

1997 BILL 30

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First Session, 24th Legislature, 46 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 30**

**HEALTH INFORMATION PROTECTION ACT**

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MR. STEVENS

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*Bill 30*  
*Mr. Stevens*

## **BILL 30**

1997

### **HEALTH INFORMATION PROTECTION ACT**

*(Assented to , 1997)*

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

Interpretation    **1(1)** In this Act,

- (a) “aggregate health information” means health information about groupings of individuals;
- (b) “anonymous individual health information” means health information in which identifying facts have been removed or encrypted;
- (c) “collect” means to gather, acquire, receive or obtain health information from any source by any means;
- (d) “Commissioner” means the Health Information Commissioner appointed under Part 4;
- (e) “custodian” means
  - (i) an approved hospital as defined in the *Hospitals Act* other than an approved hospital that is owned and operated by a regional health authority under the *Regional Health Authorities Act*;
  - (ii) a nursing home as defined in the *Nursing Homes Act* other than a nursing home that is owned and operated by a regional health authority under the *Regional Health Authorities Act*;
  - (iii) a provincial health board established pursuant to regulations made under section 17(1)(a) of the *Regional Health Authorities Act*;
  - (iv) a regional health authority under the *Regional Health Authorities Act*;
  - (v) a community health council as defined in the *Regional Health Authorities Act*;
  - (vi) a subsidiary health corporation as defined in the *Regional Health Authorities Act*;
  - (vii) the Alberta Cancer Board;
  - (viii) any board, committee, commission, panel, agency or corporation that is created or owned by a custodian referred to in subclauses (i) to (vii), all of whose members or officers are appointed or chosen by, or under the authority of, that custodian;

- (ix) a department, branch or office of the Government of Alberta;
- (x) a health services provider who provides health services that are directly or indirectly paid for by the Government of Alberta, in full or in part;
- (xi) a health professional body;
- (xii) any person or organization that provides services that are directly or indirectly paid for by the Government of Alberta, in full or in part, and that collects, uses, maintains or otherwise has access to health information;
- (xiii) a foundation that has custody or control of health information;
- (xiv) any board, committee, commission, panel, agency, corporation or other body that is designated in the regulations as a custodian;
- (f) “employee”, in relation to a custodian, includes a person who provides any service relating to health information under a contract or agency relationship with the custodian;
- (g) “health information” means any information, whether oral or recorded in any manner,
  - (i) about the health of an individual, including the past, present or future physical or mental health of that individual,
  - (ii) about any health service that is being provided or has been provided to an individual,
  - (iii) about the donation, by an individual, of any body part or any bodily substance of that individual or information derived from the testing or examination of any body part or any bodily substance of that individual, or
  - (iv) about an individual that is collected before or while a health service is provided to that individual or incidentally to any health service being provided to that individual
 and includes registration information;
- (h) “health professional body” means a person or body that is authorized by an Act that regulates a health profession to

conduct preliminary investigations, discipline proceedings and practice reviews relating to health services providers;

- (i) “health services provider” means a person who provides or has provided health services;
- (j) “health services provider information” means information that is collected for the purpose of identifying health services providers and includes the following information about a health services provider:
  - (i) registration information;
  - (ii) type of health services provider and licence number;
  - (iii) date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services;
  - (iv) skills and accreditation and the dates they were acquired;
  - (v) education;
  - (vi) restrictions that apply to the health services provider’s right to provide health services in Alberta;
  - (vii) complaints or discipline proceedings relating to the health services provider under any legislation governing the health services provider;
  - (viii) business arrangements relating to the payment of the health services provider’s accounts;
  - (ix) any business relationship that exists between the health services provider and a custodian or other individual;
- (k) “individually identifiable health information” means health information that
  - (i) may include registration or other information that identifies a specific individual, and
  - (ii) can be used to identify a specific individual, family or organization;

