

## APPENDIX A

### Offences and penalties under Canada's health information privacy laws by jurisdiction

Following are the offences and penalties as contained in health information privacy laws in jurisdictions in Canada with these laws. British Columbia and Nunavut do not have health information privacy laws.<sup>1</sup>

#### Explanatory notes

Strict liability offences in these laws are marked in red. Due diligence defences within these laws, where they exist, are marked in red and highlighted in yellow.

#### ***Alberta's Health Information Act***

Offences and penalties

107 (1) No custodian or affiliate of a custodian shall knowingly

- (a) alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the record, or
- (b) destroy any record that is subject to this Act, or direct another person to do so, with the intent to evade a request for access to the record.

(1.1) No custodian shall

- (a) fail to take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will protect against any reasonably anticipated threat or hazard to the security or integrity of health information or of loss of health information,
- (b) fail to comply with section 60.1(2), (3), (4) or (5),<sup>2</sup> or
- (c) fail to comply with an order made by the Commissioner under section 85.1(2)(b).<sup>3</sup>

(1.2) No affiliate of a custodian shall fail to comply with section 60.1(1).<sup>4</sup>

(2) No person shall knowingly

- (a) collect, use, disclose or create health information in contravention of this Act,
- (b) gain or attempt to gain access to health information in contravention of this Act,

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<sup>1</sup> This Appendix was created in July of 2021.

<sup>2</sup> Breach provisions.

<sup>3</sup> The IPC's authority to order notification of a breach.

<sup>4</sup> Affiliate responsibilities regarding breach notification.

(c) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person performing the duties, powers or functions of the Commissioner or other person under this Act,

(d) obstruct the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or other person under this Act,

(e) fail to comply with an order made by the Commissioner under [section 80](#) or by an adjudicator under [section 101](#), or

(f) use individually identifying health information to market any service for a commercial purpose or to solicit money unless the individual who is the subject of the health information has specifically consented to its use for that purpose.

(3) No researcher shall knowingly breach the terms and conditions of an agreement entered into with a custodian pursuant to [section 54](#).

(4) No information manager as defined in [section 66\(1\)](#) shall knowingly breach the terms and conditions of an agreement entered into with a custodian pursuant to [section 66](#).

(5) No person to whom non-identifying health information is disclosed and who intends to use the information to perform data matching shall fail to comply with [section 32\(2\)](#).<sup>5</sup>

(5.1) No person shall knowingly disclose health information to which this Act applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta.

(6) A person who contravenes this section is guilty of an offence and is liable

(a) in the case of an individual, to a fine of not more than \$200 000, and

(b) in the case of any other person, to a fine of not more than \$1 000 000.

## **Saskatchewan's Health Information Protection Act**

### Offences

64(1) No person shall:

(a) knowingly contravene any provision of this Act or the regulations;

(b) without lawful justification or excuse, wilfully obstruct, hinder or resist the commissioner or any other person in the exercise of the powers, performance of the duties or the carrying out of the functions of the commissioner or other person pursuant to this Act;

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<sup>5</sup> Requirement to notify IPC of a non-custodian that intends to use non-identifying PI disclosed to it by a custodian for data matching.

(c) without lawful justification or excuse, refuse or wilfully fail to comply with any lawful requirement of the commissioner or any other person pursuant to this Act;

(d) wilfully make any false statement to, or mislead or attempt to mislead, the commissioner or any other person in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner or other person pursuant to this Act;

(e) wilfully destroy any record that is governed by this Act with the intent to evade a request for access to the record; or

(f) obtain another person's personal health information by falsely representing that he or she is entitled to the information.

(1.1) No trustee or information management service provider, or former trustee or information management service provider, shall fail to keep secure the personal health information in its custody or control as required by this Act.

(1.2) No person shall be found to have contravened subsection (1.1) if that person can establish that he or she took all reasonable steps to prevent the contravention.

(2) Every person who contravenes subsection (1) or (1.1) is guilty of an offence and is liable on summary conviction:

(a) in the case of an individual, to a fine of not more than \$50,000, to imprisonment for not more than one year or to both; and

(b) in the case of a corporation, to a fine of not more than \$500,000.

