COURT FILE #:C66995 AND C66998

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CANADIAN BROADCASTING CORPORATION ET AL

APPELLANTS

AND

LEE FERRIER Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD ET AL.

RESPONDENTS

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FACTUM OF THE INTERVENER
ATTORNEY GENERAL OF ONTARIO

PART I – OVERVIEW

1. Ontario intervenes in this judicial review to make the following points:

i) The *Charter* has a limited role in the context of this case as the Appellants did not file a Notice of Constitutional Question challenging the constitutional validity of s. 35 of the *Police Services Act* and therefore this case can and should be resolved on administrative law principles;

ii) In any event, s. 35 of the *Police Services Act* is consistent with s. 2(b) of the *Charter* as s. 35 is a *Charter* compliant provision that presumes openness, and allows for a police services board hearing to be closed to the public only after the competing interests of privacy and transparency are appropriately balanced.

PART II – FACTS

2. Ontario is not taking a position on the ultimate outcome of this appeal – namely whether the police disciplinary hearing in this case should have been open or closed.

3. Below, we provide a short summary of the uncontested facts in this case.

A. The s. 83(17) extension hearing

4. The police discipline complaints at issue relate to the conduct of three officers who were involved in the investigation into the death of a First Nations man, Stacy DeBungee, on October 19, 2015. Notices of Disciplinary Hearing were served on three of the eight officers investigated by the OIPRD in relation to their role in the investigation into the death of Mr. DeBungee. However, these were served after April 19, 2016 (i.e. more than six months after the initial complaint). An extension hearing was therefore scheduled before the Thunder Bay Police Services Board ("TBPSB") under s. 83(17) of the *Police Services Act* to determine whether it was reasonable to delay the serving of the notices past the statutory deadline. Absent a finding that the delay in service of the notices was reasonable, service of the notices would be rendered invalid. In that event, the three officers would not face discipline.

Police Services Act, RSO 1990, c P.15 [*PSA*].

5. On July 25, 2018, retired Superior Court Justice Lee Ferrier was appointed pursuant to s. 16 of the *Public Officers Act* to exercise the powers and duties ordinarily exercised by the TBPSB. A preliminary issue arose as to whether the extension hearing under s. 83(17) should proceed in public or *in camera*. The First Nations Complainants took the position that the extension hearing should be public. The TBPSB and the officer respondents argued the hearing should be held *in camera*. The Complainants submitted that "the case has been traumatic for the complainants and Rainy River First Nations [as well as others]" and that "the trauma will be exacerbated by secret hearings and that secrecy undermines the public trust in the process,

even if the decision is made public."

Public Officers Act, RSO 1990, c P.45

Canadian Broadcasting Corporation v Thunder Bay Police Services Board, 2018 ONSC 5872 (Pierce J) at para 29 (Appeal Book of the Intervenor) [Decision of Pierce J].

6. After learning about the hearing and the preliminary issue, the Canadian Broadcasting Corporation ("CBC") provided written submissions arguing that on the issue of whether to close the hearing under s. 35(4), the open courts principle and the *Dagenais / Mentuck* test should apply. The CBC argued that a proper application of these principles called for the hearing to be open to the public.

7. In a decision dated September 20, 2018, Mr. Ferrier held that the hearing should be held *in camera*. Mr. Ferrier recognized that under the test set out in s. 35, hearings are presumptively open. However, the hearing can be closed where the test set out in s. 35(4) is satisfied:

> **Proceedings open to the public**
> (3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.
>
> **Exception**
> (4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,
>
> a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or
>
> b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

8. Mr. Ferrier went on to find that the conditions in s. 35(4)(b) were met. On the first branch of the test, after examining previous case law, he found that disciplinary actions or matters,

that an extension application was "an administrative act" analogous to a *pre-enquete* hearing. Where a *pre-enquete* hearing is held after a private Information is sworn in the criminal context, the hearing is not open.

