

Proposed Personal Health Information Legislation
for
Prince Edward Island

Consultation Paper



Health and Wellness

December 2013



Health and
Wellness

Santé et
Mieux-être



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The Department of Health and Wellness is pleased to release this Consultation Paper which proposes new legislation to govern the collection, use, and disclosure of personal health information in Prince Edward Island.

There is no information that is more sensitive and in need of protection than personal health information. This is information about our bodies and our minds. Yet the health sector relies on the unfettered flow of personal health information between health care providers in order to diagnose, treat, and care for Islanders. Currently, personal health information flows freely between the public and private sectors without any clear set of rules governing the management and control of this information. The proposed legislation sets out uniform requirements and one arbiter to protect the personal health information of Islanders while concurrently serving their health care needs. The proposed legislation is intended to balance protecting the personal privacy of Islanders with the need to appropriately share personal health information so that Islanders receive the best possible health care outcomes.

The Department invites your comments on the proposed legislation. This Consultation Paper will be the focus of consultations with stakeholders. The Department plans to introduce the new personal health information legislation in the spring 2014 sitting of the Legislative Assembly. However, before any legislation is implemented, the Department and Health PEI will provide training and education sessions for all interested stakeholders with respect to the duties and obligations provided in the proposed legislation.

In order to enable the Department to complete consultations in a timely manner, we request that your written comments be submitted not later than March 14, 2014 to:

Department of Health and Wellness
Attn: Nichola M. Hewitt
4th Floor Shaw Building North
P.O. Box 2000
Charlottetown, PE
C1A 7N8

We look forward to receiving your comments on this important legislative initiative.

Sincerely,

Doug Currie
Minister of Health and Wellness

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Section I: Introduction

This section of the Consultation Paper will examine the current legislative regime as it relates to personal health information. It will also highlight some of the key provisions in the proposed legislation.

Current Health Information Legislation

In Prince Edward Island, there is no specific legislation that governs the collection, use, and disclosure of personal health information in both the public and the private sectors. In certain circumstances the use, collection, and disclosure of personal health information is regulated under the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, "FOIPP". In other instances the *Personal Information Protection and Electronic Documents Act* (Canada), "PIPEDA", governs the collection, use and disclosure of personal health information in Prince Edward Island. In short:

- FOIPP governs the collection, use, and disclosure of personal health information within the provincial public sector by entities such as Health PEI and the Department of Health and Wellness.
- PIPEDA governs the collection, use and disclosure of personal information in the private sector by entities such as physicians offices, dental clinics, and pharmacies.

FOIPP and PIPEDA are statutes of general application. They were not designed to deal specifically with personal health information. Health care providers are concerned about the lack of clarity and consistency regarding the management of personal health information within the public and private sectors. In addition, there is uncertainty about which legislation prevails when personal health information is exchanged between the public and private sectors.

Technology further complicates this picture. As electronic devices and information technology achieve greater penetration in Canadian society, the internet has become an indispensable medium of information and communication. Given the sensitive nature of personal health information, governments across the country are working to establish legal frameworks that will protect the confidentiality of personal health information while allowing appropriate access to that information for purposes of providing health care and managing the health care system.

A jurisdictional scan reveals that nine provinces have already enacted personal health information legislation and in the fall of 2013 two territories introduced personal health information bills in their Legislative Assemblies. To assist in developing legislation for Prince Edward Island, the Department reviewed the personal health information legislation in these other jurisdictions and also considered the Model Code for the Protection of Personal Information developed by the Canadian Standards Association.

The Model Code incorporates the following ten guiding principles:

- Accountability
- Identification of purposes
- Consent
- Limits to collection
- Limits to use, disclosure and retention
- Accuracy
- Safeguards
- Openness
- Individual access
- Challenges to compliance

These ten principles form the basis of personal health information legislation in most Canadian jurisdictions and were used as a framework to develop the proposed legislation set out in Section II of this Consultation Paper.

Proposed Legislation

In the absence of specific provincial legislation governing the collection, use, and disclosure of personal health information in Prince Edward Island, and given the advances in technology and the potential for harm if personal health information is mismanaged, the Department has developed the proposed legislation set out in Section II of this Consultation Paper.

A brief review of Parts 1 through 7 of the proposed legislation, set out below, are intended to assist the reader to better understand a) the types of information to which the legislation applies, b) the people and organizations who will be governed by the legislation, and c) the rights and obligations imposed by the legislation. To assist the reader, this review will refer to specific sections in the proposed legislation.

This review is not intended to be comprehensive. To achieve a better understanding of the proposed legislation, the reader is encouraged to read Section II of this Consultation Paper.

Part 1: Interpretation, Purpose, and Application (Sections 1-7)

Interpretation

This section sets out terms used in the proposed legislation. Set out below are summaries of some key definitions:

“custodian” means a person or organization that collects, maintains, or uses personal health information *for the purpose of providing or assisting in the provision of health care or treatment or the planning and management of the health care system*. Not all persons or organizations who possess personal health information are considered to be custodians. For example, non-custodian entities include professional governing bodies such as the

Prince Edward Island College of Physicians and Surgeons, insurance companies, and most employers as they are not using the information in their control for the purpose of delivering health care or managing the health care system (subsection 1(b)).

“health care” includes but is not limited to the diagnosis, treatment or maintenance of a physical or mental condition of an individual and the compounding, selling or dispensing of a drug, device, or equipment (subsection 1(k))

“health care facility” includes but is not limited to hospitals, nursing homes, community health centres, medical clinics, dental clinics, pharmacies, and any other facility in which health care is provided (subsection 1(l))

“health care provider” includes but is not limited to those professionals who are registered or licenced to provide health care in Prince Edward Island (subsection 1(m))

“personal health information” includes but is not limited to identifiable information that is linked to an individual person and relates to that person’s mental or physical health, health care history, genetic information, provision of and payment for health care to that person (subsection 1(t)).

Purposes

The Act attempts to balance two competing interests:

- the need to protect privacy of personal health information; and
- the needs of health care providers to appropriately collect, use, and disclose the information so that they can provide health care and manage the health care system.

To accommodate these divergent interests, the Act provides the following purposes:

- to establish legislative requirements for custodians regarding the collection, use, disclosure, retention and secure destruction of personal health information that protects the confidentiality of personal health information and the privacy of the individual to whom it relates;
- to enable the sharing and accessing of personal health information where appropriate to improve the provision of health services and the planning and management of the health care system;
- to provide individuals with the right to examine and receive a copy of their personal health information;
- to provide individuals with the right to request corrections to their personal health information;
- to establish mechanisms to ensure the accountability of custodians and others having custody and control of personal health information and safeguard the security and integrity of personal health information;

- to provide for an independent review of decisions made by custodians with respect to personal health information and the resolution of complaints; and
- to provide effective remedies for contravention of the legislation

Application

The application of the proposed legislation is broad enough to capture all holders of personal health information who collect, use, and disclose such information for the purpose of providing health care regardless of whether they are in the public or private sectors, whether they act independently or not, and whether they are in the profit or not-for-profit sectors. The establishment of a uniform and consistent set of legislative requirements for the management of personal health information across the entire health sector means that, in the event of a conflict between the proposed legislation and any other provincial statute, the former prevails. Consequential amendments will be made to other provincial legislation to ensure consistency with the proposed legislation.

Part 2: Access to Personal Health Information (Sections 8-12)

One of the most fundamental manifestations of a privacy right in relation to personal health information is the right to know what is contained in your medical records with few limitations. This right is grounded in the common law and in the Canadian Charter of Rights and Freedoms. The proposed legislation incorporates the common-law right of an individual to access his or her own personal health information. There are three elements to this right which are provided in the proposed legislation:

- the right to examine the personal health information (subsection 8(1));
- the right to obtain a copy of the personal health information (subsection 8(2)); and
- the right to seek a correction of the personal health information (section 11).

The proposed legislation provides time lines for accessing personal health information (section 8) as well as the limited circumstances under which a custodian may refuse access (section 10). Section 11 grants an individual the right to challenge the accuracy of the personal health information held by a custodian and request that the information be corrected. If a custodian declines to correct the personal health information the individual may appeal the refusal under Part 6.

Part 3: Consent (Sections 13-16)

In most jurisdictions the common approach to consent in personal health information legislation is the use of implied, knowledgeable consent. Under section 13 of the proposed legislation, custodians can rely on implied consent when it is reasonable to believe that the individual understands the purposes for which the information is being collected, used, and disclosed. For example, when an individual attends an emergency room and health care providers collect personal health information about the individual

for the purpose of diagnosis, treatment, and care, it is widely accepted that the individual would understand and accept that this personal health information will be used and disclosed, as necessary, to other health care providers for these purposes.

Section 13 also allows an individual to place a condition on his or her consent, refuse to grant consent or withdraw consent to the collection, use or disclosure of the individual's personal health information except where withdrawal is otherwise prohibited. Where an individual refuses to grant or withdraws consent, the custodian is required to take reasonable steps to comply with the decision, inform the individual of the implications of the refusal or withdrawal, and inform other custodians of the individual's personal health information of the decision. A custodian may refuse to comply with a refusal or withdrawal of an individual's consent if compliance is likely to endanger the individual's health or the health of another person.

Most jurisdictions adopt the position that the collection, use, and disclosure of personal health information for purposes other than care and treatment require the express consent of the individual. The proposed legislation provides that express consent is required when the custodian proposes to disclose an individual's personal health information to a non-custodian, or to another custodian, other than the Minister, for a purpose other than providing health care to the individual.

For a variety of reasons some individuals lack the mental capacity to make decisions concerning the collection, use, and disclosure of their personal health information. Section 15 establishes the persons who may, if an individual is incapable of consenting to the collection, use, and disclosure of the individual's personal health information, give, withhold or withdraw consent on behalf of the individual.

Part 4: Collection, Use, and Disclosure of Personal Health Information (Sections 17-46)

Collection

The key principles underpinning personal health information legislation are: a) the collection of personal health information is carried out in the most limited manner possible, b) the information is shared on a need-to-know-basis, and c) the information is collected with the highest degree of autonomy possible.

The purpose for collecting personal health information will depend on the function of the particular facility as well as the circumstances in which the collection takes place. For example, a psychiatric facility is likely to collect personal health information for a different purpose than a dental clinic. Likewise, the personal health information required when an individual comes to a flu clinic for a vaccination will likely be different from what is needed when someone enters a nursing home.

Generally speaking, legislation requires that personal health information be collected directly from the person the information is about (section 18). Indirect collection is

permitted in some instances (section 17). Section 19 prohibits a custodian, unless required to do so by law, from collecting personal health information if other information will serve the same purpose, and from collecting more personal health information than is reasonably necessary to satisfy the purpose for which it collected. Section 21 requires a custodian to inform an individual from whom personal health information is collected of the purpose of the collection.

Use

The proposed legislation provides that personal health information should be used primarily for the purpose for which it is collected, that is for providing health care to the individual. This information is a tool which supports the seamless delivery of health care to the patient and enables the planning and management of the health care system in Prince Edward Island.

Section 22 establishes the conditions under which a custodian is permitted to use personal health information. Every use of personal health information must be limited to the minimum amount necessary to accomplish the purpose for which it is used. In addition, a custodian is required to limit the use of and access to the personal health information that it maintains to those employees and agents who need to know the information to carry out the purpose for which it was collected or received.

Disclosure

The general principle concerning disclosure is that the personal health information can only be disclosed to the extent that the recipient needs to know the information. There is an overriding concern that the relationship between the health care provider and the patient may be eroded by fear of inappropriate disclosure of personal health information to other parties without the consent of the patient. As stated by Minister Currie "There is no information that is more sensitive and in need of protection than personal health information. This is information about our bodies and our minds."