(3) Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence, and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the corporation has been prosecuted or convicted.

(3.1) An individual who is an employee of or in the service of a trustee or information management service provider and who knowingly discloses or directs another person to disclose personal health information in circumstances that would constitute an offence by the trustee or information management service provider pursuant to this Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the trustee or information management service provider has been prosecuted or convicted.

(3.2) An individual who is an employee of or in the service of a trustee and who wilfully accesses or uses or directs another person to access or use personal health information that is not reasonably required by that individual to carry out a purpose authorized pursuant to this Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the trustee has been prosecuted or convicted.

(3.3) An individual who is an employee of or in the service of an information management service provider and who wilfully accesses or uses or directs another person to access or use personal health

information for a purpose that is not authorized by subsection 18(1) of this Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the information management service provider has been prosecuted or convicted.

### **Manitoba's Personal Health Information Act**

Offences

63(1)

Any person who

(a) wilfully makes a false statement to, or misleads or attempts to mislead, the Ombudsman or another person in the performance of the duties and powers of the Ombudsman;

(b) wilfully obstructs the Ombudsman, or any person acting for or under the direction of the Ombudsman, in any manner;

(c) wilfully destroys or erases personal health information with the intent to evade an individual's request to examine or copy the information;

(d) obtains another person's personal health information by falsely representing that he or she is entitled to the information;

(e) requires production of or collects or uses another person's PHIN contrary to [section 26](#); or

(f) knowingly falsifies another person's personal health information;

is guilty of an offence.

Offence by employee, officer or agent

63(2)

Despite [subsection 61\(2\)](#), a person who is an employee, officer or agent of a trustee, information manager or health research organization and who, without the authorization of the trustee, information manager or health research organization, wilfully

(a) discloses personal health information in circumstances where the trustee, information manager or health research organization would not be permitted to disclose the information under this Act; or

(b) uses, gains access to or attempts to gain access to another person's personal health information;

is guilty of an offence.

Offences by trustees and information managers

63(3)

A trustee, information manager or health research organization who

(a) collects, uses, sells or discloses personal health information contrary to this Act;

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

(c) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on a trustee or other person;

is guilty of an offence.

Due diligence defence

63(4)

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

Continuing offence

63(5)

When a contravention of this Act continues for more than one day, the person is guilty of a separate offence for each day the contravention continues.

Prosecution within two years

63(6)

A prosecution under this Act may be commenced not later than two years after the commission of the alleged offence.

S.M. 2008, c. 41, s. 27; [S.M. 2013, c. 22, s. 2](#).

Penalty

64(1)

A person who is guilty of an offence under [section 63](#) is liable on summary conviction to a fine of not more than \$50,000.

Directors and officers of corporations

64(2)

When a corporation is guilty of an offence, a director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000.

## **Ontario's Personal Health Information Protection Act**

### Offences

**72 (1)** A person is guilty of an offence if the person,

(a) wilfully collects, uses or discloses personal health information in contravention of this Act or its regulations;

(b) **makes a request under this Act, under false pretences, for access to or correction of a record of personal health information;**

(b.1) wilfully contravenes [section 11.2](#);<sup>6</sup>

(c) in connection with the collection, use or disclosure of personal health information or access to a record of personal health information, makes an assertion, knowing that it is untrue, to the effect that the person,

(i) is a person who is entitled to consent to the collection, use or disclosure of personal health information about another individual,

(ii) meets the requirement of [clauses 26 \(2\) \(b\) and \(c\)](#),<sup>7</sup>

(iii) holds the beliefs described in [subsection 26 \(5\)](#),<sup>8</sup> or

(iv) is a person entitled to access to a record of personal health information under [section 52](#);

(d) disposes of a record of personal health information in the custody or under the control of the custodian with an intent to evade a request for access to the record that the custodian has received under [subsection 53 \(1\)](#);

(e) wilfully disposes of a record of personal health information in contravention of [section 13](#);

(f) **contravenes [subsection 34 \(2\), \(3\) or \(4\)](#)<sup>9</sup> or [clause 47 \(15\) \(a\), \(e\) or \(f\)](#);<sup>10</sup>**

(g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

(h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

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<sup>6</sup> Attempt to reidentify deidentified PHI.