- (l) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (m) “non-identifiable”, when used to describe health information, means health information from which it is impossible to ascertain the identity of the individual who is the subject of the information;
- (n) “record” means health information in any form and includes x-rays, notes, images, audio-visual recordings, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded, digitized or stored in any manner, but does not include software or any mechanism that produces records;
- (o) “registration information” means information that is collected for the purpose of registering individuals who may be eligible to receive health services and includes the following information about an individual:
  - (i) personal health number and any other identification number;
  - (ii) name;
  - (iii) address;
  - (iv) telephone number;
  - (v) gender;
  - (vi) date of birth;
  - (vii) residency information;
  - (viii) employer information;
  - (ix) family association;
  - (x) marital status;
  - (xi) amounts paid by the individual or the individual’s family in respect of health services provided to the individual or the family;
  - (xii) any relationship that exists between the individual and a custodian or other individual for the purpose of health system management;



- (xiii) picture or electronic image;
  - (xiv) signature;
  - (xv) whether the individual is eligible to receive health services that are directly or indirectly paid for by the Government of Alberta, in full or in part;
  - (xvi) whether the individual has elected to opt out of the Alberta Health Care Insurance Plan and the Hospitalization Benefits Plan;
  - (xvii) whether the individual is exempt from the requirement to register under the *Health Insurance Premiums Act*;
  - (xviii) whether the individual is exempt from the requirement to pay premiums under the *Health Insurance Premiums Act*;
  - (xix) whether the individual is eligible to receive a reduction or waiver of premiums or charges payable in respect of health services;
  - (xx) authorization to obtain income tax information;
  - (xxi) effective dates, if any, that are relevant to any of the information listed in subclauses (i) to (xx);
- (p) “unique identifier” means an identifier that
- (i) is assigned to an individual by a custodian for the purpose of the operations of the custodian, and
  - (ii) uniquely identifies that individual in relation to that custodian,

but does not include the name or personal health or other identification number of the individual.

(2) Any act carried out by, or information disclosed to, an employee of a custodian in the performance of the employee’s duties of employment is considered to have been carried out by, or disclosed to, the custodian.

Purposes of  
Act

**2** The purposes of this Act are

- (a) to establish strong and effective mechanisms to protect the privacy of individuals with respect to health information,

- (b) to provide individuals with a right of access to health information about themselves that is held by a custodian, subject to limited and specific exceptions as set out in this Act,
- (c) to provide individuals with a right to request corrections to health information about themselves that is held by a custodian,
- (d) to prescribe rules for the collection, use and disclosure of health information, in the most limited manner and with the highest degree of anonymity that is possible in the circumstances,
- (e) to establish strong and effective remedies for violations of this Act, and
- (f) to provide for independent reviews of decisions made by custodians under this Act and the resolution of complaints under this Act.

Scope of Act     **3 This Act**

- (a) does not limit the information otherwise available by law to a party to legal proceedings,
- (b) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents, and
- (c) does not prohibit the storage or destruction of any record in accordance with any other enactment of Alberta or Canada.

## **PART 1**

### **OBTAINING ACCESS TO HEALTH INFORMATION**

Right to  
request  
access to  
health  
information

**4(1)** A custodian that has custody or control of health information about an individual must, at the request of the individual, permit the individual to have access to and receive a copy of health information about that individual.

**(2)** The right of access to health information does not extend to information in respect of which a custodian is entitled to refuse access under section 7, but if that information can reasonably be severed from a record, an individual has a right of access to the remainder of the record.

(3) The right of access to health information is subject to the payment of any fee required by the regulations.

Request for  
access to be  
written

**5** A custodian that has received a request for access to health information under section 4 may require the individual to submit the request in writing.

Duty to create  
record

**6** A custodian that has received a request for access to health information under section 4 must create a record of the information for the individual who requests it if

- (a) the record can be created from information that is in electronic form and in the custody or under the control of the custodian, using its normal computer hardware and software and technical expertise, and
- (b) creating the record would not unreasonably interfere with the operations of the custodian.

