Information and Privacy Commissioner of Ontario

RECOMMENDATIONS FOR AMENDMENTS TO THE *PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004*

AMEND THE DEFINITION OF "HEALTH CARE" TO EXCLUDE FITNESS TO WORK ASSESSMENTS AND INDEPENDENT MEDICAL EVALUATIONS

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
1	**Recommendation** It is recommended that the *Personal Health Information Protection Act, 2004* ("the *Act*") be amended to expressly state that fitness to work assessments and independent medical evaluations do not fall within the definition of "health care" in section 2 of the *Act*, thereby clarifying that persons or organizations conducting such assessments and evaluations are not health information custodians for purposes of the *Act*. **Rationale** Clarifying that fitness to work assessments and independent medical evaluations are not "done for a health-related purpose" and therefore do not fall within the definition of "health care" in section 2 of the *Act*, is consistent with the decision of the Information and Privacy Commissioner/Ontario in HC-050014-1, with the policy behind subsection 20(2) of the *Act*, with the intention of the Ministry of Health and Long-Term Care in drafting the definition of "health care" and with the decision of the Federal Court of Appeal in *Rousseau v. Canada (Privacy Commissioner)*, [2008] F.C.J. No. 151. In HC-050014-1, which involved a complaint by an employee of a municipality that a registered nurse employed by that municipality disclosed information in contravention of the *Act* while providing services to accommodate the employee's return to work, the Information and Privacy Commissioner/Ontario held that the registered nurse was not a health information custodian for purposes of the *Act* in providing these services. The Information and Privacy Commissioner/Ontario stated that the services were "not provided for a health-related purpose, but for the purpose of assisting employees to return to work," and therefore the registered nurse "could not be said to be providing health care in this capacity."	Section 2 of the *Act* be amended as follows: "health care" means any observation, examination, assessment, care, service or procedure that is done ***primarily*** for a health-related purpose and that, (a) is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition, (b) is carried out or provided to prevent disease or injury or to promote health, or (c) is carried out or provided as part of palliative care, and includes, (d) the compounding, dispensing or selling of a drug, a device, equipment or any other item to an individual, or for the use of an individual, pursuant to a prescription, and (e) a community service that is described in subsection 2 (3) of the *Long- Term Care Act, 1994* and provided by a service provider within the meaning of that Act, ***but excludes,*** ***(f) any observation, examination, assessment, care, service or procedure done***

	Clarifying that fitness to work assessments and independent medical evaluations are not "done for a health-related purpose" and therefore do not constitute "health care" within the meaning of section 2 of the *Act*, is also consistent with the policy rationale behind subsection 20(2) of the *Act*. Subsection 20(2) permits certain health information custodians, such as health care practitioners who collect personal health information from the individual or another health information custodian, to assume the individual's implied consent to collect, use and disclose that information for the purpose of providing health care unless the individual has expressly withheld or withdrawn consent. The policy behind this subsection is to facilitate collections, uses and disclosures of personal health information in the health system that individuals generally expect to occur without express consent. Interpreting that health professionals conducting fitness to work assessments on behalf of an employer or conducting independent medical evaluations on behalf of a third party such as an insurer, are health care practitioners and are providing "health care" within the meaning of section 2 of the *Act*, would permit a health information custodian to disclose personal health information to these health professionals on the basis of assumed implied consent without requiring the express consent of the individual. This is contrary to the policy behind subsection 20(2) of the *Act* because it is not reasonable to assume that an individual impliedly consents to the disclosure of his or her personal health information to a health professional retained by a third party, such as an insurer. Clarifying that fitness to work assessments and independent medical evaluations are not "health care" as defined in section 2 of the *Act*, is also consistent with statements by the Ministry of Health and Long -Term Care in the document entitled *Personal Health Information Protection Act, 2004: An Overview For Health Information Custodians*. In this document, the Ministry of Health and Long-Term Care states that "a nurse advising an employer with respect to back to work requirements" and "a physician employed by an insurance company reviewing submitted medical claims" are not health information custodians given, when acting in such a capacity, they are not providing health care as defined in the *Act*. Finally, interpreting that independent medical evaluations are not "health care" is also consistent with the decision of the Federal Court of Appeal in *Rousseau v. Canada (Privacy Commissioner)* which stated that it is common ground that the *Act* does not apply to doctors performing independent medical evaluations.	***for the sole purpose of determining an individual's fitness to work, and*** ***(g) any observation, examination, assessment, care, service or procedure done solely at the request of or on behalf of a third party, including, without limiting the generality of the foregoing, an educational institution, employer, insurer, solicitor or Workplace Safety and Insurance Board;***

