

# PHIPA – Administrative Monetary Penalties

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# DISCLAIMER

THIS PRESENTATION IS:

- PROVIDED FOR INFORMATIONAL PURPOSES,
- NOT LEGAL ADVICE, AND
- NOT BINDING ON THE IPC.

# Introduction to Administrative Monetary Penalties

- In 2020, the Ontario legislature amended the *Personal Health Information Protection Act (PHIPA)* to provide the IPC with additional enforcement powers that would allow it to impose administrative monetary penalties (AMPs)
- IPC's use of this additional enforcement power is governed by section **61.1 of PHIPA** and an accompanying regulation [**O. Reg. 329/04, s. 35**] that took effect on **January 1, 2024**.

# Order Making Powers- AMPs

## Powers of Commissioner

61 (1) After conducting a review under section 57 or 58, the Commissioner may,

(h.1) make an order in accordance with section 61.1 requiring any person whose activities the Commissioner reviewed to **pay an administrative penalty in the amount set out in the order** if the Commissioner is of the opinion that **the person has contravened this Act or its regulations**

# The Purpose of AMPs

61.1 (1) An order requiring a person to pay an administrative penalty may be issued under clause 61 (1) (h.1) for **the purposes of**,

- (a) **encouraging compliance** with this Act and its regulations; or
- (b) **preventing a person from deriving, directly or indirectly, any economic benefit** as a result of a contravention of this Act or its regulations.

# Amount of AMPs

The amount of an administrative penalty for a contravention must (s.61.1(2)),

- (a) **reflect the purposes** referred to in 61.1(1); and
- (b) **be determined** by the Commissioner **in accordance with the regulations** made under this Act.

# AMPs Amount – Regulation s.35(1)

Determination of amount of administrative penalty

35. (1) For the purpose of clause 61.1 (2) (b) of the Act, the amount of an administrative penalty determined by the Commissioner for any number of contraventions of the Act or its regulations set out in an order under clause 61 (1) (h.1) of the Act shall not exceed the following:

1. If the person required to pay the administrative penalty is a **natural person**, **\$50,000**.
2. If the person required to pay the administrative penalty is **not a natural person**, **\$500,000**.

# AMPs Amount – Regulation s.35(2)

35(2) Despite subsection (1), the **Commissioner may increase the amount** of an administrative penalty that a person is required to pay by **an amount equal to the economic benefit** acquired by, or that accrued to, the person as a result of the contraventions.



# AMPs Amount – Regulation s.35(3)

35 (3) In determining the amount of an administrative penalty, the Commissioner shall consider the following criteria, and may consider any other criteria that the Commissioner considers relevant:

1. The extent to which the **contraventions deviate from the requirements** of the Act or its regulations.
2. The extent to which the person could have taken **steps to prevent the contraventions**.
3. The **extent of the harm or potential harm** to others resulting from the contraventions.
4. The **extent to which the person tried to mitigate any harm or potential harm** or took any other remedial action.

# AMPs Amount – Regulation s.35(3) (cont.)

5. The **number** of individuals, health information custodians and other persons **affected by the contraventions**.
6. Whether the person **notified the Commissioner and any individuals** whose personal health information was affected by the contraventions.
7. The extent to which the person derived or reasonably might have expected to derive, directly or indirectly, any **economic benefit from the contraventions**.
8. Whether the person has **previously contravened the Act or its regulations**.

# IPC Guidance on AMPs



# IPC Guidance on AMPs

- AMPs are **part of the IPC's broader regulatory toolkit for encouraging compliance** with PHIPA in a manner that is flexible, balanced, and progressive.
- The IPC's ability to directly impose AMPs provides additional flexibility to address contraventions of PHIPA with **appropriate and meaningful consequences**, depending on level of severity.
- AMPs are but **one option** among the range of escalating actions and interventions available to the IPC.

# IPC Guidance on AMPs

In the vast majority of cases, those who work for and contribute to Ontario's health care system:

- are deeply **committed to protecting personal health information**, and
- show a genuine willingness to **report, take responsibility for, and remedy errors** when they occur.

# IPC Guidance on AMPs

The vast majority of cases usually involve:

- inadvertent errors, one-off contraventions with relatively minor impact, or some at-risk behaviours in need of coaching and course correction
- an individual or organization that is highly responsive and cooperative in rectifying the situation where **education, guidance, early resolution, and recommendations for corrective measures are often the only tools the IPC needs** to use

# IPC Guidance on AMPs – When is it appropriate?

Examples of these contraventions might include:

- 1. Serious snooping into patient records:** There have been situations where individuals working in the health care system have taken improper advantage of their access privileges and violated the privacy of patients by accessing their health records without authorization for motives completely unrelated to their health care. In serious cases of this nature, the IPC might consider that imposing an AMP on such an individual would be an appropriate consequence to encourage future compliance with PHIPA.

# IPC Guidance on AMPs – When is it appropriate?

Examples of these contraventions might include (cont.):

**2. Contraventions for economic gain:** In previous cases before the IPC, agents of a hospital were found to be accessing patient records and improperly using and disclosing personal health information without authority for the purpose of selling products or services related to the information. If similar cases were to come before the IPC after January 1, 2024, the IPC could consider imposing AMPs where appropriate to prevent the agent from directly or indirectly deriving any economic benefit as a result of contravening PHIPA.



# IPC Guidance on AMPs – When is it appropriate?

Examples of these contraventions might include (cont.):

**3. Disregard for individual's right of access:** Individuals have a right of access to records of their own personal health information that are in the custody or control of a health information custodian, subject to limited and specific exceptions. An AMP may be an appropriate enforcement tool to consider in cases where a HIC has persistently failed to comply with PHIPA.



QUESTIONS?