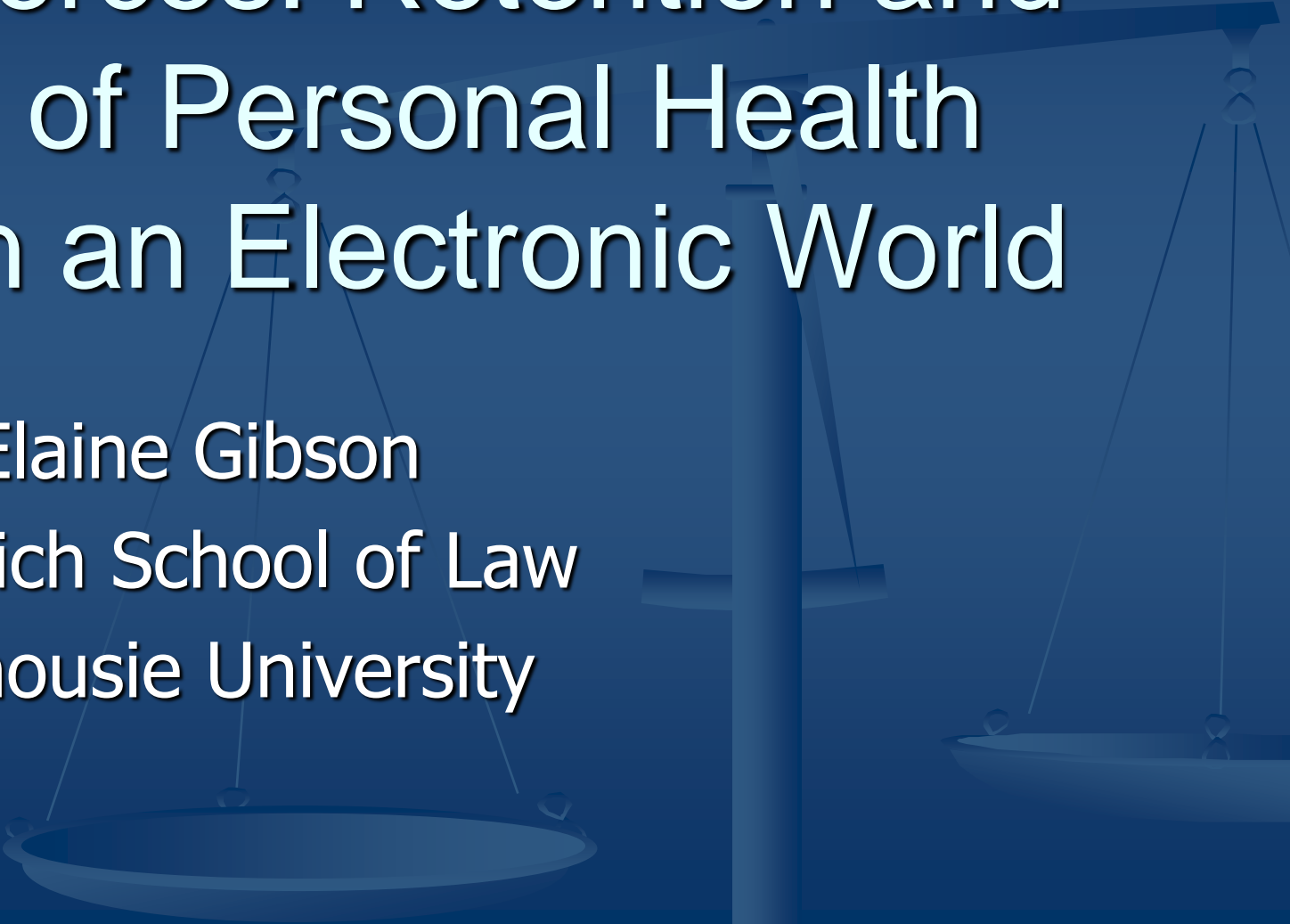



# Competing Forces: Retention and Destruction of Personal Health Information in an Electronic World



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# Overview

- Parameters
  - Competing theories: Why retention? Why destruction?
  - Who decides?
  - Overview of laws and policies in Canada
  - Digitization of health information - impact
  - Theoretical framework
  - Suggestions
- 