CONTINUITY OF RIGHTS AND OBLIGATIONS UPON DEATH, BANKRUPTCY, INSOLVENCY OR CHANGES IN PRACTICE

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
2	**Recommendation** It is recommended that section 3 of the *Act* be amended to require the estate trustee or the person who has assumed responsibility for the administration of the estate of a deceased health information custodian, to provide notice to the individuals to whom the records of personal health information relate, that the health information custodian has died and setting out: - Where individuals may make a written request for access to records of personal health information held by the deceased health information custodian; and - The retention period for the records of personal health information. **Rationale** Subsection 3(12) of the *Act* explicitly states that the estate trustee or the person who has assumed responsibility for the administration of the estate of a deceased health information custodian, if the estate does not have an estate trustee, is deemed to be a health information custodian until custody and control of the records of personal health information passes to another person legally authorized to hold the records. However, based on the experiences of the Information and Privacy Commissioner/Ontario, individuals are either not aware of the death of the health information custodian or are aware of the death but are not aware of the identity of the estate trustee or the person who assumed responsibility for administration of the estate. As a result, individuals do not have the information necessary to exercise the right of access to their records of personal health information in order to ensure that these records are available for their on-going health care. The amendment requested provides individuals with a meaningful right of access to their records of personal health information in the custody or control of the estate trustee or the person who assumed responsibility for the administration of the estate of a deceased health information custodian.	Section 3 of the *Act* be amended to add the following subsection: ***3 (13) The estate trustee of the deceased health information custodian or the person who has assumed responsibility for the administration of the deceased health information custodian's estate, if the estate does not have an estate trustee, shall at the first reasonable opportunity following the death of the health information custodian, post or make readily available a notice where it is likely to come to the attention of the individuals to whom the records of personal health information relate or provide the individuals with a notice that,*** ***(a) states that the health information custodian has died,*** ***(b) sets out where individuals may make a written request under section 53 for access to records of personal health information held by the deceased health information custodian, and*** ***(c) sets out how long the records of personal health information will be retained.***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
3	**Recommendation** It is recommended that section 13 of the *Act* be amended to require a health information custodian that is ceasing to operate or ceasing to practice for an indefinite or extended period of time, to provide notice to the individuals to whom the records of personal health information relate, that the health information custodian is ceasing to operate or ceasing to practice and setting out: - Where individuals may make a written request for access to records of personal health information; and - The retention period for the records of personal health information. **Rationale** Individuals have a statutory right of access to their records of personal health information, subject to limited exceptions set out in the *Act*. In order to meaningfully exercise this right, individuals must be advised that the health information custodian has ceased to operate or ceased to practice and must be advised where they may make a request for access to their records of personal health information in order to ensure that these records are available for their on-going health care.	Section 13 of the *Act* be amended to add the following subsection: ***13 (3) Where a health information custodian is ceasing to operate or ceasing to practice for an indefinite or extended period of time, the health information custodian shall, before ceasing to operate or ceasing to practice for an indefinite or extended period of time, or if that is not reasonably possible, at the first reasonable opportunity thereafter, post or make readily available a notice where it is likely to come to the attention of the individuals to whom the records of personal health information relate or provide the individuals with a notice that,*** ***(a) states that the health information custodian is ceasing to operate or ceasing to practice for an indefinite or extended period of time,*** ***(b) sets out where individuals may make a written request under section 53 for access to records of personal health information, and*** ***(c) sets out how long the records of personal health information will be retained.***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
4	**Recommendation** It is recommended that section 3 of Regulation 329/04 to the *Act* be amended to require every person who obtains complete custody or control of records of personal health information as a result of the bankruptcy or insolvency of a health information custodian, to provide notice to the individuals to whom the records of personal health information relate, that the health information custodian is bankrupt or insolvent and setting out: - Where individuals may make a written request for access to records of personal health information; and - The retention period for the records of personal health information. **Rationale** Subsection 3(7) of Regulation 329/04 to the *Act* explicitly states that a person who, as a result of the bankruptcy or insolvency of a health information custodian, obtains complete custody or control of records of personal health information held by the health information custodian, is the health information custodian with respect to those records of personal health information. However, once again, based on the experiences of the Information and Privacy Commissioner/ Ontario, individuals are either not aware of the bankruptcy or insolvency of the health information custodian or are aware of the bankruptcy or insolvency but are not aware of the identity of the person who obtained complete custody or control of the records of personal health information. As a result, individuals do not have the information necessary to exercise the right to access their records of personal health information in order to ensure that these records are available for their on-going health care. The amendment requested provides individuals with a meaningful right of access to their records of personal health information in the custody or control of a person who obtains complete custody or control of the records as a result of the bankruptcy or insolvency of the health information custodian.	Section 3 of Regulation 329/04 to the *Act* be amended to add the following subsection: ***3 (8) Every person who, as a result of the bankruptcy or insolvency of a health information custodian, obtains complete custody or control of records of personal health information held by the health information custodian, shall at the first reasonable opportunity following the bankruptcy or insolvency, post or make readily available a notice where it is likely to come to the attention of the individuals to whom the records of personal health information relate or provide the individuals with a notice that,*** ***(a) states that the health information custodian is bankrupt or insolvent,*** ***(b) sets out where individuals may make a written request under section 53 for access to records of personal health information, and*** ***(c) sets out how long the records of personal health information will be retained.***

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5	**Recommendation** It is recommended that a regulation be made prescribing a retention period for records of personal health information in the custody or control of health information custodians that are not subject to a retention period in any other statute or regulation. It is further recommended that this retention period be at least ten years after the date of the last entry in the record of personal health information. **Rationale** Subsection 13(1) of the *Act* requires a health information custodian to ensure that records of personal health information in its custody or control are retained, transferred and disposed of in a secure manner and in accordance with prescribed requirements. To date, no requirements have been prescribed mandating the retention period for records of personal health information. Subsection 13(2) of the *Act* only requires a health information custodian with custody or control of personal health information that is the subject of a request for access under section 53 of the *Act* to retain the personal health information for as long as necessary to allow the individual to exhaust any recourse under the *Act* with respect to the request for access. The issue that the Information and Privacy Commissioner/Ontario has come across is that health information custodians that are not subject to a retention period in another statute or regulation or health information custodians, such as estate trustees and trustees in bankruptcy who assume complete custody or control of records of personal health information, can simply dispose of records of personal health information in order to avoid costs associated with retaining these records for a prescribed period of time. In these circumstances, the rights of an undetermined number of individuals to access their records of personal health information are forever extinguished upon destruction of these records, particularly where the records are required for the ongoing provision of health care.	Regulation 329/04 to the *Act* be amended to add the following subsection: ***26. For the purposes of subsection 13(1) of the Act, a health information custodian that has custody or control of records of personal health information and that is not subject to any other law governing the retention of these records of personal health information, shall retain the records for at least ten years after the date of the last entry in the record of personal health information, but in any event shall retain personal health information that is the subject of a request for access under section 53 of the Act for as long as necessary to allow the individual to exhaust any recourse under the Act that he or she may have with respect to the request.***

