claims involving the doctor, where the Ministry has determined that services were not provided, and insert a flag against all such claims indicating " fraudulent claim – not part of CREF record." If any individuals are not otherwise notified under Provision 11, I order the Ministry to notify them of the actions taken pursuant to Provision 9.

10. I order the Ministry to identify all individuals who are the subject of pre-April 1996 claims submitted by the doctor over the time period covered by the fraud conviction, and to insert a flag against all such claims indicating "service provider convicted of fraud."

11. I order the Ministry to notify all individuals identified in Provision 10, advise them of the possibility that pre-April 1996 claims for services provided to them by the doctor may not have been provided, and offer these individuals an opportunity to request a copy of their pre-April 1996 CREF, free of charge.

12. If, after receiving a copy of their pre-April 1996 CREF, any individuals advise the Ministry that they dispute the accuracy of any entries, I order the Ministry to take the appropriate steps, pursuant to its responsibilities under section 40(2) of the *Act*, to determine whether there are any other fraudulent claims or other claims involving the doctor that relate to services not provided to these individuals and to change the flag against all such claims to indicate "fraudulent claim - not part of CREF record." In cases where it has been determined that the services were provided, the flag should be removed from the claim entry.

13. For all claims on any individual's pre-April 1996 CREF referred to in provision 12 where the Ministry has been unable to determine whether they are fraudulent or relate to services not provided to the individual by the doctor, I order the Ministry to change the flag on these claims to read "service provider convicted of fraud – claim disputed."

Provisions 9, 10 and 11 must be complied with by **May 22, 2001**. Provisions 12 and 13 must be complied within 60 days of receiving a notification of dispute from any individual who received notice from the Ministry under Provision 11.

14. I order the Ministry to notify any person or body to whom the appellant's personal information was disclosed within the year preceding his request for correction of his record, in accordance with the requirements of section 47(2)(c) of the *Act*, and to provide the appellant with confirmation that notification has been made. This provision must be complied with by **April 23, 2001**.

15. I order the Ministry to notify any person or body to whom the personal information of any individual referred to in Provisions 4, 7, 9 and 12 was disclosed within the year preceding any such individual's request for correction of his or her record, in accordance with the requirements of section 47(2)(c) of the *Act*, and to provide the individual with confirmation that notification has been made. This provision must be complied within 90 days of receipt of notice under Provisions 4, 7, 9 and 12.

16. In order to verify compliance with this Interim Order, I order the Ministry to provide me with confirmation of compliance with provisions 1, 2, 3, 4, 6, 9, 11, 14 and 15. I reserve the right to require the Ministry to provide me with confirmation of compliance with any and all other provisions of this order, upon request.

17. I remain seized of this appeal in order to deal with any compliance issues arising from this Interim Order, and to deal with the outstanding *Charter* issues raised by the appellant.

18. For the reasons stated above, I must dismiss the appellant's appeal for an award of costs.

Original signed by: March 20, 2001
Ann Cavoukian, Ph.D.
Commissioner

POSTSCRIPT

This appeal stems from a situation where a particular doctor has been convicted of fraud, and my findings and the order provisions stemming from them apply only to circumstances involving this specific doctor and the various patients of this doctor, including the appellant, who were the victims of his improper billing activities. However, the framework I have established in this order could also be applied more broadly by the Ministry to cover two other categories of service providers engaged in similar improper activities.

First, it is clear that the doctor in this case is not the only service provider who has been convicted of fraud. Thus, there is no policy rationale for treating these other providers any differently than this particular doctor. Second, I assume that there are other situations where the Ministry, through its own investigative processes absent criminal proceedings, makes a determination that billing claims by certain service providers do not reflect services actually provided to patients.

In both of these circumstances, unless the Ministry takes action, the claims records of patients who are the victims of improper billing activities will continue to contain information relating to their health history that the Ministry knows to be incorrect in that they do not reflect health services actually provided. In my view, the principles and processes for dealing with claims stemming from the conviction of the doctor in this appeal could and should apply, with necessary modifications, to all other claims the Ministry otherwise determines do not reflect health services actually delivered by service providers. I would encourage the Ministry to consider the feasibility of applying the direction provided by this order to these two other categories of claims – that would be the logical progression flowing from this Interim Order.

It is important to recognize and acknowledge that the main reason this appeal is before me is the multi-purpose nature of the CREF database. If the database was restricted to uses relating to OHIP billings and accounting, then the procedures required to differentiate between properly and improperly billed OHIP claims would be much more straightforward. As the appellant acknowledges in this case, billing records, both proper and improper, should be retained for accounting purposes. It is only when the uses extend beyond those originally intended that the problems arise. In the longer run, the solution lies in a redesign of the systems used by the Ministry in administering the OHIP program. Admittedly, this would represent a major change, and a commitment to invest significant time and resources. However, this type of action is long overdue. In the absence of a fundamentally different approach to systems design on the part of the Ministry, which ensures that the secondary uses of personal information are tightly controlled and clearly rationalized, we will continue to be faced with untenable situations that invariably compromise increasingly threatened privacy rights.

I encourage the Ministry, in the strongest terms possible, to move forward with a fundamental re-examination of the OHIP billing system, in an effort to restrict its uses to the primary purposes

for which it was intended, namely, billing and accounting. From my understanding, the OHIP system was never designed to function as a repository of health-related information, with the intent of forming a comprehensive health history of those involved. It is in this context that the greatest threat to personal privacy arises – from these secondary uses of OHIP information, extending well beyond billing and accounting purposes.

The right to access one's personal information and correct any inaccuracies is especially noteworthy in the context of unintended, secondary uses of information. The data subject (in this case, the patient), may have no knowledge of such uses. In other instances, while knowledgeable, they may not have consented to the disclosure of their health information on a truly informed basis.

The accuracy of personal information becomes even more important in the context of such secondary uses involving disclosures to third parties beyond the organization. In such cases, the accuracy of the information becomes paramount because it may be used in ways that the data subject is unaware of. The potential for harm becomes exponentially higher once the personal information is in the hands of a third party. At that stage, there are no controls or restrictions on the use of that data since the *Act* does not apply beyond the Ministry. Thus, a third party's use of one's health history is potentially without limit, and subsequent disclosures may occur without obstacle. Given the potential for widespread disclosure, the information contained in one's health history records must then be, at the very least, accurate. The consequences of one's electronic profile or "data shadow" being inaccurate can indeed be devastating.

The right of access to and correction of one's personal information are among the fundamental principles underlying the universally accepted code of "fair information practices," governing the proper treatment and handling of personal information. Individuals should not have to go to tremendous lengths to have their personal information corrected, particularly when the information at issue is as important, and as sensitive, as personal health information. Cases such as this underscore the vital importance of having the right to appeal disputed corrections of personal information to an independent oversight agency. Without this right, the corrections I have ordered in this case would not have been made, and the appellant's privacy would have been further eroded. Clearly, such an outcome must be avoided at all costs.