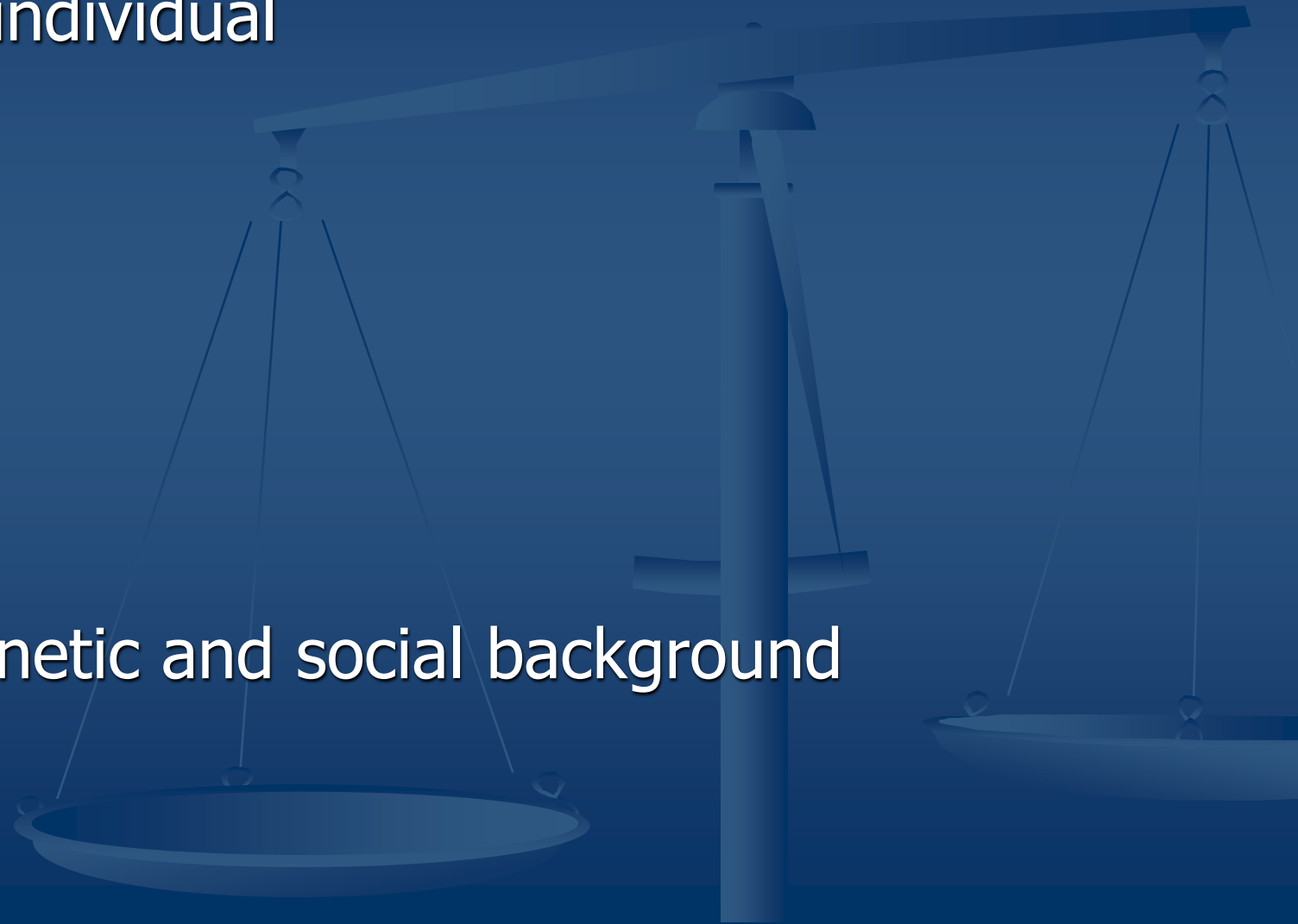
# Parameters

- Personal health information
  - May include de-identified
  - Not anonymized
  - Not aggregate
- Includes tissue samples, blood
- Covering all health professions



# Why Retain Information?

- Treatment and care of individual
- Billing
- Quality assurance
- Research
- Public health
- Litigation
- Economic value
- Relatives' interest in genetic and social background
- Archival significance



# Why Destroy Information?

- Space limitations
- Privacy and confidentiality
- 'Right to be let alone'
- 'Right to be forgotten'



# Sources of Requirements

- Information legislation
- Professions legislation
  - College standards
- Hospitals legislation
- Limitation periods legislation
- Professional organization policies