Right to refuse  
access to  
health  
information

**7** A custodian is not required to comply with section 4 if

- (a) compliance could reasonably be expected
  - (i) to result in immediate and grave harm to the individual's health or safety,
  - (ii) to threaten anyone else's safety or mental or physical health, or
  - (iii) to interfere with public safety,
- (b) the record identifies or could reasonably lead to the identification of a person who provided health information to the custodian explicitly or implicitly in confidence and in circumstances in which it was appropriate that the name of the person who provided the information be kept confidential,
- (c) the record is subject to legal privilege or any law that prohibits disclosure,
- (d) compliance could reasonably be expected to reveal
  - (i) advice, proposals, recommendations, analyses or policy options developed by or for a member of the Executive Council, or

- (ii) consultations or deliberations involving a member of the Executive Council or the staff of a member of the Executive Council,
- (e) compliance could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for the governing body of the custodian, and the custodian is not a custodian referred to in section 1(1)(e)(ii), (vi), (viii), (x) or (xii), or
- (f) the record contains the procedures or the results of a preliminary investigation, discipline proceeding or practice review.

Time limit for responding to a request for access

**8(1)** A custodian must make every reasonable effort to respond to a request for access to health information under section 4 not later than 30 days after the custodian receives the request, unless that time limit is extended under section 9.

**(2)** In a response under subsection (1), the custodian must tell the individual

- (a) whether access to a record or part of it is granted or refused,
- (b) if access to the record or part of it is granted, where, when and how access will be given, and
- (c) if access to the record or part of it is refused,
  - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
  - (ii) the name, title, business address and business telephone number of an officer or employee of the custodian who can answer the individual's questions about the refusal, and
  - (iii) that the individual may ask for a review of that decision by the Commissioner.

**(3)** The failure of the custodian to respond to a request for access to health information within the 30-day period set out in subsection (1) or any extended period under section 9 is to be treated as a decision to refuse access to the information.

Extending the  
time limit for  
responding

**9(1)** The custodian may extend the time for responding to a request for access for an additional period of up to 30 days or, with the Commissioner's permission, for a longer period if

- (a) the request for access does not give enough detail to enable the custodian to identify the requested record,
- (b) a large number of records or a large amount of health information is requested or must be searched and responding within the period set out in section 8 would unreasonably interfere with the operations of the custodian, or
- (c) more time is needed to consult with another custodian before deciding whether or not to grant access to a record.

**(2)** If the time is extended under subsection (1), the custodian must tell the individual

- (a) the reason for the extension,
- (b) when a response can be expected, and
- (c) that the individual may make a complaint to the Commissioner about the extension.

Correction or  
amendment of  
health  
information

**10(1)** An individual who believes there is an error or omission in the individual's health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.

**(2)** Within 45 days after receiving a request under subsection (1) or within an extended period under section 11, the custodian must

- (a) make the correction or amendment, give written notice to the individual that the correction or amendment has been made and notify any person to whom that information has been disclosed during the one year before the correction or amendment was requested that the correction or amendment has been made, or
- (b) give written notice to the individual that the custodian refuses to make the correction or amendment and of the reasons for the refusal.

**(3)** The failure of the custodian to respond to a request for the correction or amendment of health information within the 45-day period set out in subsection (2) or any extended period under section 11 is to be treated as a decision to refuse to make the correction or amendment.

Extending the  
time for  
responding

**11(1)** The custodian may extend the time for responding to a request under section 10 for an additional period of up to 45 days or, with the Commissioner's permission, for a longer period if

- (a) the request for correction or amendment by the individual does not give enough detail to enable the custodian to identify the record that is to be corrected or amended,
- (b) a large number of records or a large amount of information is involved in the request and responding within 45 days would unreasonably interfere with the operations of the custodian, or
- (c) more time is needed to consult with another custodian before deciding whether or not to make the correction or amendment requested.

**(2)** If the time is extended under subsection (1), the custodian must tell the individual

- (a) the reason for the extension,
- (b) when a response can be expected, and
- (c) that the individual may make a complaint to the Commissioner about the extension.

Refusal to  
correct or  
amend  
information

**12(1)** Where a custodian refuses to make a correction or amendment under section 10, the custodian must tell the individual requesting it

- (a) that the individual may ask for a review of that decision by the Commissioner, and
- (b) that the individual may submit a statement of disagreement setting out the requested correction or amendment and the individual's reasons for disagreeing with the decision of the custodian.

