



Information and Privacy  
Commissioner of Ontario

Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

**VIA ELECTRONIC MAIL**

July 5<sup>th</sup>, 2023

Christine Sham  
Director, Information Management Strategy and Policy Branch  
Digital and Analytics Strategy Division  
Ministry of Health  
222 Jarvis Street, 7<sup>th</sup> Floor  
Toronto ON M7A 0B6

Dear Ms. Sham:

**RE: Proposed Amendment to O. Reg. 329/04 under PHIPA with respect to administrative penalties**

The Ontario Gazette published on May 27, 2023 contains a notice by the Minister of Health of a proposed regulation under the *Personal Health Information Protection Act, 2004* (PHIPA) relating to administrative penalties (the Proposed Regulation).<sup>1</sup> The Office of the Information and Privacy Commissioner of Ontario (IPC) is pleased to see that the government is taking this important step towards enhancing the public's trust in the health system.

In March 2020, PHIPA was amended<sup>2</sup> to add the power to issue administrative penalties to the IPC's existing order-making powers. Although these legislative provisions are in force, my office cannot exercise the new power until a regulation is made addressing how we will determine the amount of such a penalty. Once the Proposed Regulation is finalized and comes into force, we will be able to issue administrative penalties as the legislature intended for the purposes of encouraging compliance with PHIPA or preventing a person from deriving any economic benefit as a result of contravening PHIPA.

In keeping with our vision of a modern and effective regulator, the IPC will apply a proportionate approach to administrative penalties. We intend to adopt the principles and philosophy of a just culture approach when choosing the appropriate enforcement tool to use in response to a contravention (be it education, corrective measures, recommendations, orders with or without administrative penalties, or referrals to the Attorney General for prosecution of an offence). In cases that do warrant administrative penalties, we believe that the criteria set out in the proposed regulation are among the key factors that should be considered in determining their appropriate amount.

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<sup>1</sup> See [Ontario Gazette Vol. 156-21](#), pages 999-1002. The notice of the Proposed Regulation was also posted in the Ontario Regulatory Registry ([Proposal number 23-HLTC043](#)).

<sup>2</sup> See [Bill 188, Economic and Fiscal Update Act, 2020](#), S.O. 2020, c. 5, Sched. 6, ss. 16(2), 17-21, 24(3), 24(4).



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One of the IPC's strategic priorities is to promote confidence in the digital health care system by guiding custodians to respect the privacy and access rights of Ontarians and supporting the pioneering use of personal health information for research and analytics to the extent it serves the public good.<sup>3</sup> To have confidence in the digital health care system, Ontarians need to be able to trust that abuses of that system will be met with appropriate consequences. Administrative penalties play an important role in making sure that permissions to access and use our personal health information by the health sector are counterbalanced with meaningful penalties for misuse.

The IPC supports the text of the Proposed Regulation, which sets out:

- the maximum amount of a penalty (\$50,000 for an individual and \$500,000 for organization) – which, importantly, can be increased to account for economic benefit gained from the contravention – and
- the factors the IPC will consider when determining the amount of a penalty.

The Proposed Regulation strikes the right balance regarding the factors to consider, the amount of a potential penalty, and the ability to stop bad actors from inappropriately benefiting from contraventions.

In the interest of transparency to the people of Ontario, we intend to post this letter on our website.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kosseim', with a stylized flourish underneath.

Patricia Kosseim  
Commissioner

Cc: Catherine Zahn, Deputy Minister of Health  
Michael Hillmer, Assistant Deputy Minister, Digital and Data Analytics Division,  
Ministry of Health

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<sup>3</sup> See [IPC Strategic Priorities 2021-2025](#), page 2.