# Information Legislation - PIPEDA

- Commercial purposes only (interpreted as including physicians and other HCPs but not hospitals)
- 4.5.2 – should develop min. and max. retention periods
- 4.5.3 – no longer required to fulfil identified purposes should be destroyed, erased, or made anonymous
  - organizations shall develop guidelines for destruction

# Information Legislation - Provincial

## Retention

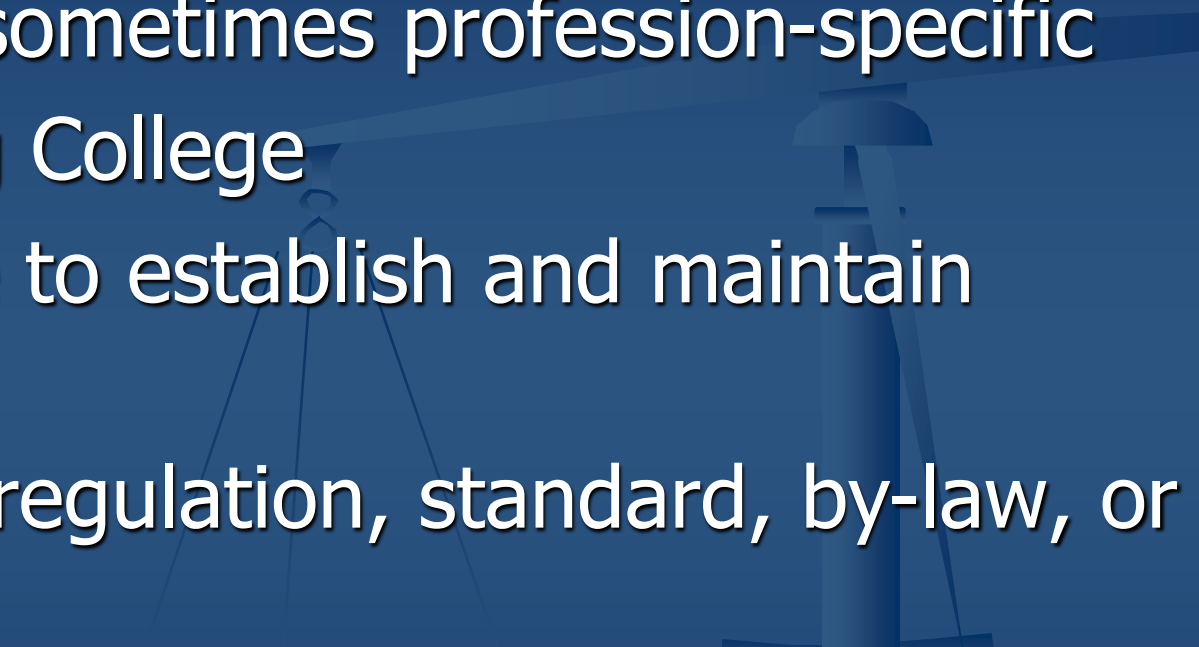
- Public body legislation: At least one year if addressed
- Most legislation requires development of policies
- Primarily re security

## Destruction

- BC PIPA and NS PHIA: Must be destroyed or de-identified once purpose met (and, in BC, if not needed for legal or business purposes)
- Quebec : Public bodies must destroy when purposes achieved
- Remainder of jurisdictions: Not addressed or manner of destruction only



# Overview – Professions Legislation

- Sometimes omnibus, sometimes profession-specific
  - Creates self-governing College
  - Empowers the College to establish and maintain standards of practice
  - Can be referred to as regulation, standard, by-law, or guideline
- 

# Standards of College

## Retention (Physicians)

- BC: 16 years plus age of majority
- Newfoundland/Labrador: 10 years or until age 21 or 10 years after date last seen
- Quebec: 5 years
- Sask: 6 years plus 2 years past age of majority or 6 years after date last seen

## Destruction (Physicians)

- BC (& most provinces): No requirement other than manner of destruction
- Newfoundland/Labrador: Must be destroyed
- Nova Scotia: Should be destroyed

