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AGENDA

• COVID-19 legal environment
• Best practices: Manage paper & electronic records at home & in the office
• Documenting the remote working relationship between employees & employers
• Reasonable security & privacy compliance measures for records created & managed remotely
• Text in green font is updated information from Nov 2020 to Mar 2022
COVID-19

- 2019+: Worldwide pandemic
- Virus evolving, no vaccine as yet
- Across Canada in emergency mode since March 2020 is 1st Wave
  - 2nd Wave (Oct 2020 – First vaccines began Dec 2020)
  - 3rd Wave (Apr 2021)
  - 4th Wave (July 2021)
  - 5th Wave (Nov 2021 - Omicron variant)
- Organizations already have 8+ 24+ months experience working remotely
COVID-19: LEGAL RISKS

- Emergency management
- Employment standards
- Human rights
- Liability & limitations
- Public health orders
- Privacy
- Workplace health & safety
COVID-19: LEGAL RISKS

- *Emergencies Act (Canada)* to regulate COVID-19 mandate protesters
COVID-19 BC LEGAL ENVIRONMENT

- Emergency Program Act
- Public Health Act
- Privacy
- Workers Compensation Act
COVID-19 LEGAL ENVIRONMENT
KEY BC CHANGES SINCE NOV 2020

  - Prevents protests blocking access to health care facilities & schools
- **COVID-19 Related Measures Act** (BC Reg. 204/2020 enacted in Dec 2020 but retroactive from Jan 1, 2020)
  - Immunity from being sued for damages from COVID-19 if comply with COVID-19 law
- **Public Service Act** (BC Reg. 284/2021 effective Nov 19, 2021)
  - Vaccination required to work in BC Public Service; if no vaccination, termination of employment with just cause
COVID-19 LEGAL ENVIRONMENT
KEY CANADIAN CHANGES SINCE NOV 2020

• Like BC, Can Fed Gov’s enacted laws to combat COVID-19 with tax relief, wage subsidies, legal limitation periods suspended
COVID-19 LEGAL ENVIRONMENT
KEY CANADIAN CHANGES SINCE NOV 2020

- **Emergencies Act (Canada)** (enacted 1988, first used Feb 2022)
  - Fed Gov’s extraordinary temporary legal powers to respond to national emergencies
  - Prohibition on travel & protesting
  - Require assistance, with compensation, to be given to government or police for essential services (e.g., towing vehicles)
  - For violators, tow their vehicles, freeze their bank accounts, cancel their vehicle insurance
  - For violators, arrest & sanctions ranging FROM
    - $500 fine +/- 6 months jail
  TO
    - $5,000 fine +/- 5 years jail
COVID-19: EMERGENCY PROGRAM ACT

- Manage emergencies/disasters in BC
- Outdated, in 2021 scheduled to be repealed & replaced BUT nothing happened in 2021 & in 2022 no news from government
  - > hard to track what is in force & what is repealed
COVID-19: PRIVACY

- **Freedom Of Information And Protection Of Privacy Act (FIPPA)**
  - BC government & public bodies
- **Personal Information Protection Act (PIPA)**
  - BC organizations
- Office of the Information & Privacy Commissioner for BC (OIPCBC) regulates both FIPPA & PIPA
COVID-19: PRIVACY SINCE NOV 2020

• Require public bodies subject to FIPPA to conduct Privacy Impact Assessments if personal information that is sensitive is disclosed to be stored outside of Canada (BC Reg. 294/2021, effective Nov 26, 2021)

• BC Reg 294/2021 repeals 17 year prohibition on disclosing, storing & allowing access to personal information outside of Canada

• No equivalent change to PIPA for organizations
COVID-19: PUBLIC HEALTH ACT

- Protect public from health hazards like COVID-19
- Public Health Officer has broad power to make orders
- 17 31 orders to date & range widely, examples:
  - Workplace safety (7 variations since 2020)
  - Restrictions on mink farming & eventually permanent ban by 2025
COVID-19: WORKERS COMPENSATION ACT

- Protect workers from workplace hazards like COVID-19
- WorkSafeBC has broad power to investigate & levy administrative penalties for non-compliance
- COVID-19 Safety Plans required for all employers & legal duties changed per BC PHO orders over time, except still no guidance for RIM
Best Practices: Manage Paper & Electronic Records At Home & In The Office

- Record formats
- Record types
- Publication requirements
- Create new primary for COVID-19 records?
RECORD FORMATS