<sup>7</sup> Age restriction and legal authority re giving consent for another person.

<sup>8</sup> Substitute decision maker in order of ranking.

<sup>9</sup> Restrictions on PHIN.

<sup>10</sup> Obligations of a health data institute.

(i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner under this Act; or

(j) **contravenes section 70.**<sup>11</sup>

#### Penalty

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction,

(a) if the person is a natural person, to a fine of not more than \$200,000 or to a term of imprisonment of not more than 1 year, or to both; or

(b) if the person is not a natural person, to a fine of not more than \$1,000,000.

#### ***New Brunswick's Personal Health Information Privacy and Access Act***

#### Offences

76(1) No person shall

(a) collect, use or disclose personal health information in wilful contravention of this Act,

(b) attempt to gain or gain access to personal health information in wilful contravention of this Act,

(c) knowingly make a false or misleading statement to the Ombud or another person in the performance of the duties or the exercise of the powers of the Ombud or the other person under this Act or knowingly mislead or attempt to mislead the Ombud or the other person,

**(d) obstruct the Ombud or another person in performing duties or exercising powers under this Act,**

(e) destroy a record or erase information in a record that is subject to this Act, or direct another person to do so, with the intent to evade a request to examine or copy the record,

(f) alter, falsify, conceal or destroy any record or part of any record, or direct another person to do so, with an intent to evade a request to examine or copy the record, or

(g) wilfully fail to comply with an investigation of the Ombud.

76(2) A person who is an employee of a custodian or information manager who, without the authorization of the custodian or information manager, discloses personal health information in wilful 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.

**76(3) A custodian or information manager commits an offence if the custodian or information manager**

**(a) collects, uses, sells or discloses personal health information contrary to this Act,**

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<sup>11</sup> Whistle blower protection and protection against avoiding or preventing non-compliance.

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

(c) 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

(d) takes any adverse employment action against an employee because the employee has complied with a request or requirement to produce a record or provide information or evidence to the Ombud, or a person acting for or under the direction of the Ombud, under this Act.

76(4) No custodian or information manager shall be found to have contravened paragraph (3)(a) or (b) if the custodian or information manager can establish that he or she took all reasonable steps to prevent the contravention.

76(5) A person who violates or fails to comply with subsection (1), (2), (3) or (4) commits an offence punishable under Part II of the [Provincial Offences Procedure Act](#) as a category F offence.

The penalty for category F offence is between \$240 and \$10,200. For repeat convictions, the fine is up to \$15,000.

### ***Nova Scotia's Personal Health Information Act***

#### Offence

106 A person is guilty of an offence if the person

(a) wilfully collects, uses or discloses health information in contravention of this Act or the regulations;

(b) wilfully gains or attempts to gain access to health information in contravention of this Act or the regulations;

(c) wilfully obtains or attempts to obtain another individual's personal health information by falsely representing that the person is entitled to the information;

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

(e) in connection with the collection, use or disclosure of personal health information or access to a record of personal health information makes an assertion, knowing that it is untrue, to the effect that the person is a person who is entitled to consent on behalf of another individual;

(f) wilfully disposes of a record of personal health information in contravention of the requirements for protection of personal health information required in this Act or the regulations;

(g) requires production of or collects or uses another person's health card number in contravention of this Act or the regulations;

(h) wilfully alters, falsifies, conceals, destroys or erases any record, or directs another person to do so, with the intent to evade a request for access to the record;

(i) wilfully obstructs, makes a false statement to or misleads or attempts to mislead the Review Officer or another person in the performance of the duties, powers or functions of the Review Officer under this Act;

(j) wilfully obstructs, makes a false statement to or misleads or attempts to mislead another individual or organization in the performance of the duties, powers or functions of that individual or organization under this Act;

(k) uses individually identifying health information to market any service for a commercial purpose or to solicit money unless the individual who is the subject of the health information has expressly consented to its use for that purpose;

(l) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on another person; or

(m) breaches the terms and conditions of an agreement entered into with a custodian under this Act.