# Hospitals Legislation

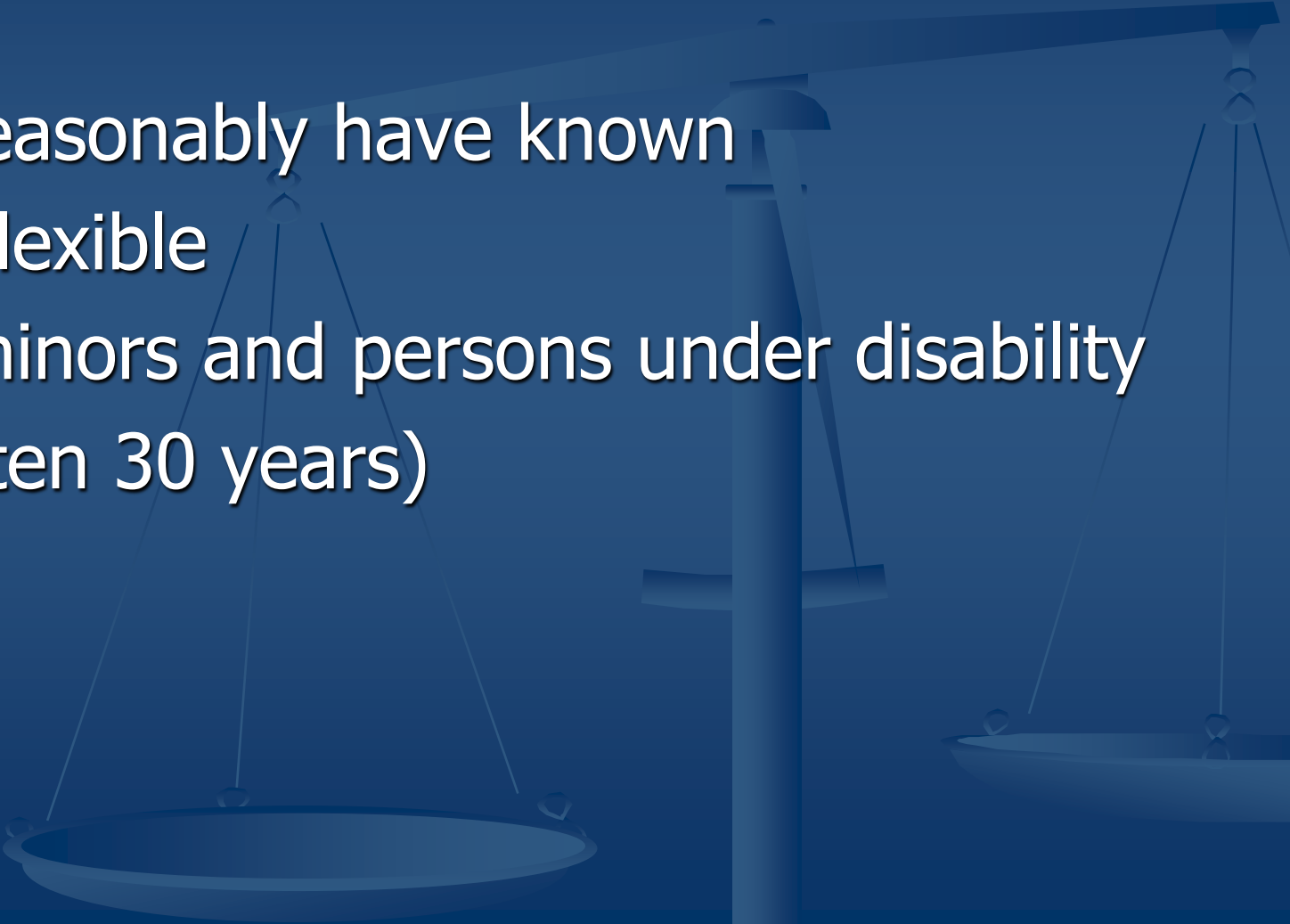
## Retention

- New Brunswick: 6 years or until patient turns 21; electronic or microfilmed copy 30 years
- Ontario: 10 years plus age of majority
- PEI: 20 years plus age of majority; 5 years after death

## Destruction

- Not addressed or permissive only in most provinces
- Ontario and PEI: must develop destruction policy
- Quebec: Information banks only – must destroy 5 years after stated use ends