POWERS OF THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
6	**Recommendation** It is recommended that sections 7 and 60 of the *Act* be amended to clarify that the Information and Privacy Commissioner/Ontario may demand the production of, inquire into, require evidence of or inspect any books, records, information or other documents relevant to the subject matter of the review despite any legal privilege that restricts disclosure, including solicitor-client privilege, and despite the fact that a record contains quality of care information within the meaning of the *Quality of Care Information Protection Act, 2004*. It is further recommended that section 68 of the *Act* be amended to make explicit that the Information and Privacy Commissioner/Ontario will not disclose any information that is subject to solicitor-client privilege or claimed to be subject to solicitor-client privilege unless it has been finally determined by the Information and Privacy Commissioner/Ontario or a court of competent jurisdiction, that the information is not subject to solicitor-client privilege. **Rationale** The Information and Privacy Commissioner/Ontario is an independent officer of the Legislature who is responsible for providing independent review and adjudication of complaints under the *Act*, including those related to access to records of personal health information. The Information and Privacy Commissioner/Ontario is responsible for making binding determinations on complaints related to access to records of personal health information, subject only to judicial review. This function requires the Information and Privacy Commissioner/Ontario to review and determine the proper application of various exemptions and exclusions from the statutory right of access to records of personal health information, including whether the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or information or whether the record contains quality of care information within the meaning of the *Quality of Care Information Protection Act, 2004*.	Sections 7, 60 and 68 of the *Act* be amended to add the following subsections: ***7(6) Despite subsection 7(4), subsection 60(22) of this Act prevails in the event of a conflict with a provision of the Quality of Care Information Protection Act, 2004.*** ***60(22) In conducting a review under section 57 or 58, the Commissioner may demand the production of, and inquire into, require evidence of, or inspect any books, records, information or other documents relevant to the subject matter of the review or copies of extracts from the books, records, information or other documents,*** ***(a) despite any other provision in this Act including but not limited to subsection 7(4) and subsection 9(2);*** ***(b) despite any other provision in any other Act; and*** ***(c) despite any privilege, including solicitor-client privilege.*** ***68(3.1) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose, pursuant to subsection 68(3) of this Act, any information that is subject to solicitor-client privilege or that is claimed to be subject to solicitor-client privilege that comes to their knowledge in the course of exercising their functions under this Act until it is finally determined by the Commissioner or a court of competent jurisdiction that the information is not subject to solicitor-client privilege.***

	As an obvious component of this mandate the Information and Privacy Commissioner/Ontario may, on occasion, be required to demand the production of, inquire into, require evidence of, or inspect any books, records, information or other documents relevant to the determination of whether an exemption or exclusion to the statutory right of access exists, including whether the record or the information in the record is subject to a legal privilege or whether the record contains quality of care information within the meaning of the *Quality of Care Information Protection Act, 2004*. Requiring production of, inquiring into, requiring evidence of or inspecting books, records, information and other documents to ensure that they are appropriately subject to a legal privilege, or to ensure that they do in fact contain quality of care information within the meaning of the *Quality of Care Information Protection Act, 2004*, would ensure that persons who are the subject of a review under the *Act* do not inappropriately assert these exemptions or exclusions from the statutory right of access by ensuring independent verification of the exemptions or exclusions from the right of access. The amendment requested clarifies this obvious component of the mandate of the Information and Privacy Commissioner/Ontario and is consistent with two of the stated purposes of the *Act*, to provide individuals with a right of access to their records of personal health information subject to limited and specific exceptions and to provide for independent review and resolution of complaints, including complaints related to access to records of personal health information. It is also consistent with subsection 52(4) of the *Freedom of Information and Protection of Privacy Act* which states: 52(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation. and with subsection 41(4) of the *Municipal Freedom of Information and Protection of Privacy Act* which states: 41(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.	

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7	**Recommendation** It is recommended that subsection 57(2) of the *Act*, which contains limitations on the uses that can be made of information disclosed in the course of trying to effect a settlement, be amended to limit its application to information that is subject to mediation privilege. This would enable the Information and Privacy Commissioner/Ontario to use information disclosed during mediation, which is not subject to mediation privilege, in conducting a review under the *Act*. **Rationale** Subsections 57(2)(a) and (b) of the *Act* are overly broad. While the intention of subsection 57(2) is to restrict the use and disclosure of information subject to mediation privilege, subsections (a) and (b) also capture information that is not subject to mediation privilege.	Subsection 57(2) of the *Act* be amended as follows: 57. (2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified, ~~***(a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Act;***~~ ~~***(b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Act; and***~~ (c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 60, unless all parties expressly consent.

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8	**Recommendation** It is recommended that subsection 57(4) of the *Act* be amended to explicitly permit the Information and Privacy Commissioner/Ontario not to review the subject matter of a complaint where proceeding with the review would serve no useful purpose. **Rationale** The *Act* should be amended to permit the Information and Privacy Commissioner/Ontario not to review the subject matter of a complaint where proceeding with the review would serve no useful purpose, for example, where the subject matter of the complaint has been previously decided, where the person making the complaint already has a copy of the record of personal health information being requested or where a number of complaints have been received from a number of individuals in relation to the same factual circumstances. This explicit authorization not to review complaints where it would serve no useful purpose is necessary to ensure transparency in the decision making process used by the Information and Privacy Commissioner/Ontario.	Subsection 57(4) of the *Act* be amended as follows: 57. (4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that, (a) the person about which the complaint is made has responded adequately to the complaint; (b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act; (c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person; (d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; ~~***or***~~ (e) the complaint is frivolous or vexatious or is made in bad faith***; or*** ***(f) proceeding to review the subject-matter of the complaint would serve no useful purpose.***