B. Justice Pierce's decision to stay Mr. Ferrier's decision

12. Justice Pierce allowed the CBC's motion to the Divisional Court for a temporary injunction over the disciplinary proceedings pending the resolution of the judicial review of Mr. Ferrier's decision. Pierce J. found that all three branches of the test for a stay (set out in *RJR MacDonald Inc. v. Canada (Attorney General)* were satisfied.

RJR MacDonald Inc v Canada (Attorney General), [1994] 1 SCR 311.

C. The Divisional Court's decision on the Judicial Review

12. The Divisional Court dismissed the Judicial Review. At para 53, it stated:

> There is no need for any reference to the *Dagenais/Mentuck* line of cases when the *PSA* statutory scheme itself sets out the balancing act to be undertaken and there is no ambiguity in the legislative provisions. As Iacobucci J. stated in *Bell ExpressVu Ltd.*:
>
> > [T]o the extent this Court has recognized a "*Charter* values" interpretive principle, such principle can *only* receive application in circumstances of genuine ambiguity, i.e., where a statutory provision is subject to differing, but equally plausible, interpretations. [at para. 62]
>
> See also *R. v. Rodgers*, [2006] 1 S.C.R. 554 at para. 18; *R. v. Gomboc*, [2010] 3 S.C.R. 211 at paras. 87-91; *Gehl v. Canada (Attorney General)* (2017), 138 O.R. (3d) 52 at paras.78-83; and *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673 at para. 20.
>
> Decision of Pierce J, *supra*.

PART III - ISSUES

13. Ontario makes the following submissions:

> i. The *Charter* has a limited role in the context of this case as the applicant did not file a notice of constitutional question challenging the constitutional validity of s. 35 of the *Police Services Act* and therefore this case can and should be resolved on administrative law principles;
>
> ii. In any event, s. 35 of the *Police Services Act* is consistent with s. 2(b) of the *Charter* as s. 35 is a *Charter* compliant provision that presumes openness, and allows for a police services board hearing to be closed to the public only after the competing interests of privacy and transparency are appropriately balanced.

14. Ontario is not taking a position on the ultimate outcome of this appeal – namely whether the police disciplinary hearing in this case should have been open or closed.

PART IV: DISCUSSION

ISSUE #1: This case should be decided on administrative law principles

15. Contrary to the CBC's position, Ontario submits that in the circumstances of this case, it would be a legal error to resort to *Charter* values. Rather, this case should be resolved through the straightforward application of administrative law and statutory interpretation principles.

16. In a case without a Notice of Constitutional Question, the role of *Charter* values is limited: it is well-established that the *Charter* cannot be used to subvert clear statutory language.

> *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at paras 62–66, [2002] 2 SCR 559 [*Bell ExpressVu*]

17. When interpreting legislation, *Charter* values are only relevant where courts determine that the provision at issue has a genuine ambiguity. Absent a constitutional challenge to

legislation, courts must give effect to the clearly expressed legislative intent and avoid using the *Charter* to achieve a different result.[3] As the Supreme Court noted in *Bell ExpressVu Limited Partnership v Rex*, to hold otherwise would upset the dialogue between legislatures and courts and pre-empt true *Charter* challenges to legislation.

Bell ExpressVu, *supra* at paras 62-66.

18. In a similar vein, the Supreme Court noted in *R. v. Gomboc* that *Charter* values "cannot be used as a freewheeling *deus ex machina* to subvert clear statutory language, or to circumvent the need for direct *Charter* scrutiny with its attendant calibrated evidentiary and justificatory requirements". As stated more recently by the Divisional Court:

> *Charter* values [cannot be used] to replace the legislative threshold ...with a different test, not found in the statute .... If a reformulation of the test in s. 59(2) is constitutionally required, it should be done either by the legislature in response to a declaration of invalidity or through the constitutional remedy of "reading in" after a judicial finding of invalidity of the statutory provision. No Notice of Constitutional Question has been served upon the Attorney General, nor has the Attorney General had any opportunity to adduce evidence justifying any such alleged infringement.
>
> *R v Gomboc*, [2010] 3 SCR 211 at para 87.
>
> *Iacovelli v College of Nurses of Ontario,* 2014 ONSC 7267, (2014) OJ 6087 (Div Ct) at para 51.