# Limitation Periods Legislation

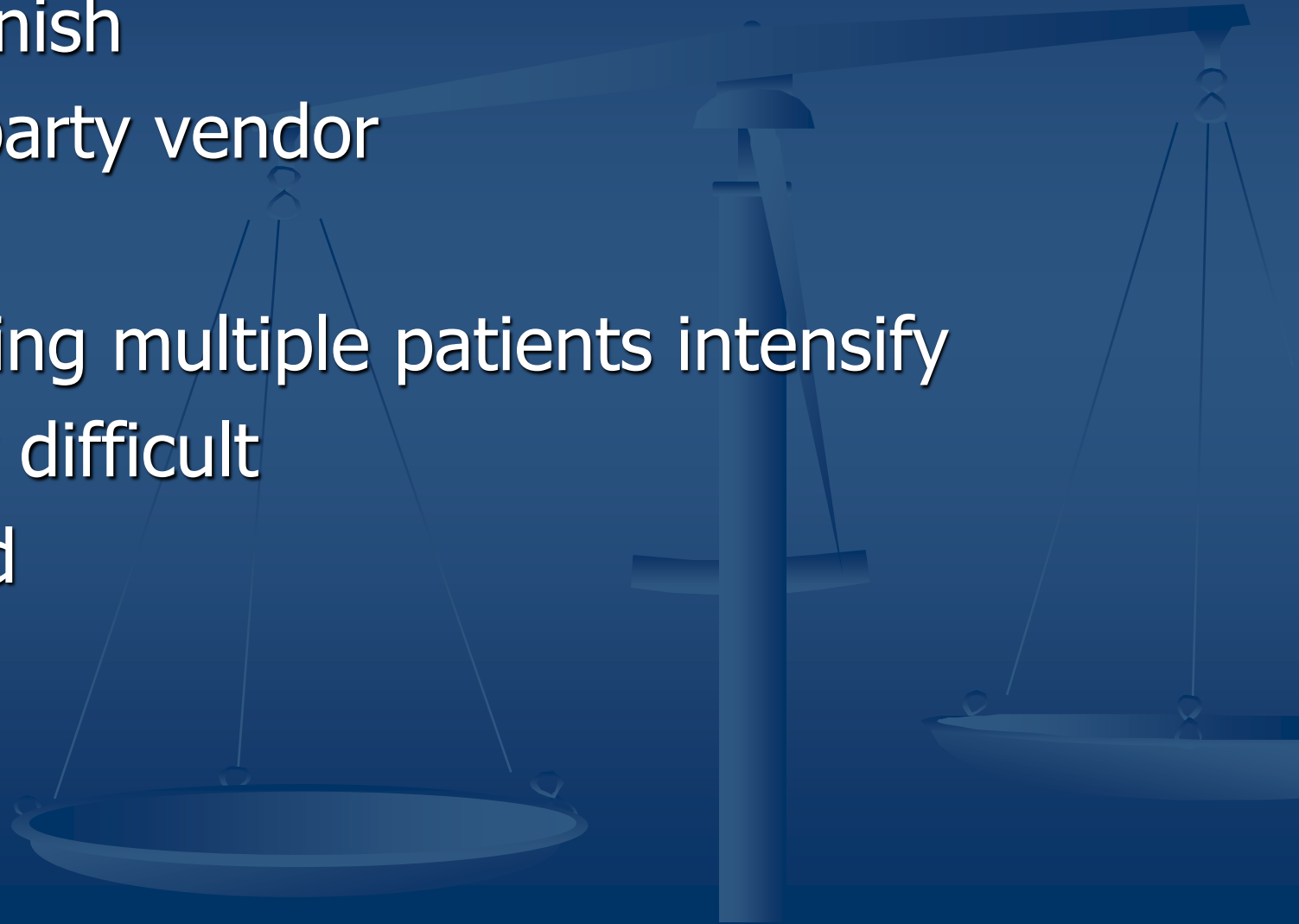
- 2 years most basic
  - When plaintiff could reasonably have known
  - In some jurisdictions flexible
  - Clock suspended for minors and persons under disability
  - Ultimate limitation (often 30 years)
- 

# Guidance from Professional Organizations

- Canadian Medical Association: Defers to Colleges
- Canadian Medical Protective Association:
  - recommends at least 10 years' retention; for minors 10 years from age of majority
  - once retention period expired, records should be destroyed in manner that maintains confidentiality
  - remainder is re manner of destruction