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9	**Recommendation** It is recommended that subsection 60(13) of the *Act* be deleted. This subsection requires the Information and Privacy Commissioner/Ontario to either obtain the consent of the individual to whom the personal health information relates, or to issue a determination pursuant to subsection 60(13) of the *Act*, prior to inspecting a record of, requiring evidence of or inquiring into, personal health information. As a companion amendment, it is recommended that subsection 58(3)(c) of the *Freedom of Information and Protection of Privacy Act* be amended to delete the reference to subsection 60 (13) of the *Act* from the Annual Report that the Information and Privacy Commissioner/Ontario or the Assistant Commissioner for Personal Health Information must make to the Speaker of the Legislative Assembly. **Rationale** Imposing restrictions on the ability of the Information and Privacy Commissioner/Ontario to inspect a record of, require evidence of or inquire into personal health information in the course of conducting a review, is inconsistent with the provisions in the *Act* which permit health information custodians to use or disclose personal health information for the purposes of proceedings or contemplated proceedings without consent and without restrictions (see subsections 37(1)(h) and 41(1)(a) of the *Act*). It is also inconsistent with the provisions in the *Act* that permit health information custodians to disclose, and that permit bodies administering or enforcing other legislation to collect, personal health information without consent and without restrictions (see subsections 43(1)(b), 43(1)(c), 43(1)(d) and 43(1)(e) of the *Act*). Imposing restrictions on the ability of the Information and Privacy Commissioner/Ontario to inspect a record of, require evidence of or inquire into personal health information in the course of conducting a review, would subject the Information and Privacy Commissioner/Ontario to greater restrictions than other bodies administering or enforcing other legislation such as colleges within the meaning of the *Regulated Health Professions Act, 1991*, the Board of Regents under the *Drugless Practitioners Act*, the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, the Public Guardian and Trustee, the Children's	Subsection 60(13) of the *Act* be repealed as follows: ~~***60(13) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into, personal health information without the consent of the individual to whom it relates, unless,***~~ ~~***(a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and***~~ ~~***(b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner's determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified.***~~ Subsection 58(3)(c) of the *Freedom of Information and Protection of Privacy Act* be repealed as follows: 58. (3) If the Commissioner has delegated powers or duties under the *Personal Health Information Protection Act, 2004* to the Assistant Commissioner for Personal Health Information, a report made under subsection (1) shall include a report prepared in consultation with the Assistant Commissioner on the exercise of the Commissioner's powers and duties under that Act, including, (a) information related to the number and nature of complaints received by the Commissioner under section 56 of that Act and the disposition of

	Lawyer and children's aid societies. This is perplexing given the Information and Privacy Commissioner/ Ontario, unlike other potential recipients of personal health information, is bound by strict confidentiality obligations in subsection 68(3) of the *Act*. Further, in virtually all jurisdictions with privacy legislation, including jurisdictions with health sector privacy legislation, the Information and Privacy Commissioner is permitted to inspect, require evidence of or inquire into any personal information or personal health information that may be required in the course of conducting a review without any such restrictions.	them; (b) information related to the number and nature of reviews conducted by the Commissioner under section 58 of that Act and the disposition of them; ~~***(c) information related to the number of times the Commissioner has made a determination under subsection 60 (13) of that Act and general information about the Commissioner's grounds for the determination;***~~ (c) all other information prescribed by the regulations made under that Act; and (d) all other matters that the Commissioner considers appropriate.

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10	It is recommended that subsection 61(1) of the *Act* be amended to clarify that the Information and Privacy Commissioner/Ontario may make an order against an agent of a health information custodian without requiring the Information and Privacy Commissioner/Ontario to also make an order against the health information custodian. **Rationale** As currently worded, subsection 61(1)(h) of the *Act* states that the Information and Privacy Commissioner/Ontario may make an order directing any person who is an agent of a health information custodian to take or refrain from taking any action if the order is necessary to ensure that the health information custodian will comply with the order made against the custodian. This provision may be interpreted in a manner so as to prevent the Information and Privacy Commissioner/Ontario from issuing an order against an agent of a health information custodian where an order is not issued against the health information custodian. Such an interpretation is problematic, especially given there are circumstances where the actions or inactions of an agent, particularly an agent of more than one health information custodian, and not the actions or inactions of a health information custodian, are the direct cause of the contravention of the *Act* giving rise to an order pursuant to subsection 61(1) of the *Act*. In these circumstances, it is necessary to correct the conduct of the agent and to correct this conduct vis a vis all the health information custodians for whom the agent provides services in order to ensure that the privacy of individuals is adequately protected. The requested amendment would clarify that the Information and Privacy Commissioner/Ontario may make an order against an agent of a health information custodian without also issuing an order against the health information custodians to whom the agent provides services and would achieve the necessary level of protection by issuing one order against the agent as opposed to requiring the Information and Privacy Commissioner/Ontario to issue orders against multiple health information custodians to whom the agent provides services.	Subsection 61(1)(h) of the *Act* be repealed and the following substituted: 61.(1) After conducting a review under section 57 or 58, the Commissioner may, ~~***(h) make an order directing any person who is an agent of a health information custodian, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent to ensure that the custodian will comply with the order made against the custodian; or***~~ ***(h) make an order directing any person who is an agent of a health information custodian and whose activities the Commissioner reviewed,*** ***(i) to perform a duty imposed on an agent by this Act or its regulations,*** ***(ii) to perform a duty imposed on a health information custodian by this Act or its regulations where the health information custodian has authorized the agent to act for or on behalf of the custodian in performing that duty,*** ***(iii) to cease collecting, using or disclosing personal health information that the health information custodian has permitted the agent to collect, use or disclose if the Commissioner determines that the agent or the health information custodian is collecting, using or disclosing the information, as they case may be, or is about to do so in contravention of this Act, its regulations or an agreement entered into under this Act, or***

		(iv) to dispose of records of personal health information that the health information custodian has permitted the agent to collect, use or disclose if the Commissioner determines that the information was collected, used or disclosed in contravention of this Act, its regulations or an agreement entered into under this Act but only if the disposal of the records is not reasonably expected to adversely affect the provision of health care to the individual; or

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11	**Recommendation** It is recommended that subsection 61(1) of the *Act* be amended to permit the Information and Privacy Commissioner/Ontario to make any other order that is deemed appropriate. **Rationale** The Information and Privacy Commissioner/Ontario should be given the authority to make any other order that is deemed appropriate in order to protect the privacy of individuals with respect to their personal health information, in order to protect the confidentiality of personal health information and in order to protect the right of individuals to access and to require correction of their personal health information. The amendment requested is consistent with subsection 54(3) of the *Freedom of Information and Protection of Privacy Act* which states: 54(3) Subject to this Act, the Commissioner's order may contain any terms and conditions the Commissioner considers appropriate. It is also consistent with subsection 43(3) of the *Municipal Freedom of Information and Protection of Privacy Act* which states: 43(3) Subject to this Act, the Commissioner's order may contain any conditions the Commissioner considers appropriate.	Subsection 61(1) of the *Act* be amended to add the following subclause: 61(1) After conducting a review under section 57 or 58, the Commissioner may, ***(h.1) subject to this Act, make any other order that the Commissioner considers appropriate against a person whose activities the Commissioner reviewed; or***