19. Where the issue is not one of legislative interpretation but the review of administrative action, the role of *Charter* values is also limited. As this Court held in *Gehl v. Canada (Attorney General) supra*, *Charter* values should not be resorted to where a straightforward administrative

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[3] While in *Taylor Baptiste v Ontario Public Service Employees Union,* 2015 ONCA 495, the Court of Appeal held that *Charter* values could be considered by administrative decision-makers in their interpretation of legislative provisions even where those provisions do not have a genuine ambiguity, more recent Court of Appeal precedents cast significant doubt on this holding and affirm that *Charter* values only play a role in statutory interpretation where the legislation evidences a genuine ambiguity: *Gehl v Canada (Attorney General),* 2017 ONCA 319 at para 83; *Ontario Medical Association v Ontario (Information and Privacy Commissioner),* 2018 ONCA 673 at para 20.

law approach suffices.[4] To resort to *Charter* values where that approach is unnecessary also risks subverting a true *Charter* challenge to the legislation. More generally, unnecessarily resorting to a *Charter* values analysis in reviewing the reasonableness of administrative decisions poses several analytical problems, as noted in *Gehl*:

> Furthermore, there is good reason to maintain a modest role for *Charter* values in judicial reasoning generally and in statutory interpretation specifically. *Charter* values lend themselves to subjective application because there is no doctrinal structure to guide their identification or application. Their use injects a measure of indeterminacy into judicial reasoning because of the irremediably subjective – and value laden – nature of selecting some *Charter* values from among others, and of assigning relative priority among *Charter* values and competing constitutional and common law principles. The problem of subjectivity is particularly acute when *Charter* values are understood as competing with *Charter* rights.
>
> *Gehl*, *supra* at paras 78-79.

20. It is well established that constitutional questions should only be decided where necessary. As the Supreme Court noted in *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*:

> This Court has said on numerous occasions that it should not decide issues of law that are not necessary to a resolution of an appeal. This is particularly true with respect to constitutional issues [...] (emphasis added)
>
> *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 6.

21. As recognized by the court below, resort to the *Charter* is unnecessary in this case, as the matter can be decided through the application of administrative law and statutory interpretation. Mr. Ferrier was required to apply the test as set out in s. 35(4)(b), having regard to the provision's terms and objectives. The terms of that provision are clear. There is no genuine ambiguity in the language of s. 35(4)(b) that would call for the use of *Charter* values as a matter

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[4] See also *ET v Hamilton-Wentworth District School Board*, 2017 ONCA 893; *Ojeikere v Ojeikere*, 2018 ONCA 372; *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293 [*TWU*], (Rowe J).

of statutory interpretation. Under s. 35, there is a presumption of open hearings, which can only be departed from once a balancing exercise between privacy and openness is satisfied.

22. The test set out in s. 35(4) of the *PSA* is identical to the test used over the last 30 years to govern the openness of hearings for most administrative tribunals pursuant to s. 9 of the *Statutory Power Procedures Act* ("*SPPA*").[5] Like s. 35(4), s. 9 of the *SPPA* begins from a presumption of openness. As stated by the Divisional Court in *Lifford Wine Agencies v. Ontario (Alcohol and Gaming Commission)* "s. 9 of the *SPPA* and the common law both strongly favour open hearings".[6]

> *Lifford Wind Agencies Ltd v Ont. (Alcohol & Gaming Commission)*, [2003] OJ No 4972, 2003 CarswellOnt 4717 at para 3.