Section 23 of the proposed legislation prohibits the disclosure of personal health information except as authorized by the Act or the regulations. In addition, disclosure of personal health information is to be limited to the minimum necessary to accomplish the purpose for which it is disclosed. The disclosure by a custodian is limited to the employees and agents of the custodian who need to know the information to carry out the purpose for which it was collected or received. Personal health information shall not be disclosed if other information will serve the purpose of the disclosure. Subsections 23(7) to (16) specify the limited circumstances in which a custodian may disclose or is required to disclose personal health information without the consent of the individual to whom it relates.

Section 24 of the proposed legislation sets out additional circumstances in which a custodian is permitted or required to disclose personal health information without the consent of the individual involved. These circumstances include, but are not limited to, the health or safety of the individual or others, to a superintendent of a correctional facility or administrator of a psychiatric facility in which the individual is lawfully

detained, to a body with statutory responsibility for the discipline of health care providers, and to a person carrying out an authorized inspection or investigation under the proposed legislation.

Privacy Impact Assessments and Data Matching

When a custodian proposes to change its practices concerning the collection, use, or disclosure of personal health information, the custodian is required to complete a privacy impact assessment and submit that assessment to the Commissioner (see Part 5, below) for review and comment. The assessment will determine how the proposed changes in information management policy, practices, or systems may affect the confidentiality of the personal health information managed by the custodian.

Data-matching, which is the manipulation of personal health information, is permitted in limited circumstances. In most instances, a privacy impact assessment must be conducted and submitted to the Commissioner before data-matching can commence.

Research Using Personal Health Information

The proposed legislation authorizes custodians to disclose personal health information to researchers if certain conditions are satisfied. These conditions include submission of the proposed research plan to a research ethics board for consideration, and, if approval is granted, then a copy of that approval is to be provided to the Commissioner for review.

Management of Personal Health Information

All custodians are required to establish administrative, technical, and physical safeguards to ensure the confidentiality and accuracy of personal health information in its possession. More specifically, custodians are required to:

- establish and implement information practices that facilitate compliance with the legislation;
- promote openness and transparency in its dealings with the public;
- notify both the Commissioner and patient(s) if personal health information is stolen, lost, or inappropriately disposed of;
- ensure the accuracy and completeness of the personal health information; and
- disclose personal health information only to persons legally authorized to receive the information.

Custodians are required to protect personal health information by adopting information practices based on nationally or provincially recognized information technology and security standards and processes that are appropriate for the level of sensitivity of the personal health information held by the custodian. Personal health information shall not be accessed even by people within the custodian's organization unless it is determined that they need to have that access.

Those custodians who maintain personal health information in electronic form are required to implement appropriate safeguards to protect the information. Among other things, these safeguards must include procedures to limit access to the information to authorized people and ensure that the electronic transmission of personal health information is not intercepted.

Custodians who retain the services of an agent for the collection, use, disclosure or retention of personal health information are required to enter into a written agreement with the agent that requires the agent to comply with the custodian's legal obligations regarding the handling of personal health information. Likewise, custodians who retain the services of an information manager for the purpose of processing, storing or destroying the personal health information or for providing information management or information technology services to the custodian, are required to enter into a written agreement that provides for the protection of the personal health information. *It is important to note that custodians can outsource services but they cannot outsource responsibility and accountability.*

Part 5: Commissioner (Sections 47-57) and ***Part 6: Review, Investigation, and Inquiry*** (Sections 58-66)

An independent oversight and review mechanism is an integral component of personal health information legislation. The Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act* is designated as the Commissioner for the purposes of the proposed legislation.

The proposed legislation prescribes the following functions and powers of the Commissioner:

- to review any decision, act, or failure to act of a custodian;
- to receive and act on complaints;
- to conduct investigations;
- to review a response submitted by a research ethics board;
- to review and make recommendations on privacy impact assessments;
- to educate the public;
- to provide advice to custodians;
- to promote best practices;
- to comment on proposed legislation and the implications for personal health information; and
- to issue an order.

Part: 7 General Provisions (Sections 67-76)

Offences

In order to protect personal health information, there must be consequences if the legislation is not obeyed. Personal health legislation must provide the activities that are considered offences and the penalties that correspond to those offences. The proposed legislation provides that it is an offence to:

- collect, use, or disclose personal health information in contravention of the legislation;
- attempt to gain or gain access to personal health information in contravention of the legislation;
- knowingly make a false statement to or mislead the Commissioner;
- obstruct the Commissioner;
- fail to comply with an order made by the Commissioner; or
- destroy, alter, falsify, or conceal personal health information to evade a request for access to information

Penalties for contravention of the proposed legislation are as follows:

- An individual is liable on summary conviction to a fine of not more than \$10,000 or a term of imprisonment of not more than six months, or to both.
- A corporation is liable on summary conviction to a fine of not more than \$50,000.

Fees

The proposed legislation provides that the examination of an individual's personal health information by the individual is free of charge. Custodians will be allowed to charge fees, not to exceed the costs of providing the service, for a service under the proposed legislation. Regulations will further set out permissible fees and it is anticipated that these charges will be similar to those provided under FOIPP.

Section II: Proposed Personal Health Information Legislation

December 17, 2013

CONSULTATION DRAFT

Health Information Act

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1

INTERPRETATION, PURPOSES AND APPLICATION

1. In this Act

Definitions

- (a) “agent”, in relation to a custodian, means a person that, with the authorization of the custodian, acts on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent’s purposes, whether or not the agent has the authority to bind the custodian or is being remunerated by the custodian; agent
- (b) “capable” means mentally capable, in accordance with section 14, of making a decision; capable
- (c) “collect” in relation to personal health information, means to gather, acquire, receive or obtain the information by any means from any source; collect
- (d) “Commissioner” means the Information and Privacy Commissioner appointed under Part 3 of the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988 Cap. F-15.01; Commissioner
- (e) “custodian” means a person or organization that collects, maintains or uses personal health information for the purpose of providing or assisting in the provision of health care or treatment or the planning and management of the health care system or delivering a government program or service related to those purposes, and, without limiting the foregoing, includes custodian
- (i) public bodies,
 - (ii) health care providers,
 - (iii) the Minister,
 - (iv) the following organizations or agencies,
 - (A) Island EMS,
 - (B) Health PEI,
 - (C) Workers Compensation Board of Prince Edward Island,
 - (D) Canadian Blood Services,

- (v) information managers,
- (vi) researchers conducting a research project approved in accordance with this Act,
- (vii) health care facilities,
- (viii) nursing homes and community care facilities, and
- (ix) a person designated in the regulations as a custodian;

data matching	(f) “data matching” means the creation of individually identifying personal health information by combining individually identifying personal health information, de-identified personal health information or other information from 2 or more electronic databases or 2 or more electronic records, without the consent of the individuals to whom the information relates;
de-identified	(g) “de-identified”, with reference to personal health information, means personal health information from which all identifying information has been removed;
disclose	(h) “disclose” in relation to personal health information in the custody or under the control of a custodian or a person, means to make the information available or to release it to another custodian or to another person, but does not include using the personal health information;
enactment	(i) “enactment” means an enactment as defined in the <i>Interpretation Act</i> R.S.P.E.I. 1988, Cap. I-8;
guardian	(j) “guardian” means a guardian appointed under the <i>Mental Health Act</i> R.S.P.E.I. 1988, Cap. M-6.1;
health care	(k) “health care” means any observation, examination, assessment, care, service or procedure that is carried out, provided or undertaken for a health-related purpose, including <ul style="list-style-type: none"> (i) the diagnosis, treatment or maintenance of an individual’s physical or mental condition, (ii) the prevention of disease or injury or promotion of health, (iii) rehabilitative or palliative care, (iv) the compounding of a drug for the use of an individual, pursuant to a prescription, (v) the dispensing or selling of a drug, a device, equipment or any other item to an individual for the use of the individual, pursuant to a prescription, and (vi) a program or service related to health care prescribed by regulation;
health care facility	(l) “health care facility” means <ul style="list-style-type: none"> (i) a hospital, (ii) a community health centre, (iii) a medical clinic,

- (iv) a dental clinic,
- (v) a pharmacy, and
- (vi) any other facility in which health care is provided that is designated in the regulations;

(m) “health care provider” means a person who is registered or licensed to provide health care under an enactment or who is a member of a class of persons designated as health care providers in the regulations; health care provider

(n) “health number” means a health number as defined in the *Provincial Health Number Act* R.S.P.E.I. 1988, Cap. P-27.01; health number

(o) “identifying information” means information that identifies an individual or which it is reasonably foreseeable in the circumstances could be utilized, either alone or with other information, to identify an individual; identifying information

(p) “individual”, in relation to personal health information, means the individual, whether living or deceased, with respect to whom the information was or is being collected or created; individual

(q) “information manager” means a person or organization that on behalf of a custodian information manager

- (i) possesses, stores, retrieves, archives or disposes of personal health information,
- (ii) de-identifies or otherwise transforms personal health information, or
- (iii) provides information management or information technology services;

(r) “information practices”, in relation to a custodian, means the policies of the custodian governing actions in relation to personal health information, including information practices

- (i) when, how and the purposes for which the custodian routinely collects, uses, modifies, discloses, retains, destroys or disposes of personal health information, and
- (ii) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information;

(s) “Minister” means the Minister of Health and Wellness; Minister

(t) “personal health information” means identifying information about an individual in oral or recorded form that personal health information

- (i) relates to the individual’s physical or mental health, family health history or health care history, including genetic information about the individual,

(ii) relates to information about an individual that is collected for the purpose of registering the individual for the provision of health care, including a health number, medical record number and any other identifier assigned to an individual,

(iii) relates to the provision of health care to the individual,

(iv) relates to an individual's entitlement to benefits under or participation in a health care program or service,

(v) is collected in the course of, and is incidental to, the provision of a health care program or service or payment for a health care program or service,

(vi) relates to a drug, a health care aid, device, product, equipment or other item provided to an individual under a prescription or other authorization issued by a health care provider,

(vii) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,

(viii) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,

(ix) identifies the individual's substitute decision maker, or

(x) identifies an individual's health care provider;

pharmacy	(u) "pharmacy" means a pharmacy as defined in the <i>Pharmacy Act</i> R.S.P.E.I. 1988, Cap. P-6;
proceeding	(v) "proceeding" means a proceeding held before, in or under the rules of a court, a tribunal, a commission, the Commissioner, a body with the statutory authority for the discipline of health professionals, an arbitrator or a mediator;
public body	(w) "public body" means a public body as defined in the <i>Freedom of Information and Protection of Privacy Act</i> , and the regulations under that Act;
record	(x) "record" means a record containing information in any form, including information that is oral, written, photographed, recorded or stored in any manner, on any storage medium or by graphic, electronic, mechanical or any other means, but does not include electronic software or any mechanism that produces records;
research	(y) "research" means a systematic investigation designed to develop or establish principles, facts or general knowledge, or any combination of them, and includes the development, testing and evaluation of research;
research data centre	(z) "research data centre" means an organization that has entered into an agreement with the province for the purpose of compiling or

analyzing statistical information to assist in the management, evaluation or monitoring of the allocation of resources, health care service planning or delivery of a government service;

(aa) “research ethics board” means a research ethics board designated in the regulations; research ethics board

(bb) “researcher” means a person whose research plan has been submitted to a research ethics board pursuant to section 30; researcher

(cc) “substitute decision maker” in relation to an individual means, unless the context requires otherwise, a person who is authorized under this Act to give, withhold or withdraw consent on behalf of and in the place of the individual with respect to the collection, use or disclosure of the individual’s personal health information; substitute decision maker

(dd) “use”, in relation to personal health information in the custody of or under the control of a custodian, means to handle or deal with information or to apply the information for a purpose and includes reproducing the information, but does not include disclosing the information. use

2. The purposes of this Act are Purposes

(a) to establish a set of rules for custodians regarding the collection, use, disclosure, retention and secure destruction of personal health information that protects the confidentiality of personal health information and the privacy of the individual to whom the personal health information relates;

(b) to enable personal health information to be shared and accessed where appropriate, for the better provision of health services and the planning and management of the health care system;

(c) to provide an individual with the right to examine and receive a copy of the individual’s personal health information maintained by a custodian, as set out in this Act;

(d) to provide an individual with the right to request the correction of or amendment to the individual’s personal health information maintained by a custodian, as set out in this Act;

(e) to establish mechanisms to ensure the accountability of persons having custody or control of personal health information and to safeguard the security and integrity of the personal health information in their custody or control;

(f) to provide for an independent review of decisions made by custodians and the resolution of complaints made with respect to custodianship of personal health information; and

(g) to provide effective remedies for contraventions of this Act.