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12	**Recommendation** It is recommended that section 61 of the *Act* be amended to clarify that the Information and Privacy Commissioner/Ontario may make an interlocutory or interim order prior to completing a review under section 57 or 58 of the *Act* and prior to issuing either a final order under subsection 61(1) of the *Act* or a notice under subsection 61(4) of the *Act* setting out the reasons for not making an order. **Rationale** It should be clarified that the Information and Privacy Commissioner/Ontario has the jurisdiction to issue an interlocutory or interim order where it is reasonably necessary to protect the confidentiality of personal health information and the privacy of individuals with respect to that information. For example, if in the course of reviewing a complaint, the Information and Privacy Commissioner/ Ontario discovers that a health information custodian has ceased to operate and that records of personal health information in its custody or control are not being protected against unauthorized disclosure, the Information and Privacy Commissioner/Ontario ought to be able to make an interim order directing the health information custodian to retain the records of personal health information in a secure manner pending a final determination of the review. Such an interlocutory or interim order is necessary in order to protect the confidentiality of the personal health information and to protect the privacy of individuals with respect to that information.	Section 61 of the *Act* be amended to add the following subsection: ***61(5) Prior to completing a review under section 57 or 58 of this Act, the Commissioner may, where it is reasonably necessary to protect the confidentiality of personal health information and the privacy of individuals with respect to that information, make an order in accordance with subsection 61(1) of this Act and for that purpose subsection 61(1) of this Act shall apply to such an order.***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
13	**Recommendation** It is recommended that subsection 64(1) of the *Act* be amended to enable the Information and Privacy Commissioner/Ontario to rescind or vary a decision not to review the subject-matter of a complaint pursuant to subsection 57(4) of the *Act* or to rescind or vary a decision not to make an order pursuant to subsection 61(4) of the *Act* when new facts come to the attention of the Information and Privacy Commissioner/Ontario or where there is a material change in circumstances. **Rationale** As currently worded, the *Act* only permits the Information and Privacy Commissioner/Ontario to rescind or vary an order or to make a further order after having completed a review where new facts come to the attention of the Information and Privacy Commissioner/Ontario or where there is a material change in circumstances. The Information and Privacy Commissioner/Ontario is not given the express authority to rescind or vary a decision not to review the subject-matter of a complaint pursuant to subsection 57(4) of the *Act* or to rescind or vary a decision not to make an order pursuant to subsection 61(4) of the *Act* in circumstances similar to those set out in subsection 64(1) of the *Act*. It is recommended that the *Act* be amended to eliminate the distinction between the ability of the Information and Privacy Commissioner/Ontario to reconsider an order and the ability of the Information and Privacy Commissioner/Ontario to reconsider a decision not to review the subject matter of a complaint or a decision not to make an order because the same privacy interests and protections and the same rights of individuals are engaged.	Subsection 64(1) of the *Act* be amended as follows: 64. (1) After ***deciding not to review the subject-matter of a complaint under subsection 57(4) or after*** conducting a review under section 57 or 58 and making an order under subsection 61 (1) ***or giving a notice under subsection 61(4)***, the Commissioner may rescind or vary the ***decision under subsection 57(4), may rescind or vary the*** order or may make a further order under ~~***that***~~ subsection ***61(1) or may rescind or vary the notice under subsection 61(4)*** if new facts relating to the subject-matter of the ***complaint or*** review***, as the case may be,*** come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the ***complaint or*** review***, as the case may be***.

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
14	**Recommendation** It is recommended that subsection 68(3) of the *Act* be amended to permit the Information and Privacy Commissioner/Ontario, the Assistant Commissioner for Personal Health Information and persons acting on their behalf of or under their direction, to disclose information that comes to their knowledge in the course of exercising their functions under the *Act* if there are reasonable grounds to believe the disclosure is necessary to eliminate or reduce a significant risk of serious physical or psychological harm to a person or group of persons, including the individual to whom the personal health information relates. **Rationale** There has been occasion since the *Act* came into force, where the Information and Privacy Commissioner/Ontario received a letter of complaint under Part VI of the *Act* which caused the Commissioner and Assistant Commissioner for Personal Health Information to believe that the disclosure of information gained during the course of conducting the review should be disclosed to eliminate or reduce a significant risk of serious harm. For this reason, it is recommended that subsection 68(3) of the *Act* be amended to permit the Information and Privacy Commissioner/Ontario, the Assistant Commissioner for Personal Health Information and persons acting on their behalf or at their direction to disclose information where there are reasonable grounds to believe the disclosure is necessary to eliminate or reduce a significant risk of serious physical or psychological harm. This amendment is consistent with subsection 40(1) of the *Act* which permits health information custodians and their agents to disclose personal health information in similar circumstances.	Section 68(3) of the *Act* be amended to add the following subsection: 68. (3) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Act unless, (a) the disclosure is required for the purpose of exercising those functions; (b) the information relates to a health information custodian, the disclosure is made to a body that is legally entitled to regulate or review the activities of the custodian and the Commissioner or the Assistant Commissioner is of the opinion that the disclosure is justified; (c) the Commissioner obtained the information under subsection 60 (12) and the disclosure is required in a prosecution for an offence under section 131 of the *Criminal Code* (Canada) in respect of sworn testimony; ~~***or***~~ (d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence***; or*** ***(e) there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious physical or psychological harm to a person or group of persons, including the individual to whom the personal health information relates.***

