

Administrative monetary penalties now in effect under PHIPA

23 janvier 2024

Effective Jan. 1, 2024, the Information and Privacy Commissioner of Ontario (IPC) has discretion to issue administrative monetary penalties (AMPs) for contraventions of the [Personal Health Information Protection Act, 2004 \(PHIPA\)](#) or its regulations. PHIPA governs how health information custodians such as health care practitioners and institutions, may collect, use and disclose personal health information.

The IPC can order a maximum AMP of C\$50,000 for a natural person and C\$500,000 for organizations, as outlined in the [O. Reg. 329/04](#). Importantly, where there is an economic gain, the IPC may issue an AMP above the maximum amounts in proportion to the economic benefit derived from the contravention.

The IPC has [published guidance](#) on its new enforcement powers, stating that AMPs are one tool in the “broader regulatory toolkit for encouraging compliance with PHIPA in a manner that is flexible, balanced, and progressive”. Accordingly, AMPs will not be the default response to contraventions of PHIPA, but rather reserved for more severe violations. The guidance provides examples of cases where AMPs may be appropriate, such as serious snooping on patient records, contraventions for economic gain (such as selling products or services based on improper use and disclosure of personal health information), or **persistent disregard for an individual’s right to access their personal health information**. AMPs will typically not be imposed in cases involving unintentional errors or one-off mistakes, provided that prompt and reasonable corrective action is taken upon discovery of the error.

In determining the amount of an AMP, the IPC must consider the following criteria, in addition to any other criteria it considers relevant:

- The extent to which the contraventions deviate from the requirements of PHIPA or its regulations.
- The extent to which the person could have taken steps to prevent the contraventions.
- The extent of the harm or potential harm to others resulting from the contraventions.
- The extent to which the person tried to mitigate any harm or potential harm or took any other remedial action.

- The number of individuals, health information custodians and other persons affected by the contravention.
- Whether the person notified the IPC and any individuals whose personal health information was affected by the contravention.
- The extent to which the person derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention.
- Whether the person has previously contravened PHIPA or its regulations.

For the most severe PHIPA contraventions, the IPC may still refer the case to the Attorney General for prosecution, resulting in even higher fines of up to \$200,000 for individuals, and \$1,000,000 for organizations. However, to date, there have been a very limited number of prosecutions under PHIPA, with very few convictions.

PHIPA now provides the IPC with greater enforcement powers by allowing it to directly issue AMPs. Unlike criminal or quasi-criminal fines, administrative penalties do not require prosecution by the crown and a finding of guilt before the court. Ontario health information custodians should review their privacy practices to ensure statutory compliance.

Par

[Labiba Chowdhury, Jiwan Sangha](#)

Services

[Cybersécurité, respect de la vie privée et protection des renseignements personnels, Droit de la santé, Soins de santé et sciences de la vie](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000, rue De La Gauchetière Ouest
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir soupesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.