23. In arguing that Mr. Ferrier was required to exercise his discretion under s. 35 by applying *Dagenais / Mentuck / Sierra Club,* the applicants improperly seek to supplant the terms of s. 35 for the test in *Dagenais / Mentuck / Sierra Club* without challenging the constitutionality of s. 35. That kind of an analysis goes beyond the exercise of discretion in accordance with *Charter* values and effectively amounts to a re-writing of the provision. *Charter* values cannot be used to subvert the clear statutory language in s. 35 of the *PSA*. In any event, the test set out in s. 35

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[5] For a relatively recent example see the decision of the Ontario Securities Commission in *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, 2018 LNONSC 192 where a panel of the OSC held that a broker had not satisfied the test to close the hearing.

[6] In that case, the Divisional Court quashed the AGC's order closing the hearing. See also *Palkowski v. Ivancic* 2009 ONCA 705 at para 30, where Jurriansz J.A. stated in *obiter*: "Finally, I am concerned that a narrow interpretation of the phrase "open to the public" will... affect the proceedings of a great many administrative tribunals, municipal and other public institutions, whose governing statutes require that proceedings be "open to the public". Section 9 of the *Statutory Powers Procedure Act* provides that, subject to specific and narrow exceptions, "an oral hearing shall be open to the public". Section 55(3) of the *Municipal Act,* provides that "except as provided in [Section 55], all meetings shall be open to the public." The governing statutes of a great many administrative tribunals, municipal and other public institutions with decision-making bodies have similar provisions. A narrow interpretation of this phrase risks allowing a great many public institutions to withdraw behind closed doors...[citations omitted]".

is very similar to the test set out in *Dagenais / Mentuck / Sierra Club.* Both are premised on a presumption of openness with narrow exceptions to openness only once a balancing exercise between the importance of open proceedings and privacy is carried out.

24. *Charter* values have no role to play in reviewing the exercise of discretion under s. 35 of the *PSA.* The Legislature, in enacting section 35(4) of the *PSA,* has provided decision-makers with clear statutory direction on how they should exercise their discretion. Where the Legislature does not offer clear statutory guidance on how discretion should be exercised, it presumes that administrative decision-makers will rely on *Charter* values. However, where there are no such gaps – e.g. where the Legislature has clearly articulated a test for the decision-maker to apply – the use of *Charter* values threatens to supplant the Legislature's intention that decisions be made in a certain way, potentially without requiring that a *Charter* breach be proven or offering opportunity for a justificatory rationale to be put forward. In the present case, s. 35 provides clear statutory direction to decision makers. Requiring decision-makers exercising discretion under s. 35 to apply *Dagenais / Mentuck / Sierra Club* would supplant the Legislature's intention that decisions under s. 35 be made in the manner prescribed by the legislation. Mr. Ferrier's decision under s. 35(4) should be reviewed with reference to the requirements of that particular provision.[7]

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[7] In *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*], the Supreme Court held that the discretionary decisions of adjudicative decision makers should be made in compliance with *Charter* values. However, it is important to note that the statutory grant of discretion in that case was extraordinarily broad and provided no statutory test to apply, unlike s 35 of the *PSA*. As stated in *Doré, supra* at para 60: "At the relevant time, art. 2.03 of the Code of ethics (now modified as art. 2.00.01, O.C. 351-2004, (2004) 136 G.O. II, 1272) stated that '[t]he conduct of an advocate must bear the stamp of objectivity, moderation and dignity'. This provision, whose constitutionality is not impugned before us, sets out a series of broad standards that are open to a wide range of interpretations. The determination of whether the actions of a lawyer violate art. 2.03 in a given case is left entirely to the Disciplinary Council's discretion" (emphasis added). Similarly, in the Supreme Court case of *TWU*, the only real statutory guidance provided to the Benchers in determining whether to approve Trinity Western University was the LSBC's overarching statutory object to uphold and protect the public interest in the

ISSUE #2: In any event, s. 35 of the *Police Services Act* is compliant with the open courts principle and s. 2(b) of the *Charter*