BREACH NOTIFICATION

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
15	It is recommended that subsection 12(2) of the *Act* be amended to authorize the Information and Privacy Commissioner/Ontario, in appropriate circumstances, to permit a health information custodian not to notify individuals whose personal health information is stolen, lost or accessed by unauthorized persons or to permit a health information custodian to notify individuals whose personal health information is stolen, lost or accessed by unauthorized persons, at a time other than at the first reasonable opportunity and in a manner other than through direct notification. **Rationale** The *Act* obligates health information custodians to notify individuals whose personal health information is stolen, lost or accessed by unauthorized persons at the first reasonable opportunity, regardless of whether or not notification is possible, regardless of whether notification may be detrimental to the individual, regardless of whether notification at a time other than at the first reasonable opportunity may be more appropriate and regardless of whether indirect notification may be more suitable in the circumstances. This amendment would provide flexibility for the Information and Privacy Commissioner/Ontario to authorize a health information custodian not to notify an individual or to notify the individual at a time other than at the first reasonable opportunity and in a manner other than directly, in rare circumstances where notification would not be appropriate, where notification would be harmful or where notification at a time other that an the first reasonable opportunity and in a manner other than directly, may be more appropriate.	Subsection 12(2) of the *Act* be amended as follows: 12. (2) Subject to subsection (3) and subject to the exceptions and additional requirements, if any, that are prescribed, a health information custodian that has custody or control of personal health information about an individual shall notify the individual at the first reasonable opportunity if the information is stolen, lost, or accessed by unauthorized persons ***unless the Commissioner has authorized the health information custodian not to notify the individual, unless the Commissioner has authorized the health information custodian to provide notification at a time other than at the first reasonable opportunity or the Commissioner has authorized the health information custodian to provide notification in another manner.***

EXPAND THE CIRCUMSTANCES WHERE EXPRESS CONSENT OF THE INDIVIDUAL IS REQUIRED

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
16	**Recommendation** It is recommended that section 18 of the *Act* be amended to require a health information custodian to obtain express consent of the individual to whom the personal health information relates prior to collecting and using personal health information for purposes other than for the provision of health care. **Rationale** Subsection 18(3) of the *Act* does not prevent a health information custodian from collecting or using personal health information for purposes other than for the provision of health care based on the implied consent of the individual to whom the personal health information relates. This is because subsection 18(3) only states that disclosures of personal health information for purposes other than for the provision of health care require express consent. Section 18 of the *Act* ought to be amended to require a health information custodian to obtain the express consent of the individual to whom the personal health information relates prior to collecting or using personal health information for purposes other than for the provision of health care. Amending the *Act* in this manner would ensure consistency with the provisions in the *Act* relating to the disclosure of personal health information for purposes other than for the provision of health care. For example, the *Act* requires a health information custodian to obtain express consent prior to disclosing personal health information to a non-health information custodian and prior to disclosing personal health information to a health information custodian for purposes other than for the provision of health care. The *Act* further requires a health information custodian to either obtain express consent prior to disclosing personal health information for research purposes or to fulfill the requirements of section 44 of the *Act*.	Section 18 of the *Act* be amended to add the following subsection: ***18(8) A consent to the collection or use of personal health information about an individual must be express and not implied where the collection or use is not for the purposes of providing health care or assisting in providing health care.***

EXPANDING PERMISSIBLE DISCLOSURES TO ELIMINATE OR REDUCE SIGNIFICANT RISKS OF HARM

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
17	**Recommendation** It is recommended that subsection 40(1) of the *Act* be amended to clarify that a health information custodian is permitted to disclose personal health information if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious psychological harm, as well as physical harm, to a person or group of persons including the individual to whom the personal health information relates. As a companion amendment, it is recommended that subsection 52(1)(e)(i) of the *Act* be amended to clarify that a health information custodian is permitted to deny access to a record of personal health information if granting access could reasonably be expected to result in a risk of serious physical or psychological harm to the individual or another person. **Rationale** This amendment clarifies what was already the intent of this section, which is to permit the disclosure of personal health information for the purpose of eliminating or reducing a significant risk of not only serious physical harm, but serious psychological harm as well. This is consistent with the decision of the Supreme Court of Canada in *R. v. McCraw* [1991] 3 S.C.R. 72, which held that the phrase "serious bodily harm" in the *Criminal Code*, which is the same phrase used in the *Act*, means "any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant." It also clarifies that the significant risk of serious physical or psychological harm need not be a risk to other persons or groups of persons, but the risk can be a risk to the individual to whom the personal health information relates.	Subsection 40(1) of the *Act* be amended as follows: 40(1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious ***physical or psychological ~~bodily~~*** harm to a person or group of persons***, including the individual to whom the personal health information relates***. Subsection 52(1)(e)(i) of the *Act* be amended as follows: 52(1) Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless, […] (e) granting the access could reasonably be expected to, (i) result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious ***physical or psychological ~~bodily~~*** harm to the individual or another person,

PROHIBITING HEALTH INFORMATION CUSTODIANS FROM IMPOSING CONDITIONS ON THE RIGHT OF ACCESS

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
18	**Recommendation** It is recommended that subsection 54(1) of the *Act* be amended to ensure that health information custodians do not impose conditions on individuals seeking to access their records of personal health information. **Rationale** It has come to the attention of the Office of the Information and Privacy Commissioner/Ontario, that health information custodians are requesting individuals to advise the health information custodians of the purposes for which they are making a request for access to records of personal health information and are requesting individuals to waive any claims that they may have against the health information custodians with respect to the records of personal health information as a condition of providing access. The right of access to one's records of personal health information is a fundamental right in the *Act*. Conditions such as these, which serve as obstacles to exercising this right, should be prohibited.	Subsection 54(1) of the *Act* be amended to add the following subsection: 54(1) A health information custodian that receives a request from an individual for access to a record of personal health information shall, ***(a.1) in making the record available to the individual for examination or in providing a copy of the record to the individual, not impose conditions or restrictions not otherwise set out in this Act or not otherwise prescribed by regulation including, but not limited to, requiring the individual to identify the purpose of the request for access and requiring the individual to waive any rights or claims that the individual may have at law.***