3. This Act applies Application

- (a) to personal health information that is collected, used or disclosed by a custodian or that is in the custody or control of a custodian; and
- (b) to personal health information that was collected before the coming into force of this Act and that is prescribed by regulation whether or not it was collected by a person or agency that meets the criteria of a custodian under this Act.

Non-application

4. (1) Unless otherwise specifically provided in this Act, this Act does not apply to

- (a) anonymous or statistical information that does not, either by itself or when combined with other information available to the holder of the information, permit individuals to be identified;
- (b) an individual's personal health information if seven years have passed since the death of the individual;
- (c) a person or organization that collects, maintains or uses personal health information for purposes other than health care or treatment and the planning and management of the health care system, including
 - (i) employers,
 - (ii) insurance companies,
 - (iii) regulatory bodies of health care providers,
 - (iv) licensed or registered health care providers who do not provide health care,
 - (v) any other person or organization prescribed by regulation;
- (d) a note made by or for, or a communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (e) a constituency record of a Minister of the Crown;
- (f) information in a court record, a record of a judge, a judicial administration record or a record relating to support services provided to a judge or to a court official.

Idem

(2) Unless otherwise provided in this Act or the regulations, this Act does not apply to a record created or information held by a person under or for the purposes of the following enactments, notwithstanding that the information would otherwise be considered to be personal health information or the person would otherwise be considered to be a custodian within the meaning of this Act:

- (a) the *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5;
- (b) the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1;
- (c) the *Human Tissue Donation Act* R.S.P.E.I. 1988, Cap. H-12.1;
- (d) the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1;
- (e) the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1;
- (f) any enactment prescribed by regulation.

Idem

(3) This Act does not apply to

- (a) standardized tests, including intelligence tests, or a record that contains raw data from a standardized test or assessment;
- (b) testing or auditing procedures or techniques.

5. Unless otherwise specifically provided in this Act, this Act

Operation of Act

- (a) does not affect the law of evidence;
- (b) does not restrict information that is otherwise available by law to a party to legal proceedings;
- (c) does not affect any information that would disclose privileged communications;
- (d) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of documents;
- (e) does not interfere with the activities of a body with statutory responsibility for the discipline of health care providers;
- (f) does not affect a court order that prohibits a person from making information public or from publishing information;
- (g) is in addition to and does not replace existing procedures for access to records or information normally available to the public; and
- (h) does not prohibit the transfer, storage or disposition of a record in accordance with another enactment or an Act of the Parliament of Canada.

6. If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

Paramountcy

- (a) the other enactment; or
- (b) a regulation under this Act

expressly provides that the other enactment or a provision of it prevails despite this Act.

7. (1) The *Freedom of Information and Protection of Privacy Act* does not apply to personal health information in the custody or under the control of a custodian unless this Act specifies otherwise.

Relationship to
*Freedom of
Information and
Protection of
Privacy Act*

(2) If a request is made under section 8 that contains information to which the *Freedom of Information and Protection of Privacy Act* applies, the part of the request that relates to that information is deemed to be a request under section 7 of the *Freedom of Information and Protection of Privacy Act* and that Act applies to that part of the request as if it had been made under section 7 of that Act.

Idem

(3) If a request is made under section 11 to correct information to which the *Freedom of Information and Protection of Privacy Act* applies, the request is deemed to be a request under section 34 of the *Freedom of*

Idem

Information and Protection of Privacy Act and that Act applies to the request as if it had been made under section 34 of that Act.

PART 2

ACCESS TO PERSONAL HEALTH INFORMATION

Right of access to personal health information	8. (1) Subject to this Act, an individual has a right, on request, to examine or receive a copy of his or her personal health information maintained by a custodian.
Request to custodial	(2) A request made under this section shall <ul style="list-style-type: none"> (a) be made to the custodian that the individual believes has the custody and control of the personal health information; and (b) contain sufficient detail to permit the custodian to identify and locate the record with reasonable efforts.
Request in writing	(3) A custodian may require a request to be in writing.
Severance of information	(4) This Part applies to that part of a record of personal health information that can be severed from the part of the record that contains the information described in subsection 7(2).
Assistance with request	(5) If a request under this section does not contain sufficient detail to permit the custodian to identify and locate the record containing the personal health information with reasonable efforts, the custodian shall offer assistance to the person who made the request to reformulate the request to comply with this section.
Timely response required	(6) A custodian shall respond to a request made under this section as promptly as required in the circumstances, but not later than 30 days after receiving it, unless the time limit for responding is extended under subsection (11) or (12) or the request is transferred to another custodian under subsection (14).
Effect of failure to respond	(7) The failure of a custodian to respond to a request within the 30-day period shall be treated as a decision to refuse to permit the personal health information to be examined or copied.
Response by custodian	(8) In responding to a request, a custodian shall do one of the following: <ul style="list-style-type: none"> (a) make the personal health information available for examination and provide a copy, if requested, to the individual; (b) inform the individual in writing if the information does not exist, no longer exists, is no longer available, has been transferred to another custodian or cannot be found; or (c) inform the individual in writing that the request is refused, in whole or in part, for a specified reason described in section 10 and

advise the individual of the individual's right to request a review of the refusal under Part 6.

(9) A custodian shall, on request, provide assistance to an individual in reviewing the individual's personal health information.

Assistance on request

(10) If a request is made for personal health information that a custodian maintains in electronic form, the custodian shall produce a record of the information for the individual in a form usable by the individual, if it can be produced using the custodian's normal computer hardware and software and technical expertise.

Record of personal health information

(11) The custodian may extend the time for responding to a request for up to an additional 30 days if

Extension of time for response

- (a) the individual making the request does not give enough detail to enable the custodian to identify a requested record;
- (b) the individual making the request does not respond to a request for clarification by the custodian within the remainder of the original 30-day period, or 15 days, whichever is longer;
- (c) a large number of records is requested or must be searched or responding within the time period set out in subsection (1) would interfere unreasonably with the operations of the custodian;
- (d) time is needed to consult with another custodian before permitting the personal health information to be examined or copied; or
- (e) the individual requests records that relate to a proceeding commenced by a Notice of Action or a Notice of Application.

(12) In any circumstances referred to in subsection (11), the custodian may, with the prior approval of the Commissioner, extend the time limit for responding to a request for a period longer than 30 days.

Extension approved by Commissioner

(13) If the time limit for responding to a request is extended under subsection (11) or (12), the custodian shall send a written notice to the applicant setting out

Notice to applicant

- (a) the reason for the extension;
- (b) when a response can be expected; and
- (c) if the time limit was extended without the approval of the Commissioner, that the individual making the request may file a complaint with the Commissioner respecting the extension.

(14) Within 15 days after receiving a request under subsection (2), a custodian may transfer a request to another custodian if the personal health information is maintained by the other custodian.

Transfer of request

(15) If a request is transferred under subsection (14),

Notification of transfer

- (a) the custodian who transferred the request shall notify the individual making the request of the transfer in writing as soon as possible; and
- (b) the custodian to which the request is transferred shall respond to the request within 30 business days after receiving it, unless the time for responding to the request is extended under subsection (11).

Obligation of
custodian

9. A custodian

- (a) shall not permit personal health information to be examined or copied unless the custodian is satisfied as to the identity of the individual making the request; and
- (b) shall take reasonable steps to ensure that any personal health information intended for an individual is received only by that individual or a representative of that individual.

When access may
be refused

10. (1) A custodian is not required to permit an individual to examine or copy his or her personal health information under this Part

- (a) if knowledge of the information could reasonably be expected to endanger the health or safety of the individual or another person;
- (b) if disclosure of the information would reveal personal health information about another person who has not consented to the disclosure;
- (c) if disclosure of the information could reasonably be expected to identify a third party, other than another custodian, who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;
- (d) if the information was compiled and is used solely
 - (i) for the purpose of a review by a committee established to study or evaluate the health care practices of a health care facility,
 - (ii) for the purpose of a body with statutory responsibility for the discipline of health care providers or to regulate the quality or standards of professional services provided by the health care providers, or
 - (iii) for the purposes of risk management or error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;
- (e) if the information was compiled principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding to which the custodian is or may be a party;
- (f) if the information is protected by privilege;
- (g) if another enactment, an Act of the Parliament of Canada or a court order prohibits disclosure of the personal health information;
- (h) if the personal health information was collected for the purposes of an investigation conducted pursuant to an enactment; or
- (i) for any reason prescribed by regulation.

(2) A custodian may consult with a health care provider who has been involved in an individual's care, or another health care provider, before deciding to refuse under clause (1)(a) to permit personal health information to be examined or copied.

Consultation by
custodian

(3) A custodian who refuses to permit personal health information to be examined or copied under subsection (1) shall, to the extent possible, sever the personal health information that cannot be examined or copied and permit the individual to examine and receive a copy of the remainder of the information.

Severance where
possible

11. (1) For purposes of accuracy or completeness, an individual may make a request to correct any personal health information that the individual may examine and copy under this Part.

Request to correct
personal health
information

(2) A request under subsection (1) shall

- (a) be made in writing to the custodian that the individual believes has the custody and control of the personal health information; and
- (b) contain sufficient detail to permit the custodian to identify and locate the record with reasonable efforts.

Request in writing

(3) Within 30 days after receiving a request under subsection (1), the custodian shall do one of the following:

Duty of custodian

- (a) make the requested correction to the record of the personal health information in such a manner that it will be read with and form part of the record or be adequately cross-referenced to it if the individual making the request
 - (i) demonstrates to the satisfaction of the custodian that the record is incomplete or inaccurate for the purposes for which the custodian uses the information, and
 - (ii) provides to the custodian the information necessary to enable the custodian to correct the record;
- (b) inform the individual, in writing, if the personal health information no longer exists or cannot be found;
- (c) if the custodian does not have the personal health information in the custodian's care and control,
 - (i) inform the individual making the request that the custodian does not have the personal health information,
 - (ii) provide the individual with the name and address of the custodian who has the care and control of the personal health information, if known, and
 - (iii) if the custodian who has the care and control of the personal health information is known, transfer the request to that custodian and notify the individual making the request of the transfer;
- (d) refuse the request for correction where

- (i) the record was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record,
- (ii) the information which is the subject of the request consists of a professional opinion or observation that a custodian has made in good faith about the individual, or
- (iii) the custodian believes on reasonable grounds that the request is frivolous, vexatious or made in bad faith.

Notice of refusal

(4) If a custodian refuses a request for correction in accordance with subsection (3), the custodian shall inform the individual in writing of the custodian's refusal to correct the record as requested, the reason for the refusal, and the individual's right to add a statement of disagreement to the record and to request a review of the refusal under Part 6.

Extension of time to respond

(5) The custodian may, with the prior approval of the Commissioner, extend the time limit for responding to a request for a period longer than 30 days in the circumstances set out in subsection 8(11).

