

- [3] The Commissioner has jurisdiction over the Department of Health, which is responsible for the administration of community health centres: ATIPPA, s 2, definition of “public body”.

Issues

- [4] The issues in this review are:
- a. Was there a disclosure of personal information?
 - b. If so, was the disclosure authorized?
 - c. If so, what steps should the Department of Health take to respond to the disclosure and to prevent a recurrence?

Facts

- [5] The incident giving rise to this complaint occurred in the lobby of a community health centre. I have written versions of events from the Complainant, a nurse and a security guard. They largely coincide on the main points, though they differ in details and interpretations.
- [6] The Complainant’s partner was a patient in the health centre. After a call from the partner in which they sounded distressed, the Complainant did not know exactly what their partner’s medical condition was, but believed it could be serious. They had a telephone conversation with an unnamed nurse who was not the partner’s nurse. The Complainant asked when the best time would be to come in, and the nurse suggested the following morning at shift change.
- [7] The Complainant did go to the health centre the next morning at the suggested time. When they arrived, they were stopped by a security guard, who informed the Complainant that visiting hours did not begin until 3:00pm. The Complainant indicated that they had been told by a nurse it was okay, and they had been allowed in at the same time a few days before, but the security guard did not permit entry.
- [8] The Complainant says that the security guard “made a comment about” the partner’s medical condition. I have no further information about this

alleged comment. The Complainant replied that they would not discuss medical matters with the guard.

[9] The guard called in to the nursing staff, and the partner's nurse agreed to come out to speak to the Complainant.

[10] When the nurse arrived in the lobby, the Complainant explained the reason they were there at that time. I do not need to repeat all the back-and-forth of what was said. The upshot was that the nurse still did not permit entry for the Complainant to see their partner.

[11] The nurse said that the Complainant was agitated, and raised their voice. The security guard was close by, and may have stepped between them.

[12] The Complainant, the nurse and the security guard all agree that, at one or more times during this conversation, the nurse said something about the Complainant's partner's medical condition. The nurse says it was to try to ease a difficult situation and "appease" the Complainant. The Complainant says the nurse's words could be heard by the security guards (there was more than one) and other people present in the lobby.

[13] There was more back-and-forth. In the end, the nurse walked away and went back into the medical section of the building. Eventually, the Complainant left the building, after leaving their contact information with reception in the event of an emergency.

[14] The same day, the Complainant contacted the Commissioner's office to complain about the breach of their partner's privacy. The Complainant was also in touch with the patient relations office at the health centre as well as the nurse manager.

Law

[15] "Personal information" means any information about an identifiable individual, including information about their health or health care history: ATIPPA, s 2.

- [16] Personal information may be disclosed only in accordance with the access provisions (which do not apply here) or sections 48, 48.1 or 49: ATIPPA, s 47.
- [17] Section 48 contains a long list of circumstances in which disclosure of personal information is authorized. Only one might apply in this case. I will discuss it below.

Analysis

Was there a disclosure of personal information?

- [18] The Complainant alleges two breaches of their partner's privacy: first by the security guard, then by the nurse.
- [19] With respect to the security guard, the facts before me are thin. The Complainant alleges the guard said something about the partner's medical condition, but I do not know what. The guard does not address this aspect of the complaint in their written statement, and the nurse was not there. Without more, I am not prepared to make a finding that there was disclosure of personal information by the guard. The rest of this report is about the alleged disclosure by the nurse.
- [20] All three versions of the conversation agree on the point that there was some brief discussion, in the lobby, of the partner's condition. The Complainant says, and I accept as a fact, that the circumstances of the

communication were such that the discussion could be heard by others unconnected to the partner's medical care.

- [21] There was therefore a disclosure of the partner's personal information, namely their medical condition.

If there was disclosure, was it authorized?

- [22] The nurse says that the disclosure of the partner's medical condition was intended to cool a heated situation that had developed in the health centre's lobby.

- [23] The disclosure may have been well-intentioned, but Nunavut's privacy law requires more than good intentions. Disclosure is authorized only in the circumstances set out in s 48 (which can be interpreted in light of s 48.1) and s 49 (which does not apply here). Do any of the s 48 circumstances apply? In a word: no.

