

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

**FACTUM OF THE INTERVENOR,
INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO**

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INDEX

PART I – OVERVIEW	1
A. The intervenor	1
B. The principle of fundamental justice test and its application below	2
C. The intervenor’s position in the appeal.....	3
PART II – THE FACTS.....	4
PART III – ISSUES AND LAW	4
A. Preliminary matters	4
1. The societal interests and individual rights at issue	4
2. Access legislation, transparency, accountability and the courts.....	5
B. Applying the principle of fundamental justice test.....	6
1. The principle is a legal principle	6
i. In international law	6
ii. Throughout the Canadian legislative landscape	9
iii. Within <i>Charter</i> jurisprudence.....	10
2. The principle is fundamental to a fair legal system.....	12
3. As identified, the principle yields a manageable standard.....	14
PART IV - ORDER REQUESTED.....	15
SCHEDULE A – LIST OF AUTHORITIES.....	i
SCHEDULE B – LIST OF LEGISLATION	iv

PART I – OVERVIEW

1. This appeal involves a section 7 *Charter* challenge to the law enforcement and police powers granted to inspectors and other officials of the Ontario Society for the Prevention of Cruelty to Animals (the “OSPCA”) under the *OSPCA Act*.

A. The intervenor

2. The Information and Privacy Commissioner of Ontario (the “IPC”) intervenes with leave as a friend of the Court. The IPC is an officer of the Legislative Assembly of Ontario responsible for administering the *Freedom of Information and Protection of Privacy Act (FIPPA)* and its municipal counterpart, adjudicating appeals from decisions of institutions relating to requests for access to records, and determining whether those records must be disclosed.

3. Ontario’s public sector access and privacy statutes govern rights of access to records held by provincial and municipal institutions, including those that perform law enforcement functions. Bodies subject to these statutes with law enforcement powers include: (i) all Ontario police services; and (ii) institutional actors like the Ontario Securities Commission, the Ontario Alcohol and Gaming Commission, and special constables, by-law officers and inspectors working for various institutions.

4. On average, over 1/3 of the approximately 60,000 access requests filed in Ontario each year are made to law enforcement bodies. Of those 20,000 + requests, ~ 3/4 lead to full or partial disclosure. These disclosures frequently reveal matters of significant public interest, including information about the character and scale of intrusive practices, the spending of public money, and the adequacy of law enforcement efforts.¹

¹ IPC Book of Authorities (“Tab”), [Tab 1] *IPC Annual and Statistical Reports (2014-2018)*; [Tab 2] *MO-1989, Toronto Police Services Board*, 2005 CanLII 56450 (ON IPC) at pages 1-3, 22-23, 27, quashed *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2007 CanLII 65610

5. The IPC intervenes solely with respect to the new principle of fundamental justice recognized by the court below, namely that “law enforcement bodies must be subject to reasonable standards of transparency and accountability.”²

B. The principle of fundamental justice test and its application below

6. To qualify as a principle of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), a principle must :

(1) be a legal principle, (2) enjoy consensus that the rule or principle is fundamental to the way in which the legal system ought fairly to operate, and (3) be identified with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person.³

7. The court below held that transparency and accountability form a single legal principle on the basis that: (i) the obligation to be transparent and accountable is found throughout our legal system, including in rules and legislation that require open hearings and access to information; and (ii) transparency and accountability “work in tandem to provide for open government and reviewable government action in a free society.”⁴

8. The court found that the principle is fundamental to our legal system:

(ON SCDC) at paras. 1-9, 47, reversed 2009 ONCA 20 (CanLII) (“*TPSB*”) at paras. 4, 11-13, 60; [Tab 3] *P-534, Ministry of the Attorney General*, [1993] O.I.P.C. No. 246 at pages 1-3, 5, affirmed *Ontario (Attorney General) v. Fineberg*, 1994 CanLII 10563 (ON SC) at paras. 1, 11, 14, 16, 26; [Tab 4] *Order PO- 2739, Ontario (Attorney General) (Re)*, 2008 CanLII 68865 (ON IPC) at pages 1-4, 24, 30, affirmed in part in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 172 (CanLII) at paras. 1-2, 6-10, 13-14, 36-40, 46-51; [Tab 5] *PO-2811, Ministry of Community Safety and Correctional Services*, 2009 CanLII 43354, affirmed 2011 ONSC 3525 (CanLII), affirmed 2012 ONCA 393 (CanLII), appealed dismissed 2014 SCC 31 (CanLII); [Tab 6] *PO-3017, Ontario Lottery and Gaming Corporation (Re)*, 2011 CanLII 80435 (ON IPC) at paras. 1-30; and [Tab 7] Robyn Doolittle, *Globe & Mail: Unfounded; Police dismiss 1 in 5 sexual assault claims as baseless*, February 3, 2017; *Unfounded: How police and politicians have responded to The Globe’s investigation so far*, December 12, 2017; *Canadian police dismissing fewer sexual assault cases*, July 23, 2018; *Unfounded rates start to fall in cities across Canada*, August 2, 2018; and *Unfounded case ends with conviction 19 years after police dismissed sexual assault complaint*, September 20, 2018.

² [Tab 8] *Bogaerts v. Ontario*, 2019 ONSC 41 (CanLII) (“*Bogaerts*”) at para. 89.

³ [Tab 9] *R. v. Anderson*, 2014 SCC 41 (CanLII) (“*Anderson*”) at para. 29, referencing [Tab 10] *R. v. D.B.*, 2008 SCC 25 (CanLII) (“*D.B.*”) at para. 46 and [Tab 11] *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 (CanLII) (“*CFCYL*”) at para. 8.

⁴ [Tab 8] *Bogaerts supra* at paras. 82-86.

“Transparency and accountability are basic tenets of our legal system, as well as our democratic process. This has been recognized by courts, Parliament, and the legislature in many different contexts (open courts, freedom of the press, access to information legislation, appeal processes, etc.). It is vital that the public have confidence in the enforcement of our laws []. A reasonable level of transparency and accountability is the cornerstone for that confidence.”⁵

9. The court concluded that the principle can be identified with sufficient precision to yield a manageable standard: necessary contextual variations aside, the principle already applies to “virtually every public body and law enforcement agency.” It pointed to three statutes that provide for transparency and accountability standards, none of which apply to the OSPCA: the *Police Services Act*, the *Ombudsman Act*, and *FIPPA*.⁶

C. The intervenor’s position in the appeal

10. The IPC submits that the *Charter* dictates that law enforcement bodies empowered to deprive individuals of their section 7 rights must be subject to reasonable standards of transparency and accountability, including bodies whose functions are regulatory in nature. At a minimum, those standards must include the critical transparency and accountability mechanisms provided for under a statute like *FIPPA*.

11. Courts, legislators, governments and experts around the world have repeatedly affirmed that access to information rights are indispensable in a democracy. The public’s meaningful participation in democratic decision-making and holding government to account requires that people be informed about the workings of government. It is difficult to conceive of an informed public without substantial transparency with respect to government functions.

12. Law enforcement functions are government functions, whether performed by police, special constables, or specialized inspectors. While certain law enforcement

⁵ [Tab 8] *Bogaerts supra* at para. 87.

⁶ [Tab 8] *Bogaerts supra* at paras. 88, 91.

matters require confidentiality, the public must be able to challenge confidentiality claims through an independent, impartial and accessible system of justice. Access to information regimes provide the quintessential form of that system of justice.

PART II – THE FACTS

13. The IPC takes no position on any factual matters.

PART III – ISSUES AND LAW

14. The IPC intervenes to assist this Court in answering one question: is there a principle of fundamental justice that requires law enforcement bodies be subject to reasonable standards of transparency and accountability?

A. Preliminary matters

1. The societal interests and individual rights at issue

15. A key task in assessing a principle of fundamental justice is delineating the boundaries of the interests and rights that must be accommodated under it:

Consideration of both societal interests and individual rights within s. 7 is necessary because '[t]he principles of fundamental justice are concerned not only with the interest of the person who claims his liberty has been limited, but with the protection of society. Fundamental justice requires that a fair balance be struck between these interests, both substantively and procedurally' [].⁷

16. In this appeal, as in the open court context, it is imperative that the public interest in ensuring effective law enforcement be balanced with the public's fundamental right to monitor police and other law enforcement officials:

A fundamental belief pervades our political and legal system that the police should remain under civilian control and supervision by our democratically elected officials; our country is not a police state. The tactics used by police, along with other aspects of their operations, is a matter that is presumptively of public concern. [] "[P]articipation in social and political decision-making is to be fostered and encouraged", a principle fundamental to a free and democratic

⁷ [Tab 10] *D.B. supra* at para. 144, Rothstein J. in dissent, but not on this point; [Tab 12] *R. v. Malmo-Levine*, 2003 SCC 74 (CanLII) at paras. 98-99.

society. [] Such participation is an empty exercise without [] information [] about the practices of government, including the police.⁸

2. Access legislation, transparency, accountability and the courts

17. As recognized by the Supreme Court of Canada in *Dagg v. Canada*:

The overarching purpose of access to information legislation is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. [] Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive & accountable.⁹

18. Transparency and accountability are “mutually reinforcing and interdependent. Accountability can only be achieved if citizens have access to information. In turn, transparency is also dependent on accountability mechanisms, such as the rule of law, without which ... the right to information will be seriously weakened.”¹⁰

19. The transparency and accountability provided by a statute such as *FIPPA* is a necessary corollary to the transparency and accountability provided for under the rule of law by the courts and tribunals, including with respect to a body like the OSPCA.

20. Courts and tribunals tasked with overseeing trials and other proceedings have a vital role to play in ensuring transparency and accountability with respect to law enforcement officials. At the same time, Canadian history shows that:

[R]eliance on comments from the Bench is an entirely haphazard and unsatisfactory method of control, depending as it does on the almost accidental disclosure of a misdeed in the course of other proceedings, and the inclination of the judge to comment on it or not, usually without the benefit of any background evidence or argument.¹¹

⁸ [Tab 13] *R. v. Mentuck*, 2001 SCC 76 (CanLII) at paras. 1, 50, 51.

⁹ [Tab 14] *Dagg v. Canada (Min. of Finance)*, 1997 CanLII 358 (SCC) (“*Dagg*”) at paras. 61, 63. And see [Tab 2] *TPSB* *supra* at para. 47.

¹⁰ [Tab 15] Centre for Law and Democracy, *International Standards on Transparency and Accountability*, Briefing Paper 47, March 2014, (“*International Standards*”) at page 4; [Tab 16] Maeve McDonagh, *Right to Information in International Human Rights Law*, Human Rights Law Review 13:1 (2018) at page 53.

¹¹ [Tab 17] The Hon. Mr. Justice D.C. McDonald, *Royal Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Second Report*, Vol. 2, Freedom and Security under the Law (Ottawa: Privy Council Office, 1981) at pages 1006-7.

21. As observed by the Supreme Court of Canada, trial safeguards may not be “adequate as they will only address instances in which charges are laid and pursued to trial.” In *Tse*, transparency and accountability mechanisms, such as post-investigation notice to wiretap targets, were required to ensure compliance with the *Charter*. It was left for another day whether providing intrusive powers to a wide range of officials breached the *Charter*, “especially in the absence of any accountability requirements.”¹²

B. Applying the principle of fundamental justice test

1. The principle is a legal principle

22. A principle will be recognized as a legal principle if it is “an established legal principle in international and domestic law.” The transparency and accountability principle is recognizable in access to information related rights enacted into law around the world, and rights recognized under international law and the *Charter*.¹³

i. In international law

23. The International Covenant on Civil and Political Rights (the “ICCPR”), which Canada acceded to in 1976, establishes a right to seek and receive information subject to necessary restrictions provided by law. In particular, Articles 19(2-3) provide that:

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.¹⁴

¹² [Tab 18] *R. v. Tse*, 2012 SCC 16 (CanLII) (“*Tse*”) at paras. 55-57, 84-86.

¹³ [Tab 11] *CFCYL* *supra* at para. 9.

¹⁴ [International Covenant on Civil and Political Rights](#), 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (“ICCPR”) (Canada acceded to 19 May 1976) at Art. 19, emphasis added.

24. ICCPR Article 19 is reflected in the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, both of which have been found to protect the right to access information:

[Article 13 of the American] Convention, in guaranteeing expressly the rights to “seek” and “receive” “information”, protects the right of every person to request access to the information under the control of the State, with the exceptions recognised under the regime of restrictions in the Convention. Consequently, the said article encompasses the right of individuals to receive the said information and the positive obligation of the State to provide it, in such form that the person can have access in order to know the information or receive a motivated answer when for a reason recognised by the Convention, the State may limit the access to it in the particular case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.¹⁵

25. States are required to report to the United Nations on measures they have taken to give effect to the ICCPR. In its most recent report, Canada repeatedly referenced Canadian access to information legislation to demonstrate its compliance with Art. 19.¹⁶

26. In 2013, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression highlighted the central role Article 19 rights play in preserving and promoting democracy, the rule of law, human rights and an effective justice system:

Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information. Combating and responding to corruption, for example, require the adoption of procedures and regulations that allow members of the public to obtain information on the organization, functioning and decision-making processes of its public administration. [] Elucidating past and present human rights violations often requires the disclosure of information held by a multitude of State entities. Ultimately, ensuring access to information is a first step in the promotion of justice and reparation, in particular in the aftermath of periods of

¹⁵ [Tab 19] *Claude Reyes and Others v. Chile*, 19 September 2006, Series C, No. 151, Inter-American Court of Human Rights at paras. 77-82, 84- 87; [Tab 20] *Társaság A Szabadságjogokért v. Hungary*, 14 April 2009, Application No. 37374/05 at paras. 26, 27, 30 (the European Court of Human Rights’ comparable European Convention decision); [Tab 15] *International Standards supra* at page 7.

¹⁶ [Tab 21] *ICCPR, CCPR C/CAN/6*, UN Human Rights Committee, Consideration of State reports submitted under article 40 of the Covenant, 9 April 2013 at pages 18, 25, 26, 28, 30, 31, 32, and 34.

authoritarianism. [] In the context of human rights violations, [] gaining access to information [] is usually essential in order to give effect to other rights, such as due process, guarantees to a fair trial and the right to a remedy.¹⁷

27. When it comes to official misconduct, the “right to truth implies not only the clarification of the immediate circumstances of particular violations, but also the clarification of the general context, the policies and the institutional failures and decisions that enabled their occurrence.” Throughout, it is essential that the right to access information be supported by the independent review of secrecy claims:

The Inter-American Court [of Human Rights] has also noted that when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act. Thus, what is incompatible with the rule of law and effective judicial protection is not that there are secrets, but rather that they are outside legal control.¹⁸

28. Few countries had enacted access to information legislation by the time the ICCPR came into force in 1976. Watergate, the fall of the Berlin Wall, and other international events helped to strengthen the growing consensus that the “right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts)”. As of 2018, 118 countries have comprehensive access to information statutes. Dozens more are pending. Ninety countries include the right to information in their constitution. Access information laws now span the globe.¹⁹

¹⁷ [Tab 22] UN Special Rapporteur on Freedom of Opinion and Expression, *UN General Assembly, A/68/362* (4 September 2013), (“2013 UN SR Report”) at paras. 3, 5, 40.

¹⁸ [Tab 22] 2013 UN SR Report *supra* at paras. 30, 62, citations omitted.

¹⁹ [Tab 23] 6 December 2004, *Joint Declaration: UN Special Rapporteur, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression* at page 2; [Tab 24] David Banisar, *National Right to Information Laws Map, Regulations and Initiatives 2018*; [Tab 25] *Progress on the Right to Information Around the World*, ARTICLE 19.

ii. Throughout the Canadian legislative landscape

29. The wave of access to information legislation that now covers Canada made its first appearance here in the late 1970s. Today, every jurisdiction has access legislation that applies to law enforcement bodies and incorporates specific exemptions to the right of access tailored to ensure necessary law enforcement-related confidentiality.²⁰

30. Under Ontario law, institutions, including those with law enforcement duties, must:

- Preserve records and retain them per prescribed retention schedules,
- Provide timely written responses to access requests,
- Grant every person access to the records they request unless a exemption or exclusion applies, and
- Determine whether, having regard to all relevant interests - including the public interest in disclosure - disclosure should be made despite the fact that an exemption applies.²¹

31. Requesters have the right to appeal an institution's access decision to the IPC, which may then conduct an inquiry. During an inquiry, the IPC has the power to enter and inspect premises, order the production of records and summon witnesses. The institution resisting disclosure bears the burden of proving an exemption or exclusion applies. After hearing the evidence, the IPC has the authority to make a binding order

²⁰ [Tab 26] *The Report of the Commission on Freedom of Information and Individual Privacy 1980*, Vol. 2 (Toronto: Queen's Printer, 1980), at pages 128-138. Canadian legislation available at: **Canada:** [Access to Information Act](#); [Privacy Act](#); **Northwest Territories:** [Access to Information and Protection of Privacy Act](#); **Nunavut:** [Access to Information and Protection of Privacy Act](#); **Yukon:** [Access to Information and Protection of Privacy Act](#); **British Columbia:** [Freedom of Information and Protection of Privacy Act](#); **Alberta:** [Freedom of Information and Protection of Privacy Act](#); **Saskatchewan:** [The Freedom of Information and Protection of Privacy Act](#); [The Local Authority Freedom of Information and Protection of Privacy Act](#); **Manitoba:** [The Freedom of Information and Protection of Privacy Act](#); **Ontario:** [Freedom of Information and Protection of Privacy Act](#), R.S.O. 1990, c. F.31 (*FIPPA*); R.R.O. 1990, [Reg. 459](#) and [Reg. 460](#); (also see [Archives and Recordkeeping Act](#), 2006, S.O. 2006, c. 34, [Sched. A](#)); [Municipal Freedom of Information and Protection of Privacy Act](#), R.S.O. 1990, c. M.56; R.R.O. 1990, [Reg. 823](#) **Quebec:** [An Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information](#); **New Brunswick:** [Right to Information and Protection of Privacy Act](#); **Nova Scotia:** [Freedom of Information and Protection of Privacy Act](#); **Prince Edward Island:** [Freedom of Information and Protection of Privacy Act](#); and **Newfoundland and Labrador:** [Access to Information and Protection of Privacy Act](#).

²¹ *FIPPA*, s. 1, 2(1), 10-10.1, 12-23, 26-27.1, 40(1) and (4), 65(1-6, 8-8.1, 11-14); [Tab 27] *Ont. (Public Safety and Security) v. Criminal Lawyers Assoc.*, 2010 SCC 23 (CanLII) ("CLA") at paras. 46-48, 66-67.

disposing of the issues in the appeal, which may include an order for disclosure. There is no right of appeal from an IPC order, but judicial review is available.²²

32. All Canadian jurisdictions have substantially similar access legislation, each administered by a commissioner or ombudsman under one of two adjudicative models.

33. Like Ontario, Quebec, British Columbia, Alberta, and Prince Edward Island employ an adjudicative model under which commissioners have order-making authority where their orders are subject to either appeal or judicial review in the superior court. Canada, Saskatchewan, Nova Scotia, Yukon, Northwest Territories and Nunavut all employ a “report and recommend” model. In this model, commissioners have the authority to investigate, report on and make recommendations in relation to complaints that a public body has failed to comply with its disclosure obligations under the statutes, but have no order-making authority. Order-making authority resides with the superior court of each jurisdiction. Manitoba and Newfoundland employ their own unique models that incorporate elements of the “report and recommend” and adjudication models, under which parties have subsequent resort to the superior courts.²³

iii. Within *Charter* jurisprudence

34. A principle of fundamental justice: (i) may be derived from a right or duty already recognized as a constitutional right or norm; and (ii) must be defined in a way that promotes coherence within the *Charter*.²⁴

35. Section 2(b) *Charter* jurisprudence already recognizes an access to information facilitated transparency and accountability principle as a constitutional right or norm.

Key aspects of this constitutional norm include the following:

²² *FIPPA*, s. 50, 52-54.

²³ Per [Bill 29-18\(3\)](#), it is expected that the Northwest Territories will soon employ the adjudicative model.

²⁴ [Tab 28] *Canada v. Fed. of Law Societies*, 2015 SCC 7 (CanLII) at para. 40; [Tab 29] *R. v. Mills*, 1999 CanLII 637 (SCC) (“*Mills*”) at para. 69; [Tab 30] *R. v. Lloyd*, 1999 CanLII 637 (SCC) at paras. 82-84, 120.

- Subject to countervailing considerations inconsistent with the right, individuals have a *Charter* right to obtain access to government held records, including law enforcement records, where a denial of access substantially impedes meaningful commentary on a matter of public importance,
- The broad exclusion of a class of records from a statutory scheme providing for a right of access contravenes the *Charter* where, absent countervailing considerations, the exclusion substantially impedes meaningful commentary,
- Access rights must be protected by procedural fairness requirements, including:
 - A government body withholding a record bears the burden of establishing that the information is properly exempt from disclosure,
 - The body must act in utmost good faith and make full, fair and candid disclosure of the facts, including those that may be adverse to its interest,
 - Individuals have recourse to independent review of a body's access decision,
 - The independent reviewers (e.g. an access to information commissioner or a court) have access to the information that is being withheld in order to determine whether an exemption has been properly claimed, and
 - At least one of the independent reviewers has the power to order release if it determines that the information is not exempt from disclosure.²⁵

36. Section 7 *Charter* jurisprudence already recognizes a key aspect of the principle as a constitutional norm. As a corollary to the Crown's section 7 disclosure duties, law enforcement officials have a duty to preserve records and other relevant evidence. This duty may only be relieved where the loss or destruction of evidence can be satisfactorily explained, for example, in relation to the rules established under a retention schedule.²⁶

²⁵ [Tab 27] *CLA supra* at paras. 37-40; [Tab 31] *ARPA Canada and Patricia Maloney v. R.*, 2017 ONSC 3285 (CanLII) at paras. 31-53; and [Tab 32] *Ruby v. Canada (Solicitor General)*, 2002 SCC 75 (CanLII) at paras. 42, 46-47.

²⁶ [Tab 33] *R. v. La*, 1997 CanLII 309 (SCC) at paras. 20-22, 55-59; [Tab 34] *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 (CanLII) at paras. 48-49, 53, 56-64; [Tab 35] *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37 (CanLII) at paras. 92-93; and [Tab 36] *Chaudhary v. Ontario (Attorney General)*, 2012 ONSC 5023 at paras. 21, 38-49, 55, 58, 61-65, 80-81, 83, 87-88, affirmed 2013 ONCA 615 at paras. 5, 11. And see [Tab 37] IPC, June 5, 2013, *Deleting Accountability: A Special Investigation Report* at pages 1-3, 7-9, 35.

2. The principle is fundamental to a fair legal system

37. To qualify as a section 7 principle, a principle must enjoy consensus that it is fundamental to the way in which the legal system ought fairly to operate:

The principles of fundamental justice are the shared assumptions upon which our system of justice is grounded. They find their meaning in the cases and traditions that have long detailed the basic norms for how the state deals with its citizens. Society views them as essential to the administration of justice.²⁷

38. The idea that government transparency and accountability are fundamental to our political and legal systems has deep roots in our democratic traditions. The democratic imperative to acquire “the means of knowledge” to permit an informed citizenry to engage in meaningful political expression dates to pre-revolutionary America and England. A century long struggle against efforts, through taxation, to curtail expression critical of government contributed to the American Revolution, and ultimately the adoption of the First Amendment to the U.S. Constitution. “The aim of the struggle was... to establish and preserve the right... to full information in respect of the doings or misdoings of their government.” As John Adams declared in 1765:

Wherever, a general Knowledge and sensibility have prevailed among the People, Arbitrary Government and every kind of oppression, have lessened and disappeared in Proportion... [T]he people [] have a right, an indisputable, inalienable, indefeasible divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers... The preservation of the means of knowledge among the lowest ranks is of more importance than all the property of all the rich men in the country.²⁸

39. The principle underlying openness in democratic institutions – that publicity is a check on injustice – was recognized more than a century ago by the House of Lords:

It moves Bentham over and over again. “In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity

²⁷ [Tab 9] *Anderson supra* at para. 29; [Tab 11] *CFCYL supra* at para. 8.