Statement of disagreement

(6) A custodian who refuses to make a correction that is requested under this section shall

- (a) permit the individual to file a concise statement of disagreement stating the correction requested and the reason for the correction; and
- (b) add the statement of disagreement to the record in such a manner that it will be read with and form part of the record or be adequately cross-referenced to it.

Notice to other custodians, etc.

(7) If a custodian makes a correction or adds a statement of disagreement under this section, the custodian shall, when practicable, notify any other custodian or person to whom the personal health information has been disclosed respecting the correction or statement of disagreement.

Application to other records of individual

(8) A custodian shall make the correction or add the statement of disagreement, if applicable, to any record of the individual's personal health information that the custodian maintains.

Fee prohibited

(9) A custodian shall not charge a fee in connection with a request for a correction made under this section.

Activities not prevented

12. Nothing in this Part prevents a custodian from

- (a) granting an individual access to a record of the individual's personal health information if the individual makes an oral request for access or makes no request, provided that access is authorized under this Part; and
- (b) communicating with the individual about the collection, use or disclosure of the individual's personal health information.

PART 3

CONSENT

13. (1) If this Act or any other enactment requires the consent of an individual to the collection, use or disclosure of personal health information by a custodian, the consent

Criteria respecting consent

- (a) shall be a consent of the individual, if the individual is capable of granting consent, or the consent of a substitute decision-maker;
- (b) shall be knowledgeable;
- (c) shall be able to be withdrawn or withheld;
- (d) shall relate to the personal health information;
- (e) shall not be obtained through deception or coercion; and
- (f) subject to subsection (6), may be express or implied.

(2) The consent to the collection, use or disclosure of an individual's personal health information is knowledgeable if it is reasonable in the circumstances for the custodian to believe that the individual knows

Knowledgeable consent

- (a) the purpose of the collection, use or disclosure, as the case may be;
- (b) that the individual may give or withhold consent; and
- (c) that the personal health information may only be collected, used or disclosed without the individual's consent in accordance with the provisions of this Act.

(3) Unless it is not reasonable in the circumstances to make the assumption, a custodian is entitled to assume that an individual knows the purpose of the collection, use or disclosure of the individual's personal health information by the custodian if the custodian

When knowledge may be assumed

- (a) posts or makes readily available a notice describing the purpose where it is likely to come to the individual's attention; or
- (b) provides the individual with such a notice.

(4) Unless it is not reasonable in the circumstances to make the assumption, where an individual has provided personal health information to a custodian, the custodian is entitled to assume that the custodian has the individual's implied consent, and to assume the consent is knowledgeable, to collect or use the individual's personal health information or to disclose that information to another custodian or person for the purpose of providing health care to that individual.

Implied consent

(5) If a custodian receives personal health information relating to an individual from the individual, the individual's substitute decision-maker or another custodian for a purpose for which the individual's consent was required, the custodian is entitled to assume that consent was given and that the custodian has the individual's continuing implied consent to collect, use or disclose the personal health information for that purpose,

Continuing consent implied

unless the custodian that receives the personal health information is aware that the individual has expressly withheld or withdrawn the consent.

Express consent
required

(6) An individual's consent to the disclosure of the individual's personal health information shall be express, and may not be implied, when

- (a) a custodian proposes to disclose the personal health information to a person that is not a custodian; or
- (b) a custodian proposes to disclose the personal health information to another custodian, other than the Minister, if the disclosure is not for the purpose of providing health care or assisting in providing health care to the individual whose information it is.

Consent, when
express

(7) The express consent of an individual to the collection, use or disclosure of personal health information by a custodian may be oral or written.

Limit on conditional
consent

(8) If an individual places a condition on his or her consent to have a custodian collect, use or disclose the individual's personal health information, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a custodian that is required by law or by established standards of professional or institutional practice.

Assumption
respecting consent

(9) A custodian who has obtained an individual's consent to the collection, use or disclosure of the individual's personal health information or who has received a copy of a document purporting to record the individual's consent to the collection, use or disclosure of the information is entitled to assume that the consent fulfils the requirements of this Act and the individual has not withdrawn it, unless it is not reasonable in the circumstances to make the assumption.

Exceptions to
refusal of consent

(10) An individual may refuse to grant his or her consent or withdraw his or her consent to the collection, use or disclosure of the individual's personal health information by a custodian except where

- (a) it is prohibited by law to withdraw consent;
- (b) the collection, use or disclosure is for the purposes of a program to monitor the prescribing, dispensing or use of prescribed classes of drugs;
- (c) the collection, use or disclosure is for the purpose of the creation or maintenance of an electronic health record; or
- (d) the collection, use or disclosure is for another purpose provided for in this Act.

Duty of custodian
with respect to
refusal

(11) If an individual refuses to grant consent or withdraws his or her consent to the collection, use or disclosure of his or her personal health information under subsection (1), the custodian shall

- (a) take reasonable steps to act in accordance with the decision;
- (b) inform the individual of the implications of the refusal or withdrawal; and
- (c) inform the other custodians, if known, holding the individual's personal health information of the decision.

(12) A custodian may refuse to comply with the refusal or withdrawal of an individual's consent to the collection, use or disclosure of his or her personal health information under subsection (1) if compliance with the individual's refusal or withdrawal of consent is likely to endanger the health of the individual or the health of another person.

When custodian may refuse to comply

(13) If the custodian refuses to comply with the refusal or withdrawal of an individual's consent for the reasons referred to in subsection (13), the custodian shall inform the individual as soon as possible, and in writing if practicable, of the collection, use or disclosure of the individual's personal health information.

Notice to individual

14. (1) An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able

- (a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and
- (b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.

Capability of individual to consent

(2) An individual may be capable of consenting to the collection, use or disclosure of personal health information at one time, but incapable of consenting at another time.

Capability may vary

(3) An individual is presumed to be capable of consenting to the collection, use or disclosure of the individual's personal health information.

Presumption

(4) A custodian may rely on the presumption under subsection (3), unless the custodian has reasonable grounds to believe that the individual is incapable of consenting to the collection, use or disclosure of personal health information.

Exception

(5) A custodian that determines that an individual is incapable of consenting to the collection, use or disclosure of personal health information under this Act shall do so in accordance with the requirements and restrictions, if any, prescribed by regulation.

Requirements may be prescribed

Substitute decision-maker

15. (1) If an individual is incapable of consenting, or of communicating that consent, to the collection, use or disclosure of personal health information by a custodian, the following persons may, in descending order of priority, on the individual's behalf and in the place of the individual, act as a substitute decision-maker for that individual by giving, withholding or withdrawing the consent:

- (a) a person who has been authorized, in writing, by the individual to provide consent;
- (b) the individual's guardian;
- (c) the individual's proxy appointed in accordance with the Consent to Treatment and Health Care Directives Act;
- (d) the individual's attorney appointed under a power of attorney respecting property, if the giving, withholding or withdrawing of consent relates to the powers and duties of the attorney;
- (e) the individual's spouse or common-law partner;
- (f) the individual's adult child;
- (g) the individual's parent;
- (h) the individual's adult sibling;
- (i) any other adult next of kin of the individual;
- (j) the individual's health care provider; and
- (k) the Public Guardian.

Criteria

(2) A person referred to in subsection (1) may decide whether or not to consent on behalf of an individual only if the person

- (a) is capable of consenting to the collection, use or disclosure of personal health information by a custodian; and
- (b) is willing to assume the responsibility of making a decision on behalf of the individual as to whether or not to consent.

Duties of substitute decision-maker

16. A person who consents under this Act or any other enactment on behalf of and in the place of an individual to the collection, use or disclosure of personal health information by a custodian, or who withholds or withdraws a consent on that basis, shall take into consideration

- (a) any written instruction provided by the individual in a health care directive, power of attorney for personal care or other power of attorney;
- (b) the wishes, values and beliefs that,
 - (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal health information, or
 - (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal health information;

- (c) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;
- (d) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and
- (e) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

PART 4

COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

Collection of Personal Health Information

- 17.** (1) A custodian may collect personal health information relating to an individual from a person other than the individual to whom the information relates if
- (a) the custodian has the individual's consent under this Act and the collection, to the best of the custodian's knowledge, is necessary for a lawful purpose; or
 - (b) the collection is permitted or required by this Act.
- (2) A custodian may collect personal health information relating to an individual from a person other than the individual to whom the information relates without that individual's consent if
- (a) the individual is incapable of providing or communicating consent;
 - (b) the decision of a substitute decision maker respecting consent cannot be obtained in a timely manner; and
 - (c) the collection of the personal health information is necessary for the provision of health care to the individual.
- 18.** A custodian shall collect personal health information directly from the individual to whom the information relates except where
- (a) the individual has authorized another method of collection;
 - (b) collection of the personal health information directly from the individual could reasonably be expected to endanger the health or safety of the individual or another person;
 - (c) collection of the personal health information is in the interest of the individual and time or circumstances do not permit collection directly from the individual;

Restrictions on the collection of information

Idem

Methods of collection

- (d) collection of the personal health information directly from the individual could reasonably be expected to result in the collection of inaccurate information;
- (e) the custodian collects the personal health information from a person who is not a custodian for the purpose of carrying out a research project of the custodian;
- (f) another method is authorized or required by a court order, an enactment, an Act of the Parliament of Canada or a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada;
- (g) the individual is unable to provide the personal health information and a substitute decision-maker consents to another method of collection;
- (h) the personal health information is to be collected for the purpose of assembling a family health or genetic history and the information collected will be used in the context of providing a health service to the individual;
- (i) the personal health information is collected for the purpose of
 - (i) determining the individual's eligibility to participate in a health care program or to receive a benefit, product or health care service from a custodian and the information is collected in the course of processing an application made by or for the individual to whom the personal health information relates, or
 - (ii) verifying the eligibility of an individual who is participating in a health care program or receiving a benefit, product or health care service from a custodian to participate in the program or to receive the benefit, product or service;
- (j) the custodian is collecting the personal health information for a purpose authorized by law that relates to
 - (i) the investigation of a breach of an agreement or a contravention or an alleged contravention of an enactment or an Act of the Parliament of Canada,
 - (ii) the conduct of a proceeding or a possible proceeding, or
 - (iii) a function of the custodian under this Act;
- (k) the custodian is collecting personal health information for the purpose of analysis or compiling statistical information respecting the management, evaluation or monitoring of the allocation of resources to, or planning for all or part of, the health care system, including the delivery of services, and the person from whom the information is collected has in place practices and procedures to protect the privacy of the individual whose personal health information it receives and to maintain the confidentiality of the information; or

(l) the custodian is the Minister and is collecting personal health information from another custodian for the purposes of creating or maintaining an electronic health record.

19. Unless a custodian is required to do so by law, the custodian shall not collect

- (a) personal health information if other information will serve the same purpose as the personal health information; or
- (b) more personal health information than is reasonably necessary to meet the purpose for which the information is collected.

20. A custodian may collect for any purpose personal health information that has been de-identified.

21. (1) A custodian who collects personal health information directly from the individual to whom the information relates or from another person in accordance with section 18 shall, before it is collected or as soon as practicable afterwards, take reasonable steps to inform the individual

- (a) of the purpose for which the information is being collected; and
- (b) if the custodian is not a health care provider, how to contact an officer or employee of the custodian who can answer the individual's questions about the collection.

(2) A custodian is not required to comply with subsection (1) if the custodian has recently provided the individual with the information referred to in that subsection about the collection of the same or similar personal health information for the same or a related purpose.

Use of Personal Health Information

22. (1) A custodian shall not use personal health information except as authorized under this section.

(2) Every use by a custodian of personal health information shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.

(3) A custodian shall limit the use of personal health information it maintains to those employees and agents of the custodian who need to know the information to carry out the purpose for which the information was collected or received or to carry out any of the permitted uses authorized under this section.

