



*Personal Health Information
Protection Act*

PHIPA

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The Four Villages Community

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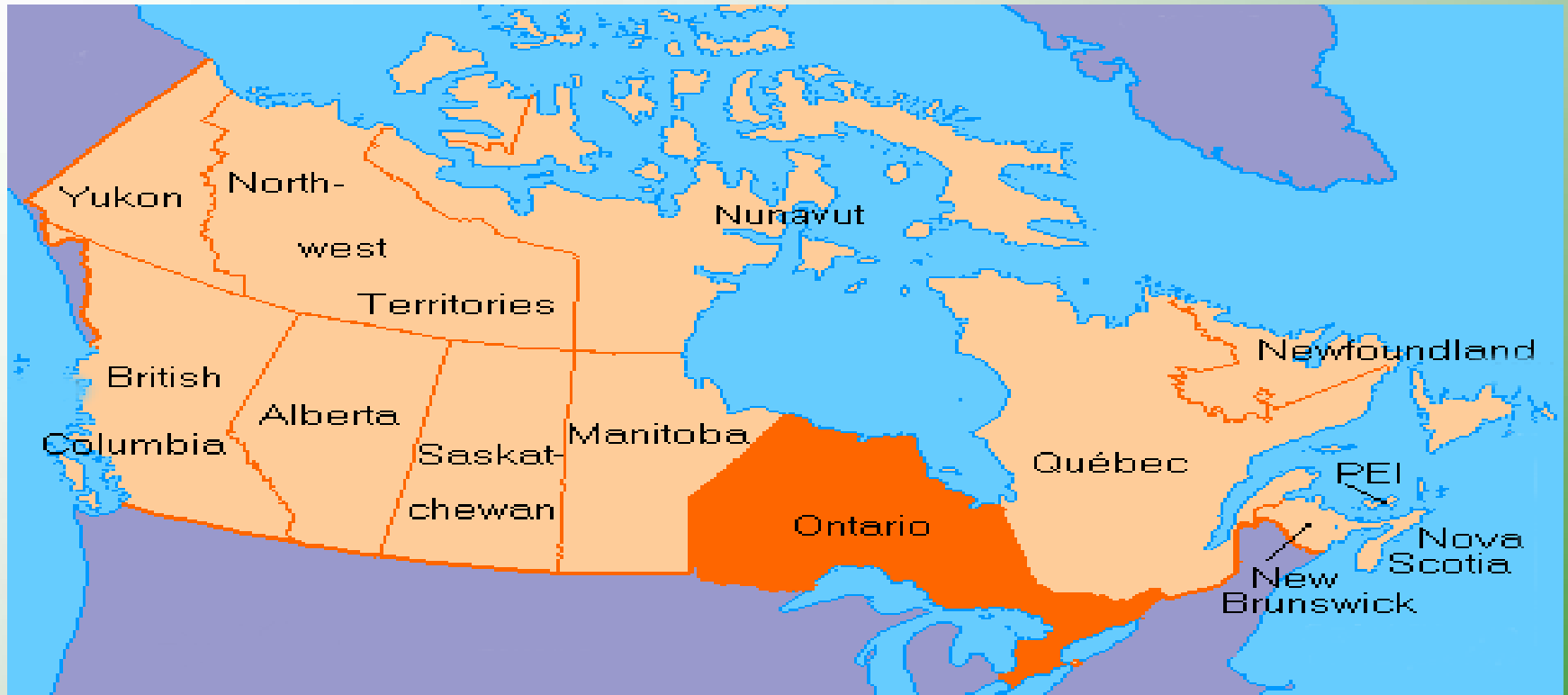


Privacy Laws in Canada

There are two types of data protection legislation in Canada:

1. Law that requires government to limit their collection, use, and disclosure of citizen personal information; and,
 2. Law that requires businesses to limit their collection, use, and disclosure of consumer personal information.
- Laws apply to all of Canada, not just Ontario.
 - *The IPC does not oversee these laws.*

Privacy Laws in Ontario



- *Freedom of Information and Protection of Privacy Act (FIPPA);*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA);*
- *Personal Health Information and Protection Act (PHIPA).*



The Commissioner

The Commissioner is appointed by the Ontario legislature and is independent from the government.

The Commissioner has the power to:

- Offer comment on the privacy protection implications of proposed programs of institutions;
- In appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- Engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- Conduct public education programs and provide information concerning this Act and the Commissioner's role and activities;
- Receive representations from the public concerning the operation of this Act.



Role of the IPC

- The IPC acts independently of government to uphold and promote open government and the protection of personal privacy.
- The IPC is responsible for:
 - resolving appeals from refusals to provide access to information;
 - investigating privacy complaints about information held by government organizations;
 - ensuring that the government organizations comply with the access and privacy provisions of the *Acts*;
 - educating the public about Ontario's access and privacy laws; and
 - conducting research on access and privacy issues, and providing advice and comment on proposed government legislation and programs.