²⁸ [Tab 38] J. Adams, *A Dissertation on the Canon and Feudal Law*, Boston Gazette, 30 September 1765, in R. J. Taylor et al., eds., *Papers of John Adams*, vol. 1 (Cambridge, Mass: Belknap Press of Harvard University, 1977) at 108, 120 121; [Tab 39] *Grosjean v. American Press Co.*, 297 U.S. 233 at 247, 249, 250 (1936) (S.C.).

has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.” “[I]t is the keenest spur to exertion and the surest of all guards against improbity [I]” “The security of securities is publicity.” But amongst historians the grave and enlightened verdict of Hallam....: “Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances.”²⁹

40. As outlined in the body of law above, the transparency and accountability principle is “a foundational requirement for the dispensation of justice” in a free and democratic society. It is not a mere factor or consideration that can be subordinated at will. The Supreme Court of Canada acknowledged as much in *Wakeling v. United States of America*, where transparency and accountability safeguards were essential to the section 8 *Charter* rulings of six of the seven Supreme Court justices.³⁰

41. To count as a principle of fundamental justice, a principle must be a basic tenet of our legal system. It need not be an absolute or unyielding rule. In cases involving competing claims, “no single principle is absolute” or “capable of trumping” all others, including those associated with access to information. The fact that access to specific records or even classes of records may be properly withheld in the public interest does not make transparency and accountability any less fundamental to a fair legal system.³¹

42. Like other section 7 *Charter* principles, the transparency and accountability principle contains a number of essential elements, each of which must be present proportionate to the context. At a minimum, in order to ensure that a law enforcement body can be held accountable, requirements must be in place to ensure that information

²⁹ [Tab 40] *Scott v. Scott*, [1913] A.C. 419 (H.L.) at page 477 as quoted in [Tab 41] *CBC v. New Brunswick (A.G.)*, 1996 CanLII 184 (SCC) at para. 21.

³⁰ [Tab 42] *Wakeling v. U.S.A.*, 2014 SCC 72 (CanLII) at paras 65, 67, 72, 77, 126, 135-143.

³¹ [Tab 11] *CFCYL supra* at para. 10; [Tab 29] *Mills supra* at 61, 73, 112.

about its day-to-day functions and activities will be recorded and preserved so that they may be accessed by the public under a robust and accountable access regime.

3. As identified, the principle yields a manageable standard

43. As outlined above, the transparency and accountability principle has been identified with sufficient precision to yield a manageable standard against which to measure section 7 deprivations.³² International and domestic access to information related law informs us that the transparency and accountability principle may be further described as follows. Law enforcement bodies empowered to deprive individuals of their section 7 *Charter* rights must be subject to legally binding standards that provide for:

- A law enforcement body's duty to preserve its records and only destroy them pursuant to prescribed retention schedules,
- An individual's right to request access to records held by a law enforcement body and obtain access to those records, subject only to a reasonable framework of limited and specific statutory exemptions and exclusions, with due regard to the right to meaningful commentary on matters of public importance,
- A law enforcement body's duty to meet its burden of proof, act in utmost good faith, provide a timely written decision, and exercise its powers of decision reasonably, including by considering the public interest in disclosure, and
- An individual's right to appeal the law enforcement body's decision (including a lack of a decision) to an independent adjudicator with authority to review the records and order their release if the reviewer determines, after hearing from the parties, that the information is not exempt or excluded from disclosure.

44. In the circumstances of this appeal, the transparency and accountability principle is satisfied, in whole or part, through the application of an access to information statute such as *FIPPA*. However, compliance with the principle does not require the application

³² [Tab 27] *CLA supra* at para. 39: in practice, exceptions to access are "well settled, providing predictability and certainty to what must be produced and what remains protected."

of *FIPPA* and only *FIPPA*. A legal framework that incorporates the standards described above will fall within the range of constitutional options.

45. This appeal has implications for the administrative authorities referenced at para. 55(a) of the Attorney General's factum. The law enforcement functions performed by these bodies were delegated to them under the *Safety and Consumer Statutes Administration Act, 1996*. Inspectors and investigators at eight such bodies investigate and enforce offences punishable by incarceration. None of those eight are subject to *FIPPA* (or a comparable regime). The IPC attempted to secure the public's access rights in the 1990's, but government declined to take the necessary steps.³³

46. It is not clear whether this appeal implicates the Law Society of Ontario. While it is not subject to *FIPPA*, it is a self-regulating profession, subject to a comprehensive governance framework established under the *Law Society Act*, governed by benchers elected by the profession, and required "to act in a timely, open and efficient manner."³⁴

PART IV - ORDER REQUESTED

47. The Commissioner takes no position on the disposition of the appeal and asks that there be no order as to costs either for or against the Commissioner.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 18, 2019

Stephen McCammon
Lawyer for the Intervener Information
and Privacy Commissioner of Ontario

³³ The eight are the: Bereavement Authority of Ontario ([Funeral, Burial and Cremations Act, 2002](#)); Condominium Management Regulatory Authority of Ontario ([Condominium Management Services Act, 2015](#)); Electrical Safety Authority, ([Electricity Act, 1998](#)); Ontario Film Authority ([Film Classification Act, 2005](#)); Ontario Motor Vehicle Industry Council ([Motor Vehicle Dealers Act, 2002](#)); Real Estate Council of Ontario ([Real Estate and Business Brokers Act, 2002](#)); Taron Warranty Corporation ([Ontario New Home Warranties Plan Act, 1990](#)); and the Travel Industry Council of Ontario ([Travel Industry Act, 2002](#)).

[Tab 43] *IPC 1998 Annual Report* at pages 11-12.

³⁴ *Law Society Act*, R.S.O. 1990, c. L.8, paragraph 4 of section 4.2

COURT OF APPEAL FOR ONTARIO

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

- and -

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

Intervenor
(Respondent in Appeal)

C E R T I F I C A T E

I, Stephen McCammon, lawyer for the Intervenor, Information and Privacy Commissioner of Ontario, certify that the Intervenor, Information and Privacy Commissioner of Ontario, will require 15 minutes for oral argument.

June 18, 2019

Stephen McCammon
Lawyer for the Intervenor Information
and Privacy Commissioner of Ontario

SCHEDULE A – LIST OF AUTHORITIES

Tab #

1. IPC Publication, *IPC Annual and Statistical Reports* (2014-2018)
2. *MO-1989, Toronto Police Services Board*, 2005 CanLII 56450 (ON IPC), quashed *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2007 CanLII 65610 (ON SCDC), reversed 2009 ONCA 20 (CanLII)
3. *P-534, Ministry of the Attorney General*, [1993] O.I.P.C. No. 246, affirmed *Ontario (Attorney General) v. Fineberg*, 1994 CanLII 10563 (ON SC)
4. *Order PO- 2739, Ontario (Attorney General) (Re)*, 2008 CanLII 68865 (ON IPC), affirmed in part in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 172 (CanLII)
5. *PO-2811, Ministry of Community Safety and Correctional Services*, 2009 CanLII 43354, affirmed 2011 ONSC 3525 (CanLII), affirmed 2012 ONCA 393 (CanLII), appealed dismissed 2014 SCC 31 (CanLII);
6. *PO-3017, Ontario Lottery and Gaming Corporation (Re)*, 2011 CanLII 80435 (ON IPC)
7. Robyn Doolittle, *Globe & Mail: Unfounded; Police dismiss 1 in 5 sexual assault claims as baseless*, February 3, 2017; *Unfounded: How police and politicians have responded to The Globe's investigation so far*, December 12, 2017; *Canadian police dismissing fewer sexual assault cases*, July 23, 2018; *Unfounded rates start to fall in cities across Canada*, August 2, 2018; and *Unfounded case ends with conviction 19 years after police dismissed sexual assault complaint*, September 20, 2018
8. *Bogaerts v. Ontario*, 2019 ONSC 41 (CanLII)
9. *R. v. Anderson*, 2014 SCC 41 (CanLII)
10. *R. v. D.B.*, 2008 SCC 25 (CanLII)
11. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 (CanLII)
12. *R. v. Malmo-Levine*, 2003 SCC 74 (CanLII)
13. *R. v. Mentuck*, 2001 SCC 76 (CanLII)
14. *Dagg v. Canada (Min. of Finance)*, 1997 CanLII 358 (SCC)

15. Centre for Law and Democracy, *International Standards on Transparency and Accountability*, Briefing Paper 47, March 2014
16. Maeve McDonagh, *Right to Information in International Human Rights Law*, Human Rights Law Review 13:1 (2018)
17. The Hon. Mr. Justice D.C. McDonald, *Royal Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Second Report, Vol. 2, Freedom and Security under the Law* (Ottawa: Privy Council Office, 1981)
18. *R. v. Tse*, 2012 SCC 16 (CanLII)
19. *Claude Reyes and Others v. Chile*, 19 September 2006, Series C, No. 151, Inter-American Court of Human Rights
20. *Társaság A Szabadságjogokért v. Hungary*, 14 April 2009, Application No. 37374/05, European Court of Human Rights
21. *ICCPR, CCPR C/CAN/6*, UN Human Rights Committee, Consideration of State reports submitted under article 40 of the Covenant, 9 April 2013
22. UN Special Rapporteur on Freedom of Opinion and Expression, *UN General Assembly, A/68/362* (4 September 2013)
23. *Joint Declaration: UN Special Rapporteur, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on Freedom of Expression*, 6 December 2004
24. David Banisar, *National Right to Information Laws Map, Regulations and Initiatives 2018*
25. *Progress on the Right to Information Around the World*, ARTICLE 19
26. *The Report of the Commission on Freedom of Information and Individual Privacy 1980*, Vol. 2 (Toronto: Queen's Printer, 1980)
27. *Ontario (Public Safety and Security) v. Criminal Lawyers Association*, 2010 SCC 23 (CanLII)
28. *Canada v. Federation of Law Societies*, 2015 SCC 7 (CanLII)
29. *R. v. Mills*, 1999 CanLII 637 (SCC)
30. *R. v. Lloyd*, 1999 CanLII 637 (SCC)

31. *ARPA Canada and Patricia Maloney v. R.*, 2017 ONSC 3285 (CanLII)
32. *Ruby v. Canada (Solicitor General)*, 2002 SCC 75 (CanLII)
33. *R. v. La*, 1997 CanLII 309 (SCC)
34. *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 (CanLII)
35. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37 (CanLII)
36. *Chaudhary v. Ontario (Attorney General)*, 2012 ONSC 5023, affirmed 2013 ONCA 615
37. IPC Publication, *Deleting Accountability: A Special Investigation Report*, June 5, 2013
38. J. Adams, *A Dissertation on the Canon and Feudal Law*, Boston Gazette, 30 September 1765, in R. J. Taylor et al., eds., *Papers of John Adams*, vol. 1 (Cambridge, Mass: Belknap Press of Harvard University, 1977)
39. *Grosjean v. American Press Co.*, 297 U.S. 233 (1936) (S.C)
40. *Scott v. Scott*, [1913] A.C. 419 (H.L.)
41. *CBC v. New Brunswick (A.G.)*, 1996 CanLII 184 (SCC)
42. *Wakeling v. U.S.A.*, 2014 SCC 72 (CanLII)
43. IPC Publication, *1998 Annual Report*

SCHEDULE B – LIST OF LEGISLATION

Tab

1. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 at Article 19
2. *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 1, 2(1), 10-10.1, 12-23, 26-27.1, 40 (1) and (4), 50, 52-54, 65 (1-6, 8-8.1, 11-14)
3. *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, s. 2(1)
4. *R.R.O. 1990, Regulation 460: General*, s. 4(3), 5, Schedule
5. *R.R.O. 1990, Regulation 459: Disposal of Personal Information*, s. 1, 2(1), 3, 4, 6
6. *Law Society Act*, R.S.O. 1990, c. L.8, ss. 4.2

TAB 1

No. 14668

MULTILATERAL

**International Covenant on Civil and Political Rights.
Adopted by the General Assembly of the United
Nations on 19 December 1966**

**Optional Protocol to the above-mentioned Covenant.
Adopted by the General Assembly of the United
Nations on 19 December 1966**

*Authentic texts: English, French, Chinese, Russian and Spanish.
Registered ex officio on 23 March 1976.*

MULTILATÉRAL

**Pacte international relatif aux droits civils et politiques.
Adopté par l'Assemblée générale des Nations Unies le
19 décembre 1966**

**Protocole facultatif se rapportant au Pacte susmentionné.
Adopté par l'Assemblée générale des Nations Unies le
19 décembre 1966**

*Textes authentiques : anglais, français, chinois, russe et espagnol.
Enregistrés d'office le 23 mars 1976.*

INTERNATIONAL COVENANT¹ ON CIVIL AND POLITICAL RIGHTS

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

¹ The Covenant, with the exception of article 41,* came into force on 23 March 1976 in respect of the following States, i.e., three months after the date of deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or accession, in accordance with article 49 (1):**

<i>State</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>	<i>State</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>
Barbados***	5 January 1973a	Iraq***	25 January 1971
Bulgaria***	21 September 1970	(Signature affixed on 18 February 1969.)	
(Signature affixed on 8 October 1968.)		Jamaica	3 October 1975
Byelorussian Soviet Socialist Republic***	12 November 1973	(Signature affixed on 19 December 1966.)	
(Signature affixed on 19 March 1968.)		Jordan	28 May 1975
Chile	10 February 1972	(Signature affixed on 30 June 1972.)	
(Signature affixed on 16 September 1969.)		Kenya	1 May 1972a
Colombia	29 October 1969	Lebanon	3 November 1972a
(Signature affixed on 21 December 1966.)		Libyan Arab Republic***	15 May 1970a
Costa Rica	29 November 1968	Madagascar	21 June 1971
(Signature affixed on 19 December 1966.)		(Signature affixed on 17 September 1969.)	
Cyprus	2 April 1969	Mali	16 July 1974a
(Signature affixed on 19 December 1966.)		Mauritius	12 December 1973a
Czechoslovakia***	23 December 1975	Mongolia***	18 November 1974
(Signature affixed on 7 October 1968.)		(Signature affixed on 5 June 1968.)	
Denmark***	6 January 1972	Norway***	13 September 1972
(Signature affixed on 20 March 1968.)		(Signature affixed on 20 March 1968.)	
Ecuador	6 March 1969	Romania***	9 December 1974
(Signature affixed on 4 April 1968.)		Rwanda	16 April 1975a
Finland***	19 August 1975	Sweden****	6 December 1971
(Signature affixed on 11 October 1967.)		(Signature affixed on 29 September 1967.)	
German Democratic Republic***	8 November 1973	Syrian Arab Republic***	21 April 1969a
(Signature affixed on 27 March 1973.)		Tunisia	18 March 1969
Germany, Federal Republic of***	17 December 1973	(Signature affixed on 30 April 1968.)	
(With a declaration of application to Berlin (West).)†		Ukrainian Soviet Socialist Republic***	12 November 1973
(Signature affixed on 9 October 1968.)		(Signature affixed on 20 March 1968.)	
Hungary***	17 January 1974	Union of Soviet Socialist Republics***	16 October 1973
(Signature affixed on 25 March 1969.)		(Signature affixed on 18 March 1968.)	
Iran	24 June 1975	Uruguay	1 April 1970
(Signature affixed on 4 April 1968.)		(Signature affixed on 21 February 1967.)	
		Yugoslavia	2 June 1971
		(Signature affixed on 8 August 1967.)	

(Continued on page 173)

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1. 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2. 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present

(Footnote continued from page 172)

*See p. 300 of this volume for the texts of the declarations recognizing the competence of the Human Rights Committee under article 41.

**Several of the 35 instruments deposited were accompanied by reservations, about which the Covenant is silent. In this regard, the Secretary-General, on the basis of the consultations that he held in the same circumstances with respect to the International Covenant on Economic, Social and Cultural Rights (see No. I-14531 of volume 993), has considered that the States concerned did not object to the entry into force of the International Covenant on Civil and Political Rights on 23 March 1976.

***See p. 288 of this volume for the texts of the declarations and reservations made upon ratification or accession.

†The following countries made declarations regarding the declaration made upon ratification by the Federal Republic of Germany: France, German Democratic Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America. For the texts of the said declarations, see No. I-14531 in volume 993.

Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4. 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5. 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6. 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the

Crime of Genocide.¹ This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8. 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9. 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

¹ United Nations, *Treaty Series*, vol. 78, p. 277.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10. 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12. 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13. An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14. 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15. 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16. Everyone shall have the right to recognition everywhere as a person before the law.

Article 17. 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18. 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19. 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20. 1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22. 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize¹ to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

¹ United Nations, *Treaty Series*, vol. 68, p. 17.

Vol. 999, I-14668

Article 23. 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24. 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28. 1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29. 1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30. 1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31. 1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32. 1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33. 1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34. 1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months

of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35. The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37. 1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38. Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39. 1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40. 1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41. 1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

- (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42. 1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter.
- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.
- (c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.
- (d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43. The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.¹

Article 44. The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

PART V

Article 46. Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the

¹ United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47. Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48. 1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49. 1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50. The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51. 1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53. 1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

TAB 2

Freedom of Information and Protection of Privacy Act

R.S.O. 1990, CHAPTER F.31

Consolidation Period: From May 29, 2019 to the e-Laws currency date.

Last amendment: 2019, c. 7, Sched. 60, s. 9.

Legislative History: 1992, c. 14, s. 1; 1992, c. 32, s. 13; 1993, c. 38, s. 65; 1994, c. 11, s. 388; 1994, c. 12, s. 49; 1995, c. 1, s. 82; 1996, c. 1, Sched. K, s. 1-12; 1996, c. 2, s. 66; 1996, c. 6, s. 2, 3; 1996, c. 25, s. 6; 1997, c. 41, s. 118; 1998, c. 26, s. 103; 2002, c. 2, s. 15, 19 (4-7); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 1-11; 2002, c. 34, Sched. B, s. 2, 3; 2004, c. 3, Sched. A, s. 81; 2004, c. 17, s. 32; 2005, c. 25, s. 34; 2005, c. 28, Sched. F; 2006, c. 19, Sched. N, s. 1; 2006, c. 21, Sched. C, s. 110; 2006, c. 34, Sched. C, s. 1-12; 2006, c. 34, Sched. F, s. 1; 2006, c. 35, Sched. C, s. 47; 2007, c. 6, s. 61; 2007, c. 13, s. 43; 2008, c. 15, s. 86; 2010, c. 25, s. 24; 2011, c. 9, Sched. 15; 2014, c. 13, Sched. 4, s. 8; 2014, c. 13, Sched. 6, s. 1, 2; 2015, c. 20, Sched. 13; 2016, c. 5, Sched. 10; 2016, c. 23, s. 49; 2016, c. 37, Sched. 18, s. 8; 2017, c. 2, Sched. 12, s. 4; 2017, c. 7, s. 3; 2017, c. 8, Sched. 13; 2017, c. 14, Sched. 4, s. 14; 2017, c. 19, Sched. 2; 2017, c. 25, Sched. 9, s. 94; 2018, c. 17, Sched. 19; 2019, c. 7, Sched. 17, s. 80; 2019, c. 7, Sched. 31; 2019, c. 7, Sched. 60, s. 9.

CONTENTS

- 1. Purposes
- 1.1 Limited application re Assembly
- 2. Definitions

PART I **ADMINISTRATION**

- 3. Responsible minister
- 4. Information and Privacy Commissioner
- 5. Term of office
- 6. Removal or suspension
- 7. Salary and benefits
- 7.1 Designation by Commissioner
- 7.2 Temporary Commissioner
- 7.3 Subsequent appointment not prohibited
- 7.4 Restrictions re other work, etc.
- 7.5 Oath of office
- 7.6 Nature of office
- 7.7 Protection from liability
- 8. Staff
- 9. Financial

PART II **FREEDOM OF INFORMATION** ACCESS TO RECORDS

- 10. Right of access
- 10.1 Measures to ensure preservation of records
- 11. Obligation to disclose

EXEMPTIONS

- 12. Cabinet records
- 13. Advice to government
- 14. Law enforcement
- 14.1 Civil Remedies Act, 2001
- 14.2 Prohibiting Profiting from Recounting Crimes Act, 2002
- 15. Relations with other governments
- 15.1 Relations with Aboriginal communities
- 16. Defence
- 17. Third party information
- 18. Economic and other interests of Ontario
- 18.1 Information with respect to closed meetings
- 19. Solicitor-client privilege

- 20. Danger to safety or health
- 21. Personal privacy
- 21.1 Species at risk
- 22. Information soon to be published
- 23. Exemptions not to apply

ACCESS PROCEDURE

- 24. Request
- 25. Request to be forwarded
- 26. Notice by head
- 27. Extension of time
- 27.1 Frivolous request
- 28. Notice to affected person
- 29. Contents of notice of refusal
- 30. Copy of record

INFORMATION TO BE PUBLISHED OR AVAILABLE

- 31. Publication of information re institutions
- 32. Operation of institutions
- 33. Institution documents
- 34. Annual report of head
- 35. Documents made available
- 36. Information from heads

PART III **PROTECTION OF INDIVIDUAL PRIVACY** COLLECTION AND RETENTION OF PERSONAL INFORMATION

- 37. Application of Part
- 38. Personal information
- 39. Manner of collection
- 40. Retention of personal information

USE AND DISCLOSURE OF PERSONAL INFORMATION

- 41. Use of personal information
- 42. Where disclosure permitted
- 43. Consistent purpose

PERSONAL INFORMATION BANKS

- 44. Personal information banks
- 45. Personal information bank index
- 46. Inconsistent use or disclosure

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

- 47. Rights of access and correction
- 48. Requests and manner of access
- 49. Exemptions

PART III.1 **DATA INTEGRATION**

- 49.1 Definitions
- 49.2 Purpose for the collection of personal information
- 49.3 General rules re personal information
- 49.4 Collection of personal information
- 49.5 Restrictions on collection
- 49.6 Linking and de-identification
- 49.7 Limits on use of personal information
- 49.8 Limits on use of de-identified information
- 49.9 Disclosure of personal information
- 49.10 Notice of collection
- 49.11 Security and retention
- 49.12 Commissioner's review of practices
- 49.13 Annual report
- 49.14 Data standards
- 49.15 Regulations

PART IV **APPEAL**

- 50. Right to appeal
- 51. Mediator to try to effect settlement
- 52. Inquiry

<u>53.</u>	Burden of proof
<u>54.</u>	Order
<u>55.</u>	Confidentiality
<u>56.</u>	Delegation by Commissioner

PART V **GENERAL**

<u>57.</u>	Fees
<u>58.</u>	Annual report of Commissioner
<u>59.</u>	Powers and duties of Commissioner
<u>60.</u>	Regulations
<u>61.</u>	Offences
<u>62.</u>	Delegation, civil proceedings
<u>63.</u>	Informal access
<u>64.</u>	Information otherwise available
<u>65.</u>	Application of Act
<u>65.1</u>	Service provider organizations
<u>65.2</u>	Public consultation before making regulations
<u>65.3</u>	Non-application re: certain corporations
<u>66.</u>	Exercise of rights of deceased, etc., persons
<u>67.</u>	Conflict with other Act
<u>69.</u>	Application
<u>70.</u>	Crown bound

Purposes

1 The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. F.31, s. 1.

Limited application re Assembly

1.1 (1) This Act applies to the Assembly, but only in respect of records of reviewable expenses of the Opposition leaders and the persons employed in their offices and in respect of the personal information contained in those records. 2002, c. 34, Sched. B, s. 2.