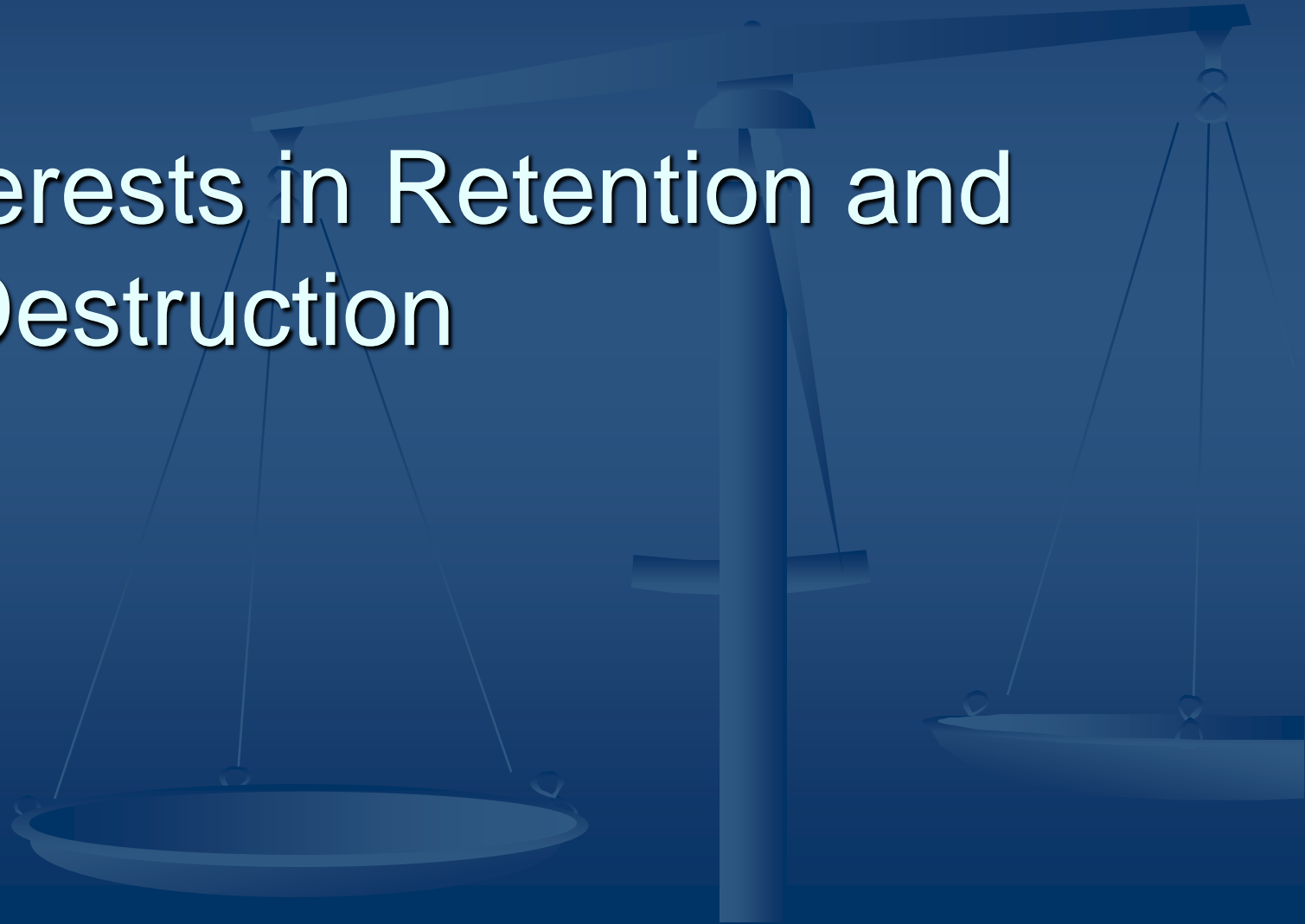
# Digitization of Health Information

- Space limitations diminish
- Info often with third party vendor
- Multiple copies exist
- Risks of breach involving multiple patients intensify
- Destruction extremely difficult
- Value highly enhanced



The Challenge:

Balancing Interests in Retention and  
Destruction



# Theoretical Framework

- Liberalism
- Communitarianism
- Relational Theory
- Privacy as a Social Good





# Proposed Directions

A faint, stylized illustration of a balance scale is visible in the background. The scale is positioned on the right side of the frame, with its horizontal beam extending towards the left. The left pan is lower than the right pan, suggesting it is heavier. The scale is rendered in a light blue color that blends with the overall dark blue background.