**(2)** A statement of disagreement must be submitted to the custodian within 45 days after the written notice of refusal has been given to the individual under section 10(2)(b).

**(3)** On receiving a statement of disagreement, the custodian must

- (a) attach the statement to the record that is the subject of the requested correction or amendment, and

- (b) disclose the statement to any person to whom the part of the record relating to the requested correction or amendment is disclosed.

Application of this Part      **13** This Part applies in respect of health information collected before or after the coming into force of this Act.

## **PART 2**

### **COLLECTION OF HEALTH INFORMATION**

Prohibitions      **14(1)** No custodian shall collect health information unless

- (a) the collection is for a lawful purpose connected with a function or activity of the custodian, and
- (b) the collection is necessary for that purpose.

**(2)** No custodian shall collect health information by any unlawful means.

Manner of collection of health information      **15** A custodian must collect health information directly from the individual the information is about unless

- (a) the individual from whom the information is to be collected, after being informed of the matters set out in section 17, authorizes collection of the information from someone else,
- (b) that individual is unable to provide the information and the custodian collects the information from that individual's personal representative after the representative has been informed of the matters set out in section 17,
- (c) the custodian believes, on reasonable grounds, that collection from that individual would
  - (i) prejudice the interests of the individual,
  - (ii) prejudice the purposes of collection,
  - (iii) prejudice the safety of any other individual, or
  - (iv) result in the collection of inaccurate information,
- (d) collection from that individual is not reasonably practicable,

- (e) the collection is for the purpose of assembling a family or genetic history,
- (f) the collection is for the purpose of determining the eligibility of an individual to participate in a program or to receive a benefit, product or service from a custodian and the information is collected in the course of processing an application made by or on behalf of the individual the information is about,
- (g) the collection is for the purpose of verifying the eligibility of an individual who is participating in a program or receiving a benefit, product or service from a custodian to participate in the program or to receive the benefit, product or service,
- (h) the information to be collected is registration information only,
- (i) the collection is for the purpose of informing the Public Trustee or the Public Guardian about potential clients,
- (j) the information is available to the public, or
- (k) the custodian receives the information in accordance with Part 3.

Right to  
request non-  
disclosure

**16(1)** At any time, an individual or the personal representative of an individual may request that a record or any portion of a record in the custody or under the control of a health services provider that contains health information about the individual not be disclosed in the context of the provision of further or other health services to that individual unless the individual or the personal representative consents to the disclosure.

**(2)** Despite a request being made under subsection (1), the record or portion of a record to which the request relates

- (a) may be disclosed by a custodian in accordance with section 30(c), (j) or (n), 31 or 32, and
- (b) must be disclosed by a custodian in accordance with sections 35, 37 and 38.

**(3)** A health services provider must, in the course of providing a health service to an individual, inform the individual

- (a) of the right to make a request under subsection (1),



- (b) that health information to which a request under subsection (1) relates may or must be disclosed in accordance with subsection (2), and
- (c) of the implications for the individual of making a request under subsection (1).

**Duty to inform** **17** A custodian that collects health information that is required by section 15 to be collected directly from the individual the information is about must, at the request of the individual, take reasonable steps to inform the individual

- (a) of the individual's right to request access to health information about that individual and to request correction or amendment of health information about that individual,
- (b) of the procedures that must be followed to exercise the rights referred to in clause (a), and
- (c) of the anticipated use and disclosure of the information by the custodian.

**Duty to protect health information** **18(1)** A custodian that has custody or control of health information must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will

- (a) protect the integrity and confidentiality of the information,
- (b) protect against any reasonably anticipated
  - (i) threat or hazard to the security, integrity or loss of the information, or
  - (ii) unauthorized use, disclosure or modification of the information or unauthorized access to the information,

and

- (c) otherwise ensure compliance with this Act by the custodian and its employees.

**(2)** The safeguards to be maintained under subsection (1) must include appropriate measures for the proper disposal of records to prevent any reasonably anticipated unauthorized use or disclosure of the health information or unauthorized access to the health information following its disposal.

(3) The safeguards to be maintained under subsection (1) relating to any type of health information must be commensurate with the level of confidentiality required by this Act for that type of health information.