#### Penalty

107 A person who is guilty of an offence under this Act or the regulations is liable on summary conviction

(a) in the case of an individual, to a fine of not more than ten thousand dollars or imprisonment for six months, or both; or

(b) in the case of a corporation, to a fine of not more than fifty thousand dollars.

#### **PEI's Health Information Act**

##### 70. Offence

(1) An authorized custodian who

(a) fails or refuses to make prescribed personal health information in its custody or under its control accessible by means of the PEI EHR in accordance with this Part and the regulations; or

(b) accesses prescribed personal health information by means of the PEI EHR for a purpose or in a manner not authorized by this Part or the regulations, is guilty of an offence and liable on summary conviction to the penalties set out in subsections 79(1) and (2).

##### 78. Prohibition

(1) No person shall

(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, alter, falsify or conceal any personal health information, or direct another person to do so, with the intent to evade a request for access to the personal health information; or

(g) destroy, alter, falsify or conceal personal health information, or direct another person to do so, to affect the outcome of an audit or an investigation authorized under this Act or another enactment.

Offence - employee

(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.

Idem - custodian etc.

(3) Any person commits an offence if the person

(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.

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.

79. Penalty for contravention

(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.

### **Newfoundland and Labrador's *Personal Health Information Act***

Offences and penalties

88. (1) A person who wilfully

(a) obtains or attempts to obtain another individual's personal health information by falsely representing that the person is entitled to the information;

(b) makes a false statement to, or misleads or attempts to mislead, the commissioner or another person performing duties or exercising powers under this Act;

(c) obstructs the commissioner or another person performing duties or exercising powers under this Act; or

(d) destroys or erases personal health information with the intent to evade a request for access to the information,

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 6 months, or to both.

(2) A custodian or information manager who

(a) collects, uses or discloses personal health information contrary to this Act;

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

or

(c) discloses personal health information contrary to this Act with the intent to obtain a monetary or other material benefit or to confer such a benefit on another person,

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 6 months, or to both.

(3) A custodian or information manager shall not be found to have contravened paragraph (2)(a) or (b) if the custodian or information manager can establish that all reasonable steps were taken to prevent the contravention.

## **Northwest Territories *Health Information Act***

### Offence and Punishment Prohibition

185. No person shall knowingly collect, use or disclose personal health information in contravention of this Act or the regulations.

186. No person shall willfully (a) obstruct the Information and Privacy Commissioner or another person in the exercise of the powers or performance of the duties or functions of the IPC or other person under this Act; (b) fail to comply with a lawful requirement of the IPC or other person under this Act; or (c) make a false statement to, or mislead or attempt to mislead, the IPC or any other person in the exercise of the powers or performance of the duties or functions of the IPC or other person under this Act.

187. No person shall (a) alter, falsify or conceal a record, or direct another person to do so, with the intent of evading an access request, correction request or a request for disclosure of a record; or (b) destroy a record that is subject to this Act, or direct another person to do so, with the intent of evading an access request, a correction request or a request for disclosure of a record.

188. No person shall (a) obtain or attempt to obtain access to another person's personal health information by falsely representing that he or she is entitled to the information; or (b) attempt to have a change or correction made to another person's personal health information by falsely representing that he or she is entitled to have the change or correction made.

189. No person shall knowingly use personal health information to market a service for a commercial purpose, to solicit money, or for any other commercial purpose or anticipated profit unless the individual the information is about has provided express consent to its use for that purpose.

190. No person shall knowingly contravene or fail to comply with this Act or the regulations.

191. No person is liable to prosecution for an offence under an enactment by reason only of that person's compliance with a requirement or recommendation of the Information and Privacy Commissioner under this Act.

192. Every person who contravenes or fails to comply with this Act or the regulations is guilty of an offence punishable on summary conviction, and except as otherwise provided, is liable (a) in the case of a corporation, to a fine not exceeding \$500,000; or (b) in the case of any other person, to a fine not exceeding \$50,000.

193. If a corporation commits an offence, any officer, director, agent or employee of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted for the offence or convicted.