



Information and Privacy  
Commissioner of Ontario  
Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

October 13, 2023

**VIA ELECTRONIC MAIL**

Dr. Catherine Zahn  
Deputy Minister of Health  
College Park, 5th Floor  
777 Bay Street  
Toronto, ON M7A 2J3

Dear Deputy Minister Zahn:

**RE: Proposed regulation under the Personal Health Information Protection Act, 2004 (PHIPA) relating to administrative penalties**

I am writing to reiterate my support for the proposed regulation under the *Personal Health Information Protection Act, 2004* (PHIPA) relating to administrative penalties (the Proposed Regulation), as recently published in the Ontario Gazette.<sup>1</sup> The Office of the Information and Privacy Commissioner of Ontario (IPC) appreciates the government's commitment to delivering new regulatory tools that will enhance the public's trust in the health system.

The provisions in PHIPA relating to administrative penalties were passed by the legislature in March 2020. However, in the absence of the Proposed Regulation, Ontarians do not yet have the security of knowing that serious privacy breaches in the health system can and will be appropriately addressed. Finalizing the Proposed Regulation and bringing it into force will give my office the option to issue administrative penalties as a consequence for serious contraventions of PHIPA. Having this additional authority in our enforcement toolkit will enhance our ability to encourage compliance with PHIPA, and will help ensure that no one derives economic benefit from contraventions of PHIPA.

At the IPC, we strive to build trust in the health care system by providing guidance that promotes the privacy and access rights of Ontarians in their day-to-day encounters with care providers. We also support public trust by informing and regulating innovative, privacy-protective uses of personal health information for research and analytics that serve the public good. To develop and maintain this trust, Ontarians must be confident that violations of privacy and access protections that impact them and their families will be met with proportionate consequences that reflect their severity. Administrative penalties will be an important new enforcement tool enabling the IPC to serve as a modern and effective regulator achieving more flexible, balanced and meaningful enforcement of PHIPA, without having to undertake expensive and time-consuming court proceedings.

The IPC intends to adopt the principles and philosophy of a "just culture" approach when choosing the appropriate enforcement tool to use in response to a contravention. The attached figure provides an illustration of how the factors listed in the Proposed Regulation would be considered

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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](#)).



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by the IPC in determining the amount of an administrative penalty and also how administrative penalties would be considered as part of a progressive toolset of regulatory interventions that could be used to address PHIPA contraventions. We recognize that the vast majority of Ontario's health information custodians are deeply committed to the protection of personal health information and that when mistakes occur, there is willingness to take responsibility and remedy errors. In many cases, education, guidance, informal resolution and recommendations to take corrective measures are the only response needed to address inadvertent errors and unintended violations. In more serious cases that warrant it, stronger measures may be required, including binding orders with or without administrative penalties, or referrals to the Attorney General for prosecution of an offence. In the small number of cases that may warrant administrative penalties, we believe that the criteria set out in the Proposed Regulation effectively address the key factors that should be considered in determining their appropriate amount.

The IPC also supports the flexibility that is provided by allowing a range of penalties up to the maximum amount (\$50,000 for an individual and \$500,000 for an organization) that has been set out in the Proposed Regulation. The specific amount of a penalty would depend on the particulars of each case, and must not be punitive. By specifying "up to", the Proposed Regulation does not require those maximum amounts to be imposed in every case, and in practice, penalties less than the maximum may be appropriate in many situations. Conversely, however, the maximums can also be increased where necessary to prevent a person from profiting from a contravention, for example, through the unauthorized sale of personal information or the exploitation of ransomware.

In conclusion, we are pleased to support the Proposed Regulation. We are confident that it strikes the right balance regarding the factors to consider, the amount of a potential monetary penalty, and the ability to stop persons from inappropriately benefiting from privacy violations.