Accuracy of  
information

**19** A custodian that collects health information must take reasonable steps to ensure that the information is accurate and complete before using or disclosing it.

Taping device  
used in  
collection

**20(1)** A custodian that collects health information from an individual using a recording device or camera or any other device that may not be obvious to the individual must, before the collection occurs, obtain the written consent of the individual to the use of the device for the purpose of collecting the health information.

(2) Subsection (1) does not apply if the custodian believes, on reasonable grounds, that compliance would result in the collection of inaccurate health information.

Application of  
this Part

**21(1)** Sections 16, 18 and 19 apply in respect of health information collected before or after the coming into force of this Act.

(2) Sections 14, 15, 17 and 20 apply only in respect of health information collected after the coming into force of this Act.

### **PART 3**

#### **USE AND DISCLOSURE OF HEALTH INFORMATION**

Prohibitions on  
use and  
disclosure

**22(1)** No custodian shall

- (a) use health information in any manner, or
- (b) disclose health information to any person other than the individual the information is about,

except in accordance with this Part.

(2) No custodian shall use health information to market its services or to solicit money unless the individual from whom the information was collected has specifically consented to its use for that purpose.

Use of health  
information

**23(1)** A custodian may use health information that is in its custody or under its control for the following purposes only:

- (a) providing health services;
- (b) determining the eligibility of an individual to receive a health service;
- (c) planning and resource allocation;
- (d) quality assurance and peer review;
- (e) research;
- (f) evaluation;
- (g) health system management;
- (h) health services provider education;
- (i) public health surveillance;
- (j) health policy development;
- (k) monitoring and audit.

**(2)** A custodian must not use health information that was collected for one of the purposes listed in subsection (1) for any other purpose listed in subsection (1) unless

- (a) the individual the information is about has consented to its use for the other purpose,
- (b) the other purpose is consistent with the purpose for which that health information was collected, or
- (c) the other purpose is one for which that health information may or must be disclosed by a custodian under section 30, 31, 32, 33, 34 or 35.

**(3)** Subsection (2) does not apply to the following custodians:

- (a) a provincial health board established under the *Regional Health Authorities Act*;
- (b) a regional health authority under the *Regional Health Authorities Act*;
- (c) the Alberta Cancer Board;
- (d) the Department of Health.

(4) For the purposes of subsection (2)(b), a use of health information is consistent with the purpose for which the information was collected if the use

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the duties of the custodian or for operating a program of the custodian.

Requirement  
to use non-  
identifiable  
information  
first

**24(1)** Where a custodian wishes to make use of health information for a particular purpose, the custodian must first attempt to use only

(a) aggregate health information, or

(b) anonymous individual health information

that is non-identifiable.

(2) If using the health information described in subsection (1) is inadequate to enable the custodian to carry out the purpose, the custodian may then use

(a) other aggregate health information, and

(b) other anonymous individual health information.

(3) If using the health information described in subsections (1) and (2) is inadequate to enable the custodian to carry out the purpose, the custodian may then use individually identifiable health information.

(4) This section does not apply to a custodian that uses

(a) any health information in the context of providing health services or determining the eligibility of an individual to receive a health service, or

(b) health information that is non-identifiable, when that information is used in circumstances other than those described in clause (a).

Requirement  
to use  
information in  
a limited  
manner

**25(1)** A custodian must use only the health information that is essential to enable the custodian to carry out its purposes and must use that health information only to the extent that is necessary to enable the custodian to carry out its purposes.

(2) Subsection (1) does not apply to a custodian who uses health information in the context of providing health services or

determining the eligibility of an individual to receive a health service.

Use of health information by employee

**26** An employee of a custodian must not use health information in any manner that is not in accordance with the requirements of the employee's duties to the custodian.

Use of health services provider information

**27** The Minister may use health services provider information for any of the purposes set out in section 23(1).

Recipient's use of health information

**28** No recipient of health information shall use the information for any purpose other than the purpose for which it was disclosed to the recipient unless otherwise authorized under this Part.

Disclosure of health information pursuant to consent

**29(1)** A custodian may disclose health information to a person other than the individual the information is about

- (a) if the individual who is the subject of the information has consented to the disclosure, and
- (b) only in accordance with the terms of the consent.