(4) A custodian may use for any purpose personal health information that has been de-identified.

Authorized purposes

(5) A custodian may use personal health information in its custody or under its control for one or more of the following purposes:

(a) for the purpose for which the personal health information was collected or created and for all the functions reasonably necessary for carrying out that purpose, unless the individual expressly instructs otherwise;

(b) another use to which the individual who is the subject of the personal health information consents;

(c) for a purpose for which the use of the personal health information is authorized by this Act, an enactment or an Act of the Parliament of Canada;

(d) to prevent or reduce a risk of significant harm to the health or safety of the public or a group of people;

(e) if the custodian is a public body, for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of those programs or services, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;

(f) for the purpose of risk management or error management or for the purpose of activities to improve or maintain the quality of health care or to improve or maintain the quality of any related programs or services of the custodian;

(g) for educating agents of the custodian to provide health care;

(h) for the purpose of disposing of the information or de-identifying the information;

(i) for the purpose of seeking the individual's consent, or the consent of the individual's substitute decision-maker, if the personal health information used by the custodian for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, if applicable;

(j) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the personal health information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(k) if the custodian is a Minister of the Crown, for the purpose of recovering health care costs;

(l) for the purpose of obtaining payment for or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services;

(m) for a research project approved by a research ethics board under section 25;

(n) for the purpose of conducting research or performing other services to facilitate another person's research

- (i) if the custodian or researcher has submitted a research plan to a research ethics board in accordance with section 26,
- (ii) if the research ethics board has approved the research plan,
- (iii) if the custodian or researcher has complied with or undertaken to comply with any conditions imposed by the research ethics board, and
- (iv) where the research ethics board recommends that consents should be obtained from the individuals whose personal health information is to be used, if those consents have been obtained;
- (o) for the purpose of performing data-matching;
- (p) subject to any requirements and restrictions prescribed by regulation, for the purposes of complying with an enactment or a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada;
- (q) for the purpose of the custodian's
 - (i) planning and resource allocation,
 - (ii) health system management,
 - (iii) public health surveillance,
 - (iv) health policy development, or
 - (v) delivery or administration of health care;
- (r) to produce de-identified information that does not, either by itself or in combination with other information in the custody of or under the control of the custodian, permit an individual to be identified.

Disclosure of Personal Health Information

- 23.** (1) A custodian shall not disclose personal health information except as authorized under this Act or the regulations. Disclosure of information
- (2) Every disclosure by a custodian of personal health information shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed. Limitation on disclosure of information
- (3) A custodian shall limit the disclosure of personal health information it maintains to those employees and agents of the custodian who need to know the information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under this section. *Idem*
- (4) A custodian may disclose for any purpose personal health information that has been de-identified. Disclosure of de-identified information
- (5) A custodian shall not disclose personal health information that is in its custody or control unless Prohibition
- (a) it has the individual's consent under this Act to the disclosure and the disclosure is necessary for a lawful purpose; or
 - (b) the disclosure is permitted or required by this Act.

Idem

(6) A custodian shall not disclose personal health information if other information will serve the purpose of the disclosure.

Disclosure without
consent permitted

(7) Unless the disclosure is contrary to an express request of the individual, a custodian may disclose personal health information without the consent of the individual to whom the information relates

(a) to a custodian, where the disclosure is necessary for the provision of health care to the individual; or

(b) to a person other than a custodian, for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, where the individual is injured, incapacitated or ill and unable to give consent personally.

Notification where
disclosure is limited

(8) If a custodian discloses personal health information relating to an individual under clause (7)(a) and an express request of the individual prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care to the individual, the custodian shall notify the person to whom it makes disclosure of that fact.

Disclosure - health
care facility

(9) A custodian that is a health care facility may disclose to a person the following personal health information relating to an individual who is a patient or resident of the facility if the facility offers the individual the opportunity, at the first reasonable opportunity after admission to the facility, to object to that disclosure and the individual does not do so:

(a) the fact that the individual is a patient or resident in the facility;

(b) the individual's general health status, described as critical, poor, fair, stable or satisfactory, or in similar terms; and

(c) the general location of the individual in the facility.

Disclosure
respecting deceased
individual

(10) A custodian may disclose personal health information relating to an individual who is deceased or presumed to be deceased

(a) for the purpose of identifying the individual;

(b) for the purpose of informing a person whom it is reasonable to inform in the circumstances of the fact that the individual is deceased or presumed to be deceased and the circumstances of the death, if appropriate;

(c) to the personal representative of the deceased for a purpose related to the administration of the estate;

(d) to a spouse, common-law partner, sibling or descendant of the individual if the recipient of the information reasonably requires the information to make decisions about his or her own health care or the health care of his or her child or if the disclosure is necessary to provide health care to the recipient; or

(e) for research purposes under section 30, if the information has been de-identified.

(11) A custodian shall disclose personal health information relating to an individual without the consent of the individual

Where disclosure is required

- (a) if the custodian is a Minister of the Crown, for the purpose of recovering health care costs;
- (b) to a person conducting an audit or reviewing an application for accreditation or reviewing an accreditation, if the audit or review relates to the services provided by the custodian;
- (c) to or via an information network, designated by the Minister in accordance with the regulations, in which personal health information is recorded for the purpose of facilitating
 - (i) the delivery, evaluation or monitoring of a program that relates to the provision of health care or the payment for health care,
 - (ii) review and planning necessary for the provision of health care or the payment for health care, or
 - (iii) the creation and maintenance of an electronic health record established in accordance with the regulations;
- (d) to a custodian who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances;
- (e) to the Chief Public Health Officer if the disclosure is required by another Act or an Act of the Parliament of Canada; and
- (f) to a public health authority established under an Act of the Parliament of Canada, another province or other jurisdiction, if the disclosure is made for a public health purpose.

(12) If a custodian discloses personal health information under clause (11)(b),

Disclosure for audit, etc.

- (a) the person conducting the audit or reviewing an application for accreditation or reviewing an accreditation shall undertake in writing
 - (i) if the personal health information was physically acquired by the person, to destroy the information at the earliest possible opportunity after the audit or review, and
 - (ii) not to disclose the personal health information to any other person, except as required to accomplish the audit or review or to report unlawful conduct by the custodian; and
- (b) the custodian shall take reasonable measures to confirm that the terms of the agreement have been fulfilled.

(13) A custodian may disclose personal health information relating to an individual without the consent of the individual if the disclosure is

Disclosure without consent permitted

- (a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an enactment or an Act of the Parliament of Canada and funded in whole or part by the Government or the Government of Canada;

(b) for the purpose of determining or providing payment to the custodian for the provision of health care or for processing, monitoring, verifying or reimbursing claims for payment for the provision of health care;

(c) to a department of the government of another jurisdiction or to an agency of that government to the extent necessary to obtain payment for health care provided to the individual to whom the personal health information relates;

(d) for the purpose of delivering, evaluating or monitoring a program of the custodian that relates to the provision of health care or the payment for health care;

(e) for the purpose of review and planning necessary for the provision of health care by another custodian;

(f) to an information manager in accordance with this Act;

(g) to a person who requires the personal health information to carry out an audit for, or to provide legal services, error management services or risk management services to, the custodian;

(h) to a research data centre in accordance with the terms of an agreement between the research data centre and the custodian;

(i) to a potential successor of the custodian for the purpose of allowing the potential successor to assess or evaluate the operations of the custodian, on condition that the potential successor first enters into an agreement with the custodian to keep the information confidential and secure and not to retain the information any longer than is necessary for the purpose of the assessment or evaluation; and

(j) to the successor of the custodian if

(i) the custodian transfers records to the successor as a result of the custodian's ceasing to be a custodian or ceasing to provide health care, and

(ii) and the successor is a custodian.

Notice respecting
transfer of
information

(14) For the purpose of clause (13)(j), a custodian who transfers a record of personal health information to its successor shall

(a) make reasonable efforts to give notice to the individual to whom the information relates before the transfer or, if this is not possible, as soon as possible after the transfer, that it has ceased to be a custodian of the information; and

(b) inform the individual as to the identity of its successor.

Disclosure to
Minister

(15) A custodian shall disclose to the Minister personal health information without the consent of the individual to whom it relates if the disclosure is for the purpose of the Minister's

(a) planning or delivery of programs or services that the Minister provides or funds in whole or in part;

- (b) monitoring or verifying claims for payment for health care or drugs provided under those programs or services;
- (c) allocation of resources to any of those programs or services;
- (d) evaluation or monitoring of any of those programs or services;
- or
- (e) detection, monitoring or prevention of fraud or any unauthorized receipt of services or benefits related to any of those programs or services.

(16) The Minister may disclose personal health information referred to in subsection (15) to another person without the consent of the individual to whom it relates for a purpose set out in that subsection if in the opinion of the Minister the disclosure is necessary for that purpose.

Disclosure by
Minister

24. (1) A custodian may disclose personal health information without the consent of the individual to whom the information relates if the custodian reasonably believes that disclosure is required

Disclosure
permitted for health
or safety reasons

- (a) to prevent or reduce a risk of serious harm to the mental or physical health or safety of the individual to whom the information relates or another individual; or
- (b) to prevent or reduce a risk of significant harm to the health or safety of the public or a group of people.

(2) A custodian may disclose personal health information without the consent of the individual to whom the information relates to the superintendent of a correctional facility in which the individual is lawfully detained or to the administrator of a psychiatric facility in which the individual is lawfully detained under the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1 to assist the superintendent or administrator, as the case may be, in making a decision respecting

Disclosure
permitted

- (a) arrangements for the provision of health care to the individual; or
- (b) the placement of the individual into custody or the detention, release, conditional release, discharge or conditional discharge of the individual under an enactment or an Act of another province or territory or of the Parliament of Canada.

(3) A custodian shall disclose personal health information without the consent of the individual to whom the information relates

Disclosure required
– discipline, etc.

- (a) on written request, to a body with statutory responsibility for the discipline of health care providers or for regulating the quality or standards of professional services provided by health care providers, including for the purpose of an investigation by that body;
- (b) for the purpose of complying with a summons, subpoena, warrant, order or similar requirement issued by a court, person or entity with jurisdiction to compel the production of personal health information; or

(c) for the purpose of complying with the Rules of Court concerning the production of personal health information in a proceeding.

Disclosure permitted – proceedings, etc.

(4) A custodian may disclose personal health information without the consent of the individual to whom the information relates

(a) for the purpose of a proceeding or contemplated proceeding in which the custodian is or is expected to be a party or a witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(b) to a person who is a proposed litigation guardian, committee or legal representative of the individual for the purpose of having the person appointed as a litigation guardian, committee or legal representative;

(c) to a litigation guardian, committee or a legal representative who is authorized under the Rules of Court to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding; or

(d) for the purpose of laying an information or making an application for an order, if the personal health information relates to or is a matter in issue in the information or application.

Disclosure required – investigations, etc.

(5) A custodian shall disclose personal health information, including information relating to a person providing health care, without the consent of the individual to whom the information relates to a person carrying out an inspection, investigation or similar procedure that is authorized by or under this Act, another enactment or an Act of the Parliament of Canada for the purpose of facilitating the inspection, investigation or procedure.

Disclosure permitted – fraud, etc.

(6) A custodian may disclose personal health information, including information relating to a person providing health care, without the consent of the individual to whom the information relates to another custodian if the custodian disclosing the information has a reasonable expectation that disclosure will detect or prevent fraud, limit abuse in the use of health care or prevent the commission of an offence under an enactment or an Act of the Parliament of Canada.

Disclosure required by law

(7) A custodian shall disclose personal health information without the consent of the individual to whom the information relates if the disclosure is required by an enactment or an Act of the Parliament of Canada or by a treaty, agreement or arrangement made under an enactment or an Act of the Parliament of Canada.