- [24] Most of s 48 is obviously inapplicable to these circumstances. The only one that is even arguably applicable is paragraph 48(q):

(q) when necessary to protect the mental or physical health or safety of any individual;

One might argue that disclosure of the partner's medical condition was intended to cool a heated situation, and therefore to protect the "safety" of those in the lobby.

- [25] I am not prepared to find that s 48(q) is broad enough to cover the circumstances of this case. The Complainant was agitated but there was no real risk to anyone's safety. Moreover, other options may have been available, such as speaking in a private room. I do not want to second-

guess the nurse too minutely, but disclosure of personal information was not “necessary” in the circumstances of this case.

If the disclosure was not authorized, what steps did the Department of Health take to respond to the disclosure and to prevent a recurrence?

- [26] The unauthorized disclosure that occurred in this case happened in the heat of the moment. The Complainant was understandably agitated. The nurse was understandably trying to cool the situation. The security guard was trying to do their job.
- [27] This situation does not strike me as being all that unusual or unforeseeable. It is to be expected that people in a hospital setting may be agitated. Patients and family members may be uncertain, upset and vulnerable. Third parties may be involved. Situations may escalate. That is why there are security guards in health centres, an unfortunate necessity about which the Minister of Health has recently spoken in the legislature.
- [28] Staff members, too, may be faced with difficult situations. It is to be expected that they will do what they can to de-escalate conflict. Sometimes they will have to react quickly, without time to reflect carefully. We should not be too quick to pick apart, at leisure and with hindsight, a decision made in an instant.
- [29] Nevertheless, privacy is privacy. The fact that tensions were raised does not mean privacy can be breached.
- [30] In this case, the nurse tried to de-escalate by speaking about the partner’s medical condition. It was done in a way that could be overheard by those in the vicinity. We know now that this was not a good choice. As it turned out, the situation was not de-escalated, as the nurse ended up having to walk away, leaving it to the security guards and the Complainant to bring the situation to a resolution. In addition to not working, the disclosure was a breach of the partner’s privacy. Anyone within hearing distance would know the partner’s medical condition.

- [31] I am satisfied, given the department's response to the complaint, that it understands and takes seriously the privacy breach. The department brought the matter to the attention of both health centre management and the private company that supplies security guards. In addition to contacting this office, the Complainant shared their concerns with the patient relations office and the nurse manager at the health centre. The people who need to know what happened that morning do know.
- [32] The department informs me that privacy training has been provided to health centre staff. Training is not a panacea, of course; the nurse involved in this case had received some privacy training about a month before the incident. The facts of this case might form a useful basis for a case study in future training.
- [33] I would also note that there are some situations in which a security guard must be present, for the safety of all, and it is inevitable that they will be able to hear a conversation between health centre staff and the patient or family member. The fact that a guard overhears a conversation is not automatically a privacy breach. Everything depends on the circumstances. These situations do underline how important it is that security guards be properly trained about privacy.

The issue of consent

- [34] An additional issue raised by the former Commissioner, in correspondence with the department, is how the nurse knew that the Complainant was authorized to receive medical information about their partner.
- [35] The Complainant says that they had their partner's consent.
- [36] The nurse does not address this issue in their statement, and the department says the nurse is no longer employed by the GN and so was not available to answer the question of consent.
- [37] The nurse's written statement does indicate they knew who the Complainant was. On an earlier day the Complainant had, to the nurse's

personal knowledge, been permitted into the medical area of the health centre while the partner was receiving treatment. It is very likely the issue of consent had been previously raised, but I have no information, one way or the other, on which to base a decision.

[38] In the circumstances, I make no finding on this aspect of the case, though the issue of consent is always critical when sharing health-care information. To address this issue, it is better for me to wait for another case in which the evidence is more fully fleshed out.

Conclusion

[39] There was a disclosure of personal information by the nurse, because the information was shared in circumstances in which it could easily be overheard by others.

[40] The disclosure was not authorized by law.

Recommendations

[41] I **recommend** the Department of Health review its privacy training materials to ensure they are consistent with my finding that there was, in the heat of the moment, an unauthorized disclosure of personal information.

Graham Steele

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