The open courts principle in the administrative tribunal context

25. Under the open courts principle, as a matter of constitutional law, court hearings are presumptively open to the public. A party who wishes to close a court hearing in the criminal context must meet the stringent *Dagenais / Mentuck* test. This test was derived by courts in the criminal context as a mechanism to determine whether withholding disclosure of a court record violates *Charter* s. 2(b) (freedom of expression). As modified by *Sierra Club* for civil courts, the test sets a high threshold for departing from openness, requiring that:

> (1) the order [to close the hearing] is necessary in order to prevent a serious risk to an important interest [...] in the context of litigation because reasonably alternative measures will not prevent the risk, and
>
> (2) the salutary effects of the [closing the hearing], including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible proceedings.

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 53, [2002] 2 SCR 522 [*Sierra Club*].

Application of the Open Courts Principle to Administrative Tribunals

26. The only case to consider the application of the open courts principle to administrative tribunal proceedings is the relatively recent decision of the Superior Court of Justice in *Toronto Star Newspapers Ltd v Ontario (AG).*[8] At issue in that case was whether the *Freedom of*

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administration of justice, which the Court held was "stated in the broadest possible terms" (*supra* at para 33). No specific statutory test to guide the determination of when a law faculty should be approved was provided for in the legislation.

[8] Contrary to the CBC's assertion at paragraph 2 of its factum, the court in *Langenfeld v. Toronto Police Service* did not recognize a "constitutional right of members of the public to attend board meetings". That case simply reaffirmed the statutory right of the public to attend police board meetings.

Information and Protection of Privacy Act could govern public access to adjudicative records held by 14 different tribunals or whether the application of the *FIPPA* scheme infringed s. 2(b) of the *Charter* because it breached the open courts principle. The court held that while the application of *FIPPA* to administrative tribunals infringed s 2(b) of the *Charter*, the infringement was justified under *Charter* s. 1. On the narrower issue of the constitutional validity of s. 21 of *FIPPA*, Morgan J. found that the infringement of that section could not be justified under *Charter* s 1 as it imposed a presumption of non-disclosure (rather than a presumption of openness) over records that contained personal information (except where the information fell under an exception under *FIPPA*).

Toronto Star Newspapers Ltd v Ontario (AG), 2018 ONSC 3586.

Freedom of Information and Protection of Privacy Act, RSO 1990 c F.31 [*FIPPA*].

27. The *Toronto Star* decision upholding, under *Charter* s. 1, the application of *FIPPA* to the adjudicative records held by administrative tribunals is consistent with other decisions that have recognized that different standards of openness may apply to administrative tribunals than to courts.[9] It is also consistent with the principle that a flexible and contextual approach may be required in the administrative context. Morgan J. explained:

> The decision-maker contemplating a limitation on the openness principle must take the differing contexts and the statutory objectives of the particular administrative body into account (*Doré v Barreau du Québec*, [2012] 1 SCR 395, paras 55-56)... There is no 'one size fits all' application of the openness principle.

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[9] The cases cited by the applicant in their factum do not stand for the proposition that a strict application of the *Dagenais / Mentuck / Sierra Club* test applies to administrative tribunals. In *Lifford Wine Agencies Ltd v Ontario (Alcohol and Gaming Commission)*, [2003] OJ No 4972, the Court applied the statutory test under s 9 of the *Statutory Powers Procedure Act*, RSO 1990 c S.22 [*SPPA*]; in citing the *Dagenais / Mentuck* test, the court was only commenting on the similarity between that test and the test for open hearings under s 9. The Court in *Re Ottawa Police Force and Lalande*, [1986] OJ No 1382, also applied the statutory test under s 9 of the *SPPA* (at paras 2, 7). The *obiter* comments of the Law Society and the Human Rights Tribunal on the importance of openness in *Law Society of Upper Canada v Dmello*, 2011 ONLSHP 114, and *Marakkaparambil v Ontario (Minister Health and Long-Term Care)*, 2007 HRTO 24, were made in the context of those administrative bodies applying the statutory presumption of openness in *SPPA*, s 9.