Same

(2) Sections 11, 31, 32, 33, 34, 36, 44, 45 and 46 do not apply with respect to the Assembly. 2002, c. 34, Sched. B, s. 2.

Definitions

(3) In this section,

“Opposition leader” has the same meaning as in section 1 of the *Cabinet Ministers’ and Opposition Leaders’ Expenses Review and Accountability Act, 2002*; (“chef d’un parti de l’opposition”)

“reviewable expense” means a reviewable expense as described in section 3 of the *Cabinet Ministers’ and Opposition Leaders’ Expenses Review and Accountability Act, 2002*. (“dépense sujette à examen”) 2002, c. 34, Sched. B, s. 2.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted: (See: 2014, c. 13, Sched. 4, ss. 8, 9)

Definitions

(3) In this section,

“Opposition leader” has the same meaning as in section 1 of the *Politicians’ Expenses Review Act, 2002*; (“chef d’un parti de l’opposition”)

“reviewable expense” means a reviewable expense as described in section 3 of the *Politicians’ Expenses Review Act, 2002*, (“dépense sujette à examen”) 2014, c. 13, Sched. 4, s. 8.

Section Amendments with date in force (d/m/y)

2002, c. 34, Sched. B, s. 2 - 1/01/2003

2014, c. 13, Sched. 4, s. 8 - not in force

Definitions

2 (1) In this Act,

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, including by adoption; (“proche parent”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 2 (1) of the Act is amended by adding the following definition: (See: 2017, c. 25, Sched. 9, s. 94 (1))

“community health facility” means a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*; (“établissement de santé communautaire”)

“ecclesiastical records” means the operational, administrative and theological records, including records relating to the practice of faith, of a church or other religious organization; (“documents ecclésiastiques”)

“educational institution” means an institution that is a college of applied arts and technology or a university; (“établissement d’enseignement”)

“head”, in respect of an institution, means,

(0.a) in the case of the Assembly, the Speaker,

(a) in the case of a ministry, the minister of the Crown who presides over the ministry,

(a.1) in the case of a public hospital, the chair of the board of the hospital,

(a.2) in the case of a private hospital, the superintendent,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a.2) of the definition of “head” in subsection 2 (1) of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 94 (2))

(a.2) in the case of a community health facility, the chair of the board,

(a.3) in the case of the University of Ottawa Heart Institute/Institut de cardiologie de l’Université d’Ottawa, the Chair of the board, and

(b) in the case of any other institution, the person designated as head of that institution in the regulations; (“personne responsable”)

“hospital” means,

(a) a public hospital,

(b) a private hospital, and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of “hospital” in subsection 2 (1) of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 94 (3))

(b) a community health facility, and

(c) the University of Ottawa Heart Institute/Institut de cardiologie de l’Université d’Ottawa; (“hôpital”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (2); (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

“institution” means,

(0.a) the Assembly,

(a) a ministry of the Government of Ontario,

(a.1) a service provider organization within the meaning of section 17.1 of the *Ministry of Government Services Act*,

(a.2) a hospital, and

- (b) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (“renseignements personnels”)

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual’s name or an identifying number or particular assigned to the individual; (“banque de renseignements personnels”)

“private hospital” means a private hospital within the meaning of the *Private Hospitals Act*; (“hôpital privé”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “private hospital” in subsection 2 (1) of the Act is repealed. (See: 2017, c. 25, Sched. 9, s. 94 (4))

“public hospital” means a hospital within the meaning of the *Public Hospitals Act*; (“hôpital public”)

“recognized party” has the same meaning as in subsection 62 (5) of the *Legislative Assembly Act*; (“parti reconnu”)

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

“regulations” means the regulations made under this Act; (“règlements”)

“responsible minister” means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3; (“ministre responsable”)

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. F.31, s. 2 (1); 2002, c. 34, Sched. B, s. 3; 2005, c. 28, Sched. F, s. 1 (1, 3); 2006, c. 19, Sched. N, s. 1 (1); 2006, c. 34, Sched. C, s. 1; 2006, c. 34, Sched. F, s. 1 (1); 2010, c. 25, s. 24 (1-5); 2016, c. 23, s. 49 (1); 2018, c. 17, Sched. 19, s. 1.

Personal information

(2) Personal information does not include information about an individual who has been dead for more than thirty years. R.S.O. 1990, c. F.31, s. 2 (2).

Business identity information, etc.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. 2006, c. 34, Sched. C, s. 2.

Same

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling. 2006, c. 34, Sched. C, s. 2.

Section Amendments with date in force (d/m/y)

2002, c. 34, Sched. B, s. 3 (1, 2) - 1/01/2003

2005, c. 28, Sched. F, s. 1 (1) - 10/06/2006; 2005, c. 28, Sched. F, s. 1 (3) - 22/06/2006

2006, c. 19, Sched. N, s. 1 (1) - 22/06/2006; 2006, c. 34, Sched. C, s. 1 (1, 2), 2 - 1/04/2007; 2006, c. 34, Sched. F, s. 1 (1) - 1/04/2007

2010, c. 25, s. 24 (1-5) - 1/01/2012

2016, c. 23, s. 49 (1) - 01/01/2017

2017, c. 25, Sched. 9, s. 94 (1-4) - not in force

2018, c. 17, Sched. 19, s. 1 (1, 2) - 06/12/2018

PART I ADMINISTRATION

Responsible minister

3 The Lieutenant Governor in Council may by order designate a minister of the Crown to be the responsible minister for the purposes of this Act. R.S.O. 1990, c. F.31, s. 3.

Information and Privacy Commissioner

4 (1) There shall be an Information and Privacy Commissioner who is an officer of the Assembly. 2018, c. 17, Sched. 19, s. 2.

Appointment

(2) The Assembly shall, by order, appoint the Information and Privacy Commissioner. 2018, c. 17, Sched. 19, s. 2.

Selection by panel

(3) Unless decided otherwise by unanimous consent of the Assembly, an order shall be made under subsection (2) only if the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. 2018, c. 17, Sched. 19, s. 2.

Powers and duties

(3.1) The Commissioner may exercise the powers and shall perform the duties prescribed by this or any other Act. 2018, c. 17, Sched. 19, s. 2.

Assistant Commissioners

(4) From the officers of the Commissioner's staff, the Commissioner shall appoint one or two Assistant Commissioners and may appoint an Assistant Commissioner for Personal Health Information. 2004, c. 3, Sched. A, s. 81 (1).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 81 (1) - 1/11/2004

2018, c. 17, Sched. 19, s. 2 - 06/12/2018

Term of office

5 (1) The Commissioner shall hold office for a term of five years and may be reappointed for one further term of five years. 2018, c. 17, Sched. 19, s. 3.

Selection by panel

(2) Subsection 4 (3) applies with respect to a reappointment under subsection (1) of this section. 2018, c. 17, Sched. 19, s. 3.

Continuation in office

(3) By order of the Assembly, the Commissioner may continue to hold office after expiry of his or her term of office until a temporary Commissioner is appointed under section 7.2 or until a successor is appointed. 2018, c. 17, Sched. 19, s. 3.

Transition

(4) The Commissioner in office immediately before the day the *Restoring Trust, Transparency and Accountability Act, 2018* receives Royal Assent is deemed to be in the first term of his or her appointment and shall continue to hold office for the remainder of the term. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

1996, c. 6, s. 2 - 25/04/1996

2006, c. 35, Sched. C, s. 47 (1) - 20/08/2007

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Removal or suspension

6 (1) The Assembly may, by order passed by a vote of at least two thirds of the members of the Assembly, remove or suspend the Commissioner from office for cause. 2018, c. 17, Sched. 19, s. 3.

Suspension if Assembly not in session

(2) If the Assembly is not in session, the Board of Internal Economy may on unanimous agreement suspend the Commissioner for cause. 2018, c. 17, Sched. 19, s. 3.

Duration of suspension

(3) A suspension under subsection (1) continues until revoked by order of the Assembly or until the Commissioner is removed from office pursuant to subsection (1). 2018, c. 17, Sched. 19, s. 3.

Same

(4) Unless the Board of Internal Economy revokes the suspension before the next sitting of the Assembly, a suspension under subsection (2) continues until revoked by order of the Assembly or until the Commissioner is removed from office pursuant to subsection (1). 2018, c. 17, Sched. 19, s. 3.

Same

(5) Despite subsection (4), no suspension imposed under subsection (2) continues past the 20th sessional day of the next sitting of the Assembly. 2018, c. 17, Sched. 19, s. 3.

Report to Assembly

(6) The Board of Internal Economy shall report to the Assembly any action taken under subsections (2) and (4) at the earliest opportunity of the next sitting of the Assembly. 2018, c. 17, Sched. 19, s. 3.

Meaning of "not in session"

(7) For the purposes of this section and sections 7.2 and 7.4, the Assembly is not in session when it is,

(a) prorogued; or

(b) adjourned for an indefinite period or to a day that is more than seven days after the date on which the Assembly was adjourned. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

1996, c. 6, s. 3 - 25/04/1996

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Salary and benefits

7 (1) The Board of Internal Economy shall determine the salary and benefits of the Commissioner. 2018, c. 17, Sched. 19, s. 3.

Pension plan

(2) Subject to subsections (3) and (4), the Commissioner is a member of the Public Service Pension Plan. 2018, c. 17, Sched. 19, s. 3.

Notice re pension plan

(3) Within 60 days after his or her appointment takes effect, the Commissioner may notify the Speaker in writing that he or she elects not to be a member of the Public Service Pension Plan. 2018, c. 17, Sched. 19, s. 3.

Same

(4) If the Commissioner gives notice of their election to the Speaker in accordance with subsection (3), the election is irrevocable and is deemed to have taken effect when the appointment took effect. 2018, c. 17, Sched. 19, s. 3.

Expenses

(5) Subject to the approval of the Board of Internal Economy, the Commissioner is entitled to be reimbursed for reasonable expenses that he or she incurs in respect of anything done under this Act. 2018, c. 17, Sched. 19, s. 3.

Transition

(6) The salary and expenses of the Commissioner in office immediately before the day the *Restoring Trust, Transparency and Accountability Act, 2018* receives Royal Assent continue to be determined in accordance with subsections 6 (1) to (3) of this Act, as they read immediately before that day, for the remainder of the Commissioner's term of office. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Designation by Commissioner

7.1 (1) The Commissioner shall designate an individual from among the employees of the office of the Commissioner who shall have the powers and duties of the Commissioner if the Commissioner is absent or unable to fulfil the duties of his or her office or if the office becomes vacant. 2018, c. 17, Sched. 19, s. 3.

Designation in writing

(2) A designation under subsection (1) shall be in writing to the Speaker. 2018, c. 17, Sched. 19, s. 3.

Powers and duties

(3) The individual designated under subsection (1) shall have the powers and duties of the Commissioner unless a temporary Commissioner is appointed under section 7.2. 2018, c. 17, Sched. 19, s. 3.

Salary

(4) The Board of Internal Economy may increase the salary of an individual who assumes the powers and duties of the Commissioner under subsection (1) in such circumstances as the Board considers appropriate. 2018, c. 17, Sched. 19, s. 3.

Removal or suspension

(5) Section 6 applies in respect of an individual who assumes the powers and duties of the Commissioner under subsection (1). 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Temporary Commissioner

7.2 (1) If the Commissioner is unable to fulfil the duties of his or her office or the office becomes vacant, the Assembly may, by order, appoint a temporary Commissioner. 2018, c. 17, Sched. 19, s. 3.

Same, conditions

(2) An order shall be made under subsection (1) only if,

(a) the Commissioner,

(i) has not made a designation under subsection 7.1 (1), or

(ii) has made a designation under subsection 7.1 (1), but,

(A) the Commissioner has been removed or suspended under section 6, or

- (B) the person designated is unable or unwilling to act or has been removed or suspended under section 6; and
- (b) unless decided otherwise by unanimous consent of the Assembly, the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. 2018, c. 17, Sched. 19, s. 3.

Appointment if Assembly not in session

(3) If, while the Assembly is not in session, the Commissioner is unable to fulfil the duties of his or her office or the office becomes vacant, the Board of Internal Economy may appoint a temporary Commissioner. 2018, c. 17, Sched. 19, s. 3.

Same

(4) Clause (2) (a) applies with respect to an appointment under subsection (3). 2018, c. 17, Sched. 19, s. 3.

Powers, salary and benefits

(5) A temporary Commissioner shall have the powers and duties of the Commissioner and shall be paid a salary and benefits determined by the Board of Internal Economy and, subject to the approval of the Board, be reimbursed for reasonable expenses that he or she incurs in respect of anything done under this Act. 2018, c. 17, Sched. 19, s. 3.

Duration of office

(6) A temporary Commissioner shall hold office until,

- (a) the Commissioner is able to fulfil the duties of the office, where the appointment resulted from the Commissioner being unable to do so;
- (b) where the appointment resulted from a suspension of the Commissioner, the suspension is revoked by order of the Assembly, by the Board of Internal Economy under subsection 6 (4) or by operation of subsection 6 (5);
- (c) the Assembly appoints a different temporary Commissioner under subsection (1); or
- (d) the Assembly appoints a Commissioner under section 4. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Subsequent appointment not prohibited

7.3 A person who continues his or her first term as Commissioner under subsection 5 (3) or who is appointed as an Assistant Commissioner or temporary Commissioner is not prohibited from a subsequent appointment as Commissioner under section 4 and, in the case of such an appointment, the previous time in office does not count toward the term of office set out in subsection 5 (1). 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Restrictions re other work, etc.

7.4 (1) The Commissioner shall not be a member of the Assembly and shall not, without prior approval by the Assembly, or by the Board of Internal Economy when the Assembly is not in session, hold any other office or employment. 2018, c. 17, Sched. 19, s. 3.

Exception

(2) Despite subsection (1), the Commissioner may hold more than one office to which he or she has been appointed by the Assembly or the Board of Internal Economy. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Oath of office

7.5 (1) Before beginning the duties of his or her office, the Commissioner shall take an oath or affirmation that he or she will faithfully and impartially exercise the functions of the office. 2018, c. 17, Sched. 19, s. 3.

Same

(2) The Speaker or the Clerk of the Assembly shall administer the oath or affirmation. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Nature of office

7.6 (1) The Commissioner holds office for a fixed term. 2018, c. 17, Sched. 19, s. 3.

Notice not required

(2) No notice to the Commissioner is required before the expiry of the Commissioner's term of office. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Protection from liability

7.7 (1) No cause of action arises, no proceeding may be brought and no remedy is available or damages, costs or compensation payable in connection with any amendment made by Schedule 19 to the *Restoring Trust, Transparency and Accountability Act, 2018* to this Act or anything done or not done in accordance with those amendments. 2018, c. 17, Sched. 19, s. 3.

Same

(2) Subsection (1) applies whether the cause of action on which a proceeding is based arose before or after the day that subsection comes into force. 2018, c. 17, Sched. 19, s. 3.

Proceedings set aside

(3) Any proceeding referred to in subsection (1) commenced before the day that subsection comes into force is deemed to have been dismissed, without costs, on that day. 2018, c. 17, Sched. 19, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 3 - 06/12/2018

Staff

8 (1) Subject to the approval of the Board of Internal Economy, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. F.31, s. 8 (1); 2018, c. 17, Sched. 19, s. 4.

Benefits

(2) The benefits determined under Part III of the *Public Service of Ontario Act, 2006* with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the employees of the office of the Commissioner:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits.
2. Plans for group life insurance, medical-surgical insurance or long-term income protection.
3. The granting of leaves of absence. 2006, c. 35, Sched. C, s. 47 (2).

Same

(2.1) For the purposes of subsection (2), if a benefit applicable to an employee of the office of the Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Commissioner or any person authorized in writing by the Commissioner. 2006, c. 35, Sched. C, s. 47 (2).

Public Service Pension Plan

(3) The Commissioner shall be deemed to have been designated by the Lieutenant Governor in Council under the *Public Service Pension Act* as a commission whose permanent and probationary staff are required to be members of the Public Service Pension Plan. R.S.O. 1990, c. F.31, s. 8 (3).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 47 (2) - 20/08/2007

2018, c. 17, Sched. 19, s. 4 - 06/12/2018

Financial

Premises and supplies

9 (1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner. R.S.O. 1990, c. F.31, s. 9 (1).

Audit

(2) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Auditor General. R.S.O. 1990, c. F.31, s. 9 (2); 2004, c. 17, s. 32.

Section Amendments with date in force (d/m/y)

2004, c. 17, s. 32 - 30/11/2004

PART II FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of access

10 (1) Subject to subsection 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 10 (1) of the Act is amended by striking out "subsection 69 (2)" and substituting "subsections (1.1) and 69 (2)". (See: 2019, c. 7, Sched. 31, s. 1 (1))

- (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. 1996, c. 1, Sched. K, s. 1; 2010, c. 25, s. 24 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 10 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 31, s. 1 (2))

Part III.1 records

(1.1) Subsection (1) does not apply to personal information collected under Part III.1 (Data Integration) or to records produced from that information under that Part that are not de-identified. 2019, c. 7, Sched. 31, s. 1 (2).

Severability of record

(2) If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. 1996, c. 1, Sched. K, s. 1.

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 1 - 30/01/1996

2010, c. 25, s. 24 (6) - 1/01/2012

2019, c. 7, Sched. 31, s. 1 (1, 2) - not in force

Measures to ensure preservation of records

10.1 Every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the institution. 2014, c. 13, Sched. 6, s. 1.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 6, s. 1 - 1/01/2016

Obligation to disclose

11 (1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public. R.S.O. 1990, c. F.31, s. 11 (1).

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so. R.S.O. 1990, c. F.31, s. 11 (2).

Contents of notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head. R.S.O. 1990, c. F.31, s. 11 (3).

Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed. R.S.O. 1990, c. F.31, s. 11 (4).

EXEMPTIONS

Cabinet records

12 (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations. R.S.O. 1990, c. F.31, s. 12 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given. R.S.O. 1990, c. F.31, s. 12 (2).

Advice to government

13 (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. R.S.O. 1990, c. F.31, s. 13 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

- (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;
- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;
- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,
 - (i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling. R.S.O. 1990, c. F.31, s. 13 (2).

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy. R.S.O. 1990, c. F.31, s. 13 (3); 2016, c. 5, Sched. 10, s. 1.

Section Amendments with date in force (d/m/y)

2016, c. 5, Sched. 10, s. 1 - 19/04/2016

Law enforcement

14 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of clause 14 (1) (b) of the Act is amended. (See: 2019, c. 7, Sched. 31, s. 2)

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. F.31, s. 14 (1); 2002, c. 18, Sched. K, s. 1 (1).

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. R.S.O. 1990, c. F.31, s. 14 (2); 2002, c. 18, Sched. K, s. 1 (2).

Refusal to confirm or deny existence of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply. R.S.O. 1990, c. F.31, s. 14 (3).

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario. R.S.O. 1990, c. F.31, s. 14 (4).

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections. R.S.O. 1990, c. F.31, s. 14 (5).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. K, s. 1 (1) - 26/11/2002

2019, c. 7, Sched. 31, s. 2 - not in force

Civil Remedies Act, 2001

14.1 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Civil Remedies Act, 2001*, conduct a proceeding under that Act or enforce an order made under that Act. 2001, c. 28, s. 22 (1); 2002, c. 18, Sched. K, s. 2; 2007, c. 13, s. 43 (1).

Section Amendments with date in force (d/m/y)

2001, c. 28, s. 22 (1) - 12/04/2002

2002, c. 18, Sched. K, s. 2 - 26/11/2002

2007, c. 13, s. 43 (1) - 4/06/2007

Prohibiting Profiting from Recounting Crimes Act, 2002

14.2 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Prohibiting Profiting from Recounting Crimes Act, 2002*, conduct a proceeding under that Act or enforce an order made under that Act. 2002, c. 2, ss. 15 (1), 19 (4); 2002, c. 18, Sched. K, s. 3.

Section Amendments with date in force (d/m/y)

2002, c. 2, s. 15 (1) - 1/07/2003; 2002, c. 18, Sched. K, s. 3 - 26/11/2002

Relations with other governments

15 A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution; or
- (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 15; 2002, c. 18, Sched. K, s. 4.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. K, s. 4 - 26/11/2002

Relations with Aboriginal communities

15.1 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of relations between an Aboriginal community and the Government of Ontario or an institution; or
- (b) reveal information received in confidence from an Aboriginal community by an institution. 2017, c. 8, Sched. 13, s. 1.

Definition

(2) In this section,

“Aboriginal community” means,

- (a) a band within the meaning of the *Indian Act* (Canada),
- (b) an Aboriginal organization or community that is negotiating or has negotiated with the Government of Canada or the Government of Ontario on matters relating to,
 - (i) Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*, or
 - (ii) a treaty, land claim or self-government agreement, and
- (c) any other Aboriginal organization or community prescribed by the regulations. 2017, c. 8, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

2017, c. 8, Sched. 13, s. 1 - 09/03/2018

Defence

16 A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 16; 2002, c. 18, Sched. K, s. 5.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. K, s. 5 - 26/11/2002

Third party information

17 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6; 2017, c. 8, Sched. 13, s. 2.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. K, s. 6 - 26/11/2002

2017, c. 8, Sched. 13, s. 2 - 17/05/2017

Economic and other interests of Ontario

18 (1) A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved;
- (j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services. R.S.O. 1990, c. F.31, s. 18 (1); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 7; 2005, c. 28, Sched. F, s. 2; 2011, c. 9, Sched. 15, s. 1.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing. R.S.O. 1990, c. F.31, s. 18 (2).

Section Amendments with date in force (d/m/y)

2002, c. 17, Sched. F, Table - 1/01/2003; 2002, c. 18, Sched. K, s. 7 (1-4) - 26/11/2002

2005, c. 28, Sched. F, s. 2 - 10/06/2006

2011, c. 9, Sched. 15, s. 1 - 1/01/2012

Information with respect to closed meetings

18.1 (1) A head may refuse to disclose a record that reveals the substance of deliberations of a meeting of the governing body or a committee of the governing body of an educational institution or a hospital if a statute authorizes holding the meeting in the absence of the public and the subject-matter of the meeting,

- (a) is a draft of a by-law, resolution or legislation; or
- (b) is litigation or possible litigation. 2005, c. 28, Sched. F, s. 3; 2010, c. 25, s. 24 (7).

Exception

- (2) Despite subsection (1), the head shall not refuse to disclose a record under subsection (1) if,
- (a) the information is not held confidentially;
 - (b) the subject-matter of the deliberations has been considered in a meeting open to the public; or
 - (c) the record is more than 20 years old. 2005, c. 28, Sched. F, s. 3.

Application of Act

- (3) The exemption in subsection (1) is in addition to any other exemptions in this Act. 2005, c. 28, Sched. F, s. 3.

Section Amendments with date in force (d/m/y)

2005, c. 28, Sched. F, s. 3 - 10/06/2006

2010, c. 25, s. 24 (7) - 1/01/2012

Solicitor-client privilege

19 A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation. 2005, c. 28, Sched. F, s. 4; 2010, c. 25, s. 24 (8).

Section Amendments with date in force (d/m/y)

2005, c. 28, Sched. F, s. 4 - 10/06/2006

2010, c. 25, s. 24 (8) - 1/01/2012

Danger to safety or health

20 A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. F.31, s. 20; 2002, c. 18, Sched. K, s. 8.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. K, s. 8 - 26/11/2002

Personal privacy

21 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,

- (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
- (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
- (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (1).

