Disclosure of An Applicant's Personal Information For Hearings Under The *Mandatory Blood Testing Act*

1. Purpose

1.1 This Policy Guideline outlines the procedure and rationale for the Consent and Capacity Board ("the Board") disclosing part of the information included in an Applicant Report when conducting a hearing under the *Mandatory Blood Testing Act, 2006* (*MBTA*).

2. Legislation

2.1 Section 4 of Ontario Regulation 449/07 made under the *MBTA* provides that both a Physician and an Applicant Report be submitted when making an application to a medical officer of health to have the blood sample of another person analysed if the applicant came into contact with a bodily substance of the other person in the circumstances prescribed by the legislation. The Applicant Report must include the applicant's consent to the release of his or her personal information and personal health information relating to the application to the Board in the event that the application is referred to the Board by a medical officer of health.

2.2 A medical officer of health submits the Physician and Applicant Reports to the Board when referring an application to the Board under section 3(3) of the *MBTA*.

2.3 The Physician and Applicant Reports are the only documents the Board receives containing material details of the occurrence leading to the allegation that the applicant came into contact with the bodily substance of the other person in the circumstances.

2.4 Section 4(1) of the *MBTA* provides that the Board must hold a hearing to determine whether the respondent should be ordered to provide a blood sample for analysis under section 5(1) of the *Act*.

2.5 The Board must commence and conclude a hearing within seven days after it receives the referral of the application under section 4(3) of the *MBTA*.

2.6 The applicant and the respondent are parties to the hearing according to section 4(2) of the *MBTA*.

2.7 The Board conducts electronic hearings under the *MBTA* in accordance with the *Statutory Powers Procedure Act, 1990* and the Board's *Rules of Practice*.

2.8 The Board is an "institution" under the *Freedom of Information and Protection of Privacy Act, 1990 (FIPPA).* Section 42(1)(c) of *FIPPA* allows an "institution" to disclose personal information "for the purpose for which it was obtained or compiled or for a consistent purpose". Section 43 of *FIPPA* defines a "consistent purpose" under section 42(1)(c) as "information collected directly from the individual to who the information relates" for which the "individual might reasonably have expected such a use or disclosure".

3. General Principles

3.1 Procedural fairness and natural justice require that parties before adjudicative tribunals have the right to review the information a tribunal will be relying on to make a decision. This principle is even more critical where the consequences of the tribunal's decision will impact an individual's fundamental right, as is the case with a respondent for whom the Board issues an order to provide a blood sample under the *MBTA*.

3.2 The information in the Applicant and Physician Reports which is relevant to the determination the Board must make under the *MBTA* is disclosed at the hearing in any event. Thus, non-disclosure of this information may, at best, delay the commencement of a hearing in order to allow the respondent to review it, and at worst, may constitute a breach of principles of procedural fairness and natural justice.

3.3 Non-disclosure of the information in the Applicant and Physician Reports which is relevant to the decision the Board must make will unnecessarily require the applicant to recount what sometimes may be traumatic circumstances leading to the alleged contact with bodily substance of the respondent.

3.4 The Notice of Collection in the Applicant Report states that the "collection, use and disclosure of the personal information on this form is for consideration of an application under the [*MBTA*], for an order requiring a respondent to give a blood sample…". Based on sections 42(1)(c) and 43 of *FIPPA*, an applicant who consents to the release of his or her personal information and personal health information relating to the application to the Board in the event that the application is referred to the Board might reasonably expect the Board to at least disclose to the Respondent information in the Applicant Report which is relevant to the determination the Board must

make under section 5 of the *MBTA*. This interpretation is consistent with the Board's duty to "act consistently with the *Charter* and its values when exercising their statutory functions."[1]

3.5 The Board can sever sections of the Applicant Report that are irrelevant to the determination the Board needs to make under the *MBTA*, in order to minimize any unnecessary disclosure of personal information and properly balance the applicant's right to privacy and the respondent's right to know the case she or he must meet.

4. Process

4.1 The Board will provide to the respondent a copy of the Applicant's Report in advance of the hearing or as soon as practicable.

4.2 The Board will blank out Part A in the copy of the Applicant Report provided to the respondent.

4.3 The Physician Report and the information contained in Part A of the Applicant Report will not be disclosed to the respondent, unless ordered otherwise by the Board.

5. Effective Date

5.1 This Policy Guideline is effective December 15, 2010.

[1] *R. v. Conway*, 2010 SCC 22 (CanLII); *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038.