Penner v Niagara (Regional Police Services Board), 2013 SCC 19 at para 33, [2013] 2 SCR 125.

Toronto Star, *supra* at para 93.

28. In the present case, s. 35 of the *PSA* sets a threshold that is closely aligned with the *Dagenais / Mentuck / Sierra Club* test. Section 35(4)(b) provides that police service board hearings are presumptively open, except where the board is of the opinion that

> Intimate ...personal matters... may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

PSA, *supra* at s 35(4)(b).

29. Section 35 of the *PSA* is sufficiently broad to encompass consideration of the estrangement of Indigenous people from and systemic racism faced within the justice system as a factor weighing in favour of an open hearing. The Supreme Court of Canada has repeatedly decried this estrangement, and called for the justice system to take remedial steps to address it.[10] Thus, Ontario submits that the Applicants' concerns about the impact of "secret hearings" on the confidence of Indigenous communities in the justice system can be accommodated within s. 35 of the *PSA*.

30. Section 35(4) requires a police services board to consider the "principle that hearings be open to the public" and a hearing is only closed when that principle is outweighed by "the desirability of avoiding disclosure". Thus, like the *Dagenais / Mentuck / Sierra Club* test, s. 35(4) of the *PSA* allows for a hearing to be closed to the public only after the competing interests of privacy and transparency are appropriately balanced. However, the s. 35 *PSA* test for closing

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[10] e.g. *R. v. Gladue,* [1999] 1 SCR 688; *Ewert v. Canada,* 2018 SCC 30; *R. v. Barton,* 2019 SCC 33.

a hearing is slightly less stringent than the *Dagenais / Mentuck / Sierra Club* test in that the s. 35 test does not explicitly require a person seeking a confidentiality order to demonstrate that it is necessary to prevent a serious risk to an interest that is broader than their own. This is an important difference in the context of administrative tribunals – many of which deal with the sensitive personal information of vulnerable litigants, such as the Human Rights Tribunal of Ontario, the Social Benefits Tribunal and the Workplace Safety and Insurance Appeals Tribunal to name just a few.[11] The slight difference between the s. 35 test and the *Dagenais / Mentuck / Sierra Club* test does not amount to an infringement of s. 2(b) of the *Charter*.

PART V – ORDER REQUESTED

29. Ontario requests that this appeal be resolved on the basis of administrative law principles only. As an intervener, Ontario does not seek costs and asks that costs not be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF OCTOBER.

Dan Guttman
Of counsel to the Intervener, the Attorney General of Ontario

[11] See *Toronto Star, supra,* at para. 103. In that paragraph, Morgan J. recognized that some tribunals deal "with highly sensitive matters going to the personal autonomy of the participating individuals (e.g. the Ontario Human Rights Tribunal, the Criminal Injuries Compensation Board, and the Ontario Civilian Police Commission)".

SCHEDULE "A"

		Paragraph(s) Referred to in Factum
1.	*Bell ExpressVu Limited Partnership v Rex,* 2002 SCC 42, [2002] 2 SCR 559	16
2.	*Taylor Baptiste v Ontario Public Service Employees Union*, 2015 ONCA 495	17
3.	*Gehl v Canada (Attorney General)*, 2017 ONCA 319	17, 19
4.	*Ontario Medical Association v Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673	17
5.	*R v Gomboc*, [2010] 3 SCR 211	18
6.	*Iacovelli v. College of Nurses of Ontario*, 2014 ONSC 7267	18
7.	*ET v Hamilton-Wentworth District School Board*, 2017 ONCA 893	19
8.	*Ojeikere v Ojeikere*, 2018 ONCA 372	19
9.	*Law Society of British Columbia v Trinity Western University*, 2018 SCC 33	19
10.	*Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, 2018 LNONSC 192	22
11.	*Lifford Wine Agencies Ltd v Ont. (Alcohol & Gaming Commission)*, [2003] OJ No 4972, 2003 CarswellOnt 4717	22
12.	*Doré v Barreau du Québec*, 2012 SCC 12	24
13.	*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522	25
14.	*Toronto Star Newspapers Ltd v Ontario (AG)*, 2018 ONSC 2586	26, 27
15.	*Re Ottawa Police Force and Lalande*, [1986] OJ No 1382	27
16.	*Law Society of Upper Canada v Dmello*, 2011 ONLSHP 114	27