The Personal Health Information Protection Act (PHIPA)

- Provincial legislation came into effect November 1, 2004;
- Designated as substantially similar to PIPEDA on November 28, 2005;
- Creates comprehensive rules for collecting, using, disclosing and disposing of personal health information (PHI);
- Applies to organizations and individuals involved in the delivery of health care services (including the Ministry of Health and Long-Term Care);
- Permits free flow of health information for health care purposes within the health care team;



The Personal Health Information Protection Act (PHIPA)

- The only health sector privacy legislation in Canada based on consent: implied consent within the “circle of care”, otherwise, express consent;
- Expands and codifies an individual’s right to access his/her PHI as well as to correct errors;
- Provides remedies for privacy breaches;
- Codifies professional standards, ethical codes, college policy, practice guidelines, common law;
- Is technology neutral.



PHIPA: Rights and Responsibilities

The Individual:

- Concerns the right of an individual to exercise choice and control about the collection, use and disclosure of his/her personal health information;
- Individuals should have a reasonable expectation that their personal health information be kept confidential and secure.



PHIPA: Rights and Responsibilities

The Health Information Custodian (HIC):

- Individual's consent;
- Collect just enough;
- Ensure accuracy of information;
- Have a contact person;
- Written statement (short notice);
- Inform of any breach;
- Ensure agents are informed;
- Safeguard information.



PHIPA Key Concepts:

Consent

- Consent is required for the collection, use, disclosure of PHI, subject to specific exceptions.
- **Express vs. Implied:**
 - **Express Consent:** Individual provides explicit, direct consent either verbally, in writing or by electronic means.
 - **Implied Consent:** Permits a custodian to infer that an individual would reasonably agree to the collection, use and disclosure of his/her personal health information.



PHIPA Key Concepts:

Consent

- Requirements for consent:
 - Knowledgeable;
 - Voluntary (not obtained through deception or coercion);
 - Related to information in question;
 - Given by the individual.



PHIPA Key Concepts:

Consent

- Substitute decision-maker:
 - When the individual is incapable of providing consent;
 - Where incapable, seek consent from ranked list of substitute decision-makers (s.26);
 - Where the patient has died, seek consent from estate trustee or someone in charge of administering the estate (s.23).



PHIPA Key Concepts:

Consent

- Withdrawal of consent:
 - An individual may withdraw consent (either implied or express) by providing notice to the custodian;
 - Safeguards to minimize any potential adverse effects of withdrawal of consent:
 - Custodian must notify recipient;
 - Disclosure is necessary to eliminate or reduce significant risk of bodily harm to one or more persons.



PHIPA Key Concepts:

Consent

Express Consent:

- Where express consent is required, PHIPA does not prescribe the form of consent (written or verbal);
- Required for disclosures outside the circle of care (employer, insurer, marketer);
- Where a HIC discloses to another HIC for a non-health care purpose;
- Research purposes unless specific requirements are met (REB approved research plan).



PHIPA Key Concepts: Collection, Use, Disclosure Without Consent

Derogations from the consent principle are allowed in limited circumstances:

- Collecting payment or processing health plan claims;
- Disclosure to a health regulatory College for administration and enforcement;
- To protect the health or safety of the individual or others;
- To educate agents;
- To identify a deceased person;
- As required by law.



PHIPA Key Concepts:

Access

- HIC must make record available for examination or provide a copy on request (subject to exceptions in Part V of the Act);
- HIC must respond to the request within 30 days, with a possible 30 day extension;
- HIC must take reasonable steps to be satisfied of the individual's identity.



Stages of Complaints

- **Intake:**
 - Matter may be resolved by informal resolution;
- **Mediation:**
 - Matter may be resolved by a mutually agreed upon resolution between a complainant and the custodian; or
 - Matter may be resolved when IPC is satisfied with the actions taken by the custodian – HIC – reported breaches and IPC – Initiated Complaints;
- **Adjudication:**
 - Matter is fully investigated and a determination is made on the issues.



As of January 18, 2006						
OPEN PHIPA COMPLAINTS BY STAGE						
File Type	Stage					
	Intake	Mediation	Adjudication			Total
Access/Correction	8	11	1			20
	Intake	Mediation	Adjudication			Total
Collection/Use/Disclosure	18	5	3			26
HIC Reported Breach	1	22	0			23
IPC Initated Complaint	2	0	9			11
		Total Open Complaints				80
CLOSED PHIPA COMPLAINTS BY STAGE/METHOD CLOSED						
File Type	Intake	Mediation	Mediation	Adjudication		
	Letter	Letter	Report	No Order	Order	Total
Access/Correction	50	10	0	1	0	61
Collection/Use/Disclosure	21	5	0	0	0	26
HIC Reported Breach	4	3	20	0	0	27
IPC Initated Complaint	0	0	0	0	1	1
		Total Closed Complaints				115
TOTAL PHIPA COMPLAINTS (Open+ Closed)						195
Note: 14 of the closed A/C and CUD complaints are from one person.						



Any Questions?

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