Criteria re invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. F.31, s. 21 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. R.S.O. 1990, c. F.31, s. 21 (3).

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

- (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or
- (d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons. R.S.O. 1990, c. F.31, s. 21 (4); 2006, c. 19, Sched. N, s. 1 (2).

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (5).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. N, s. 1 (2) - 22/06/2006

Species at risk

21.1 A head may refuse to disclose a record where the disclosure could reasonably be expected to lead to,

- (a) killing, harming, harassing, capturing or taking a living member of a species, contrary to clause 9 (1) (a) of the *Endangered Species Act, 2007*;
- (b) possessing, transporting, collecting, buying, selling, leasing, trading or offering to buy, sell, lease or trade a living or dead member of a species, any part of a living or dead member of a species, or anything derived from a living or dead member of a species, contrary to clause 9 (1) (b) of the *Endangered Species Act, 2007*; or
- (c) damaging or destroying the habitat of a species, contrary to clause 10 (1) (a) or (b) of the *Endangered Species Act, 2007*. 2007, c. 6, s. 61.

Section Amendments with date in force (d/m/y)

1997, c. 41, s. 118 (1) - 1/01/1999

2002, c. 18, Sched. K, s. 9 - 26/11/2002

2007, c. 6, s. 61 - 30/06/2008

Information soon to be published

22 A head may refuse to disclose a record where,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S.O. 1990, c. F.31, s. 22.

Exemptions not to apply

23 An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. R.S.O. 1990, c. F.31, s. 23; 1997, c. 41, s. 118 (2); 2017, c. 8, Sched. 13, s. 3.

Section Amendments with date in force (d/m/y)

1997, c. 41, s. 118 (2) - 1/01/1999

2017, c. 8, Sched. 13, s. 3 - 09/03/2018

ACCESS PROCEDURE

Request

24 (1) A person seeking access to a record shall,

- (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
- (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

- (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 2; 2017, c. 2, Sched. 12, s. 4 (1).

Frivolous request

(1.1) If the head of the institution is of the opinion on reasonable grounds that the request is frivolous or vexatious, subsections (2) to (5) do not apply to the request. 1996, c. 1, Sched. K, s. 2.

Sufficiency of detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1). R.S.O. 1990, c. F.31, s. 24 (2).

Request for continuing access to record

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years. R.S.O. 1990, c. F.31, s. 24 (3).

Institution to provide schedule

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

- (a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen; and
- (b) a statement that the applicant may ask the Commissioner to review the schedule. R.S.O. 1990, c. F.31, s. 24 (4).

Act applies as if new requests were being made

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule. R.S.O. 1990, c. F.31, s. 24 (5).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 2 - 30/01/1996

2017, c. 2, Sched. 12, s. 4 (1) - 22/03/2017

Request to be forwarded

25 (1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution. R.S.O. 1990, c. F.31, s. 25 (1).

Transfer of request

(2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request. R.S.O. 1990, c. F.31, s. 25 (2).

Greater interest

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof. R.S.O. 1990, c. F.31, s. 25 (3).

When transferred request deemed made

(4) Where a request is forwarded or transferred under subsection (1) or (2), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it. R.S.O. 1990, c. F.31, s. 25 (4).

Institution

(5) In this section,

"institution" includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 25 (5).

Notice by head

26 Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced. R.S.O. 1990, c. F.31, s. 26; 1996, c. 1, Sched. K, s. 3.

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 3 - 30/01/1996

Extension of time

27 (1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit. R.S.O. 1990, c. F.31, s. 27 (1).

Notice of extension

(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension. R.S.O. 1990, c. F.31, s. 27 (2).

Frivolous request

27.1 (1) A head who refuses to give access to a record or a part of a record because the head is of the opinion that the request for access is frivolous or vexatious, shall state in the notice given under section 26,

- (a) that the request is refused because the head is of the opinion that the request is frivolous or vexatious;
- (b) the reasons for which the head is of the opinion that the request is frivolous or vexatious; and
- (c) that the person who made the request may appeal to the Commissioner under subsection 50 (1) for a review of the decision. 1996, c. 1, Sched. K, s. 4.

Non-application

(2) Sections 28 and 29 do not apply to a head who gives a notice for the purpose of subsection (1). 1996, c. 1, Sched. K, s. 4.

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 4 - 30/01/1996

Notice to affected person

28 (1) Before a head grants a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or

- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates. R.S.O. 1990, c. F.31, s. 28 (1).

Contents of notice

(2) The notice shall contain,

- (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- (c) a statement that the person may, subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (2); 2016, c. 5, Sched. 10, s. 2 (1).

Description

(2.1) If the request covers more than one record, the description mentioned in clause (2) (b) may consist of a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 5.

Time for notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit. R.S.O. 1990, c. F.31, s. 28 (3).

Notice of delay

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will, within 10 days after the expiry of the time period for making representations under subsection (5), decide whether or not to disclose the record. R.S.O. 1990, c. F.31, s. 28 (4); 2016, c. 5, Sched. 10, s. 2 (2).

Representation re disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (5); 2016, c. 5, Sched. 10, s. 2 (3).

Extension of time

(5.1) If the time limit specified in subsection (5) presents a barrier, as defined in the *Accessibility for Ontarians with Disabilities Act, 2005*, to the person, the head may extend the time limit for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of making representations under that subsection. 2016, c. 5, Sched. 10, s. 2 (4).

Representation in writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally. R.S.O. 1990, c. F.31, s. 28 (6).

Decision re disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within 10 days after the expiry of the time period for making representations under subsection (5). 2016, c. 5, Sched. 10, s. 2 (5).

Notice of head's decision to disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within 30 days after the notice of decision is given, subject to subsection (8.1); and

- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within the time period specified in clause (a). 2016, c. 5, Sched. 10, s. 2 (5).

Extension of time

(8.1) If the time limit specified in clause (8) (a) presents a barrier, as defined in the *Accessibility for Ontarians with Disabilities Act, 2005*, to the person, the head may extend the time limit for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of appealing the decision under that clause. 2016, c. 5, Sched. 10, s. 2 (5).

Access to be given unless affected person appeals

(9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7), unless the person to whom the information relates appeals the decision to the Commissioner in accordance with clause (8) (a). R.S.O. 1990, c. F.31, s. 28 (9); 2016, c. 5, Sched. 10, s. 2 (6).

Personal information about deceased

(10) In the case of a request by the spouse or a close relative of a deceased individual for disclosure of personal information about the deceased individual, the person making the request shall give the head all information that the person has regarding whether the deceased individual has a personal representative and how to contact the personal representative. 2006, c. 19, Sched. N, s. 1 (3).

Deemed references

(11) If, under subsection (10), the head is informed that the deceased individual has a personal representative and is given sufficient information as to how to contact the personal representative, and if the head has reason to believe that disclosure of personal information about the deceased individual might constitute an unjustified invasion of personal privacy unless, in the circumstances, the disclosure is desirable for compassionate reasons, subsections (1) to (9) apply with the following modifications:

1. The expression "the person to whom the information relates" in subsections (1), (5), (7), (8) and (9) shall be deemed to be the expression "the personal representative".
2. The expression "the person" in clauses (2) (a) and (b) shall be deemed to be the expression "the deceased individual" and the expression "the person" in clause (2) (c) shall be deemed to be the expression "the personal representative". 2006, c. 19, Sched. N, s. 1 (3).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 5 - 30/01/1996

2006, c. 19, Sched. N, s. 1 (3) - 22/06/2006

2016, c. 5, Sched. 10, s. 2 (1-6) - 19/04/2016

Contents of notice of refusal

29 (1) Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. F.31, s. 29 (1).

Same

(2) Where a head refuses to confirm or deny the existence of a record as provided in subsection 14 (3) (law enforcement), section 14.1 (*Civil Remedies Act, 2001*), section 14.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*) or subsection 21 (5) (unjustified invasion of personal privacy), the head shall state in the notice given under section 26,

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;
- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. F.31, s. 29 (2); 2001, c. 28, s. 22 (2); 2002, c. 2, ss. 15 (2), 19 (5); 2007, c. 13, s. 43 (2).

Idem

(3) Where a head refuses to disclose a record or part thereof under subsection 28 (7), the head shall state in the notice given under subsection 28 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. F.31, s. 29 (3).

Description

(3.1) If a request for access covers more than one record, the statement in a notice under this section of a reason mentioned in subclause (1) (b) (ii) or clause (3) (b) may refer to a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 6.

Deemed refusal

(4) A head who fails to give the notice required under section 26 or subsection 28 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given. R.S.O. 1990, c. F.31, s. 29 (4).

Section Amendments with date in force (d/m/y)

1996, c. 1, s. 1 (1), Sched. K, s. 6 - 30/01/1996

2001, c. 28, s. 22 (2) - 12/04/2002

2002, c. 2, s. 15 (2) - 1/07/2003; 2002, c. 2, s. 19 (5) - 1/07/2003

2007, c. 13, s. 43 (2) - 4/06/2007

Copy of record

30 (1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations. R.S.O. 1990, c. F.31, s. 30 (1).

Access to original record

(2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations. R.S.O. 1990, c. F.31, s. 30 (2).

Copy of part

(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature. R.S.O. 1990, c. F.31, s. 30 (3).

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication of information re institutions

31 The responsible minister shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made;
- (b) the name and office of the head of the institution;
- (c) where the material referred to in sections 32, 33, 34 and 45 has been made available; and
- (d) whether the institution has a library or reading room which is available for public use, and if so, its address. R.S.O. 1990, c. F.31, s. 31.

Operation of institutions

32 The responsible minister shall cause to be published annually an indexed compilation containing,

- (a) a description of the organization and responsibilities of each institution including details of the programs and functions of each division or branch of each institution;
- (b) a list of the general classes or types of records prepared by or in the custody or control of each institution;
- (c) the title, business telephone number and business address of the head of each institution; and
- (d) any amendment of information referred to in clause (a), (b) or (c) that has been made available in accordance with this section. R.S.O. 1990, c. F.31, s. 32.

Institution documents

33 (1) A head shall make available, in the manner described in section 35,

- (a) manuals, directives or guidelines prepared by the institution, issued to its officers and containing interpretations of the provisions of any enactment or scheme administered by the institution where the interpretations are to be applied by, or are to be guidelines for, any officer who determines,
 - (i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme,
 - (ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or
 - (iii) whether to impose an obligation or liability on a person under the enactment or scheme; or
- (b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of the provisions of any enactment or scheme administered by the institution that affects the public. R.S.O. 1990, c. F.31, s. 33 (1).

Deletions

(2) A head may delete from a document made available under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head includes in the document,

- (a) a statement of the fact that a deletion has been made;
- (b) a brief statement of the nature of the record which has been deleted; and
- (c) a reference to the provision of this Act or the *Personal Health Information Protection Act, 2004* on which the head relies. R.S.O. 1990, c. F.31, s. 33 (2); 2004, c. 3, Sched. A, s. 81 (2).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 81 (2) - 1/11/2004

Annual report of head

34 (1) A head shall make an annual report, in accordance with this section, to the Commissioner. 2006, c. 19, Sched. N, s. 1 (4).

Contents of report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act or the *Personal Health Information Protection Act, 2004* for access to records made to the institution or to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;
- (b) the number of refusals by the head to disclose a record under this Act, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (c) the number of refusals under the *Personal Health Information Protection Act, 2004* by a health information custodian, within the meaning of that Act, that is the institution or that is acting as part of the institution, of a request for access to a record, the provisions of that Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45 (d) and (e) of this Act or in any written public statement provided under subsection 16 (1) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;
- (e) the amount of fees collected under section 57 of this Act by the institution and under subsection 54 (10) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution; and
- (f) any other information indicating an effort by the institution or by a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution to put into practice the purposes of this Act or the purposes of the *Personal Health Information Protection Act, 2004*. 2006, c. 19, Sched. N, s. 1 (4).

Separate information

- (3) The information required by each of clauses (2) (a), (d), (e) and (f) shall be provided separately for,
 - (a) each separate health information custodian that is the institution or that is acting as part of the institution; and
 - (b) the institution other than in its capacity as a health information custodian and other than in its capacity as an institution containing a health information custodian. 2006, c. 19, Sched. N, s. 1 (4).

Same

- (4) The information required by clause (2) (c) shall be provided separately for each separate health information custodian that is the institution or that is acting as part of the institution. 2006, c. 19, Sched. N, s. 1 (4).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 81 (3) - 1/11/2004

2006, c. 19, Sched. N, s. 1 (4) - 22/06/2006

Documents made available

35 (1) The responsible minister shall cause the materials described in sections 31, 32 and 45 to be made generally available for inspection and copying by the public and shall cause them to be made available to the public on the Internet or in the reading room, library or office designated by each institution for this purpose. 2006, c. 34, Sched. C, s. 3.

Same

- (2) Every head shall cause the materials described in sections 33 and 34 to be made available to the public on the Internet or in the reading room, library or office designated by each institution for this purpose. 2006, c. 34, Sched. C, s. 3.

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. C, s. 3 - 1/04/2007

Information from heads

36 (1) Every head shall provide to the responsible minister the information needed by the responsible minister to prepare the materials described in sections 31, 32 and 45. 2006, c. 34, Sched. C, s. 4.

Annual review

- (2) Every head shall conduct an annual review to ensure that all the information the head is required to provide under subsection (1) is provided and that all such information is accurate, complete and up to date. 2006, c. 34, Sched. C, s. 4.

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. C, s. 4 - 1/04/2007

**PART III
PROTECTION OF INDIVIDUAL PRIVACY**

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application of Part

37 This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. R.S.O. 1990, c. F.31, s. 37.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 37 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 31, s. 3)

Same

(2) With the exception of sections 47 to 49, this Part does not apply to personal information that is collected by a member of an inter-ministerial data integration unit or a ministry data integration unit under Part III.1, 2019, c. 7, Sched. 31, s. 3.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 3 - not in force

Personal information

38 (1) In this section and in section 39,

“personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. R.S.O. 1990, c. F.31, s. 38 (1).

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. R.S.O. 1990, c. F.31, s. 38 (2).

Manner of collection

39 (1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 59 (c);
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute. R.S.O. 1990, c. F.31, s. 39 (1).

Notice to individual

(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection. R.S.O. 1990, c. F.31, s. 39 (2).

Exception

(3) Subsection (2) does not apply where the head may refuse to disclose the personal information under subsection 14 (1) or (2) (law enforcement), section 14.1 (*Civil Remedies Act, 2001*) or section 14.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*). 2002, c. 2, s. 19 (6); 2007, c. 13, s. 43 (3).

Section Amendments with date in force (d/m/y)

2002, c. 2, s. 19 (6) - 1/07/2003

2007, c. 13, s. 43 (3) - 4/06/2007

Retention of personal information

40 (1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information. R.S.O. 1990, c. F.31, s. 40 (1).

Standard of accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date. R.S.O. 1990, c. F.31, s. 40 (2).

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes. R.S.O. 1990, c. F.31, s. 40 (3).

Disposal of personal information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. R.S.O. 1990, c. F.31, s. 40 (4).

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of personal information

41 (1) An institution shall not use personal information in its custody or under its control except,

- (a) where the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (d) subject to subsection (2), an educational institution may use personal information in its alumni records and a hospital may use personal information in its records for the purpose of its own fundraising activities, if the personal information is reasonably necessary for the fundraising activities. R.S.O. 1990, c. F.31, s. 41; 2005, c. 28, Sched. F, s. 5 (1); 2010, c. 25, s. 24 (9).

Notice on using personal information for fundraising

(2) In order for an educational institution to use personal information in its alumni records or for a hospital to use personal information in its records, either for its own fundraising activities or for the fundraising activities of an associated foundation, the educational institution or hospital shall,

- (a) give notice to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be used for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of his or her right to request that the information cease to be used for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish a notice of the individual's right to request that the individual's personal information cease to be used for fundraising purposes. 2005, c. 28, Sched. F, s. 5 (2); 2010, c. 25, s. 24 (10).

Discontinuing use of personal information

(3) An educational institution or a hospital shall, when requested to do so by an individual, cease to use the individual's personal information under clause (1) (d). 2005, c. 28, Sched. F, s. 5 (2); 2010, c. 25, s. 24 (11).

Section Amendments with date in force (d/m/y)

2005, c. 28, Sched. F, s. 5 (1, 2) - 10/06/2006

2010, c. 25, s. 24 (9-11) - 1/01/2012

Where disclosure permitted

42 (1) An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and where disclosure is necessary and proper in the discharge of the institution's functions;

Note: On a day to be named by proclamation of the Lieutenant Governor, the French version of clause 42 (1) (d) of the Act is amended. (See: 2019, c. 7, Sched. 31, s. 4 (1))

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 42 (1) (e) of the Act is repealed and the following substituted: (See: 2019, c. 7, Sched. 31, s. 4 (2))

- (e) where permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 42 (1) (g) of the Act is repealed and the following substituted: (See: 2019, c. 7, Sched. 31, s. 4 (3))

- (g) to an institution or a law enforcement agency in Canada if,
 - (i) the disclosure is to aid in an investigation undertaken by the institution or the agency with a view to a law enforcement proceeding, or
 - (ii) there is a reasonable basis to believe that an offence may have been committed and the disclosure is to enable the institution or the agency to determine whether to conduct such an investigation;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the employee;
- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner;
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs; or

- (o) subject to subsection (2), an educational institution may disclose personal information in its alumni records, and a hospital may disclose personal information in its records, for the purpose of its own fundraising activities or the fundraising activities of an associated foundation if,
 - (i) the educational institution and the person to whom the information is disclosed, or the hospital and the person to whom the information is disclosed, have entered into a written agreement that satisfies the requirements of subsection (3), and
 - (ii) the personal information is reasonably necessary for the fundraising activities. R.S.O. 1990, c. F.31, s. 42; 2005, c. 28, Sched. F, s. 6 (1); 2006, c. 19, Sched. N, s. 1 (5-7); 2006, c. 34, Sched. C, s. 5; 2010, c. 25, s. 24 (12).

Notice on disclosing personal information for fundraising

(2) In order for an educational institution to disclose personal information in its alumni records or for a hospital to disclose personal information in its records, either for the purpose of its own fundraising activities or the fundraising activities of an associated foundation, the educational institution or hospital shall ensure that,

- (a) notice is given to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be disclosed for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, notice is given to the individual to whom the personal information relates of his or her right to request that the information cease to be disclosed for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, notice is published in respect of the individual's right to request that the individual's personal information cease to be disclosed for fundraising purposes. 2005, c. 28, Sched. F, s. 6 (2); 2010, c. 25, s. 24 (13).

Fundraising agreement

(3) An agreement between an educational institution and another person for the disclosure of personal information in the educational institution's alumni records for fundraising activities, or an agreement between a hospital and another person for the disclosure of personal information in the hospital's records for fundraising activities, must,

- (a) require that the notice requirements in subsection (2) are met;
- (b) require that the personal information disclosed under clause (1) (o) be disclosed to the individual to whom the information relates upon his or her request; and
- (c) require that the person to whom the information is disclosed shall cease to use the personal information of any individual who requests that the information not be used. 2005, c. 28, Sched. F, s. 6 (2); 2010, c. 25, s. 24 (14).

Section Amendments with date in force (d/m/y)

2005, c. 28, Sched. F, s. 6 (1, 2) - 10/06/2006

2006, c. 19, Sched. N, s. 1 (5-7) - 22/06/2006; 2006, c. 34, Sched. C, s. 5 (1, 2) - 1/04/2007

2010, c. 25, s. 24 (12-14) - 1/01/2012

2019, c. 7, Sched. 31, s. 4 (1-3) - not in force

Consistent purpose

43 Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41 (1) (b) and 42 (1) (c) only if the individual might reasonably have expected such a use or disclosure. R.S.O. 1990, c. F.31, s. 43; 2006, c. 34, Sched. C, s. 6.

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. C, s. 6 - 1/04/2007

PERSONAL INFORMATION BANKS

Personal information banks

44 A head shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual. R.S.O. 1990, c. F.31, s. 44.

Personal information bank index

45 The responsible minister shall publish at least once each year an index of all personal information banks setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information. R.S.O. 1990, c. F.31, s. 45.

Inconsistent use or disclosure

46 (1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45 (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 45 (e). R.S.O. 1990, c. F.31, s. 46 (1).

Record of use part of personal information

(2) A record retained under subsection (1) forms part of the personal information to which it is attached or linked. R.S.O. 1990, c. F.31, s. 46 (2).

Notice and publication

(3) Where the personal information in a personal information bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 45 (d) and (e), the head shall,

- (a) forthwith notify the responsible minister of the use or disclosure; and
- (b) ensure that the use is included in the index. R.S.O. 1990, c. F.31, s. 46 (3).

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

Rights of access and correction

Right of access to personal information

47 (1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution. R.S.O. 1990, c. F.31, s. 47 (1).

Right of correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement. R.S.O. 1990, c. F.31, s. 47 (2).

Requests and manner of access

Request

48 (1) An individual seeking access to personal information about the individual shall,

- (a) make a request in writing to the institution that the individual believes has custody or control of the personal information, and specify that the request is being made under this Act;
- (b) identify the personal information bank or otherwise identify the location of the personal information; and
- (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 7; 2017, c. 2, Sched. 12, s. 4 (2).

Access procedures

(2) Subsections 10 (2), 24 (1.1) and (2) and sections 25, 26, 27, 27.1, 28 and 29 apply with necessary modifications to a request made under subsection (1). 1996, c. 1, Sched. K, s. 7.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 48 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 31, s. 5)

Exception, s. 25

(2.1) Despite subsection (2), subsection 25 (2) does not apply to a request for personal information that was collected under Part III.1. 2019, c. 7, Sched. 31, s. 5.

Manner of access

(3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,

- (a) permit the individual to examine the personal information; or
- (b) provide the individual with a copy thereof. R.S.O. 1990, c. F.31, s. 48 (3).

Comprehensible form

(4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used. R.S.O. 1990, c. F.31, s. 48 (4).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 7 - 30/01/1996

2017, c. 2, Sched. 12, s. 4 (2) - 22/03/2017

2019, c. 7, Sched. 31, s. 5 - not in force

Exemptions

49 A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;
- (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of,
 - (i) assessing the teaching materials or research of an employee of an educational institution or a hospital or of a person associated with an educational institution or a hospital,
 - (ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution or a hospital, or
 - (iii) determining suitability for an honour or award to recognize outstanding achievement or distinguished service;

- (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;
- (e) that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence; or
- (f) that is a research or statistical record. R.S.O. 1990, c. F.31, s. 49; 2001, c. 28, s. 22 (4); 2002, c. 2, ss. 15 (4), 19 (7); 2002, c. 18, Sched. K, s. 10; 2005, c. 28, Sched. F, s. 7; 2010, c. 25, s. 24 (15); 2017, c. 8, Sched. 13, s. 4.

Section Amendments with date in force (d/m/y)

2002, c. 2, s. 19 (7) - 1/07/2003; 2002, c. 18, Sched. K, s. 10 (1, 2) - 26/11/2002

2005, c. 28, Sched. F, s. 7 - 10/06/2006

2010, c. 25, s. 24 (15) - 1/01/2012

2017, c. 8, Sched. 13, s. 4 - 09/03/2018

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following Part: (See: 2019, c. 7, Sched. 31, s. 6)

**PART III.1
DATA INTEGRATION**

Definitions

49.1 (1) In this Part,

“data standards” means the data standards approved by the Commissioner under subsection 49.14 (1); (“normes relatives aux données”)

“inter-ministerial data integration unit” means an administrative division of a ministry that is designated as an inter-ministerial data integration unit in the regulations; (“service interministériel d’intégration des données”)

“member” means, in relation to an inter-ministerial data integration unit or a ministry data integration unit, an officer, employee or agent of the ministry in which the unit is located who works in the unit; (“membre”)

“ministry data integration unit” means an administrative division of a ministry that is designated as a ministry data integration unit in the regulations. (“service ministériel d’intégration des données”) 2019, c. 7, Sched. 31, s. 6.