Privacy Impact Assessments and Data-matching

Privacy impact assessment

25. (1) A custodian shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment in the following situations:

- (a) for the new collection, use or disclosure of personal health information or any change to the collection, use or disclosure of personal health information;
- (b) for the creation of a personal health information system or personal health information communication technology or a modification to a personal health information system or personal health information communication technology; or
- (c) if a custodian performs data matching with personal health information collected by it or with any personal health information held by another custodian or another person.

(2) A privacy impact assessment shall specify, in accordance with the regulations, how the proposed administrative practices and information systems relating to the collection, use and disclosure of personal health information may affect the privacy of the individual to whom the information relates. Contents

26. A custodian or health information repository may perform data matching using information that is in its custody or under its control. Data matching

27. (1) A custodian may perform data matching by combining information that is in its custody or under its control with information that is in the custody or under the control of another custodian. *Idem*

(2) Before performing data matching under this section, the custodian in whose custody and control the information that is created through data matching will be stored shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment. Privacy impact assessment

(3) A privacy impact assessment referred to in subsection (2) shall, in addition to the requirements of subsection 25(2), *Idem*

- (a) describe how the information to be used in the data matching is to be collected; and
- (b) set out how the information that is created through data matching is to be used or disclosed.

28. (1) A custodian may perform data matching by combining information that is in its custody or under its control with information that is in the custody or under the control of a person that is not a custodian. Data matching by custodian and non-custodian

(2) Before performing data matching under this section, the custodian shall prepare a privacy impact assessment and submit the assessment to the Commissioner for review and comment. Privacy impact assessment

<i>Idem</i>	(3) A privacy impact assessment referred to in subsection (2) shall meet the requirements of subsections 25(2) and 27(3).
Data matching for research	29. If data matching is performed for the purpose of conducting research, the custodian that proposes to perform the data matching shall comply with sections 30 to 32 before the data matching is performed.
Research Using Personal Health Information	
Submission of research plan	30. (1) A person who proposes to use personal health information for research purposes shall submit a research plan respecting the proposed research to a research ethics board for approval.
Content of research plan	(2) A research plan for the purposes of subsection (1) shall be in writing and shall set out <ul style="list-style-type: none"> (a) the affiliation of each person involved in the research; (b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and (c) all other prescribed matters related to the research.
Consideration of research plan	(3) A research ethics board to which a research plan is submitted shall <ul style="list-style-type: none"> (a) consider whether the custodian of the personal health information specified in the research plan should be required to obtain consents for the disclosure of the health information to be used in the research from the individuals who are the subjects of the information; and (b) assess whether, in the opinion of the research ethics board, <ul style="list-style-type: none"> (i) the proposed research is of sufficient importance that the public interest in the proposed research outweighs to a substantial degree the public interest in protecting the privacy of the individuals who are the subjects of the health information to be used in the research, (ii) the researcher is qualified to carry out the research, (iii) adequate safeguards will be in place at the time the research will be carried out to protect the privacy of the individuals who are the subjects of the health information to be used in the research and the confidentiality of that information, and (iv) obtaining the consents referred to in clause (a) is unreasonable, impractical or not feasible.
Factors in assessment	(4) In making an assessment under clause (3)(b), the research ethics board shall consider the degree to which the proposed research may contribute to <ul style="list-style-type: none"> (a) identification, prevention or treatment of illness or disease; (b) scientific understanding relating to health; (c) promotion and protection of the health of individuals and communities;

- (d) improved delivery of health services; or
- (e) improvements in health system management.

(5) If the research ethics board approves the research plan, it shall prepare a response to the researcher setting out

Response in writing

- (a) its recommendation under subsection (3)(a);
- (b) its assessment of the matters set out in subsection (3)(b); and
- (c) any conditions that the research ethics board considers should be imposed on the researcher.

(6) If the research ethics board refuses to approve a research plan, it shall prepare a response to the researcher setting out its reasons for the refusal.

Idem

(7) The research ethics board shall send a copy of its response prepared pursuant to subsection (5) to the Commissioner.

Copy to
Commissioner

(8) If the response of the research ethics board sent to the Commissioner under subsection (7) indicates that the research ethics board approves the research plan, the Commissioner may publish the response in any manner the Commissioner considers appropriate.

Publication of
response

(9) If the research ethics board refuses to approve the research plan, the researcher shall not apply to a custodian under section 31.

Bar to research

31. If the research ethics board has approved a research plan submitted to it under section 30, the researcher may forward to one or more custodians

Researcher may
apply

- (a) the researcher's proposed research plan referred to in subsection 30(2);
- (b) the response of the research ethics board to the researcher's proposed research plan; and
- (c) a written application for one or more of the following:
 - (i) disclosure of the personal health information to be used in the research,
 - (ii) if consents are required, a request that the custodian obtain the required consents,
 - (iii) performance of data-matching, or
 - (iv) performance of any other service to facilitate the research.

32. (1) A custodian who has received the documents referred to in section 31 may, but is not required to, disclose the requested personal health information or perform data matching or other services to facilitate the research.

Disclosure
permitted

(2) If a custodian decides to disclose the requested personal health information or perform data matching or other services to facilitate the research,

Conditions on
disclosure

- (a) the custodian
 - (i) shall impose on the researcher the conditions suggested by the research ethics board, and
 - (ii) may impose other conditions on the researcher as the custodian considers necessary or advisable; and
- (b) if the research ethics board recommended that consents referred to in clause 30(3)(a) be obtained, the custodian shall obtain the consents before the disclosure of the personal health information or performance of data matching or other services.

Agreement

(3) If a custodian decides to disclose personal health information to a researcher or perform data matching or other services to facilitate the research, the researcher shall enter into an agreement with the custodian in which the researcher agrees

- (a) to comply with
 - (i) this Act and the regulations made under this Act,
 - (ii) any conditions imposed by the custodian relating to the use, protection, disclosure, return or disposal of the health information, and
 - (iii) any requirements imposed by the custodian to provide safeguards against the identification, direct or indirect, of an individual who is the subject of the personal health information;
- (b) to use the personal health information only for the purpose of conducting the proposed research;
- (c) not to publish the personal health information in a form that could reasonably enable the identity of an individual who is the subject of the information to be readily ascertained;
- (d) not to make any attempt to contact an individual who is the subject of the health information to obtain additional personal health information unless the individual has provided the custodian with the consent referred to in subsection (7);
- (e) to allow the custodian to access or inspect the researcher's premises to confirm that the researcher is complying with the enactments, conditions and requirements referred to in clause (a); and
- (f) to pay the costs referred to in subsection (5).

Disclosure to
researcher

(4) When an agreement referred to in subsection (3) has been entered into, the custodian may disclose to the researcher the personal health information requested under section 31 or perform data matching or other services to facilitate the research

- (a) with the consent of the individuals who are the subjects of the personal health information, where the research ethics board recommends that consents should be obtained; or

(b) without the consent of the individuals who are the subjects of the personal health information, where the research ethics board does not recommend that consents be obtained.

(5) A custodian may charge the costs of

Costs

(a) preparing personal health information for disclosure, or performing data matching or other services;

(b) making copies of personal health information; and

(c) obtaining the consents referred to in section 30,

which shall not exceed the actual cost of the service provided.

(6) If a researcher contravenes or fails to meet the terms and conditions of an agreement under this section, the agreement is cancelled.

Cancellation of agreement

(7) If a researcher wishes to contact the individuals whose personal health information was disclosed under subsection (4) to obtain additional personal health information, the custodian shall first obtain consents from those individuals to their being contacted for that purpose.

Further consents needed

33. (1) If a researcher refuses to allow a custodian to access or inspect its premises in accordance with the agreement referred to in section 32, the custodian may apply to the Supreme Court for an order under subsection (2).

Application for order

(2) If the court is satisfied that there are reasonable and probable grounds to believe that access to premises or the production or removal of documents is necessary for the purpose of determining whether an agreement referred to in section 32 is being complied with, the court may make any order it considers necessary to enforce compliance with the agreement.

Court order

(3) Where authorized to do so by an order under subsection (2), a custodian may

Powers of custodian

(a) enter and search any premises of the researcher where the research is conducted;

(b) operate or cause to be operated any computer system of the researcher to search any data contained in or available to the system and produce a document from the data; and

(c) seize and make copies of any documents of the researcher that are or may be relevant to the investigation.

(4) An application for an order under this section may be made *ex parte* unless the court orders otherwise.

Application without notice

(5) The custodian shall return any documents seized pursuant to a court order under this section within 60 days after the conclusion of the investigation that gave rise to the seizure, including any hearing or appeal.

Return of documents

"Document"
defined

(6) In this section, "document" includes but is not limited to any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record, electronic record or other material or thing, regardless of physical form or characteristics.

Management of Personal Health Information

Records respecting
disclosure without
consent

34. (1) A custodian that discloses personal health information without the consent of the individual to whom it relates for health related purposes shall record the following information, unless this Act or the regulations provide otherwise:

- (a) the name of the person to whom the custodian discloses the personal health information;
- (b) the date and purpose of the disclosure; and
- (c) a description of the personal health information disclosed.

Electronic record of
access to
information

(2) Subsection (1) does not apply if

- (a) the custodian discloses personal health information by permitting access to the information stored in the information system of the custodian; and
- (b) when the personal health information is accessed the system automatically keeps an electronic log of the following information:
 - (i) the unique user identification of the individual who accesses the personal health information,
 - (ii) the date and time the personal health information is accessed, and
 - (iii) a description of the personal health information that was or could have been accessed by that individual.

Disclosure outside
province

35. A custodian may disclose personal health information relating to an individual that is collected in the province to a person outside the province without the consent of the individual only in the circumstances described in subsections 23(7), (10) and (13) or as specified in the regulations.

Duties of custodian

36. (1) A custodian shall

- (a) establish and implement information practices to facilitate the implementation of, and to ensure compliance with, this Act;
- (b) promote openness and transparency of policies and procedures toward the public;
- (c) notify the individual to whom the information relates and the Commissioner in writing at the first reasonable opportunity if personal health information is
 - (i) stolen,
 - (ii) lost,

- (iii) disposed of, except as permitted by this Act, or
- (iv) disclosed to or accessed by an unauthorized person.

(2) Clause (1)(c) does not apply if the custodian reasonably believes that the theft, loss, disposition, disclosure or access of personal health information will not

Exception

- (a) have an adverse impact on the provision of health care or other benefits to the individual to whom the information relates;
- (b) have an adverse impact on the mental, physical, economic or social well-being of the individual to whom the information relates;
- or
- (c) lead to the identification of the individual to whom the information relates.

37. A custodian may designate a person

Designation

- (a) to assist in ensuring the custodian's compliance with this Act and the regulations;
- (b) to respond to inquiries about the custodian's information practices; and
- (c) to receive and respond to complaints from the public about any alleged contravention of this Act or the regulations by the custodian.

38. (1) Except as permitted or required by law, a person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose the personal health information for any purpose other than

Disclosure to non-custodian

- (a) the purpose for which the custodian was authorized to disclose the information under this Act; or
- (b) the purpose of carrying out a statutory or legal duty.

(2) A person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose more of the personal health information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless more extensive use or disclosure is required by law.

Limitation on use or disclosure by non-custodian

39. (1) A custodian shall protect personal health information by adopting information practices that include reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information.

Protection of personal health information

(2) The information practices referred to in subsection (1) shall be based on nationally or provincially recognized information technology and security standards and processes that are appropriate for the level of sensitivity of the personal health information to be protected.

Idem - Information practices

Idem

(3) The information practices referred to in subsection (1) shall include appropriate measures to address the risks associated with the storage of personal health information, taking into account the manner and form in which the personal health information is recorded, the location of storage and the degree of sensitivity of the personal health information to be protected.