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

Sincerely,

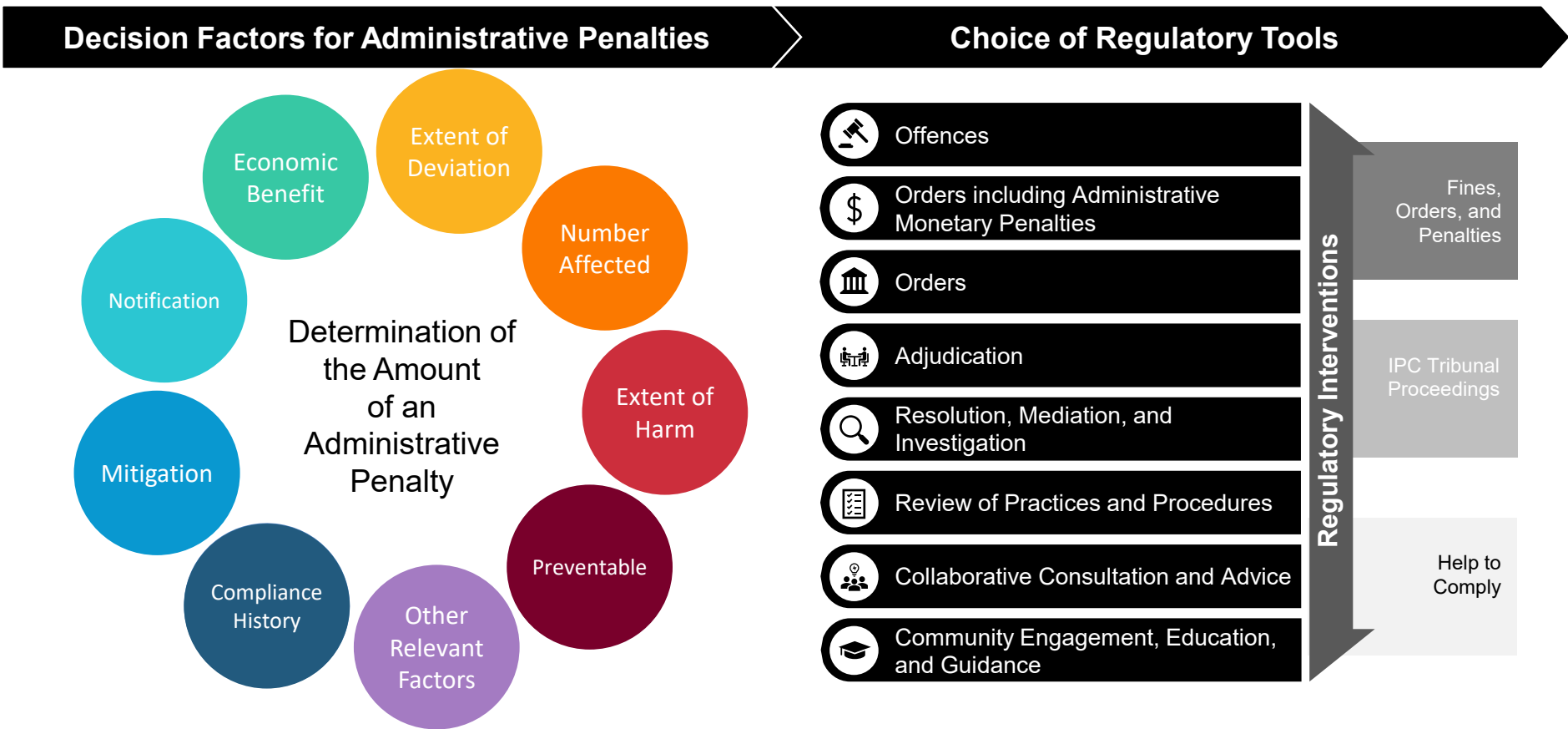


Patricia Kosseim  
Commissioner

CC: Michael Hillmer, Assistant Deputy Minister, Digital and Analytics Strategy Division;  
Christine Sham, Director, Information Management Strategy and Policy Branch  
Kishan Kandukur, Manager, Information Management Strategy and Policy Branch

Attachment: Figure – Decision Factors for Administrative Penalties and IPC Hierarchy of Regulatory Interventions

Figure. Factors to consider when imposing administrative penalties, among the range of other IPC regulatory tools



Note: The left hand of this diagram is a simplified visual representation of the factors that would be considered by the IPC in determining the amount of an administrative penalty in accordance with the Proposed Regulation. The right hand side of the diagram shows how administrative penalties would become a part of a broader toolset of progressive regulatory interventions that the IPC could apply to address PHIPA contraventions depending on their severity, level of risk and potential for resolution, among other considerations. The diagram does not include all of the regulatory tools potentially available to the IPC and all of the regulatory tools identified are not available in every situation.

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