**(2)** A consent must be in written or electronic form and must include

- (a) an authorization to disclose the health information specified in the consent,
- (b) the date the consent is effective and the date on which the consent expires,
- (c) the signature or, if the consent is in electronic form, the unique identifier of the individual,
- (d) the purpose for which the information may be disclosed,
- (e) the identity of the person to whom the health information may be disclosed,
- (f) an acknowledgment that the individual has been made aware of the reasons why the health information is needed and the risks and benefits to the individual of consenting or refusing to consent to the disclosure, and
- (g) a statement that the consent may be revoked at any time.

Disclosure  
without  
consent

**30** A custodian may disclose health information without the consent of the individual the information is about

- (a) to the health services provider who is responsible for providing continuing treatment to the individual,
- (b) to immediate family members of the individual or to any other individual with whom the individual is believed to have a close personal relationship, if the information is given in general terms and concerns the presence, location, condition, diagnosis, progress and prognosis of the individual on the day on which the information is disclosed and the disclosure is not contrary to the express request of the individual,
- (c) to a custodian that is the successor of the custodian maintaining the health information,
- (d) to an official of a penal or other custodial institution in which the individual is being lawfully detained if the purpose of the disclosure is to allow the provision of health services to the individual,
- (e) to a health professional body that requires the information for the purposes of a preliminary investigation, a discipline proceeding or a practice review relating to a health services provider if the health professional body agrees in writing
  - (i) to destroy the health information at the earliest opportunity after the preliminary investigation, discipline proceeding or practice review is concluded, and
  - (ii) not to disclose the health information to any other person, except as required to accomplish the preliminary investigation, discipline proceeding or practice review,
- (f) to a person who obtains health information for the purposes of an audit if the person agrees in writing
  - (i) to destroy the health information at the earliest opportunity after the audit is concluded, and
  - (ii) not to disclose the health information to any other person, except as required to accomplish the audit or to report unlawful or improper conduct by the custodian or a health services provider,
- (g) if the information to be disclosed is available to the public.

- (h) for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the custodian is a party,
- (i) to an officer of the Legislature if the information is necessary for the performance of the officer's duties,
- (j) to any person if the custodian believes, on reasonable grounds, that the disclosure will avoid or minimize an imminent danger to the health or safety of any person,
- (k) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted if the disclosure is not contrary to the express request of the individual,
- (l) if that individual lacks the mental capacity to provide a consent and, in the opinion of the custodian, disclosure is in the best interests of the individual,
- (m) if the disclosure is required or permitted under an enactment of Alberta or Canada,
- (n) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information, or
- (o) to the personal representative of a deceased individual for the purposes of administering the deceased individual's estate.

Disclosure of  
registration  
information

**31** A custodian may disclose registration information without the consent of the individual the information is about

- (a) for any or all of the purposes listed in section 23(1), or
- (b) for the purpose of collecting a fine or debt owing by the individual to the Government of Alberta or to a custodian.

Disclosure to  
the Minister

**32** A custodian may disclose to the Minister health information without the consent of the individual the information is about if the disclosure is necessary or desirable to enable the Minister to carry out his duties as Minister.

Disclosure by  
the Minister

**33(1)** The Minister may disclose registration information without the consent of the individual the information is about for the purpose of implementing an agreement relating to registration information made between

- (a) the Minister, and
- (b) any other Minister of the Government of Alberta or any government or a person or entity designated in the regulations made under the *Alberta Health Care Insurance Act*

under which the recipient of the registration information agrees to use the information only for the purposes specified in the agreement.

**(2)** The Minister may disclose health information without the consent of the individual the information is about

- (a) for the purpose of administering
  - (i) the *Alberta Health Care Insurance Act*, the *Health Insurance Premiums Act*, the *Hospitals Act*, the *Nursing Homes Act*, the *Mental Health Act*, the *Public Health Act* and the *Cancer Programs Act* and any regulations made under any of those Acts,
  - (ii) the *Canada Health Act* (Canada), and
  - (iii) the allocation of resources for health programs and services and any health program or service that receives funds directly or indirectly from the Department of Health,

or

- (b) for the purpose of proceedings under the *Alberta Health Care Insurance Act* or the *Health Insurance Premiums Act* or any regulation made under either of those Acts.