Meaning of de-identification

(2) A reference in this Part to de-identifying a record or personal information means to remove the following information:

1. Information that identifies an individual.
2. Information that could be used, either alone or with other information, to identify an individual based on what is reasonably foreseeable in the circumstances. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Purpose for the collection of personal information

49.2 The purpose of the collection of personal information under this Part is to compile information, including statistical information, to enable analysis in relation to,

- (a) the management or allocation of resources;
- (b) the planning for the delivery of programs and services provided or funded by the Government of Ontario, including services provided or funded in whole or in part or directly or indirectly; and
- (c) the evaluation of those programs and services. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

General rules re personal information

49.3 (1) A member of an inter-ministerial data integration unit or a ministry data integration unit shall not collect personal information under this Part or use or disclose that information if other information will serve the purpose of the collection, use or disclosure. 2019, c. 7, Sched. 31, s. 6.

Extent of information

(2) A member of an inter-ministerial data integration unit or a ministry data integration unit shall not collect, use or disclose more personal information under this Part than is reasonably necessary to meet the purpose of the collection, use or disclosure. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Collection of personal information

49.4 (1) Subject to the restrictions in section 49.5, a member of an inter-ministerial data integration unit may indirectly collect personal information if the following conditions are met:

1. The personal information is being collected for the purpose set out in section 49.2.
2. The personal information is to be collected from an institution, including a ministry data integration unit, an institution within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act* or from a person or entity prescribed by the regulations.
3. A notice has been published on a website that relates to the personal information and that meets the requirements of section 49.10.
4. The minister of the ministry in which the inter-ministerial data integration unit is located, or a person designated by the minister, has determined, after considering the privacy interests of individuals and the manner in which their personal information will be protected, that there is a public interest in collecting the personal information.
5. A member of the inter-ministerial data integration unit has made a determination as to whether to link the personal information after it is collected to other personal information collected by the unit under this Part and, if so, the personal information with which it will be linked. 2019, c. 7, Sched. 31, s. 6.

Collection of personal information, ministry data integration unit

(2) Subject to the restrictions in section 49.5, a member of a ministry data integration unit may indirectly collect personal information if the following conditions are met:

1. The personal information is being collected for the purpose set out in section 49.2.
2. The personal information is to be collected from,
 - i. an officer, employee or agent of the ministry in which the unit is located who is not a member of the unit,
 - ii. a person or entity that receives funding from the ministry or that administers a program or service on behalf of or in partnership with the ministry, but only if the personal information relates to the funding or to the program or service provided on behalf of or in partnership with the ministry, as the case may be, or
 - iii. a person or entity prescribed by the regulations, but only if the regulations authorize a member to collect the type of personal information to be collected.
3. A notice has been published on a website that relates to the personal information and that meets the requirements of section 49.10.
4. The minister of the ministry in which the ministry data integration unit is located, or a person designated by the minister, has determined, after considering the privacy interests of individuals and the manner in which their personal information will be protected, that there is a public interest in collecting the personal information.
5. A member of the ministry data integration unit has made a determination as to whether to link the personal information after it is collected to other personal information collected by the unit under this Part and, if so, the personal information with which it will be linked. 2019, c. 7, Sched. 31, s. 6.

Additional requirements

(3) The member shall comply with any additional requirements set out in the data standards when collecting personal information under this section. 2019, c. 7, Sched. 31, s. 6.

Disclosure to unit

(4) An institution or a person or entity referred to in paragraph 2 of subsection (1) or (2), as the case may be, is authorized to disclose the personal information to the member and shall,

- (a) take reasonable steps to ensure that the personal information provided is accurate, complete and up-to-date before disclosing the information to the member; and
- (b) notify the member of any concerns respecting the accuracy or completeness of the information or how up-to-date it is, 2019, c. 7, Sched. 31, s. 6.

Conflict

(5) Personal information may be collected and disclosed as provided for in this section despite a confidentiality provision in any other Act and despite subsection 67 (2), unless the regulations provide that a confidentiality provision in another Act prevails over this section, 2019, c. 7, Sched. 31, s. 6.

Collection of excluded information

(6) Despite subsections 65 (1), (5.2), (6) and (8), the regulations may authorize the collection of personal information under this Part that is excluded from the application of this Act under those subsections, 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Restrictions on collection

49.5 (1) The authority to collect personal information under section 49.4 is subject to the following restrictions:

1. A member of an inter-ministerial data integration unit or a ministry data integration unit may not collect personal information until,
 - i. the data standards have been approved by the Commissioner, and
 - ii. in the case of a member of an inter-ministerial data integration unit, the Commissioner has completed a review of the unit's practices and procedures under subsection 49.12 (2) after the unit's designation.
2. If the purpose of collecting personal information is only to compile statistical information, the member must be a member of the inter-ministerial data integration unit designated by the regulations for this purpose.
3. A member of an inter-ministerial data integration unit may not collect personal health information from a health information custodian unless authorized to do so by the regulations.
4. A member of a ministry data integration unit may only collect personal health information from a health information custodian if the unit is located in the Ministry of Health and Long-Term Care.
5. A member of an inter-ministerial data integration unit or a ministry data integration unit may not collect the following types of information, including personal information:
 - i. Information that would reveal information that was obtained in connection with the imposition or collection of a tax or duty imposed under an Act of Canada or of a province or territory, unless the unit is located in the Ministry of Finance.
 - ii. Notes of personal information about an individual that are recorded by a health information custodian and that document the contents of conversations during a counselling session.
6. Any other restriction prescribed by the regulations, 2019, c. 7, Sched. 31, s. 6.

Definitions

(2) In this section "health information custodian" and "personal health information" have the same meanings as in the *Personal Health Information Protection Act*, 2004, 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Linking and de-identification

49.6 (1) Upon collection of personal information under this Part, a member of an inter-ministerial data integration unit or a ministry data integration unit shall do the following as soon as reasonably possible in the circumstances:

1. Create a record containing the minimal amount of personal information necessary for the purpose of de-identifying the information and linking it to other information collected by the unit.
2. De-identify the personal information.
3. If the information is to be linked, link the personal information that has been de-identified under paragraph 2 to other de-identified information within the unit.
4. Promptly and securely destroy any record created under paragraph 1 that contains personal information, subject to any exemptions set out in the data standards. 2019, c. 7, Sched. 31, s. 6.

Same

(2) In complying with subsection (1), the member shall comply with the requirements set out in the data standards. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Limits on use of personal information

49.7 (1) A member of an inter-ministerial data integration unit or a ministry data integration unit may only use personal information collected under this Part,

- (a) to link and de-identify the information under section 49.6; and
- (b) to conduct an audit where there are reasonable grounds to believe that there has been inappropriate receipt of a payment, service or good, including any benefit funded in whole or in part, directly or indirectly, by the Government of Ontario. 2019, c. 7, Sched. 31, s. 6.

Reporting on use

(2) The minister of the ministry in which an inter-ministerial data integration unit or a ministry data integration unit is located shall publicly report on the use of personal information under subsection (1) in accordance with the data standards. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Limits on use of de-identified information

49.8 No person or entity shall use or attempt to use information that has been de-identified under this Part, either alone or with other information, to identify an individual. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Disclosure of personal information

49.9 A member of an inter-ministerial data integration unit or a ministry data integration unit may only disclose personal information collected under this Part if,

- (a) the disclosure is to another member of the inter-ministerial data integration unit or the ministry data integration unit, as the case may be, who need access to the information in the performance of their duties in connection with this Part;
- (b) the disclosure is required by law;
- (c) the disclosure is to an institution or a law enforcement agency in Canada and,
 - (i) the disclosure is to aid in an investigation undertaken by the institution or the agency with a view to a law enforcement proceeding, or
 - (ii) there is a reasonable basis to believe that an offence may have been committed and the disclosure is to enable the institution or the agency to determine whether to conduct such an investigation;
- (d) the disclosure is for the purpose of a proceeding or a contemplated proceeding before a court or a tribunal and the information relates to or is a matter in issue in the proceeding and,
 - (i) the ministry or the Government of Ontario is, or is expected to be, a party, or
 - (ii) a current or former employee, consultant or agent of the unit is, or is expected to be, a witness;

- (e) the disclosure is to the Commissioner; or
- (f) the disclosure for a research purpose is permitted by the regulations and the conditions prescribed in the regulations are met. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Notice of collection

49.10 The minister of the ministry in which an inter-ministerial data integration unit or a ministry data integration unit is located shall ensure that a notice is published on a website that contains the following information respecting any personal information that a member of the unit intends to collect under this Part:

1. The legal authority for the collection;
 2. The types of personal information that may be collected;
 3. The sources of the personal information that may be collected;
 4. The purpose for which the personal information is collected and may be used and disclosed, including the general nature of the linkages that may be made with the personal information;
 5. The title and contact information of a member of the inter-ministerial data integration unit or the ministry data integration unit, as the case may be, who can answer questions about the collection, use and disclosure of the personal information under this Part;
 6. The contact information for the Commissioner and a description of the Commissioner's functions under section 49.12.
- 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Security and retention

49.11 (1) The minister of the ministry in which an inter-ministerial data integration unit or a ministry data integration unit is located shall ensure that any personal information collected under this Part is,

- (a) retained, transferred and disposed of in a secure manner so as to protect the information against theft or loss or unauthorized use or disclosure;
- (b) retained separately from other personal information in the custody or under the control of the institution;
- (c) retained for the period of time set out in the data standards or, if there is no such specified period, for at least one year after the day it was last used by a member of the unit; and
- (d) securely disposed of in accordance with the data standards. 2019, c. 7, Sched. 31, s. 6.

Security requirements

(2) In complying with clause (1) (a), the minister shall comply with any requirements set out in the data standards respecting the security of the personal information. 2019, c. 7, Sched. 31, s. 6.

Notice of theft, loss, etc., to individual

(3) Subject to the exceptions and additional requirements, if any, that are prescribed, if personal information collected under this Part that is in the custody or control of an inter-ministerial data integration unit or a ministry data integration unit is stolen or lost or if it is used or disclosed in a manner that is not permitted by this Part, the minister of the ministry in which the unit is located shall,

- (a) notify the individual to whom the personal information relates at the first reasonable opportunity of the theft or loss or the unauthorized use or disclosure; and
- (b) include in the notice a statement that the individual is entitled to make a complaint to the Commissioner. 2019, c. 7, Sched. 31, s. 6.

Notice to Commissioner

(4) In the case of a theft or loss or of a use or disclosure in a manner that is not permitted by this Part, the minister shall notify the Commissioner of the theft, loss or unauthorized use or disclosure at the first reasonable opportunity. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Commissioner's review of practices

49.12 (1) The Commissioner may conduct a review of the practices and procedures of an inter-ministerial data integration unit or a ministry data integration unit if the Commissioner has reason to believe that the requirements of this Part are not being complied with. 2019, c. 7, Sched. 31, s. 6.

Mandatory review of inter-ministerial data integration unit

(2) The Commissioner shall conduct a review of the practices and procedures of an inter-ministerial data integration unit in order to determine if they comply with the requirements under this Part,

- (a) after the unit is designated; and
- (b) as otherwise necessary to ensure that a review of the practices and procedures is conducted at least once every three years. 2019, c. 7, Sched. 31, s. 6.

Conduct of review

(3) In conducting a review referred to in subsection (1), the Commissioner shall review the practices and procedures of the inter-ministerial data integration unit or the ministry data integration unit, as the case may be, to determine whether,

- (a) there has been unauthorized collection, retention, use, disclosure, access to or modification of personal information collected under this Part; and
- (b) the requirements under this Part, including requirements with respect to notice, de-identification, retention, security and secure disposal, have been met. 2019, c. 7, Sched. 31, s. 6.

Duty to assist

(4) Members of the inter-ministerial data integration unit or the ministry data integration unit and the minister of the ministry in which the unit is located shall co-operate with and assist the Commissioner in the conduct of the review. 2019, c. 7, Sched. 31, s. 6.

Powers of Commissioner

(5) The Commissioner may require the production of such information and records that are relevant to the subject matter of the review and that are in the custody or under the control of,

- (a) the institution in which the inter-ministerial data integration unit or the ministry data integration unit is located;
- (b) an institution, an institution within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*, a person or an entity that has disclosed personal information to the inter-ministerial data integration unit or the ministry data integration unit under this Part; or
- (c) an institution, an institution within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*, a person or entity to whom a member of the inter-ministerial data integration unit or the ministry data integration unit has disclosed personal information under this Part. 2019, c. 7, Sched. 31, s. 6.

Same

(6) A member of an inter-ministerial data integration unit or a ministry data integration unit, the minister of the ministry in which the unit is located, the head of an institution referred to in clause (5) (b) or (c), the administrative head of any person or entity referred to in either of those clauses and any person referred to in either of those clauses who is an individual shall provide the Commissioner with whatever assistance is reasonably necessary for the conduct of the review, including using any data storage processing or retrieval device or system to produce a record required by the Commissioner in readable form. 2019, c. 7, Sched. 31, s. 6.

Orders

(7) If, after giving an opportunity to be heard to the minister of the ministry in which the inter-ministerial data integration unit or the ministry data integration unit is located, the Commissioner determines that a practice or procedure contravenes this Part, the Commissioner may order the unit to do any of the following:

1. Discontinue the practice or procedure.
2. Change the practice or procedure as specified by the Commissioner.
3. Destroy personal information collected or retained under the practice or procedure.

4. Implement a new practice or procedure as specified by the Commissioner. 2019, c. 7, Sched. 31, s. 6.

Limit on certain orders

(8) The Commissioner may order under subsection (7) no more than what is reasonably necessary to achieve compliance with this Part. 2019, c. 7, Sched. 31, s. 6.

Procedure

(9) The *Statutory Powers Procedure Act* does not apply to a review conducted under this section. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Annual report

49.13 (1) The minister of a ministry in which is located an inter-ministerial data integration unit or a ministry data integration unit that collects personal information under this Part during the course of a year shall ensure that an annual report for the year is published on a Government of Ontario website on or before April 1 in the following year. 2019, c. 7, Sched. 31, s. 6.

Contents of report

(2) The annual report shall,

- (a) describe the types of personal information that were collected and used during the year;
- (b) describe the purposes for which personal information was collected, used and disclosed during the year;
- (c) describe the nature of the linkages of personal information that have been made over the year;
- (d) provide a summary of the manner in which de-identified information was used and disclosed during the year; and
- (e) set out a description of how the practices and procedures of the inter-ministerial data integration unit or the ministry data integration unit meet the requirements of this Part. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Data standards

49.14 (1) The responsible minister or a person designated by him or her shall,

- (a) prepare draft data standards providing for anything referred to in this Part as being provided for in the data standards, as well as practices and procedures for use, in connection with this Part, when,
 - (i) collecting, using and disclosing personal information,
 - (ii) linking and de-identifying personal information,
 - (iii) reporting publicly on the use of personal information,
 - (iv) securely retaining personal information, including providing for a minimum retention period for personal information, and
 - (v) securely disposing of personal information; and
- (b) provide the draft data standards to the Commissioner who may approve them. 2019, c. 7, Sched. 31, s. 6.

Publicly available

(2) The responsible minister shall make the data standards available on a Government of Ontario website in English and in French. 2019, c. 7, Sched. 31, s. 6.

Non-application of the *Legislation Act, 2006*, Part III

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the data standards. 2019, c. 7, Sched. 31, s. 6.

Compliance with data standards

(4) A member of an inter-ministerial data integration unit or a ministry data integration unit shall comply with the data standards. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

Regulations

49.15 (1) The Lieutenant Governor in Council may make regulations governing anything that this Part refers to as being provided for in the regulations. 2019, c. 7, Sched. 31, s. 6.

Inter-ministerial data integration unit

(2) The regulations may only designate a single inter-ministerial data integration unit whose members are also authorized to collect personal information solely for the purpose of compiling statistical information, and the unit must be located in the ministry of the minister who is responsible for the administration of the *Statistics Act*. 2019, c. 7, Sched. 31, s. 6.

Consultation with Commissioner

(3) A minister shall consult with the Commissioner before recommending a regulation to the Lieutenant Governor in Council that,

- (a) designates an inter-ministerial data integration unit; or
- (b) permits the disclosure of personal information for a research purpose under clause 49.9 (f) or establishes any conditions for the purposes of that clause. 2019, c. 7, Sched. 31, s. 6.

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 31, s. 6 - not in force

PART IV APPEAL

Right to appeal

50 (1) A person who has made a request for,

- (a) access to a record under subsection 24 (1);
- (b) access to personal information under subsection 48 (1); or
- (c) correction of personal information under subsection 47 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner. R.S.O. 1990, c. F.31, s. 50 (1).

Fee

(1.1) A person who appeals under subsection (1) shall pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 8.

Time for application

(2) Subject to subsection (2.0.1), an appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal. R.S.O. 1990, c. F.31, s. 50 (2); 2016, c. 5, Sched. 10, s. 3 (1).

Extension of time

(2.0.1) If the time limit specified in subsection (2) presents a barrier, as defined in the *Accessibility for Ontarians with Disabilities Act, 2005*, to the person, the Commissioner may extend the time limit for a period of time that is reasonably required in the circumstances to accommodate the person for the purpose of making the appeal. 2016, c. 5, Sched. 10, s. 3 (2).

Immediate dismissal

(2.1) The Commissioner may dismiss an appeal if the notice of appeal does not present a reasonable basis for concluding that the record or the personal information to which the notice relates exists. 1996, c. 1, Sched. K, s. 8.

Non-application

(2.2) If the Commissioner dismisses an appeal under subsection (2.1), subsection (3) and sections 51 and 52 do not apply to the Commissioner. 1996, c. 1, Sched. K, s. 8.

Notice of application for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned of the notice of appeal and may also inform any other institution or person with an interest in the appeal, including an institution within the

meaning of the *Municipal Freedom of Information and Protection of Privacy Act*, of the notice of appeal. 2006, c. 34, Sched. C, s. 7.

Ombudsman Act not to apply

(4) The *Ombudsman Act* does not apply in respect of a complaint for which an appeal is provided under this Act or the *Municipal Freedom of Information and Protection of Privacy Act* or to the Commissioner or the Commissioner's delegate acting under this Act or the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 50 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 50 (4) of the Act is amended by adding "a complaint respecting a review conducted by the Commissioner under section 49.12 or an order made by the Commissioner under that section" after "provided under this Act or the *Municipal Freedom of Information and Protection of Privacy Act*". (See: 2019, c. 7, Sched. 31, s. 7)

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 8 - 30/01/1996

2006, c. 34, Sched. C, s. 7 - 1/04/2007

2016, c. 5, Sched. 10, s. 3 (1, 2) - 19/04/2016

2019, c. 7, Sched. 31, s. 7 - not in force

Mediator to try to effect settlement

51 The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal. R.S.O. 1990, c. F.31, s. 51.

Inquiry

52 (1) The Commissioner may conduct an inquiry to review the head's decision if,

- (a) the Commissioner has not authorized a mediator to conduct an investigation under section 51; or
- (b) the Commissioner has authorized a mediator to conduct an investigation under section 51 but no settlement has been effected. 1996, c. 1, Sched. K, s. 9.

Procedure

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1). R.S.O. 1990, c. F.31, s. 52 (2).

Inquiry in private

(3) The inquiry may be conducted in private. R.S.O. 1990, c. F.31, s. 52 (3).

Powers of Commissioner

(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. R.S.O. 1990, c. F.31, s. 52 (4).

Record not retained by Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4). R.S.O. 1990, c. F.31, s. 52 (5).

Examination on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site. R.S.O. 1990, c. F.31, s. 52 (6).

Notice of entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose. R.S.O. 1990, c. F.31, s. 52 (7).

Examination under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry, and for that purpose the Commissioner may administer an oath. R.S.O. 1990, c. F.31, s. 52 (8).

Evidence privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court. R.S.O. 1990, c. F.31, s. 52 (9).

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. R.S.O. 1990, c. F.31, s. 52 (10).

Protection under Federal Act

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. F.31, s. 52 (11).

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section. R.S.O. 1990, c. F.31, s. 52 (12).

Representations

(13) The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 50 (3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made. 2006, c. 34, Sched. C, s. 8 (1).

Right to representation

(14) Each of the following may be represented by a person authorized under the *Law Society Act* to represent them:

1. The person who requested access to the record.
2. The head of the institution concerned.
3. Any other institution or person informed of the notice of appeal under subsection 50 (3). 2006, c. 34, Sched. C, s. 8 (5).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 9 - 30/01/1996

2006, c. 21, Sched. C, s. 110 - 1/05/2007; 2006, c. 34, Sched. C, s. 8 (1, 2) - 1/04/2007; 2006, c. 34, Sched. C, s. 8 (5) - 1/05/2007

Burden of proof

53 Where a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head. R.S.O. 1990, c. F.31, s. 53.

Order

54 (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal. R.S.O. 1990, c. F.31, s. 54 (1).

Idem

(2) Where the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part. R.S.O. 1990, c. F.31, s. 54 (2).

Terms and conditions

(3) Subject to this Act, the Commissioner's order may contain any terms and conditions the Commissioner considers appropriate. R.S.O. 1990, c. F.31, s. 54 (3); 1996, c. 1, Sched. K, s. 10.

Notice of order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 50 (3) written notice of the order. R.S.O. 1990, c. F.31, s. 54 (4).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 10 - 30/01/1996

Confidentiality

55 (1) The Commissioner or any person acting on behalf of or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (1).

Not compellable witness

(2) The Commissioner or any person acting on behalf of or under the direction of the Commissioner is not compellable to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (2).

Proceedings privileged

(3) No proceeding lies against the Commissioner or against any person acting on behalf of or under the direction of the Commissioner for anything done, reported or said in good faith in the course of the exercise or performance or intended exercise or performance of a power, duty or function under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (3).

Delegation by Commissioner

56 (1) The Commissioner may in writing delegate a power or duty granted to or vested in the Commissioner to an officer or officers employed by the Commissioner, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation. R.S.O. 1990, c. F.31, s. 56 (1).

Exception re records under s. 12 or 14

(2) The Commissioner shall not delegate to a person other than the Deputy Commissioner or an Assistant Commissioner his or her power to require a record referred to in section 12 or 14 to be produced and examined. R.S.O. 1990, c. F.31, s. 56 (2); 2018, c. 17, Sched. 19, s. 5.

Section Amendments with date in force (d/m/y)

2018, c. 17, Sched. 19, s. 5 - 06/12/2018

PART V GENERAL

Fees

57 (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record. 1996, c. 1, Sched. K, s. 11 (1).

(2) REPEALED: 1996, c. 1, Sched. K, s. 11 (1).

Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25. R.S.O. 1990, c. F.31, s. 57 (3).

Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations. R.S.O. 1990, c. F.31, s. 57 (4); 1996, c. 1, Sched. K, s. 11 (2).

Review

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee. R.S.O. 1990, c. F.31, s. 57 (5); 1996, c. 1, Sched. K, s. 11 (3).

Disposition of fees

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations. 1996, c. 1, Sched. K, s. 11 (4).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 11 (1-4) - 30/01/1996

Annual report of Commissioner

58 (1) The Commissioner shall make an annual report to the Speaker of the Assembly in accordance with subsections (2) and (3). 2004, c. 3, Sched. A, s. 81 (4).