17.	*Marakkaparambil v Ontario (Minister Health and Long-Term Care)*, 2007 HRTO 24	27
18.	*Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 SCR 125	27

SCHEDULE "B"

Police Services Act

R.S.O. 1990, CHAPTER P.15

Meetings

35 (1) The board shall hold at least four meetings each year.

Quorum

(2) A majority of the members of the board constitutes a quorum.

Proceedings open to the public

(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

Exception

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public. R.S.O. 1990, c. P.15, s. 35.

Six-month limitation period, exception

83 (17) If six months have elapsed since the day described in subsection (18), no notice of hearing shall be served unless the board, in the case of a municipal police officer, or the Commissioner, in the case of a member of the Ontario Provincial Police, is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. 2007, c. 5, s. 10.

Public Officers Act

R.S.O. 1990, CHAPTER P.45

Procedure when public officer interested in question before him

16 Where by any general or special Act any person or the occupant for the time being of any office is empowered to do or perform any act, matter or thing and such person or the occupant for the time being of such office is disqualified by interest from acting and no other person is by law empowered to do or perform such act, matter or thing, then he or she or any interested person may apply, upon summary motion, to a judge of the Superior Court of Justice, who may appoint some disinterested person to do or perform the act, matter or thing in question. R.S.O. 1990, c. P.45, s. 16; 2006, c. 19, Sched. C, s. 1 (1).

Statutory Powers Procedure Act

R.S.O. 1990, CHAPTER S.22

Hearings to be public; maintenance of order
Hearings to be public, exceptions

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

(a) it is not practical to hold the hearing in a manner that is open to the public; or

(b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

Maintenance of order at hearings

(2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

Proceedings involving similar questions

9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

(a) combine the proceedings or any part of them, with the consent of the parties;

(b) hear the proceedings at the same time, with the consent of the parties;

(c) hear the proceedings one immediately after the other; or

(d) stay one or more of the proceedings until after the determination of another one of them.

Exception

(2) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

Same

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

(a) any other Act or regulation that applies to the proceeding requires that it be heard in private;

(b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Municipal Act, 2001

S.O. 2001, CHAPTER 25

Improvements on upper-tier highways

55 (3) A lower-tier municipality may, with the agreement of the upper-tier municipality, construct a sidewalk or other improvement or service on an upper-tier highway and the lower-tier municipality is liable for any injury or damage arising from the construction or presence of the sidewalk, improvement or service. 2001, c. 25, s. 55 (3).

Freedom of Information and Protection of Privacy Act

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

Consolidation Period: From July 1, 2019 to the e-Laws currency date.

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

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.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

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.

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).

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).

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.

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.

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.

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.

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).

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).

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.

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).

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.

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).

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.

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.

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).

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.

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.

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).

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).

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).

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).

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.

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.

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.

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).

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).

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,

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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)

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).

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).

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 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 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.

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).

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).

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". (See: 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).

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).

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 subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019* 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); 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).

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).

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).

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.

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).

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).

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).

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.

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).

68 Repealed: 2006, c. 34, Sched. C, s. 12.

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).

Crown bound

70 This Act binds the Crown. R.S.O. 1990, c. F.31, s. 70.

Canadian Broadcasting Corporation et al	Lee Ferrier, Q.C. Exercising Powers and Duties of the Thunder Bay Police Services Board et al.	Court File No: C6699 and C66998
Appellants	Respondents	

COURT OF APPEAL FOR ONTARIO

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