Controls and
safeguards

- (4) Without limiting the generality of subsection (1), a custodian shall
- (a) implement controls that limit the persons who may use personal health information maintained by the custodian to those specifically authorized by the custodian to do so, including where appropriate the restriction of access to an individual's personal health information by an employee, agent, contractor or volunteer of the custodian or by a health care professional who has the right to treat persons at a health care facility operated by the custodian to only that information that the employee, agent, contractor, volunteer or health care professional requires to carry out the purpose for which the information was collected or will be used;
 - (b) implement safeguards and controls to ensure that personal health information maintained by the custodian cannot be used unless
 - (i) the identity of the person seeking to use the information is verified as a person the custodian has authorized to use it, and
 - (ii) the proposed use is verified as being authorized under this Act;
 - (c) if the custodian uses electronic means to request disclosure of personal health information or to respond to requests for disclosure, implement procedures to prevent the interception of the information by unauthorized persons;
 - (d) provide for the secure storage, retention and disposal of records to minimize the risk of unauthorized access to or disclosure of personal health information;
 - (e) when responding to requests for disclosure of personal health information, ensure that the request contains sufficient detail to uniquely identify the individual to whom the information relates; and
 - (f) ensure agents of the custodian adhere to the safeguards and controls implemented to protect personal health information.

Limitation

(5) This section does not override or modify any requirement in an enactment or an Act of the Parliament of Canada concerning the retention or secure destruction of records of personal health information maintained by a custodian.

Production of de-
identified
information

40. A custodian may strip, encode or otherwise transform personal health information in order to create or produce de-identified information.

41. A custodian that retains the services of an agent for the collection, use, disclosure, retention or secure destruction of personal health information shall enter into a written agreement with the agent requiring the agent to comply with

Written agreement with agent of custodian

- (a) the duties imposed on the agent under the agreement; and
- (b) the same requirements concerning the protection, retention and secure destruction of personal health information that the custodian is required to comply with under this Act.

42. (1) A custodian may provide personal health information to an information manager for the purpose of processing, storing or destroying the personal health information or providing the custodian with information management or information technology services.

Provision of information to information manager

(2) A custodian that proposes to provide personal health information to an information manager shall enter into a written agreement with the information manager that provides for the protection of the personal health information against risks such as unauthorized access to or use or disclosure, secure destruction or alteration of the information.

Idem - written agreement

43. An information manager who enters into a written agreement under subsection 42(2) shall comply with

Requirement to comply

- (a) the duties imposed on the information manager under the agreement; and
- (b) the same requirements concerning the protection, retention and secure destruction of personal health information that the custodian is required to comply with under this Act.

44. Before using or disclosing personal health information, a custodian shall take reasonable steps

Obligation of custodian

- (a) to ensure that the information is accurate, up-to-date and complete; and
- (b) to ensure that the disclosure is made only to the person intended and authorized to receive the information.

45. (1) Subject to this section, a custodian does not cease to be a custodian with respect to a record of personal health information until complete custody and control of the record passes to another person who is legally authorized to hold the record.

Ceasing to be custodian

(2) If the custodian ceases to operate as a custodian, the custodian or the custodian's successor shall

Idem – obligation to notify

- (a) notify the individual to whom the personal health information relates that the personal health information will be or has been transferred to the custodian's successor;
- (b) indicate where the person may make a written request for access to the personal health information; and

(c) state the period during which the personal health information will be retained.

Where custodian is deceased

46. If a custodian who is an individual dies, the duties and powers of a custodian under this Act shall be performed and exercised by the personal representative of the deceased as defined in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21 until custody and control of the record of personal health information passes to another person who is legally authorized to hold the record, or the personal health information is destroyed in accordance with the custodian's usual procedures for secure destruction.

PART 5

COMMISSIONER

Designation of Commissioner

47. (1) The Information and Privacy Commissioner appointed under Part 3 of the *Freedom of Information and Protection of Privacy Act* is hereby designated as the Commissioner for the purposes of this Act.

Functions of Commissioner

(2) In addition to the Commissioner's functions under Part 6 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of personal health information set out in any other enactment;
- (b) review and make recommendations respecting privacy impact assessments for the purposes of sections 25, 27 and 28;
- (c) review the response of a research ethics board under section 30;
- (d) make an order described in subsection 64(2) or (3), whether or not a review is requested;
- (e) inform the public about this Act;
- (f) comment on the implications for protection of personal information of proposed legislative schemes or programs of public bodies;
- (g) comment on the implications for protection of personal health information by using or disclosing personal health information for the purpose of data matching;
- (h) bring to the attention of a custodian any failure by the custodian to assist individuals under section 8; and
- (i) give advice and recommendations of general application to custodians on matters respecting the rights or obligations of custodians under this Act.

(3) Without limiting subsection (2), the Commissioner may investigate and attempt to resolve complaints that

Investigation and resolution of complaints

- (a) a duty imposed by subsection 8(9) has not been performed;
- (b) an extension of time for responding to a request is not in accordance with section 8 or 11;
- (c) a fee charged by a custodian for a service under this Act is inappropriate;
- (d) a correction of personal health information requested under section 11 has been refused without justification; and
- (e) personal health information has been collected, used or disclosed by a custodian in violation of Part 4.

48. (1) A custodian may request the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.

Advice and recommendations

(2) The Commissioner may in writing provide a custodian with advice and recommendations that

Advice, etc., in writing

- (a) are based on material facts provided by the custodian; and
- (b) may include any other considerations that the Commissioner considers appropriate.

49. Where, in the opinion of the Commissioner, a conflict of interest exists or may exist with respect to a custodian, the Lieutenant Governor in Council may designate a judge to act as an adjudicator in the matter in accordance with clause 68.1(1)(c) of the *Freedom of Information and Protection of Privacy Act*, and sections 68.2 to 68.7 of that Act apply with any necessary changes.

Conflict of interest

50. (1) At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8 or 11 if, in the opinion of the Commissioner,

Authorization to disregard request

- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests; or
- (b) one or more of the requests are frivolous or vexatious.

(2) The processing of a request under section 8 or 11 ceases when a custodian has made a request under subsection (1) and

Effect of request

- (a) if the Commissioner authorizes the custodian to disregard the request, does not resume;
- (b) if the Commissioner does not authorize the custodian to disregard the request, does not resume until the Commissioner advises the custodian of the Commissioner's decision.

51. (1) In conducting an investigation under clause 47(2)(a) or an inquiry under section 61 or in giving advice and recommendations under section

Powers of Commissioner

48, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31, and the powers given by subsection (2).

Production, etc. of record

(2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record, including personal health information, whether or not the record is subject to the provisions of this Act.

Production within 10 days

(3) Despite any other enactment or any privilege of the law of evidence, a custodian shall produce to the Commissioner within 10 days any record or a copy of any record required under subsection (1) or (2).

Examination at site

(4) If a custodian is required to produce a record under subsection (1) or (2) and it is not practicable to make a copy of the record, the custodian may require the Commissioner to examine the original at its site.

Return of record, etc.

(5) After completing a review or investigating a complaint, the Commissioner shall return any record or any copy of any record produced.

Admissibility

52. (1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except

- (a) in a prosecution for perjury in respect of sworn testimony;
- (b) in a prosecution for an offence under this Act; or
- (c) in an application for judicial review or an appeal from a decision with respect to that application.

Idem

(2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner.

Privilege applies

53. Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

Prohibition

54. (1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information obtained in performing their functions under this Act, except as provided in subsections (2), (4) and (5).

Exceptions

(2) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to

- (a) conduct an investigation or inquiry under this Act; or
- (b) establish the grounds for findings and recommendations contained in a report under this Act.

(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner shall take every reasonable precaution to avoid disclosing and shall not disclose

Disclosure prohibited

- (a) any personal health information the custodian would be required or authorized to refuse to disclose if it were contained in a record requested under subsection 10(1); or
- (b) whether personal health information exists, if the custodian in refusing to provide access does not indicate whether the personal health information exists.

(4) The Commissioner may disclose to the Minister of Environment, Labour and Justice and Attorney General information relating to the commission of an offence against an enactment or an Act of the Parliament of Canada if the Commissioner considers there is evidence of an offence.

Disclosure related to offence

(5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 52.

Disclosure for specified purposes

55. No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a function under this Part or Part 6.

Protection from liability

56. (1) The Commissioner may delegate to any person any function of the Commissioner under this Act, except the power to delegate under this section.

Delegation

(2) A delegation under subsection (1) shall be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

Requirements

57. (1) The Commissioner shall provide a written report annually to the Speaker of the Legislative Assembly respecting

Annual report

- (a) the work of the Commissioner's office;
- (b) such other matters relating to access to and protection of personal health information as the Commissioner considers appropriate.

(2) The Speaker shall lay each annual report before the Legislative Assembly as soon as possible.

Tabling in Legislative Assembly

PART 6

REVIEW, INVESTIGATION AND INQUIRY

- Request for review* **58.** (1) An individual who makes a request to a custodian for access to or for correction or amendment of the individual's personal health information may ask the Commissioner to review any decision, act or failure to act of the custodian that relates to the request.
- Idem* (2) An individual who believes that the individual's personal health information has been collected, used or disclosed in contravention of this Act may ask the Commissioner to review that matter.
- Requirements* (3) A request for the review of a decision of a custodian under subsection (1), a collection, use or disclosure of personal health information under subsection (2), or a refusal by a custodian to allow access to personal health information by a researcher under section 32 shall be in writing and delivered to the Commissioner within
- (a) sixty days after the person asking for the review is notified of the decision or becomes aware of the contravention; or
 - (b) any longer period allowed by the Commissioner.
- Effect of failure to respond* (4) The failure of a custodian to respond in time to a request for access to a record is to be treated as a decision to refuse access, but the time limit in clause (2)(a) for delivering a request for review does not apply.
- Notice deemed to be request* (5) A notice to the Commissioner under clause 36(1)(c) shall be treated as a request for review by the Commissioner under this Part.
- Commissioner's duties* **59.** (1) On receipt of a request for a review, the Commissioner shall as soon as practicable
- (a) provide a copy of the request or, in the case of a matter under clause 36(1)(c), the notice, to
 - (i) the custodian, and
 - (ii) any other person who in the opinion of the Commissioner is affected; and
 - (b) provide a summary of the review procedures and an anticipated date for a decision in respect of the review
 - (i) to the person who asked for the review,
 - (ii) to the custodian concerned, and
 - (iii) to any other person who in the opinion of the Commissioner is affected by the request.
- Severance of information* (2) Notwithstanding clause (1)(a), the Commissioner may sever any information in the request that the Commissioner considers appropriate before giving a copy of the request to the custodian or any other person affected by the request.

60. The Commissioner may, where the Commissioner considers it appropriate in the circumstances, authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review.

Mediation

61. (1) Unless a matter is settled under section 60, the Commissioner shall, subject to section 62, conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

Inquiry

(2) An inquiry under subsection (1) may be conducted in private.

Proceedings may be in private

(3) The person who requested the review, the custodian concerned and any other person given a copy of the request for the review shall be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

Opportunity for representations

(4) The Commissioner may decide whether the representations are to be made orally or in writing.

Representations may be oral or written

(5) The person who asked for the review, the custodian concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

Counsel or agent

(6) An inquiry under this section shall be completed within 90 days after receiving the request for the review unless the Commissioner

90-day period unless extended

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period; and

(b) provides an anticipated date for the completion of the review.

62. The Commissioner may refuse to conduct an inquiry pursuant to section 61 if, in the opinion of the Commissioner,

Grounds for refusal

(a) the subject matter of a request for a review under section 58 has been dealt with in an order or investigation report of the Commissioner; or

(b) the circumstances warrant refusing to conduct an inquiry.