Contents of report

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the *Municipal Freedom of Information and Protection of Privacy Act* in providing access to information and protection of personal privacy including,

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (b) an assessment of the extent to which institutions are complying with this Act and the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the *Municipal Freedom of Information and Protection of Privacy Act* and the regulations under them. R.S.O. 1990, c. F.31, s. 58 (2).

Same, personal health information

(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 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;
- (d) all other information prescribed by the regulations made under that Act; and
- (e) all other matters that the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 81 (5).

Tabling

(4) The Speaker shall cause the annual report to be laid before the Assembly if it is in session or shall deposit the report with the Clerk of the Assembly if the Assembly is not in session. 2004, c. 3, Sched. A, s. 81 (5).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 81 (4, 5) - 1/11/2004

Powers and duties of Commissioner

59 The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to,
 - (i) cease collection practices, and

- (ii) destroy collections of personal information, that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act. R.S.O. 1990, c. F.31, s. 59.

Regulations

60 (1) The Lieutenant Governor in Council may make regulations,

- (0.a) prescribing standards for determining what constitutes reasonable grounds for a head to conclude that a request for access to a record is frivolous or vexatious;
- (0.a.1) prescribing Aboriginal organizations and communities for the purposes of clause (c) of the definition of "Aboriginal community" in subsection 15.1 (2);
 - (a) respecting the procedures for access to original records under section 30;
 - (b) respecting the procedures for access to personal information under subsection 48 (3);
- (b.1) requiring the head of an institution to assist persons with disabilities in making requests for access under subsection 24 (1) or 48 (1);
- (c) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (d.1) providing for procedures to be followed by an institution if personal information is disclosed in contravention of this Act;
- (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (f) prescribing time periods for the purposes of subsection 40 (1);
- (f.1) respecting the disposal of personal information under subsection 40 (4), including providing for different procedures for the disposal of personal information based on the sensitivity of the personal information;
- (g) prescribing the amount, the manner of payment and the manner of allocation of fees described in clause 24 (1) (c) or 48 (1) (c), subsection 50 (1.1) or section 57 and the times at which they are required to be paid;
- (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 57;
- (i) designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (j.1) exempting one or more private hospitals from the application of this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 60 (1) (j.1) of the Act is amended by striking out "private hospitals" and substituting "community health facilities". (Sec. 2017, c. 25, Sched. 9, s. 94 (5))

- (j.2) providing for transitional matters arising from the enactment of Schedule 19 to the *Restoring Trust, Transparency and Accountability Act, 2018*;
- (k) prescribing forms and providing for their use;
- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act. R.S.O. 1990, c. F.31, s. 60; 1996, c. 1, Sched. K, s. 12 (1, 2); 2010, c. 25, s. 24 (16); 2006, c. 34, Sched. C, s. 9; 2017, c. 8, Sched. 13, s. 5; 2018, c. 17, Sched. 19, s. 6 (1).

Categories of fees

(2) A regulation made under clause (1) (g) may prescribe a different amount, manner of payment, manner of allocation or time of payment of fees for different categories of records or persons requesting access to a record. 1996, c. 1, Sched. K, s. 12 (3).

Conflict

(3) If there is a conflict between a regulation made under clause (1) (j.2) and a provision of this or any other Act or a provision of another regulation made under this or any other Act, the regulation made under clause (1) (j.2) prevails. 2018, c. 17, Sched. 19, s. 6 (2).

Section Amendments with date in force (d/m/y)

1996, c. 1, Sched. K, s. 12 (1-3) - 30/01/1996

2006, c. 34, Sched. C, s. 9 - 31/12/2016

2010, c. 25, s. 24 (16) - 1/01/2012

2017, c. 8, Sched. 13, s. 5 - 09/03/2018; 2017, c. 25, Sched. 9, s. 94 (5) - not in force

2018, c. 17, Sched. 19, s. 6 (1, 2) - 06/12/2018

Offences

61 (1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 61 (1) of the Act is amended by adding the following clause: (See: 2019, c. 7, Sched. 31, s. 8)

(b.1) wilfully contravene section 49.8;

- (c) make a request under this Act for access to or correction of personal information under false pretenses;
- (c.1) alter, conceal or destroy a record, or cause any other person to do so, with the intention of denying a right under this Act to access the record or the information contained in the record;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to, mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner. R.S.O. 1990, c. F.31, s. 61 (1); 2014, c. 13, Sched. 6, s. 2 (1).

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000. R.S.O. 1990, c. F.31, s. 61 (2).

Consent of Attorney General

(3) A prosecution shall not be commenced under clause (1) (c.1), (d), (e) or (f) without the consent of the Attorney General. R.S.O. 1990, c. F.31, s. 61 (3); 2014, c. 13, Sched. 6, s. 2 (2).

Extended limitation for prosecution

(4) A prosecution for an offence under clause (1) (c.1) shall not be commenced more than two years after the day evidence of the offence was discovered. 2014, c. 13, Sched. 6, s. 2 (3).

Protection of information

(5) In a prosecution for an offence under this section, the court may take precautions to avoid the disclosure by the court or any person of any of the following information, including, where appropriate, conducting hearings or parts of hearings in private or sealing all or part of the court files:

1. Information that may be subject to an exemption from disclosure under sections 12 to 21.1.
2. Information to which this Act may not apply under section 65.

3. Information that may be subject to a confidentiality provision in any other Act. 2014, c. 13, Sched. 6, s. 2 (4).

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 6, s. 2 (1-4) - 1/01/2016

2019, c. 7, Sched. 31, s. 8 - not in force

Delegation, civil proceedings

Delegation of head's powers

62 (1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation. R.S.O. 1990, c. F.31, s. 62 (1); 2006, c. 34, Sched. C, s. 10.

Protection from civil proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice. R.S.O. 1990, c. F.31, s. 62 (2).

Vicarious liability of Crown preserved

(3) Subsection (2) does not by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted. R.S.O. 1990, c. F.31, s. 62 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 62 (3) of the Act is amended by striking out "subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*" and substituting "subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*". (See: 2019, c. 7, Sched. 17, s. 80)

Vicarious liability of certain institutions preserved

(4) Subsection (2) does not relieve an institution of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted. R.S.O. 1990, c. F.31, s. 62 (4).

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. C, s. 10 - 1/04/2007

2019, c. 7, Sched. 17, s. 80 - not in force

Informal access

Oral requests

63 (1) Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request. R.S.O. 1990, c. F.31, s. 63 (1).

Pre-existing access preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force. R.S.O. 1990, c. F.31, s. 63 (2).

Information otherwise available

64 (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation. R.S.O. 1990, c. F.31, s. 64 (1).

Powers of courts and tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. R.S.O. 1990, c. F.31, s. 64 (2).

Application of Act

65 (1) This Act does not apply to records placed in the archives of an educational institution or the Archives of Ontario by or on behalf of a person or organization other than,

(a) an institution as defined in this Act or in the *Municipal Freedom of Information and Protection of Privacy Act*; or

(b) a health information custodian as defined in the *Personal Health Information Protection Act*, 2004. 2005, c. 28, Sched. F, s. 8 (1).

(2) REPEALED: 2004, c. 3, Sched. A, s. 81 (7).

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding. R.S.O. 1990, c. F.31, s. 65 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 65 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 60, s. 9)

Same

(3.1) This Act does not apply to personal notes, draft decisions, draft orders and communications related to draft decisions or draft orders that are created by or for a person who is acting in a quasi-judicial capacity. 2019, c. 7, Sched. 60, s. 9

Same

(4) This Act does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation. 1994, c. 12, s. 49.

Same

(5) This Act does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public. 1994, c. 12, s. 49.

Same

(5.1) This Act does not apply to a record of a committee investigating a complaint against a case management master under section 86.2 of the *Courts of Justice Act*, whether in the possession of the committee, the Chief Justice of the Superior Court of Justice, the Attorney General or any other person, if any of the following conditions apply:

1. The committee has ordered that the record or information in the record not be disclosed or made public.
2. The record was prepared in connection with the committee's investigation of the complaint and the complaint was not dealt with in a manner that was open to the public. 1996, c. 25, s. 6; 2002, c. 18, Sched. K, s. 11.

Same

(5.2) This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed. 2006, c. 34, Sched. C, s. 11.

Same

(5.3) This Act does not apply to the ecclesiastical records of a church or religious organization that is affiliated with an educational institution or a hospital. 2010, c. 25, s. 24 (17).

Same

(5.4) This Act does not apply to records that relate to the operations of a hospital foundation. 2010, c. 25, s. 24 (17).

Same

(5.5) This Act does not apply to the administrative records of a member of a health profession listed in Schedule 1 to the *Regulated Health Professions Act, 1991* that relate to the member's personal practice. 2010, c. 25, s. 24 (17).

Same

(5.6) This Act does not apply to records relating to charitable donations made to a hospital. 2010, c. 25, s. 24 (17).

(5.7) REPEALED: 2017, c. 19, Sched. 2, s. 1 (1).

Same

(6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
4. Meetings, consultations, discussions or communications about the appointment or placement of any individual by a church or religious organization within an institution, or within the church or religious organization.
5. Meetings, consultations, discussions or communications about applications for hospital appointments, the appointments or privileges of persons who have hospital privileges, and anything that forms part of the personnel file of those persons. 1995, c. 1, s. 82; 2010, c. 25, s. 24 (18).

Exception

(7) This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment. 1995, c. 1, s. 82.

Information relating to adoptions

(8) This Act does not apply with respect to the following:

1. Notices registered under section 48.3 of the *Vital Statistics Act* and notices and information registered under section 48.4 of that Act.
2. Disclosure vetoes registered under section 48.5 of the *Vital Statistics Act*.
3. Information and records in files that are unsealed under section 48.6 of that Act.
4. REVOKED: 2017, c. 14, Sched. 4, s. 14 (1).

2005, c. 25, s. 34; 2016, c. 23, s. 49 (2); 2017, c. 14, Sched. 4, s. 14 (1).

Exception

(8.1) This Act does not apply,

- (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;
- (b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution;
- (c) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; or
- (d) to a record of teaching materials collected, prepared or maintained by an employee of a hospital or by a person associated with a hospital for use at the hospital. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (19).

Note: Subsection 65 (8.1) was enacted as subsection 65 (8) in source law, Statutes of Ontario, 2005, chapter 28, Schedule F, subsection 8 (2). The subsection is renumbered in this consolidation to distinguish it from existing subsection 65 (8), enacted by Statutes of Ontario, 2005, chapter 25, section 34.

Exception

(9) Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (20).

Application of Act

(10) Despite subsection (8.1), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49 (c.1) (i). 2005, c. 28, Sched. F, s. 8 (2).

Non-application of Act

(11) This Act does not apply to identifying information in a record relating to medical assistance in dying. 2017, c. 7, s. 3.

Interpretation

(12) In subsection (11),

“identifying information” means information,

- (a) that relates to medical assistance in dying, and
- (b) that identifies an individual or facility, or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; (“renseignements identificatoires”)

“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the *Criminal Code* (Canada). (“aide médicale à mourir”) 2017, c. 7, s. 3.

Non-application of Act, provision of abortion services

(13) This Act does not apply to information relating to the provision of abortion services if,

- (a) the information identifies an individual or facility, or it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; or
- (b) disclosure of the information could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building. 2017, c. 19, Sched. 2, s. 1 (2).

Same, pharmacies

(14) A reference in subsection (13) to a facility includes reference to a pharmacy, hospital pharmacy or institutional pharmacy, as those terms are defined in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*. 2017, c. 19, Sched. 2, s. 1 (2).

Related statistical information

(15) For greater certainty, this Act applies to statistical or other information relating to the provision of abortion services that does not meet the conditions of clause (13) (a) or (b). 2017, c. 19, Sched. 2, s. 1 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 65 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 60, s. 9)

Adjudicative records

(16) This Act does not apply to adjudicative records, within the meaning of the *Tribunal Adjudicative Records Act, 2019*, referred to in subsection 2 (1) of that Act. 2019, c. 7, Sched. 60, s. 9.

Section Amendments with date in force (d/m/y)

1994, c. 12, s. 49 - 28/02/1995; 1995, c. 1, s. 82 - 10/11/1995; 1996, c. 25, s. 6 - 31/10/1996

2002, c. 18, Sched. K, s. 11 - 26/11/2002

2004, c. 3, Sched. A, s. 81 (6, 7) - 1/11/2004

2005, c. 25, s. 34 - 31/01/2007; 2005, c. 28, Sched. F, s. 8 (1, 2) - 10/06/2006

2006, c. 34, Sched. C, s. 11 - 1/04/2007

2010, c. 25, s. 24 (17-20) - 1/01/2012

2016, c. 23, s. 49 (2) - 01/01/2017

2017, c. 7, s. 3 - 10/05/2017; 2017, c. 14, Sched. 4, s. 14 (1) - 30/04/2018

2017, c. 19, Sched. 2, s. 1 (1, 2) - 25/10/2017

2019, c. 7, Sched. 60, s. 9 - not in force

Service provider organizations

65.1 (1) This section applies with respect to a service provider organization as defined in section 17.1 of the *Ministry of Government Services Act*. 2006, c. 34, Sched. F, s. 1 (2).

Definitions

(2) In this section,

“customer service information” means, in relation to a service,

- (a) the name, address and telephone number or other contact information of the individual to whom the service is to be provided and, if applicable, the person acting on behalf of that individual,
- (b) the transaction or receipt number provided by the service provider organization in relation to the request for the service,
- (c) information relating to the payment of any fee, and
- (d) such other information as may be prescribed; (“renseignements liés au service à la clientèle”)

“designated service” means a service designated by regulations made under subsection 17.1 (3) of the *Ministry of Government Services Act* as a service that the service provider organization may provide on behalf of the Government or a public body; (“service désigné”)

“Government” means the Government as defined in the *Ministry of Government Services Act*; (“gouvernement”)

“public body” means a public body as defined in section 17.1 of the *Ministry of Government Services Act*. (“organisme public”) 2006, c. 34, Sched. F, s. 1 (2).

Authorization to collect personal information

(3) A service provider organization is authorized to collect personal information for the purposes of providing a designated service. 2006, c. 34, Sched. F, s. 1 (2).

Collection of customer service information

(4) Without limiting the generality of subsection (3), a service provider organization is authorized to collect customer service information, with the consent of the individual to whom the information relates, for the purposes of providing a designated service. 2006, c. 34, Sched. F, s. 1 (2).

Conveying information to the Government, etc.

(5) If required by the regulations, a service provider organization that collects personal information on behalf of the Government or a public body in the course of providing a designated service shall convey the personal information to that Government or public body in accordance with the regulations. 2006, c. 34, Sched. F, s. 1 (2).

Limitation after information conveyed

(6) After the service provider organization has conveyed personal information under subsection (5), the service provider organization shall not use or further disclose the personal information except as allowed by the regulations. 2006, c. 34, Sched. F, s. 1 (2).

Collection of personal information under arrangements

(7) A person who provides services on behalf of a service provider organization pursuant to an arrangement under subsection 17.1 (7) of the *Ministry of Government Services Act* may not collect personal information in connection with providing those services unless the service provider organization and the person have entered into an agreement that governs the collection, use and disclosure of such personal information and the agreement meets the prescribed requirements, if any. 2006, c. 34, Sched. F, s. 1 (2).

Audits by Commissioner

(8) The Commissioner may audit a service provider organization to check that there has been no unauthorized access to or modification of personal information in the custody of the organization and the organization shall co-operate with and assist the Commissioner in the conduct of the audit. 2006, c. 34, Sched. F, s. 1 (2).

Regulations

(9) The Lieutenant Governor in Council may make regulations,

- (a) prescribing information for the purposes of clause (d) of the definition of "customer service information" in subsection (2);
- (b) governing the collection, use and disclosure of personal information by a service provider organization;
- (c) requiring the conveyance of personal information under subsection (5) to the extent and within the time period specified by the regulations;
- (d) allowing the use and disclosure of personal information under subsection (6);
- (e) prescribing requirements for agreements under subsection (7);
- (f) prescribing information for the purposes of clause 65.2 (2) (e). 2006, c. 34, Sched. F, s. 1 (2).

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. F, s. 1 (2) - 1/04/2007

Public consultation before making regulations

65.2 (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under subsection 65.1 (9) unless,

- (a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;
- (b) the notice complies with the requirements of this section;
- (c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and
- (d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

- (a) a description of the proposed regulation and the text of it;
- (b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;
- (c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;
- (d) a statement of where and when members of the public may review written information about the proposed regulation;
- (e) all prescribed information; and
- (f) all other information that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2006, c. 34, Sched. F, s. 1 (2).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

- (a) the urgency of the situation requires it; or
- (b) the proposed regulation is of a minor or technical nature. 2006, c. 34, Sched. F, s. 1 (2).

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2006, c. 34, Sched. F, s. 1 (2).

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9) if, in the Minister's opinion,

- (a) the urgency of the situation requires it; or
- (b) the proposed regulation is of a minor or technical nature. 2006, c. 34, Sched. F, s. 1 (2).

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9),

- (a) subsections (1) to (5) do not apply to the power of the Lieutenant Governor in Council to make the regulation; and
- (b) the Minister shall give notice of the decision to the public and to the Commissioner as soon as is reasonably possible after making the decision. 2006, c. 34, Sched. F, s. 1 (2).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9) because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

- (a) be identified as a temporary regulation in the text of the regulation; and
- (b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2006, c. 34, Sched. F, s. 1 (2).

No review

(11) Subject to subsection (12), neither a court, nor the Commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2006, c. 34, Sched. F, s. 1 (2).

Exception

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section. 2006, c. 34, Sched. F, s. 1 (2).

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

- (a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or
- (b) the regulation is filed, if it is a regulation described in subsection (10). 2006, c. 34, Sched. F, s. 1 (2).

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. F, s. 1 (2) - 1/04/2007

Non-application re: certain corporations

65.3 (1) REPEALED: 2016, c. 37, Sched. 18, s. 8.

Hydro One Inc.

(2) This Act does not apply to Hydro One Inc. and its subsidiaries on and after the date on which the *Building Ontario Up Act (Budget Measures)*, 2015 received Royal Assent. 2015, c. 20, Sched. 13, s. 1 (2).

Same

(3) The annual publication of information required by section 31 on or after the date described in subsection (2) must not include information about Hydro One Inc. and its subsidiaries. 2015, c. 20, Sched. 13, s. 1 (2).

Same, transition

(4) If a person has made a request under subsection 24 (3) for continuing access to a record of Hydro One Inc. or a subsidiary before the date described in subsection (2), and if the specified period for which access is requested expires after April 23, 2015, the specified period is deemed to have expired on April 23, 2015. 2015, c. 20, Sched. 13, s. 1 (2).

Same, transition

(5) Despite subsection (2), for a period of six months after the date described in that subsection,

- (a) the Commissioner may continue to exercise all of his or her powers under section 52 (inquiry) and clause 59 (b) (certain orders) in relation to Hydro One Inc. and its subsidiaries with respect to matters that occurred and records that were created before that date; and
- (b) Hydro One Inc. and its subsidiaries continue to have the duties of an institution under this Act in relation to the exercise of the Commissioner's powers mentioned in clause (a). 2015, c. 20, Sched. 13, s. 1 (2).

Continuing authority to issue orders, etc.

(6) The powers and duties of the Commissioner to issue orders under section 54 and clause 59 (b) with respect to matters mentioned in subsection (5) continue for an additional six months after the expiry of the six-month period described in that subsection. 2015, c. 20, Sched. 13, s. 1 (2).

Orders binding

(7) An order issued within the time described in subsection (6) is binding on Hydro One Inc. or its subsidiaries, as the case may be. 2015, c. 20, Sched. 13, s. 1 (2).

Repeal

(8) Subsections (4), (5), (6) and (7) and this subsection are repealed on a day to be named by proclamation of the Lieutenant Governor. 2015, c. 20, Sched. 13, s. 1 (2).

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. F.31, s. 65.3 (8) - see 2015, c. 20, Sched. 13, s. 1 (2) - not in force

2015, c. 20, Sched. 13, s. 1 (1) - 19/11/15; 2015, c. 20, Sched. 13, s. 1 (2) - 4/14/15

2016, c. 37, Sched. 18, s. 8 - 08/12/2016

Exercise of rights of deceased, etc., persons

66 Any right or power conferred on an individual by this Act may be exercised,

- (a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property; and
- (c) where the individual is less than sixteen years of age, by a person who has lawful custody of the individual. R.S.O. 1990, c. F.31, s. 66; 1992, c. 32, s. 13; 1996, c. 2, s. 66.

Section Amendments with date in force (d/m/y)

1992, c. 32, s. 13 - 3/04/1995; 1996, c. 2, s. 66 - 29/03/1996

Conflict with other Act

67 (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise. R.S.O. 1990, c. F.31, s. 67 (1).

Idem

(2) The following confidentiality provisions prevail over this Act:

1. Subsection 53 (1) of the *Assessment Act*.
2. Subsections 87 (8), (9) and (10), 98 (9) and (10), 130 (6) and 163 (6) and section 227 of the *Child, Youth and Family Services Act, 2017*.
3. Section 68 of the *Colleges Collective Bargaining Act, 2008*.
4. Section 12 of the *Commodity Futures Act*.
5. REPEALED: 1993, c. 38, s. 65.
6. Subsection 137 (2) of the *Courts of Justice Act*.
7. Subsection 119 (1) of the *Labour Relations Act, 1995*.
- 7.0.1 Sections 89 and 90 and subsection 92 (6) of the *Legal Aid Services Act, 1998*.
- 7.1 Section 40.1 of the *Occupational Health and Safety Act*.
8. Subsection 32 (4) of the *Pay Equity Act*.
- 8.1 REPEALED: 2006, c. 35, Sched. C, s. 47 (3).
9. Sections 16 and 17 of the *Securities Act*.
10. Subsection 4 (2) of the *Statistics Act*.
11. Subsection 28 (2) of the *Vital Statistics Act*. R.S.O. 1990, c. F.31, s. 67 (2); 1992, c. 14, s. 1; 1993, c. 38, s. 65; 1994, c. 11, s. 388; 1998, c. 26, s. 103; 2006, c. 35, Sched. C, s. 47 (3); 2008, c. 15, s. 86; 2017, c. 8, Sched. 13, s. 6; 2017, c. 14, Sched. 4, s. 14 (2-4).

Section Amendments with date in force (d/m/y)

1992, c. 14, s. 1 - 25/06/1992; 1993, c. 38, s. 65 (1, 2) - 14/02/1994; 1994, c. 11, s. 388 - 11/07/1994; 1998, c. 26, s. 103 - 18/12/1998
2006, c. 35, Sched. C, s. 47 (3) - 20/08/2007
2008, c. 15, s. 86 - 8/10/2008
2017, c. 8, Sched. 13, s. 6 - 17/05/2017; 2017, c. 14, Sched. 4, s. 14 (2-4) - 30/04/2018

68 REPEALED: 2006, c. 34, Sched. C, s. 12.

Section Amendments with date in force (d/m/y)

2006, c. 34, Sched. C, s. 12 - 1/04/2007

Application

69 (1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force. R.S.O. 1990, c. F.31, s. 69.

Hospitals

(2) Despite subsection (1), this Act only applies to records in the custody or under the control of a hospital where the records came into the custody or under the control of the hospital on or after January 1, 2007. 2010, c. 25, s. 24 (21).

Section Amendments with date in force (d/m/y)

2010, c. 25, s. 24 (21) - 1/01/2012

Crown bound

70 This Act binds the Crown. R.S.O. 1990, c. F.31, s. 70.

Français

[Back to top](#)

TAB 3

Municipal Freedom of Information and Protection of Privacy Act

R.S.O. 1990, CHAPTER M.56

Consolidation Period: From May 29, 2019 to the e-Laws currency date.