**(3)** The Minister may disclose health information to another department of the Government of Alberta without the consent of the individual the information is about if the disclosure is for the purpose of developing public policy and is made in accordance with sections 37 and 38.

Disclosure for  
research  
project

**34(1)** The Minister, a regional health authority under the *Regional Health Authorities Act*, the Alberta Cancer Board or the Provincial Mental Health Advisory Board established pursuant to regulations made under section 17(1)(a) of the *Regional Health Authorities Act*



may disclose health information without the consent of the individual the information is about for the purpose of a research project if the Minister or other body has determined that

- (a) the research project is of sufficient importance that the public interest in the proposed research project outweighs to a substantial degree the public interest in protecting the privacy of the individuals who are the subject of the health information to be disclosed,
- (b) the recipient of the health information is qualified to carry out the research project,
- (c) if the research project requires the approval of an ethics committee, the recipient has obtained that approval, and
- (d) the recipient of the health information has complied with all of the conditions relating to confidentiality of health information that were attached to the conduct of any previous similar research project.

(2) The Minister or other body referred to in subsection (1) must consider, in determining whether subsection (1)(a) has been satisfied, the degree to which the research project may contribute to

- (a) the identification, prevention or treatment of illness or disease,
- (b) scientific understanding relating to health,
- (c) the promotion and protection of the health of individuals and communities,
- (d) the improved delivery of health services, or
- (e) improvements in health system management.

(3) If the Minister or other body referred to in subsection (1) determines that subsection (1)(a) has been satisfied, the recipient of the health information must enter into an agreement with the Minister or other body, before the information is disclosed, in which the recipient agrees to comply with

- (a) this Act and the regulations,
- (b) if the research project requires the approval of an ethics committee, any conditions of that committee,
- (c) any conditions of the Minister or other body referred to in subsection (1) relating to the use, protection, return,

disclosure or destruction of the health information to be disclosed, and

- (d) any requirement of the Minister or other body referred to in subsection (1) to provide safeguards against the identification, direct or indirect, of any individual who is the subject of the health information to be disclosed.

(4) In an agreement referred to in subsection (3), the recipient of the health information must undertake not to make any attempt to contact an individual who is the subject of the health information to be disclosed to obtain additional health information, unless the individual has provided the Minister or other body referred to in subsection (1) with a consent to being contacted by the recipient for that purpose.

(5) Custodians other than those referred to in subsection (1) may disclose health information for the purpose of a research project in accordance with the regulations.

Compulsory  
disclosure to  
health  
oversight  
agency

**35(1)** In this section, “health oversight agency” means

- (a) the Minister,
- (b) a regional health authority under the *Regional Health Authorities Act*,
- (c) the Alberta Cancer Board,
- (d) a provincial health board established pursuant to regulations made under section 17(1)(a) of the *Regional Health Authorities Act*, or
- (e) any body designated in the regulations as a health oversight agency.

(2) When the Minister or a regional health authority is acting as a health oversight agency, the Minister or regional health authority may require any custodian to disclose to the Minister or regional health authority, in the manner required by the Minister or regional health authority, the following:

- (a) the health information requested by the Minister or regional health authority concerning the condition or treatment of, or the health services provided to, any individual;
- (b) health services provider information about the health services provider who has provided health services to the individual;