ENACTMENT OF A FEE REGULATION

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
19	**Recommendation** It is recommended that a regulation be made setting out the fee that may be charged by a health information custodian that discloses personal health information, by a health information custodian that makes a record or part of a record of personal health information available to an individual or a health information custodian that provides a copy of a record or part of a record of personal health information to an individual. The regulation should also apply to an agent of a health information custodian that discloses personal health information, that makes a record or part of a record of personal health information available or that provides a copy of a record or part of a record of personal health information on behalf of a health information custodian. **Rationale** The Information and Privacy Commissioner/Ontario has responded to numerous complaints and inquiries from members of the public about the fees charged by health information custodians and their agents to disclose personal health information or to provide access to records of personal health information. The *Act* currently allows health information custodians and their agents to charge a fee that does not exceed the prescribed amount or the amount of reasonable cost recovery, where no amount is prescribed. Given no amount has been prescribed, despite the efforts of the Ministry of Health and Long-Term Care in drafting and publishing such a regulation for public comment in *The Ontario Gazette* dated March 11, 2006, the amount of "reasonable cost recovery" has been left to the discretion of health information custodians and their agents.	The Information and Privacy Commissioner/Ontario would support a fee regulation that is substantially similar to the regulation drafted by the Ministry of Health and Long-Term Care, which was posted in the Ontario Gazette for public comment on March 11, 2006.

MISCELLANEOUS AMENDMENTS

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
20	**Recommendation** It is recommended that section 43 of the *Act* be amended to clarify that a health information custodian is permitted to disclose personal health information in accordance with subsection 20(5) of the *Children's Law Reform Act* or in accordance with subsection 16(5) of the *Divorce Act*. **Rationale** Subsection 43(1)(h) of the *Act* permits a health information custodian to disclose personal health information about an individual without the consent of the individual to whom the personal health information relates, if permitted or required by law. Subsection 20(5) of the *Children's Law Reform Act* provides that an access parent has the same right as a custodial parent to make inquiries and to be given information as to the health, education and welfare of the child unless, pursuant to subsection 20(7) of the *Children's Law Reform Act*, a court order or separation agreement provides otherwise. Similarly, section 16(5) of the *Divorce Act* provides that unless a court orders otherwise, an access parent has the right to make inquiries and to be given information as to the health, education and welfare of the child. As a result of the foregoing, subsection 43(1)(h) of the *Act* would permit a health information custodian to disclose the same personal health information about a child to a parent entitled to access to that child pursuant to the *Children's Law Reform Act* and *Divorce Act* as would be disclosed or given to a parent with custody of the child provided that a court order, or in the case of the *Children's Law Reform Act*, a court order or separation agreement, does not provide otherwise. The amendment requested codifies this interpretation and is consistent with orders issued by the Information and Privacy Commissioner/Ontario under the *Municipal Freedom of Information and Protection of Privacy Act* and *Freedom of Information and Protection of Privacy Act*, namely Orders M-787, P-1246, P-1423 and PO-2407.	Section 43 of the *Act* be amended to add the following subsection: ***43(3) Without limiting the generality of subsection 43(1)(h) of this Act, a health information custodian may disclose personal health information in accordance with subsection 20(5) of the Children's Law Reform Act and in accordance with subsection 16(5) of the Divorce Act, subject to the exceptions set out in the Children's Law Reform Act and Divorce Act .***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
21	**Recommendation** It is recommended subsection 49(1) of the *Act* be amended to permit a person who is not a health information custodian and to whom a health information custodian discloses personal health information, to use or disclose the information for the purpose of a proceeding or contemplated proceeding in which the person or the agent or former agent of the person is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding. **Rationale** This amendment would ensure consistency with the provisions in the *Act* that permit a health information custodian to use and disclose personal health information in a proceeding or contemplated proceeding in which it, an agent or a former agent, is or is expected to be a party or witness.	Section 49(1) of the *Act* be amended to add the following subclause: 49(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than, (a) the purpose for which the custodian was authorized to disclose the information under this Act; ~~***or***~~ (b) the purpose of carrying out a statutory or legal duty***; or*** ***(c) the purpose of a proceeding or contemplated proceeding in which the person is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding.***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
22	**Recommendation** It is recommended that subsection 74(6) of the *Act* be amended to require the Minister of Health and Long-Term Care to consult with the Information and Privacy Commissioner/Ontario prior to deciding that a regulation made under section 73 of the *Act* will not be subject to the requirements in subsections 74(1) to 74(5) of the *Act*, which relate to publication of a notice of the proposed regulation in *The Ontario Gazette* for public comment. **Rationale** The *Act* requires the Minister of Health and Long-Term Care to publish a notice of any proposed regulation in *The Ontario Gazette*, to specify a period of time for members of the public to submit written comments on the proposed regulation and to consider the comments and submissions received prior to the Lieutenant Governor in Council making the regulation. This however, is subject to certain exceptions in subsection 74(6) of the *Act*, which permits the Minister of Health and Long-Term Care to dispense with these requirements where the urgency of the situation requires it, where the proposed regulation clarifies the intent or operation of the *Act* or its regulations or where the proposed regulation is of a minor or technical nature. The decision to exempt a regulation from public consultation is a serious one, especially given the extent of the regulation making powers under the *Act* and given the limited legal recourse available in the event of an allegation that the Minister of Health and Long-Term Care contravened or is about to contravene the public consultation provisions of the *Act* or exempted a regulation from the public consultation provisions in contravention of the *Act*. Therefore the power to make regulations without public consultation should be narrowly construed in order to promote openness and transparency in the regulation making process of government. By requiring the Information and Privacy Commissioner/Ontario to be consulted prior to exempting a regulation from the public consultation requirements in subsections 74(1) to 74(5) of the *Act*, would provide an mechanism to ensure that one of the exceptions in subsection 74(6) of the *Act* in	Subsection 74(6) of the *Act* be amended as follows: 74. (6) The Minister may decide***, following a consultation with the Commissioner,*** that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 if, in the Minister's opinion, (a) the urgency of the situation requires it; (b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or (c) the proposed regulation is of a minor or technical nature.

	fact applies in the circumstances to exempt the regulation from the public consultation requirements, would provide a forum to discuss the merits of whether, despite the application of one of the exceptions in subsection 74(6) of the *Act*, the proposed regulation ought to be subject to public consultation in order promote openness and transparency in the regulation making process of government and would provide a forum to discuss the language of the proposed regulation itself.	