Last amendment: 2019, c. 7, Sched. 41.

Legislative History: 1992, c. 32, s. 23; 1995, c. 1, s. 83; 1996, c. 1, Sched. K, s. 13-24; 1996, c. 2, s. 73; 1996, c. 32, s. 77; 1997, c. 25, Sched. E, s. 8; 2000, c. 26, Sched. J, s. 2; 2001, c. 28, s. 23; 2002, c. 2, s. 16; 2002, c. 2, s. 19 (8-11); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 14-21; 2004, c. 3, Sched. A, s. 91; 2005, c. 28, Sched. J; 2006, c. 19, Sched. N, s. 3; 2006, c. 21, Sched. C, s. 119; 2006, c. 32, Sched. C, s. 35; 2006, c. 34, Sched. C, s. 13-21; 2007, c. 13, s. 45; 2014, c. 13, Sched. 6, s. 3, 4; 2015, c. 20, Sched. 28; 2016, c. 5, Sched. 17; 2016, c. 23, s. 59; 2017, c. 2, Sched. 12, s. 6; 2017, c. 7, s. 4; 2017, c. 8, Sched. 20; 2018, c. 3, Sched. 5, s. 38 (see: 2019, c. 1, Sched. 3, s. 5); 2019, c. 1, Sched. 4, s. 36; 2019, c. 7, Sched. 41.

CONTENTS

- 1. Purposes
- 2. Interpretation
- 3. Designation of head

PART I **FREEDOM OF INFORMATION**

ACCESS TO RECORDS

- 4. Right of access
- 4.1 Measures to ensure preservation of records
- 5. Obligation to disclose

EXEMPTIONS

- 6. Draft by-laws, etc.
- 7. Advice or recommendations
- 8. Law enforcement
- 8.1 Civil Remedies Act, 2001
- 8.2 Prohibiting Profiting from Recounting Crimes Act, 2002
- 9. Relations with governments
- 9.1 Relations with Aboriginal communities
- 10. Third party information
- 11. Economic and other interests
- 12. Solicitor-client privilege
- 13. Danger to safety or health
- 14. Personal privacy
- 15. Information soon to be published
- 16. Exemptions not to apply

ACCESS PROCEDURE

- 17. Request
- 18. Involvement of other institutions
- 19. Notice by head
- 20. Extension of time
- 20.1 Frivolous request
- 21. Notice to affected person
- 22. Contents of notice of refusal
- 23. Copy of record

INFORMATION TO BE PUBLISHED OR AVAILABLE

- 24. Publication of information re institutions
- 25. Information available for inspection
- 26. Annual report of head

PART II **PROTECTION OF INDIVIDUAL PRIVACY** COLLECTION AND RETENTION OF PERSONAL INFORMATION

<u>27.</u>	Application of Part
<u>28.</u>	Personal information
<u>29.</u>	Manner of collection
<u>30.</u>	Retention of personal information
	<u>USE AND DISCLOSURE OF PERSONAL INFORMATION</u>
<u>31.</u>	Use of personal information
<u>32.</u>	Where disclosure permitted
<u>33.</u>	Consistent purpose
	<u>PERSONAL INFORMATION BANKS</u>
<u>34.</u>	Personal information bank index
<u>35.</u>	Inconsistent use or disclosure
	<u>RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION</u>
<u>36.</u>	Rights of access and correction
<u>37.</u>	Access
<u>38.</u>	Exemptions
	<u>PART III</u>
	<u>APPEAL</u>
<u>39.</u>	Right to appeal
<u>40.</u>	Mediator to try to effect settlement
<u>41.</u>	Inquiry
<u>42.</u>	Burden of proof
<u>43.</u>	Order
<u>44.</u>	Delegation
	<u>PART IV</u>
	<u>GENERAL</u>
<u>45.</u>	Fees
<u>46.</u>	Powers and duties of Commissioner
<u>47.</u>	Regulations
<u>48.</u>	Offences
<u>49.</u>	Delegation, civil proceedings
<u>50.</u>	Informal access
<u>51.</u>	Information otherwise available
<u>52.</u>	Application of Act
<u>52.1</u>	Non-application re: Hydro One Inc.
<u>53.</u>	Other Acts
<u>54.</u>	Exercise of rights of deceased, etc., persons

Purposes

1 The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. M.56, s. 1.

Interpretation

2 (1) In this Act,

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, including by adoption; (“proche parent”)

“head”, in respect of an institution, means the individual or body determined to be head under section 3; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1) of the *Freedom of Information and Protection of Privacy Act*; (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

"institution" means,

- (a) a municipality,
- (b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those Acts,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of "institution" in subsection 2 (1) of the Act is amended by striking out "police services board" and substituting "police service board". (See: 2019, c. 1, Sched. 4, s. 36)

- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b); ("exécution de la loi")

"Minister" means the minister designated under section 3 of the *Freedom of Information and Protection of Privacy Act* as the responsible minister for the purposes of that Act; ("ministre")

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

"personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; ("banque de renseignements personnels")

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

"regulations" means the regulations made under this Act; ("règlements")

"spouse" means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or

TAB 4

Freedom of Information and Protection of Privacy Act

R.R.O. 1990, REGULATION 460

GENERAL

Consolidation Period: From June 6, 2019 to the e-Laws currency date.

Last amendment: 175/19.

Legislative History: 371/91, 135/92, 497/92, 532/93, 305/94, 88/95, 21/96, 331/96, 26/97, 478/97, 104/99, 138/99, 304/99, 191/01, 161/03, 424/03, 326/04, 421/04, 375/05, 603/05, 256/06, 92/07, 476/07, 344/08, 399/09, 261/10, 34/11, 46/12, 252/12, 157/13, 30/14, CTR 14 AU 14 - 1, 209/14 (as am. by 62/15), 123/15, 252/15, 54/16, 171/16, 441/16, 358/17, 34/18, CTR 02 NO 18 - 2, 27/19, 175/19.

This is the English version of a bilingual regulation.

1. (1) The agencies, boards, commissions, corporations and other bodies listed in Column 1 of the Schedule are designated as institutions. R.R.O. 1990, Reg. 460, s. 1 (1).

(2) The person occupying the position listed in Column 2 of the Schedule opposite to each institution listed in Column 1 is designated as the head of that institution. R.R.O. 1990, Reg. 460, s. 1 (2).

2. A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution. R.R.O. 1990, Reg. 460, s. 2.

3. (1) A head who provides access to an original record must ensure the security of the record. R.R.O. 1990, Reg. 460, s. 3 (1).

(2) A head may require that a person who is granted access to an original record examine it at premises operated by the institution. R.R.O. 1990, Reg. 460, s. 3 (2).

(3) A head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it. R.R.O. 1990, Reg. 460, s. 3 (3).

4. (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected. R.R.O. 1990, Reg. 460, s. 4 (1).

(2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it. R.R.O. 1990, Reg. 460, s. 4 (2).

(3) Every head shall ensure that reasonable measures to protect the records in his or her institution from inadvertent destruction or damage are defined, documented and put in place, taking into account the nature of the records to be protected. R.R.O. 1990, Reg. 460, s. 4 (3).

5. (1) An institution that uses personal information shall retain the information for at least one year after use, except if,

(a) the individual to whom the information relates consents to its earlier disposal; or

(b) the information is credit or debit card payment data. O. Reg. 123/15, s. 1.

(2) Despite subsection (1), an institution that uses personal information that is contained in a telecommunication logger tape in the custody or under the control of the institution shall retain the information for at least 45 days after use, except if the individual to whom the information relates consents to its earlier disposal. O. Reg. 123/15, s. 1.

5.1 A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

(a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or

(b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access. O. Reg. 21/96, s. 1.

5.2 The fee that shall be charged for the purposes of clause 24 (1) (c) or 48 (1) (c) of the Act shall be \$5. O. Reg. 21/96, s. 1.

5.3 (1) For the purposes of subsection 50 (1.1) of the Act, the fee payable for appealing a decision of a head to the Commissioner shall be,

- (a) \$25, if the person appealing has made a request for access to a record under subsection 24 (1);
 - (b) \$10, if the person appealing has made a request for access to personal information under subsection 48 (1); and
 - (c) \$10, if the person appealing has made a request for correction of personal information under subsection 47 (2). O. Reg. 21/96, s. 1.
- (2) For the purposes of subsection 50 (1.1) of the Act, no fee is payable for appealing a decision of a head to the Commissioner if the person appealing is given notice of a request under subsection 28 (1) of the Act. O. Reg. 21/96, s. 1.
6. The following are the fees that shall be charged for the purposes of subsection 57 (1) of the Act for access to a record:
- 1. For photocopies and computer printouts, 20 cents per page.
 - 2. For records provided on CD-ROMs, \$10 for each CD-ROM.
 - 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
 - 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
 - 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
 - 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received. O. Reg. 21/96, s. 2; O. Reg. 92/07, s. 1.
- 6.1 The following are the fees that shall be charged for the purposes of subsection 57 (1) of the Act for access to personal information about the individual making the request for access:
- 1. For photocopies and computer printouts, 20 cents per page.
 - 2. For records provided on CD-ROMs, \$10 for each CD-ROM.
 - 3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
 - 4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received. O. Reg. 21/96, s. 2; O. Reg. 92/07, s. 2.
7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. O. Reg. 21/96, s. 3.
- (2) A head shall refund any amount paid under subsection (1) that is subsequently waived. R.R.O. 1990, Reg. 460, s. 7 (2).
8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
- 1. Whether the person requesting access to the record is given access to it.
 - 2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment. R.R.O. 1990, Reg. 460, s. 8.
9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record. R.R.O. 1990, Reg. 460, s. 9.
10. (1) The following are the terms and conditions relating to security and confidentiality that a person is required to agree to before a head may disclose personal information to that person for a research purpose:
- 1. The person shall use the information only for a research purpose set out in the agreement or for which the person has written authorization from the institution.
 - 2. The person shall name in the agreement any other persons who will be given access to personal information in a form in which the individual to whom it relates can be identified.
 - 3. Before disclosing personal information to other persons under paragraph 2, the person shall enter into an agreement with those persons to ensure that they will not disclose it to any other person.
 - 4. The person shall keep the information in a physically secure location to which access is given only to the person and to the persons given access under paragraph 2.
 - 5. The person shall destroy all individual identifiers in the information by the date specified in the agreement.

6. The person shall not contact any individual to whom personal information relates, directly or indirectly, without the prior written authority of the institution.
7. The person shall ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.
8. The person shall notify the institution in writing immediately if the person becomes aware that any of the conditions set out in this section have been breached. R.R.O. 1990, Reg. 460, s. 10 (1).

(2) An agreement relating to the security and confidentiality of personal information to be disclosed for a research purpose shall be in the form titled "Security and Confidentiality Agreement of Personal Information for Research Purposes", dated May 1, 2016 and available on the Government of Ontario's Central Forms Repository website. O. Reg. 171/16, s. 1.

11. A request for access to a record under Part II of the Act or for access to or correction of personal information under Part III of the Act shall be in a written form that specifies that it is a request made under the Act. O. Reg. 34/11, s. 2.

SCHEDULE

Item	Column 1 Institution	Column 2 Head
1.	REVOKED: O. Reg. 27/19, s. 1 (1).	
2.	Accessibility Standards Advisory Council	Minister for Seniors and Accessibility
3.	Advertising Review Board	Minister of Government and Consumer Services
4.	Advisory Council on Special Education	Minister of Education
5.	Agricorp	Chair of the Board
6.	Agricultural Research Institute of Ontario	Minister of Agriculture, Food and Rural Affairs
7.	Agriculture, Food and Rural Affairs Appeal Tribunal	Minister of Agriculture, Food and Rural Affairs
8.	Alcohol and Gaming Commission of Ontario	Chief Executive Officer
9.	Algoma University	Executive Head
10.	Algonquin Forestry Authority	Minister of Natural Resources and Forestry
11.	Animal Care Review Board	Executive Chair, Tribunals Ontario
12.	Assessment Review Board	Executive Chair, Tribunals Ontario
13.	Autism Spectrum Disorder Clinical Expert Committee	Minister of Children and Youth Services
14.	Board of Negotiation (<i>Environmental Protection Act</i>)	Minister of Agriculture, Food and Rural Affairs
15.	Board of Negotiation (<i>Expropriations Act</i>)	Executive Chair, Tribunals Ontario
16.	Brock University	Executive Head
17.	Building Code Commission	Minister of Municipal Affairs and Housing
18.	Building Code Conservation Advisory Council	Minister of Municipal Affairs and Housing
19.	Building Materials Evaluation Commission	Minister of Municipal Affairs and Housing
20.	Business Risk Management Review Committee	Minister of Agriculture, Food and Rural Affairs
21.	Cancer Care Ontario	Chair
22.	Carleton University	Executive Head
23.	The Centennial Centre of Science and Technology	Minister of Tourism, Culture and Sport
24.	Child and Family Services Review Board	Executive Chair, Tribunals Ontario
25.	Chiropractic Review Committee	Minister of Health and Long-Term Care
26.	Citizens' Council	Minister of Health and Long-Term Care
27.	College of Trades Appointments Council	Minister of Labour
28.	Colleges of Applied Arts and Technology	Chair of the Board
29.	Collège universitaire de Hearst	Executive Head
30.	Committee on the Status of Species at Risk in Ontario	Minister of the Environment, Conservation and Parks
31.	Committee to Evaluate Drugs	Minister of Health and Long-Term Care
32.	REVOKED: O. Reg. 27/19, s. 1 (11).	
33.	Consent and Capacity Board	Minister of Health and Long-Term Care
34.	Conservation Review Board	Executive Chair, Tribunals Ontario
35.	Criminal Injuries Compensation Board	Executive Chair, Tribunals Ontario
36.	Crown Employees Grievance Settlement Board	Minister of Labour
37.	Custody Review Board	Executive Chair, Tribunals Ontario
38.	Death Investigation Oversight Council	Minister of Community Safety and Correctional Services
39.	Dentistry Review Committee	Minister of Health and Long-Term Care
40.	Education Quality and Accountability Office	Chair
41.	Education Relations Commission	Minister of Education
42.	eHealth Ontario	Chief Executive Officer
43.	Environmental Review Tribunal	Executive Chair, Tribunals Ontario
44.	Financial Services Commission of Ontario	Minister of Finance
45.	Financial Services Tribunal	Minister of Finance
46.	Fire Safety Commission	Executive Chair, Tribunals Ontario
47.	Fish and Wildlife Heritage Commission	Minister of Natural Resources and Forestry
48.	French Language Health Services Advisory Council	Minister of Health and Long-Term Care

49.	Grain Financial Protection Board	Minister of Agriculture, Food and Rural Affairs
50.	Greenbelt Council	Minister of Municipal Affairs and Housing
51.	HealthForceOntario Marketing and Recruitment Agency	Chair
52.	Health Professions Appeal and Review Board	Minister of Health and Long-Term Care
53.	Health Professions Regulatory Advisory Council	Minister of Health and Long-Term Care
54.	Health Services Appeal and Review Board	Minister of Health and Long-Term Care
54.1	Health Shared Services Ontario	Chief Executive Officer
55.	Higher Education Quality Council of Ontario	Chair
56.	Human Rights Legal Support Centre	Chair
57.	Human Rights Tribunal of Ontario	Executive Chair, Tribunals Ontario
58.	Independent Electricity System Operator	Chief Executive Officer
59.	Investment Advisory Committee of the Public Guardian and Trustee	Attorney General
60.	Joint Committee on the Schedule of Benefits	Minister of Health and Long-Term Care
61.	Justices of the Peace Remuneration Commission	President of the Treasury Board
62.	Labour-Management Advisory Committee	Minister of Labour
63.	Lakehead University	Executive Head
64.	Landlord and Tenant Board	Executive Chair, Tribunals Ontario
65.	Languages of Instruction Commission of Ontario	Minister of Education
66.	Laurentian University of Sudbury	Executive Head
67.	Legal Aid Ontario	President of Legal Aid Ontario
68.	Licence Appeal Tribunal	Executive Chair, Tribunals Ontario
69.	Liquor Control Board of Ontario	President and Chief Executive Officer
70.	Livestock Financial Protection Board	Minister of Agriculture, Food and Rural Affairs
71.	Livestock Medicines Advisory Committee	Minister of Agriculture, Food and Rural Affairs
72.	Local Health Integration Networks, each Network	Chief Executive Officer
72.1	Local Planning Appeal Tribunal	Executive Chair, Tribunals Ontario
73.	McMaster University	Executive Head
74.	McMichael Canadian Art Collection	Chief Executive Officer
75.	Medical Eligibility Committee — Health Insurance	Minister of Health and Long-Term Care
76.	Metrolinx	Chief Executive Officer
77.	Metropolitan Toronto Convention Centre Corporation	President and Chief Executive Officer of the Corporation
78.	Mining and Lands Tribunal	Executive Chair, Tribunals Ontario
79.	Minister's Advisory Council for Arts and Culture	Minister of Tourism, Culture and Sport
80.	Nawiinginiima Forest Management Corporation	Minister of Natural Resources and Forestry
81.	Niagara Escarpment Commission	Minister of Natural Resources and Forestry
82.	Niagara Parks Commission	Chair of the Commission
83.	Nipissing University	Executive Head
84.	Normal Farm Practices Protection Board	Minister of Agriculture, Food and Rural Affairs
85.	Northern Ontario Grow Bonds Corporation	Chair of the Board of Directors
86.	Northern Ontario Heritage Fund Corporation	Minister of Energy, Northern Development and Mines
87.	Northern Ontario School of Medicine	Executive Head
88.	Office for Victims of Crime	Attorney General
89.	Office of the Employer Adviser	Minister of Labour
90.	Office of the Fairness Commissioner	Commissioner
91.	Office of Francophone Affairs	Minister Responsible for Francophone Affairs
92.	Office of the Independent Police Review Director	Director
93.	Office of the Worker Adviser	Minister of Labour
94.	Ontario Advisory Committee on HIV/AIDS	Minister of Health and Long-Term Care
95.	Ontario Agency for Health Protection and Promotion	Chief Executive Officer
95.1	Ontario Arts Council	Director and Chief Executive Officer
95.2	Ontario Cannabis Retail Corporation	President and Chief Executive Officer
96.	Ontario Capital Growth Corporation	Minister of Economic Development, Job Creation and Trade
97.	Ontario Civilian Police Commission	Executive Chair, Tribunals Ontario
98.	Ontario Clean Water Agency	Chair
99.	Ontario College of Art & Design University	Executive Head
100.	Ontario Electricity Financial Corporation	Chief Executive Officer
101.	Ontario Energy Board	Chair
102.	Ontario Farm Products Marketing Commission	Minister of Agriculture, Food and Rural Affairs
103.	Ontario Financing Authority	Minister of Finance
104.	Ontario Food Terminal Board	Chair of the Board
105.	Ontario Geographic Names Board	Minister of Natural Resources and Forestry
105.1	Ontario Health	Chair of the Board
106.	Ontario Health Quality Council	Chair

107.	Ontario Heritage Trust	Minister of Tourism, Culture and Sport
108.	Ontario Highway Transport Board	Minister of Transportation
109.	Ontario Honours Advisory Council	Minister of Tourism, Culture and Sport
110.	Ontario Human Rights Commission	Chief Commissioner
111.	Ontario Immigrant Investor Corporation	Minister of Economic Development, Job Creation and Trade
112.	Ontario Infrastructure and Lands Corporation	Chief Executive Officer
113.	Ontario Labour Relations Board	Minister of Labour
114.	Ontario Lottery and Gaming Corporation	President and Chief Executive Officer
115.	Ontario Media Development Corporation	Minister of Tourism, Culture and Sport
116.	Ontario Mental Health Foundation	Chair
117.	Ontario Moose-Bear Allocation Advisory Committee	Minister of Natural Resources and Forestry
118.	Ontario Mortgage and Housing Corporation	Minister of Municipal Affairs and Housing
119.	REVOKED: O. Reg. 27/19, s. 1 (30).	
120.	Ontario Northland Transportation Commission	Chair of the Commission
121.	Ontario Parks Board of Directors	Minister of the Environment, Conservation and Parks
122.	Ontario Parole Board	Executive Chair, Tribunals Ontario
123.	Ontario Place Corporation	Minister of Tourism, Culture and Sport
124.	Ontario Police Arbitration Commission	Minister of Community Safety and Correctional Services
125.	Ontario Power Generation Inc.	Chief Executive Officer
126.	Each subsidiary (as defined in subsection 2 (1) of the <i>Electricity Act, 1998</i>) of Ontario Power Generation Inc.	Chief Executive Officer of the subsidiary
126.1	Ontario Research Fund Advisory Board	Minister of Economic Development, Job Creation and Trade
127.	Ontario Review Board	Chair of the Board
128.	Ontario Securities Commission	Minister of Finance
129.	REVOKED: O. Reg. 358/17, s. 1 (2).	
130.	Ontario Special Education Tribunal (English)	Executive Chair, Tribunals Ontario
131.	Ontario Special Education Tribunal (French)	Executive Chair, Tribunals Ontario
132.	Ontario Tourism Marketing Partnership Corporation	Minister of Tourism, Culture and Sport
133.	Ontario Trillium Foundation	Chief Executive Officer
134.	REVOKED: O. Reg. 358/17, s. 1 (2).	
135.	Optometry Review Committee	Minister of Health and Long-Term Care
136.	The Order of Ontario Advisory Council	Chief Justice of Ontario
137.	Ornge, incorporated under the <i>Canada Corporations Act</i> on October 8, 2004 as Ontario Air Ambulance Services Co.	Chair of the board of directors
138.	Ottawa Convention Centre Corporation	President
139.	Owen Sound Transportation Company Limited	President
140.	REVOKED: O. Reg. 358/17, s. 1 (2).	
141.	Pay Equity Commission	Minister of Labour
142.	Pay Equity Hearings Tribunal	Minister of Labour
143.	Pesticides Advisory Committee	Minister of the Environment, Conservation and Parks
144.	Pharmacy Council	Minister of Health and Long-Term Care
145.	Physician Payment Review Board	Chair
146.	Physician Services Payment Committee	Minister of Health and Long-Term Care
147.	Post-secondary Education Quality Assessment Board	Minister of Training, Colleges and Universities
148.	Premier's Council on Youth Opportunities	Minister of Children and Youth Services
149.	Prevention Council	Minister of Labour
150.	Provincial Advisory Committee on Francophone Affairs	Minister Responsible for Francophone Affairs
151.	REVOKED: O. Reg. 358/17, s. 1 (2).	
152.	Provincial Judges Pension Board	President of the Treasury Board
153.	Provincial Schools Authority	Minister of Education
154.	Public Guardian and Trustee	Attorney General
155.	Public Service Commission	Chair
156.	Public Service Grievance Board	Minister of Labour
157.	Queen's University at Kingston	Executive Head
158.	Rabies Advisory Committee	Minister of Natural Resources and Forestry
159.	Royal Ontario Museum	Chair of the Board
160.	Rural Economic Development Advisory Panel	Minister of Agriculture, Food and Rural Affairs
161.	Ryerson University	Executive Head
162.	St. Lawrence Parks Commission	Minister of Tourism, Culture and Sport
163.	Science North	Chief Executive Officer
164.	Social Benefits Tribunal	Executive Chair, Tribunals Ontario
165.	Soldiers Aid Commission	Minister of Community and Social Services
166.	Species at Risk Program Advisory Committee	Minister of the Environment, Conservation and Parks
167.	Toronto Organizing Committee for the 2015 Pan American and Parapan American Games	Chair of the Board

168.	Training Completion Assurance Fund Advisory Board	Minister of Training, Colleges and Universities
169.	Trent University	Executive Head
170.	Trillium Gift of Life Network	Chair of the Board
171.	University of Guelph	Executive Head
172.	University of Ontario Institute of Technology	Executive Head
173.	University of Ottawa	Executive Head
174.	University of Toronto	Executive Head
175.	The University of Waterloo	Executive Head
176.	The University of Western Ontario	Executive Head
177.	University of Windsor	Executive Head
178.	Walkerton Clean Water Centre	Chief Executive Officer
179.	Wilfrid Laurier University	Executive Head
180.	Workplace Safety and Insurance Appeals Tribunal	Minister of Labour
181.	Workplace Safety and Insurance Board	Chair of the Board
182.	York University	Executive Head

O. Reg. 441/16, s. 1; O. Reg. 358/17, s. 1; O. Reg. 34/18, s. 1; O. Reg. 27/19, s. 1 (1-15, 17-40); O. Reg. 175/19, s. 1.