• Remote Work & In-office:
  • Email
  • Business records (eg. MS Office)
  • Line-of-Business (LOB) software (eg. accounting, customer relations)
  • Network (LAN) & Virtual Private Network (VPN)
  • Web
  • Mobile (eg. text)
COVID-19 RECORD TYPES

- Contracts
- Correspondence
- Disaster recovery records
- Government orders (emergency, health, workplace safety)
- Grant records from government(s)
- Health records (employee testing & quarantine)

- Holds on records destruction
- Manuals, policies/procedures, toolkits, guidelines
- Meeting minutes
- Notices
- Reports & planning
- Workplace health & safety (reporting & claims for COVID-19)
PUBLICATION REQUIREMENTS

BC PHO order Workplace COVID-19 Safety Plans (May 14, 2020):

1. Post WorkSafeBC COVID-19 Safety Plan at organization’s website (if there is one)
2. Post COVID-19 Safety Plan at workplace so it is “readily available”
3. Provide copy to BC health officer or WorkSafeBC officer upon request
PUBLICATION REQUIREMENTS

• BC PHO notice rescinding Workplace COVID-19 Safety Plans replacing them with Communicable Disease Plans (effective July 1, 2021)

• BC PHO order re-activating Workplace COVID-19 Safety Plans due to Omicron variant of concern (effective Feb 16, 2022)
CREATE NEW PRIMARY FOR COVID-19 RECORDS?

- No legal requirement to create new primary
- My practice, if a new statute that might set legal retentions, create a new primary:
  
  Eg: 0582 INFORMATION AND PRIVACY– CANADA’S ANTI-SPAM LAW (CASL)

- COVID-19 Related Measures Act only re-enacts prior emergency and health orders, so, for now I would use existing primaries in your classification plan & retention schedule
...BUT HOW TO DEAL WITH OVERLAP WITH COVID-19 RECORDS?*

• Example: WorkSafeBC COVID-19 Safety Plans could be classified and filed in:
  • 7130-03 Emergency Measures – General – Plans
  • 2520 Accidents & Injuries

*LGMA Classification Plan & Retention Schedule (Fifth Edition, 2017)
• Consider expanding scope note in classification plan & retention schedule to track COVID-19 response & add a new secondary number for COVID-19

• Consider using “see also” references to COVID-19 records in classification plan & retention schedule to track COVID-19 records

• Consider adding COVID-19 chapter in RIM Manual, COVID-19 information on your organization’s intranet or SharePoint libraries
DON’T RE-INVENT THE WHEEL: USE EXISTING TOOLS

• Appropriate Use of Technology Policy
• Bring Your Own Device (BYOD) Policy
• Conduct for Staff and Management Standards
• Guides on using office software (Microsoft Office OneNote, SharePoint)
• Information Security Policy
• Mobile Devices Policy
• Privacy Commissioner’s guidance on protecting personal information away from the office
• Social Media Guidelines
DON’T RE-INVENT THE WHEEL: PRIVACY EXAMPLE

- OIPC CBC Securing personal information: A self-assessment for public bodies and organizations (October 2020):
  - Checklist with 100+ items
  - Records management items
  - Applies to remote records & in-office records
- OIPC CBC checklist can be used by organizations to prove privacy compliance
- Privacy and the BC Vaccine Card guidance document (Sept 2021)
USE STANDARDS

- CAN/CGSB 72.34-2017 Electronic Records as Documentary Evidence free
- ISO.ORG COVID-19 standards temporarily free continues as of Mar 2022:

- ARMA International:
  - Information Governance (IG) (iGBOK)
  - Generally Accepted Recordkeeping Principles®
  - IG Maturity Model
WORKSAFEBC COVID-19 SAFETY PLANS

- Reduce legal liability & written proof of legal compliance
- On WorkSafeBC website, use guides for specific industries, like Offices
- Update your plan often since changes due to COVID-19 can occur frequently
- Make your plan accessible to authorities in event of audit, investigation or litigation
WORKSAFEBC: ZERO GUIDANCE FOR RIM
ADD YOUR OWN EXAMPLES

**Elimination**: Scan paper records from office & then email to remote worker> worker does not need to personally attend at office

**Engineering controls**: Employer provide laptops/smart phones to remote workers

**Administrative controls**: At the office, use signage and wayfinding (direct walking traffic in office to ensure physical distancing)

**PPE**: Use only PPE from Government of BC list to ensure workers onsite are protected & organization protected from liability
DOCUMENT REMOTE WORK RELATIONSHIP

Existing duties apply to remote worker:

- Records are property of employer & abide by RIM policies/procedures
- Employment terms & policies
- Workplace safety
- Ensure confidentiality & privacy
New duties remote worker can agree to:

• Information and physical security at remote office at home

• Employer-supplied laptop/smartphone OR Document worker BYOD arrangement

• Ensure remote worker’s homeowner/tenants insurance allows remote work

• Employer compensates worker for use of worker’s space at home, Internet, electricity
Examples of commonly used online meeting platforms:

- Go to Meeting
- Google Meet
- Skype
- Teams
- Zoom

If public body, FIPPA requires Privacy Impact Assessment to authorize use of online meeting cloud providers if sensitive personal information is disclosed to be stored outside of Canada (FIPPA regulation effective Nov 26, 2021)
BEFORE THE MEETING: SECURITY BEST PRACTICES FOR THE REMOTE WORKER

- Updated anti-virus software
- Secure WiFi connection
- Strong unique passwords for computers/smartphones & web accounts
- Authentication to access organization’s computers
- Locked cabinets for paper records & secure disposition of paper records
- Backed-up home computer systems
- Reports to organization any suspicious computer activity
- Training & acknowledgement of security policies
BEFORE THE MEETING: SECURITY BEST PRACTICES FOR THE MEETING

- Online meeting platforms often add new features, review platform’s website to apply any new security features added to platform when platform adds new user features.
- Ensure meeting has meeting ID & password-restricted access controls to ensure only invited attendees attend.
- Permit attendees only to attend when host joins.
- Enable waiting room software feature.
- Mute attendees.
- Limit screen sharing.
BEFORE THE MEETING

• Online meeting platforms are great for communication/collaboration but are NOT recordkeeping software

• Don’t use online meeting platforms for recordkeeping
BEFORE THE MEETING: RECORDS BEST PRACTICES

- Record of the meeting could be an official record & record responsive to a privacy request, **may need to disclose Privacy Impact Assessment to justify storage outside Canada (FIPPA regulation effective Nov 26, 2021)**
- Do we need to record?
  - ... to document a business decision?
  - ...to comply with the law?
If yes to any of the above, it is a record, record the meeting
If not, it is not a record, don’t record
- If going to record, in your team decide:
  - Who records the meeting?
  - Who manages the record of the meeting?
RECORDING THE MEETING: RECORDS BEST PRACTICES

• Record the meeting, employ security features
• Once meeting ended, most online meeting platforms will save & process the recording
• Team member takes saved record & saves it to a temporary site on team member’s computer
• Then team member saves the record as an official record into the organization’s recordkeeping system (applies naming convention and/or metadata) via VPN for example
• The record on the online meeting platform is not an official record, but transitory
• Then member deletes it as soon as possible from platform & temporary site on member’s computer, same day is a best practice
BC LIMITATIONS SUSPENDED

• Example: Running of limitation periods suspended retroactive to March 26, 2020 (BC Reg. 199/2020) and... restarts? Repealed March 25, 2021 (BC Reg. 292/2020) so limitation periods start to run again from March 25, 2021

• Risk: Destroying needed records in the event of claim suspended by limitations order

Best Practice: (1) Identify what records are subject to a limitation period (2) Suspend normal destruction for these records (3) Monitor limitation orders regularly & when they change then (4) Seek legal advice on when limitation period restarts & then ends for your specific legal claims/actions and their records
LEVERAGE TECHNOLOGY: SCANNING

- Best practice is to formalize a scanning program using standards:
  - CAN/CGSB 72.34-2017 Electronic Records as Documentary Evidence
  - ARMA International’s Generally Accepted Recordkeeping Principles® (Principles®)
LEVERAGE TECHNOLOGY: INFORMATION SECURITY CONTROLS (ISO 27002:2022)


• 27002:2022 organized around 4 controls:
  1. Organizational
  2. People
  3. Physical
  4. Technological

• Remote work is in People Controls at s. 6.7
6.7 REMOTE WORKING (ISO 27002:2022)

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THINK OF ARCHIVES NOW

Retain possible archival records that document your COVID-19 response to avoid record loss:

- Artwork
- Diaries
- Journals
- Notices (social media, websites, press releases)
- Photos
- Posters
- Reports documenting remote work procedures
- Screen captures
- Videos, GIFs
LESSONS LEARNED TO DATE

• COVID-19 response changes quickly
  • Monitor these websites regularly:
    • BC CDC
    • WorkSafeBC
    • BC government news
• Expect the unexpected
• Don’t let your guard down
QUESTIONS?

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