Onus of proof - custodian

63. (1) If an inquiry under section 61 relates to a decision by a custodian to refuse an applicant access to all or part of personal health information in a record, it is up to the custodian to prove that the applicant has no right of access to the personal health information.

(2) Notwithstanding subsection (1), if the record or part of the record that the applicant is refused access to contains the personal health information of a third party, it is up to the applicant to prove that

Onus of proof - applicant

disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

Idem – applicant
and third party

(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing the personal health information of a third party,

(a) in the case of personal health information, it is up to the applicant to prove the disclosure of the personal health information would not be an unreasonable invasion of the third party's personal privacy; and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the personal health information.

Order re disposition

64. (1) On completing an inquiry under section 61, the Commissioner shall dispose of the issues by making an order under this section.

Idem - access

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

(a) require the custodian to give the applicant access to all or part of the personal health information, if the Commissioner determines that the custodian is not authorized or required to refuse access;

(b) either confirm the decision of the custodian or require the custodian to reconsider it, if the Commissioner determines that the custodian is authorized to refuse access;

(c) require the custodian to refuse access to all or part of the personal health information, if the Commissioner determines that the custodian is required to refuse access.

Idem – other
matters

(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:

(a) require that a duty imposed by this Act or the regulations be performed;

(b) confirm or reduce the extension of a time limit under section 8;

(c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including where a time limit is not met;

(d) confirm a decision not to correct personal health information;

(e) specify how personal health information is to be corrected;

(f) require a custodian to stop collecting, using or disclosing personal health information in violation of Part 4;

(g) require a custodian to destroy personal health information collected in violation of this Act.

Terms or conditions

(4) The Commissioner may specify any terms or conditions in an order made under this section.

Copies of order

(5) The Commissioner shall give a copy of an order made under this section

- (a) to the person who asked for the review;
- (b) to the custodian concerned;
- (c) to any other person given a copy of the request for the review;
- and
- (d) to the Minister.

(6) A copy of an order made by the Commissioner under this section may be filed with the registrar of the Supreme Court and, after filing, the order is enforceable as a judgment or order of that court.

Order may be filed with Supreme Court

65. An order issued by the Commissioner under this Act is final.

Order final

66. (1) Subject to subsection (2), not later than 40 days after being given a copy of an order of the Commissioner, the custodian concerned shall comply with the order.

Compliance required

(2) The custodian shall not take any steps to comply with an order of the Commissioner until the end of the period for bringing an application for judicial review of the order under the *Judicial Review Act* R.S.P.E.I. 1988, Cap. J-3.

Application for judicial review

(3) If an application for judicial review is made before the end of the period referred to in subsection (2), the order of the Commissioner is stayed until the application is dealt with by the court.

Order stayed pending outcome of application

PART 7

GENERAL

67. (1) An employee of a custodian may disclose to the Commissioner any personal health information that the employee is required to keep confidential and that the employee, acting in good faith, believes

Disclosure to Commissioner

- (a) ought to be disclosed by a custodian under section 23; or
- (b) is being collected, used or disclosed in contravention of Part 4.

(2) The Commissioner shall investigate and review any disclosure made under subsection (1).

Investigation

(3) If an employee makes a disclosure under subsection (1), the Commissioner shall not disclose the identity of the employee to any person without the employee's consent.

Identity protected

(4) An employee of a custodian is not liable to a prosecution for an offence under any Act

Protection of employee

- (a) for copying personal health information or disclosing it to the Commissioner; or

(b) for disclosing personal health information to the Commissioner, unless the employee acted in bad faith.

Prohibition

(5) A custodian shall not take any adverse employment action against an employee because the employee, acting in good faith,

- (a) has disclosed personal health information to the Commissioner under this section; or
- (b) has exercised or may exercise a right under this section.

Powers and duties of Commissioner

(6) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 47 and 51, and sections 52 to 55 apply.

Service

68. Where this Act requires any notice or other document to be given to a person, it is to be given

- (a) by sending it to that person by prepaid mail to the last known address of that person;
- (b) by personal service;
- (c) by substituted service if so authorized by the Commissioner; or
- (d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system.

Exercise of rights or powers

69. (1) Any right or power conferred on an individual by this Act may be exercised

- (a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;
- (b) if a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;
- (c) if a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;
- (d) if the individual is a minor, by a parent or guardian of the minor in circumstances where, in the opinion of the custodian concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the personal privacy of the minor;
- (e) if the individual has appointed a proxy to make decisions on his or her behalf, by the proxy if the exercise of the right or power relates to the powers and duties of a proxy conferred by the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2; or
- (f) by any person with written authorization from the individual to act on the individual's behalf.

(2) Any notice required to be given to an individual under this Act may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1).

Notice

70. No action lies and no proceeding may be brought against the Crown, a custodian or any person acting for or under the direction of a custodian for damages resulting from

Protection from liability

- (a) the disclosure of or failure to disclose, in good faith, personal health information under this Act or any consequences of that disclosure or failure to disclose; or
- (b) the failure to give a notice required by this Act if reasonable care is taken to give the required notice.

71. (1) No person shall

Prohibition

- (a) collect, use or disclose personal health information in contravention of this Act;
- (b) attempt to gain or gain access to personal health information in contravention of this Act;
- (c) knowingly make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;
- (d) obstruct the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Act;
- (e) fail to comply with an order made by the Commissioner under section 64;
- (f) destroy any personal health information subject to this Act, or direct another person to do so, with the intent to evade a request for access to the personal health information; or
- (g) alter, falsify or conceal personal health information, or direct another person to do so, with the intent to evade a request for access to the personal health information.

(2) A person who is an employee of a custodian or information manager and who, without the authorization of the custodian or information manager, discloses personal health information in contravention of this Act in circumstances where the custodian or information manager would not be permitted to disclose the information under this Act, commits an offence.

Offence - employee

(3) A custodian or information manager commits an offence if the custodian or information manager

Idem - custodian etc.

- (a) collects, uses or discloses personal health information contrary to this Act;
- (b) subject to subsection (4), sells or discloses for consideration personal health information;

(c) fails to protect personal health information in a secure manner as required by this Act;

(d) discloses personal health information contrary to this Act with the intent of obtaining a monetary or other material benefit or to confer a benefit on a custodian or other person; or (e) takes any adverse employment action against an employee because the employee has complied with a request or requirement to provide personal health information or evidence to the Commissioner, or a person acting for or under the direction of the Commissioner, under this Act.

Exception

(4) A custodian may sell, otherwise dispose of or disclose for consideration personal health information if

(a) the sale, disposition or disclosure is essential to facilitate the sale or disposition of the practice of a health professional or the business of a health care facility as a going concern; and

(b) subject to subsection (5), the sale, disposition or disclosure is to another custodian.

Exception for
pharmacy

(5) Clause (4)(b) does not apply to a change in ownership of a pharmacy.

Defence

(6) No custodian or information manager shall be found to have contravened clause (3)(a) or (b) if the custodian or information manager can establish that he or she took all reasonable steps to prevent the contravention.

Penalty for
contravention

72. (1) Every person who contravenes a provision of this Act or the regulations or who fails to comply with an order of the Commissioner is guilty of an offence and liable on summary conviction

(a) in the case of an individual, to a fine of not more than \$15,000 or a term of imprisonment of not more than six months, or to both; or

(b) in the case of a corporation, to a fine of not more than \$50,000.

Continuing offence

(2) A contravention of this Act or the regulations or a failure to comply with an order of the Commissioner that is of a continuing nature constitutes a separate offence in respect of each day or part of a day on which it continues.

Limitation period

(3) No prosecution for an offence under this Act shall be commenced after two years from the date of the discovery of the alleged offence.

Fees

73. (1) Subject to subsection (2), a custodian may require an individual to pay to the custodian fees for services in accordance with the regulations.

Examination
without charge

(2) A custodian shall permit an individual to examine the individual's personal health information free of charge.

(3) If an individual is required to pay a fee to a custodian for a service pursuant to subsection (1), the custodian shall give the individual an estimate of the total fee before providing the service. Estimate required

(4) An individual may, in writing, request that a custodian waive the payment of all or part of a fee for a service under subsection (1). Request to waive fee

(5) A custodian may waive the payment of all or part of a fee if, in the opinion of the custodian, the individual cannot afford the payment or for any other reason it is appropriate to waive the payment. Payment may be waived

(6) If an individual has requested under subsection (4) that a custodian waive the payment of all or part of a fee and the custodian has refused the individual's request, the custodian shall notify the individual that the individual may ask for a review of the refusal under Part 6 of this Act. Review

(7) A fee prescribed pursuant to subsection (1) shall not exceed the actual cost of the service. Limit on fees

74. (1) The Lieutenant Governor in Council may make regulations Regulations

- (a) designating custodians for the purposes of the definition "custodian" in section 1;
- (b) prescribing health care services for the purposes of the definition "health care" in section 1;
- (c) designating a facility in which health care is provided for the purposes of the definition "health care facility" in section 1;
- (d) designating a class of persons as a health care provider for the purposes of the definition "health care provider" in section 1;
- (e) prescribing personal health information for the purposes of clause 3(b);
- (f) prescribing types or classes of personal health information to which this Act does not apply for the purposes of subsection 4(1);
- (g) prescribing enactments for the purposes of subsection 4(2);
- (h) prescribing the individuals or organizations referred to in clause 4(1)(c) that collect, maintain or use personal health information for purposes other than health care or treatment and the planning and management of the health care system;
- (i) specifying for the purposes of section 6 the enactments or provisions of them over which this Act does not prevail;
- (j) prescribing for the purposes of clause 10(1)(i) the circumstances in which a custodian is not required to permit an individual to examine or copy his or her personal health information;
- (k) prescribing requirements and restrictions the determination respecting an individual's inability to provide consent for the purposes of subsection 14(5);
- (l) respecting the circumstances in which and the method by which an individual may refuse to grant consent or withdraw his or her

consent to the collection, use or disclosure of his or her personal health information for the purposes of subsection 13(11);

(m) prescribing any requirements or restrictions applicable to the use of an individual's personal health information for the purposes of clause 22(5)(o);

(n) respecting the designation of information networks for the purposes of clause 23(11)(c);

(o) respecting the establishment of an electronic health record for the purposes of subclause 23(11)(c)(iii);

(p) designating a custodian for the purposes of clause 23(11)(d);

(q) specifying the contents of a privacy impact assessment for the purposes of subsection 25(2);

(r) designating research ethics boards for the purposes of section 30;

(s) prescribing the required information to be provided with a research plan for the purposes of subsection 30(2);

(t) prescribing exceptions in respect of the information required to be recorded under subsection 34(1);

(u) prescribing for the purposes of section 35 the circumstances in which a custodian may disclose personal health information relating to an individual that is collected in the province to a person outside the province;

(v) prescribing the required content of a privacy impact assessment;

(w) prescribing the manner in which a notice or a record shall be served or given to a person under this Act;

(x) prescribing fees to be paid under the Act and providing for circumstances when fees may be waived in whole or in part;

(y) respecting any matter that is to be included in a notice required by this Act;

(z) defining, enlarging or restricting the meaning of any term used in this Act but not defined in this Act;

(aa) requiring custodians to provide to the Minister information that relates to the administration of this Act;

(bb) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Application of
regulations

(2) A regulation made under subsection (1) may be made to apply to particular classes of custodians or persons or to particular classes of personal health information.

Adoption of
standard

(3) A regulation made under subsection (1) that adopts a standard may adopt it as amended from time to time and with or without changes, and may require compliance with the standard as adopted.

Commencement

75. This Act comes into force on a date that may be fixed by Commencement proclamation of the Lieutenant Governor in Council.