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
23	**Recommendation** It is recommended that subsections 6(1) and 6(2) of Regulation 329/04 to the *Act* be amended to ensure that the provisions apply not only to persons who provide services, but to persons who provide goods, to enable health information custodians to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information. **Rationale** Subsection 10(3) of the *Act* states that a health information custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information must comply with prescribed requirements. However, Regulation 329/04 of the *Act* only prescribes requirements for persons who provide services to enable health information custodians to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information. The proposed amendment would require persons who provide goods to enable health information custodians to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information to comply with these same requirements prescribed in section 6 of Regulation 329/04 to the *Act*. The reason being that the same privacy interests and protections and the same rights of individuals are engaged regardless of whether the person is supplying goods or services to enable health information custodians to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information.	Subsections 6(1) and 6(2) of Regulation 329/04 be amended as follows: 6. (1) Except as otherwise required by law, the following are prescribed as requirements for the purposes of subsection 10 (4) of the Act with respect to a person who supplies ***goods or*** services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information, and who is not an agent of the custodian: […] 6. (2) In subsection (3), "health information network provider" or "provider" means a person who provides ***goods or*** services to two or more health information custodians where the services are provided primarily to custodians to enable the custodians to use electronic means to disclose personal health information to one another, whether or not the person is an agent of any of the custodians.

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
24	**Recommendation** It is recommended that subsection 6(2) of Regulation 329/04 to the *Act* be amended to ensure that the health information network provider provisions are not limited to persons who provide services to two or more health information custodians, but also to persons who provide services to two or more prescribed persons for the purposes of subsection 39(1)(c) of the *Act*, to two or more prescribed entities for the purposes of subsection 45 of the *Act* or a combination thereof. **Rationale** Subsections 6(2) and 6(3) of Regulation 329/04 to the *Act* only prescribe requirements for persons who provide services to two or more health information custodians where the services are provided primarily to enable the health information custodians to use electronic means to disclose personal health information to one another. It is unclear why this subsection and the requirements imposed on health information network providers have been limited in this fashion. The requirements imposed on health information network providers should also apply to a person who provides services to two or more prescribed persons for the purposes of subsection 39(1)(c) of the *Act*, to two or more prescribed entities for the purposes of subsection 45 of the *Act* or a combination thereof, where the services are provided primarily to enable the use of electronic means to disclose personal health information to one another. The reason being that the same privacy interests and protections and the same rights of individuals are engaged.	Subsection 6(2) of Regulation 329/04 be amended as follows: 6. (2) In subsection (3), "health information network provider" or "provider" means a person who provides services to two or more health information custodians***, prescribed persons for the purposes of subsection 39(1)(c) of the Act, prescribed entities for the purposes of subsection 45 of the Act or a combination thereof,*** where the services are provided primarily ~~***to custodians***~~ to enable the custodians***, the prescribed persons or the prescribed entities, as the case may be,*** to use electronic means to disclose personal health information to one another, whether or not the person is an agent of any of the custodians, ***the prescribed persons or the prescribed entities, as the case may be***.

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
25	**Recommendation** It is recommended that section 24 of Regulation 329/04 to the *Act* be amended to permit an individual who has been granted access to a record of his or her personal health information by a health care practitioner, to make a written request for correction to a laboratory or specimen collection centre as defined in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act* or to a laboratory operated by a ministry of the Crown in right of Ontario. **Rationale** The rationale for this recommendation is to ensure that an individual granted access to a record of personal health information by a health care practitioner in respect of a test result requested by the health care practitioner, is permitted to request the laboratory to correct the record where the individual believes that it is inaccurate or incomplete. Otherwise, an individual granted access by a health care practitioner and who believes that the record is inaccurate and complete, may be denied correction given the record was not originally created by the health care practitioner, but rather by the laboratory, and given the health care practitioner could argue that he or she does not have sufficient knowledge, expertise and authority to correct the record pursuant to subsection 55(9) of the *Act*.	Section 24 of Regulation 329/04 to the *Act* be amended to add the following subsection: ***24(4) Notwithstanding section 24(1) of this Regulation, if a health care practitioner has granted an individual access to a record of his or her personal health information in respect of a test requested by the health care practitioner, and if the individual believes that the record is inaccurate or incomplete for the purposes for which it was collected, used or was used, the individual may request the laboratory with custody or control of personal health information in respect of a test requested by a health care practitioner to correct the record in accordance with section 55 of this Act.***

NO.	RECOMMENDATION AND RATIONALE FOR THE RECOMMENDATION	LANGUAGE OF THE PROPOSED AMENDMENT
26	**Recommendation** It is recommended that section 25.1 of Regulation 329/04 to the *Act* be deleted. **Rationale** It is recommended that section 25.1 of Regulation 329/04 to the *Act* be deleted because the separation of Sunnybrook Health Sciences Centre and Women's College Hospital has already occurred and therefore there is no longer any apparent need to continue to permit the disclosure of personal health information between the Sunnybrook Health Sciences Centre Foundation and the Women's College Hospital Foundation for the purpose of fundraising activities.	Section 25.1 of Regulation 329/04 be deleted as follows: ~~***25.1 The Sunnybrook Health Sciences Centre Foundation may disclose personal health information of an individual that it receives from a health information custodian to the Women's College Hospital Foundation for the purpose of fundraising activities undertaken for a charitable or philanthropic purpose related to the operations of the Women's College Hospital if the following requirements are satisfied:***~~ ~~***1. The only information disclosed is the individual's name and mailing address.***~~ ~~***2. The Sunnybrook Health Sciences Centre Foundation has provided to the individual a brief statement that, unless the individual requests otherwise, the individual's name and mailing address may be disclosed to the Women's College Hospital Foundation for the purpose of fundraising activities undertaken for a charitable or philanthropic purpose related to the operations of the Women's College Hospital.***~~ ~~***3. The statement provided in accordance with paragraph 2 contains information on one or more simple ways by which the individual may request that the Sunnybrook Health Sciences Centre Foundation not disclose the individual's name and mailing address to the Women's College Hospital Foundation.***~~ ~~***4. The individual has not requested that his or her name and mailing address not be disclosed to the Women's College Hospital Foundation.***~~