Note: On the day section 1 of Schedule 17 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* comes into force, item 44 of the Schedule to the Regulation is revoked and the following substituted: (See: O. Reg. 27/19, s. 1 (16))

44.	Financial Services Regulatory Authority of Ontario	Chief Executive Officer
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FORM 1 REVOKED: O. Reg. 171/16, s. 3.

FORM 2 REVOKED: O. Reg. 34/11, s. 5.

Français

Back to top

TAB 5

Freedom of Information and Protection of Privacy Act

R.R.O. 1990, REGULATION 459

DISPOSAL OF PERSONAL INFORMATION

Consolidation Period: From December 6, 2016 to the e-Laws currency date.

Last amendment: 440/16.

Legislative History: 91/07, 440/16.

This is the English version of a bilingual regulation.

1. In this Regulation,

“Archives” means the Archives of Ontario. R.R.O. 1990, Reg. 459, s. 1.

2. (1) An institution, other than an educational institution, may dispose of personal information only by transferring it to the Archives or by destroying it. R.R.O. 1990, Reg. 459, s. 2; O. Reg. 91/07, s. 1 (1).

(2) An educational institution may dispose of personal information in the following ways only:

1. By destroying the personal information.

2. By transferring it to the archives of another educational institution, in accordance with an agreement between the educational institutions authorizing the transfer.

3. By transferring it to the Archives, in accordance with an agreement between the educational institution and the Archivist of Ontario authorizing the transfer. O. Reg. 91/07, s. 1 (2).

(3) An educational institution that transfers personal information to its own archives is not considered to have disposed of the information. O. Reg. 91/07, s. 1 (2).

3. Where personal information is in the custody or under the control of an institution, no person shall destroy it without the authorization of the head. R.R.O. 1990, Reg. 459, s. 3.

4. (1) Every head shall ensure that all reasonable steps are taken to protect the security and confidentiality of personal information that is to be destroyed, including protecting its security and confidentiality during its storage, transportation, handling and destruction. R.R.O. 1990, Reg. 459, s. 4 (1).

(2) Every head shall ensure that all reasonable steps are taken to protect the security and confidentiality of personal information that is to be transferred to the Archives, including protecting its security and confidentiality during its storage, transportation and handling. R.R.O. 1990, Reg. 459, s. 4 (2).

(3) In determining whether all reasonable steps are taken under subsection (1) or (2), the head shall consider the nature of the personal information to be destroyed or transferred. R.R.O. 1990, Reg. 459, s. 4 (3).

5. Every head shall take all reasonable steps to ensure that when personal information is to be destroyed, it is destroyed in such a way that it cannot be reconstructed or retrieved. R.R.O. 1990, Reg. 459, s. 5.

6. (1) Every head of an institution shall ensure that the institution maintains a disposal record setting out what personal information has been destroyed or transferred to the Archives and the date of that destruction or transfer. R.R.O. 1990, Reg. 459, s. 6 (1).

(2) The head shall ensure that the disposal record maintained under subsection (1) does not contain personal information. R.R.O. 1990, Reg. 459, s. 6 (2).

TAB 6

Law Society Act

R.S.O. 1990, CHAPTER L.8

Consolidation Period: From May 8, 2018 to the e-Laws currency date.

Last amendment: 2018, c. 8, Sched. 15, s. 1-7.

Legislative History: 1991, c. 41; 1992, c. 7; 1993, c. 27, s. 5 and Sched.; 1994, c. 11, s. 389; 1994, c. 27, s. 49; 1996, c. 25, s. 7; 1997, c. 26, Sched.; 1998, c. 18, Sched. B, s. 8; 1998, c. 21; 1998, c. 26, s. 106; 2000, c. 42, Sched., s. 20-23; 2001, c. 8, s. 46-50; 2002, c. 18, Sched. A, s. 12; 2006, c. 21, Sched. C, s. 1-98; 2006, c. 21, Sched. F, s. 117; 2009, c. 33, Sched. 2, s. 42; 2009, c. 33, Sched. 6, s. 64; 2010, c. 1, Sched. 12; 2010, c. 15, s. 230; 2010, c. 16, Sched. 2, s. 4; 2013, c. 17, s. 1-26; 2017, c. 20, Sched. 7, s. 79; 2018, c. 8, Sched. 15, s. 1-7.

CONTENTS

PART 0.1

- 1. Interpretation
- 1.1 Transition

PART I

THE SOCIETY

- 2. Law Society continued
- 3. Annual meeting
- 4. Seat
- 4.1 Function of the Society
- 4.2 Principles to be applied by the Society
- 5. Powers of society
- 6. Application of Corporations Act
- 6. Application of Not-for-Profit Corporations Act, 2010
- 7. Treasurer
- 8. Chief Executive Officer
- 9. Liability of benchers, officers and employees

BENCHERS

- 10. Government of the Society
- 11. Honorary benchers
- 12. Benchers by virtue of their office
- 13. Attorney General, guardian of the public interest
- 14. Former Treasurers
- 15. Benchers licensed to practise law
- 16. Benchers licensed to provide legal services
- 22. Removal for non-attendance
- 23. Lay benchers
- 24. Quorum
- 25. Election of Treasurer

PARALEGAL STANDING COMMITTEE

- 25.1 Paralegal Standing Committee

ADVISORY COUNCIL

- 26. Meeting

PART 1.1

PROHIBITIONS AND OFFENCES

- 26.1 Prohibitions
- 26.2 Offences
- 26.3 Order prohibiting contravention, etc.

LICENSING

- 27. Licensing
- 27.1 Register
- 29. Officers of the courts

- 30. Surrender of licence
- 31. Appointment to judicial office

PART II

CONDUCT

- 33. Prohibited conduct
- 34. Conduct application
- 35. Conduct orders
- 36. Invitation to attend

CAPACITY

- 37. Interpretation – “incapacitated”
- 38. Capacity application
- 39. Medical or psychological examinations
- 40. Capacity orders

PROFESSIONAL COMPETENCE

- 41. Interpretation – standards of professional competence
- 42. Review; professional competence
- 43. Professional competence application
- 44. Professional competence orders

FAILURE TO COMPLY WITH ORDER

- 45. Suspension for failure to comply with order
- 45.1 Suspension for failure to comply with costs order

SUMMARY ORDERS

- 46. Summary suspension for non-payment
- 47. Summary suspension for failure to complete or file
- 47.1 Summary suspension for failure to comply with indemnity requirements
- 48. Summary revocation
- 49. Summary suspension relating to continuing professional development

AUDITS, INVESTIGATIONS, ETC.

- 49.2 Audit of financial records
- 49.3 Investigations
- 49.8 Privilege
- 49.9 Removal for copying
- 49.10 Order for search and seizure
- 49.11 Identification
- 49.12 Confidentiality
- 49.13 Disclosure to public authorities

COMPLAINTS RESOLUTION COMMISSIONER

- 49.14 Appointment
- 49.15 Functions of Commissioner
- 49.16 Delegation
- 49.17 Identification
- 49.18 Confidentiality
- 49.19 Decisions final

PROCEEDINGS AUTHORIZATION COMMITTEE

- 49.20 Proceedings Authorization Committee

LAW SOCIETY TRIBUNAL

- 49.20.1 Law Society Tribunal
- 49.20.2 Chair

HEARING DIVISION

- 49.21 Hearing Division
- 49.22 Chair
- 49.22.1 Vice-chair
- 49.23 Hearings
- 49.24 French-speaking panelists
- 49.24.1 Temporary panelists
- 49.25 Powers
- 49.26 Terms and conditions
- 49.27 Interlocutory orders
- 49.28 Costs

APPEAL DIVISION

- 49.29 Appeal Division
- 49.30 Chair
- 49.30.1 Vice-chair

49.31	Hearing of appeals
49.32	Appeals to Appeal Division
49.33	Grounds
49.34	Time for appeal
49.35	Jurisdiction of Appeal Division
49.36	Stay
49.37	Application of other provisions
	APPEALS TO THE DIVISIONAL COURT
49.38	Appeals to Divisional Court
49.39	Grounds for appeal to court
49.40	Payment for documents
49.41	Stay
	REINSTATEMENT
49.42	Variation or discharge of previous order
49.43	Dispute over satisfaction of terms and conditions
	FREEZING ORDERS AND TRUSTEESHIP ORDERS
49.44	Application
49.45	Grounds for order
49.46	Freezing order
49.47	Trusteeship order
49.48	Application for directions
49.49	Application without notice
49.50	Requirement to account
49.51	Variation or discharge
49.52	Former licensees or members
	OUTSIDE COUNSEL
49.53	Outside counsel

PART III

COMPENSATION FUND

51.	Compensation Fund	THE LAW FOUNDATION OF ONTARIO
52.	Definitions	
53.	Foundation continued	
54.	Board of trustees	
55.	Objects and funds	
56.	Powers of Foundation	
57.	Interest on trust funds	
57.1	Joint trust accounts	
57.2	Immunity	
58.	Report by Society	
59.	Regulations	
59.1	Class Proceedings Fund	
59.2	Class Proceedings Committee	
59.3	Applications by plaintiffs	
59.4	Applications by defendants	
59.5	Regulations	

UNCLAIMED TRUST FUNDS

59.6	Unclaimed trust funds
59.7	Society becomes trustee
59.8	Transfer to trust fund
59.9	Notice
59.10	Claims
59.11	Application to court
59.12	No entitlement to interest
59.13	Limit on payments
59.14	Former licensees and members

LEGAL EDUCATION, DEGREES

60.	Education programs and law degrees
	INDEMNITY FOR PROFESSIONAL LIABILITY
61.	Indemnity for professional liability

PROFESSIONAL CORPORATIONS

61.0.1	Professional corporations
61.0.2	Register

61.0.3	Notice of change of shareholder
61.0.4	Application of Act, etc.
61.0.5	Professional, fiduciary and ethical obligations to clients
61.0.6	Terms, conditions, etc.
61.0.7	Prohibitions and offences, corporations
61.0.8	Trusteeships permitted
61.0.9	Reference to corporation included
	LIMITED LIABILITY PARTNERSHIPS
61.1	Limited liability partnerships
	RULES OF PRACTICE AND PROCEDURE
61.2	Rules
	BY-LAWS
62.	By-laws
	REGULATIONS
63.	Regulations

PART 0.I

Interpretation

1 (1) In this Act,

“adjudicative body” means any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s legal interests, rights or responsibilities and, without limiting the generality of the foregoing, includes,

- (a) a federal or provincial court,
- (b) a tribunal established under an Act of Parliament or under an Act of the Legislature of Ontario,
- (c) a commission or board appointed under an Act of Parliament or under an Act of the Legislature of Ontario to conduct an inquiry or inquest, and
- (d) an arbitrator; (“organisme juridictionnel”)

“Appeal Division” means the Law Society Tribunal Appeal Division continued under Part II; (“Section d’appel”)

“bencher” means a bencher of the Society, other than an honorary bencher; (“conseiller”)

“by-laws” means the by-laws made under this Act; (“règlements administratifs”)

“certificate of authorization” means a certificate of authorization issued under this Act authorizing the corporation named in it to practise law in Ontario, to provide legal services in Ontario or to do both; (“certificat d’autorisation”)

“Chief Executive Officer” means the Chief Executive Officer of the Society; (“chef de la direction”)

“Convocation” means a regular or special meeting of the benchers convened for the purpose of transacting business of the Society; (“Conseil”)

“document” includes a paper, book, record, account, sound recording, videotape, film, photograph, chart, graph, map, plan, survey and information recorded or stored by computer or by means of any other device; (“document”)

“elected bencher” means a person who is elected as a bencher under subsection 15 (1) or 16 (1) or becomes a bencher under subsection 15 (3) or 16 (3); (“conseiller élu”)

“Hearing Division” means the Law Society Tribunal Hearing Division continued under Part II; (“Section de première instance”)

“lay bencher” means a person appointed as a bencher by the Lieutenant Governor in Council under section 23; (“conseiller non juriste”)

“licence” means a licence issued under this Act; (“permis”)

“licensed” means licensed under this Act; (“pourvu d’un permis”)

“licensee” means,

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
- (b) a person licensed to provide legal services in Ontario; (“titulaire de permis”)

“life bencher” means a person who is a bencher under paragraph 3 of subsection 12 (1); (“conseiller à vie”)

“person who is authorized to practise law in Ontario” means,

- (a) a person who is licensed to practise law in Ontario as a barrister and solicitor and whose licence is not suspended, or
- (b) a person who is not a licensee but is permitted by the by-laws to practise law as a barrister and solicitor in Ontario; (“personne autorisée à pratiquer le droit en Ontario”)

“person who is authorized to provide legal services in Ontario” means,

- (a) a person who is licensed to provide legal services in Ontario and whose licence is not suspended, or
- (b) a person who is not a licensee but is permitted by the by-laws to provide legal services in Ontario; (“personne autorisée à fournir des services juridiques en Ontario”)

“physician” means a member of the College of Physicians and Surgeons of Ontario or a person who is authorized to practise medicine in another province or territory of Canada; (“médecin”)

“professional business” means,

- (a) in the case of a person licensed to practise law in Ontario as a barrister and solicitor, the practice of law and the business operations relating to it,
- (b) in the case of a person licensed to provide legal services in Ontario, the provision of legal services and the business operations relating to it; (“activités professionnelles”)

“professional corporation” means a corporation incorporated or continued under the *Business Corporations Act* that holds a valid certificate of authorization; (“société professionnelle”)

“psychologist” means a member of the College of Psychologists of Ontario or a person who is authorized to practise psychology in another province or territory of Canada; (“psychologue”)

“regulations” means the regulations made under this Act; (“règlements”)

“rules of practice and procedure” means the rules of practice and procedure made under this Act; (“règles de pratique et de procédure”)

“Society” means the Law Society of Ontario; (“Barreau”)

“Treasurer” means the Treasurer of the Society; (“trésorier”)

“Tribunal” means the Law Society Tribunal established under Part II. (“Tribunal”) R.S.O. 1990, c. L.8, s. 1; 1991, c. 41, s. 1; 1998, c. 21, s. 1 (1-5); 2000, c. 42, Sched., s. 20; 2006, c. 21, Sched. C, s. 2 (1-9); 2013, c. 17, s. 1; 2018, c. 8, Sched. 15, s. 1.

Documents in possession or control

(2) For the purposes of this Act, a document is in the possession or control of a person if the person is entitled to obtain the original document or a copy of it. 1998, c. 21, s. 1 (6).

Hearings

(3) A hearing is not required before making any decision under this Act, the regulations, the by-laws or the rules of practice and procedure unless the Act, regulations, by-laws or rules of practice and procedure specifically require a hearing. 1998, c. 21, s. 1 (6).

Licensee

(4) For greater certainty, a person whose licence is suspended or is in abeyance is a licensee, but a person whose licence has been revoked, whose application to surrender his or her licence has been accepted under section 30 or whose licence is deemed to have been surrendered under section 31 is not a licensee. 2006, c. 21, Sched. C, s. 2 (10).

Provision of legal services

(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. 2006, c. 21, Sched. C, s. 2 (10).

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.
2. Selects, drafts, completes or revises, on behalf of a person,
 - i. a document that affects a person's interests in or rights to or in real or personal property,
 - ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,
 - iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,
 - iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),
 - v. a document that relates to the custody of or access to children,
 - vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or
 - vii. a document for use in a proceeding before an adjudicative body.
3. Represents a person in a proceeding before an adjudicative body.
4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.
2. Conducting an examination for discovery.
3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10).

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.
2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.
3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.
4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.
5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws. 2006, c. 21, Sched. C, s. 2 (10).

Terms, conditions, etc.

(9) For the purposes of this Act, a term, condition, limitation or restriction shall be considered to be imposed on a licensee, regardless of whether it is imposed on the licensee or on the licensee's licence and regardless of whether it is imposed by the by-laws on all licences of the class held by the licensee or is imposed on the particular licensee or on his or her licence by an order made under this Act. 2006, c. 21, Sched. C, s. 2 (10).

Internal references

(10) A reference in this Act to something done or omitted to be done under this Act, a Part of this Act or a provision of this Act shall be interpreted as referring to the Act, the Part or the provision, as it read on the day the thing was done or omitted to be done. 2006, c. 21, Sched. C, s. 2 (10).

Section Amendments with date in force (d/m/y)

1991, c. 41, s. 1 - 25/11/1991; 1998, c. 21, s. 1 (1-6) - 01/02/1999

2000, c. 42, Sched. , s. 20 - 01/11/2001

2006, c. 21, Sched. C, s. 1, 2 (1-10) - 01/05/2007

2013, c. 17, s. 1 (1, 2, 4-6) - 12/03/2014; 2013, c. 17, s. 1 (3) - 12/12/2013

2018, c. 8, Sched. 15, s. 1 (1-3) - 08/05/2018

Transition

Definitions

1.1 (1) In this section,

“amendment day” means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* comes into force; (“jour de la modification”)

“member” means a member as defined in section 1, as it reads immediately before the amendment day, and “membership” has a corresponding meaning. (“membre”, “qualité de membre”) 2006, c. 21, Sched. C, s. 3.

Members deemed licensees

(2) Every person who is a member immediately before the amendment day shall be deemed to become, on the amendment day, a person licensed to practise law in Ontario as a barrister and solicitor and to hold the class of licence determined under the by-laws. 2006, c. 21, Sched. C, s. 3.

Abeyance

(3) If a person’s membership in the Society is in abeyance under section 31 immediately before the amendment day, the person’s licence shall be deemed to be in abeyance under section 31 on the amendment day. 2006, c. 21, Sched. C, s. 3.

(4)-(7) REPEALED: 2013, c. 17, s. 2.

Order imposing term, condition, etc.

(8) If an order imposing a term, condition, limitation or restriction on a person’s rights and privileges as a member is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order imposing the same term, condition, limitation or restriction on the person’s licence. 2006, c. 21, Sched. C, s. 3.

Order suspending rights and privileges deemed order suspending licence

(9) If an order suspending a person’s rights and privileges as a member is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order suspending the person’s licence. 2006, c. 21, Sched. C, s. 3.

Prohibition order

(10) If an order under section 50.2 prohibiting a person from contravening section 50 is in effect immediately before the amendment day, the order shall be deemed to become, on the amendment day, an order under clause 26.3 (1) (a) prohibiting the person from contravening subsection 26.1 (1) or (2), as the case may be. 2006, c. 21, Sched. C, s. 3.

(11) REPEALED: 2013, c. 17, s. 2.

Licence deemed permit

(12) Any of the following licences that is in effect immediately before the amendment day shall be deemed to become, on the amendment day, a permit authorizing the holder to do the same things that were authorized by the licence:

1. A licence authorizing a limited liability partnership to practise law.
2. A licence authorizing a person to give legal advice respecting the law of a jurisdiction outside Canada.
3. A licence authorizing a partnership, corporation or other organization to engage in a practice of law whereby it maintains one or more offices outside Ontario and one or more offices in Ontario.
4. A licence authorizing a person, partnership, corporation or other organization to practise another profession in addition to practising law. 2006, c. 21, Sched. C, s. 3.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 3 - 01/05/2007

2010, c. 1, Sched. 12, s. 1 - 18/05/2010

2013, c. 17, s. 2 - 12/12/2013

PART I

THE SOCIETY

Law Society continued

2 (1) The Law Society of Upper Canada is continued under the name Law Society of Ontario in English and Barreau de l'Ontario in French. 2018, c. 8, Sched. 15, s. 2.

Status

(2) The Society is a corporation without share capital and its members at a point in time are,

- (a) the person who is the Treasurer at that time;
- (b) the persons who are benchers at that time;
- (c) the persons who are at that time licensed to practise law in Ontario as barristers and solicitors; and
- (d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal members. 2006, c. 21, Sched. C, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 5 - 01/05/2007

2018, c. 8, Sched. 15, s. 2 - 08/05/2018

Annual meeting

3 A meeting of the members of the Society shall be held annually at such place and at such time as is determined from time to time in Convocation, notice of which shall be given by publication as provided by the by-laws. R.S.O. 1990, c. L.8, s. 3; 1998, c. 21, s. 2; 2006, c. 21, Sched. C, s. 6.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 2 - 01/02/1999

2006, c. 21, Sched. C, s. 6 - 01/05/2007

Seat

4 The permanent seat of the Society shall continue to be at Osgoode Hall in the City of Toronto. R.S.O. 1990, c. L.8, s. 4.

Function of the Society

4.1 It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 7.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 7 - 01/05/2007

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

- 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
- 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
- 3. The Society has a duty to protect the public interest.

4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 7 - 01/05/2007

Powers of society

Acquisition and disposition of property

5 (1) The Society may purchase, acquire, take by gift, bequest, devise, donation or otherwise any real or personal property for its purposes, and it may hold, sell, mortgage, lease or dispose of any of its real or personal property. R.S.O. 1990, c. L.8, s. 5 (1).

Trustee powers

(2) The Society has and may exercise all powers of trustees under the laws of Ontario. R.S.O. 1990, c. L.8, s. 5 (2).

Borrowing power

(3) The Society may borrow money for its purposes. R.S.O. 1990, c. L.8, s. 5 (3).

Capacity to hold an interest in an insurance corporation

(4) The Society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to licensees and to persons qualified to practise law outside Ontario in Canada. R.S.O. 1990, c. L.8, s. 5 (4); 2006, c. 21, Sched. C, s. 8.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 8 - 01/05/2007

Application of *Corporations Act*

6 (1) Sections 84 and 126.1, subsections 129 (2) and (3) and section 317 of the *Corporations Act* do not apply to the Society. 2006, c. 21, Sched. C, s. 9; 2017, c. 20, Sched. 7, s. 79.

Conflict

(2) In the event of conflict between any provision of this Act and any provision of the *Corporations Act*, the provision of this Act prevails. R.S.O. 1990, c. L.8, s. 6 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 6 is repealed and the following substituted:

Application of *Not-for-Profit Corporations Act, 2010*

6. The *Not-for-Profit Corporations Act, 2010* does not apply to the Society, except as may be prescribed by regulation. 2010, c. 15, s. 230 (1).

See: 2010, c. 15, ss. 230 (1), 249.

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 9 - 01/05/2007

2010, c. 15, s. 230 (1) - not in force

2017, c. 20, Sched. 7, s. 79 - 13/01/2018

Treasurer

7 The Treasurer is the president and head of the Society. 1998, c. 21, s. 3.

Section Amendments with date in force (d/m/y)

1998, c. 21, s. 3 - 01/02/1999

THE ATTORNEY GENERAL OF ONTARIO
Respondent (Appellant in Appeal)

- and -

JEFFREY BOGAERTS et al.
Applicant (Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

**FACTUM OF THE INTERVENOR
INFORMATION AND PRIVACY COMMISSIONER
OF ONTARIO**

**INFORMATION AND PRIVACY
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