- (c) the benefits paid for the health services and the name of the person to whom the benefits were paid;
  - (d) any other information relating to the health services provided to the individual.
- (3) Subject to subsection (6), the Minister or regional health authority may, for any of the purposes listed in section 23(1),
- (a) use the information disclosed under subsection (2), and
  - (b) disclose to other health oversight agencies or to the custodian that disclosed it, the information disclosed under subsection (2).
- (4) When a body referred to in subsection (1)(c), (d) or (e) is acting as a health oversight agency, the body may require any custodian to which that body provides funds for the delivery of health services to disclose to the body, in the manner required by the body, the health information requested by the body concerning the condition or treatment of, or the health services provided to, any individual.
- (5) Subject to subsection (6), a body referred to in subsection (1)(c), (d) or (e) may, for any of the purposes listed in section 23(1),
- (a) use the health information disclosed under subsection (4), and
  - (b) disclose to other health oversight agencies or to the custodian that disclosed it, the information disclosed under subsection (4).
- (6) Information
- (a) used pursuant to subsection (3)(a) or (5)(a) is subject to the rules set out in sections 24 and 25, and
  - (b) disclosed pursuant to subsection (3)(b) or (5)(b) is subject to the rules set out in sections 37 and 38.
- (7) A custodian must provide the health information requested by a health oversight agency under this section.

Disclosure log

**36(1)** Each custodian must create a log of non-routine disclosures of individually identifiable health information made by the custodian, in which is entered

- (a) the name, address and professional affiliation, if any, of the person to whom the custodian discloses health information,
- (b) the date and purpose of the disclosure, and
- (c) a description of the health information disclosed.

(2) An entry may be deleted from the log not earlier than one year after it is entered.

(3) An individual who believes that a disclosure log created under subsection (1) contains information that relates to the individual may ask the custodian for access to and a copy of that information.

(4) A request under subsection (3) is to be treated as if it were a request for access to health information under section 4, and Part 1, except section 6, applies to the request as if it were a request for access to health information under section 4.

Requirement  
to disclose  
non-  
identifiable  
information  
first

**37(1)** Where for a particular purpose a custodian wishes to disclose health information without the consent of the individual the information is about, the custodian must first attempt to disclose only

- (a) aggregate health information, or
- (b) anonymous individual health information

that is non-identifiable.

(2) If disclosing the health information described in subsection (1) is inadequate to enable the custodian to carry out the purpose, the custodian may then disclose

- (a) other aggregate health information, and
- (b) other anonymous individual health information.

(3) If disclosing the health information described in subsections (1) and (2) is inadequate to enable the custodian to carry out the purpose, the custodian may then disclose individually identifiable health information.

(4) This section does not apply to a custodian that discloses

- (a) any health information in the context of providing health services or determining the eligibility of an individual to receive a health service, or

(b) health information that is non-identifiable, when that information is disclosed in circumstances other than those described in clause (a).

Requirement to disclose information in a limited manner

**38(1)** A custodian must disclose only the health information that is essential to enable the custodian to carry out its purposes and must disclose that information only to the extent that is necessary to enable the custodian to carry out its purposes.

(2) Subsection (1) does not apply to a custodian that discloses health information in the context of providing health services or determining the eligibility of an individual to receive a health service.

Disclosure of health information by employee

**39** An employee of a custodian must not disclose health information in any manner that is not in accordance with the requirements of the employee's duties to the custodian.

Duties of custodian

**40(1)** A custodian that discloses health information must take reasonable steps to ensure that the recipient of the information is aware that the information must not be used or disclosed for any purpose other than the purpose for which it was disclosed to the recipient unless otherwise authorized under this Part.

(2) A custodian that discloses health information is responsible for establishing the authenticity of the identification of the person to whom the disclosure is made.

Recipient's disclosure of health information

**41** No recipient of health information shall disclose the information for any purpose other than the purpose for which it was disclosed to the recipient unless otherwise authorized under this Part.

Disclosure of health services provider information

**42** The Minister may disclose health services provider information for any of the purposes set out in section 23(1).

Application of this Part

**43** This Part applies in respect of health information collected before or after the coming into force of this Act.

## **PART 4**

### **OFFICE AND POWERS OF HEALTH INFORMATION COMMISSIONER**

Definition	<b>44</b> In this Part, “Standing Committee” means the Standing Committee on Legislative Offices.
Appointment of Commissioner	<b>45(1)</b> The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Health Information Commissioner to carry out the duties and functions set out in this Act.  <b>(2)</b> The Commissioner is an officer of the Legislature.  <b>(3)</b> The Commissioner may not be a member of the Legislative Assembly.
Term of office	<b>46(1)</b> Except as provided for in section 47, the Commissioner holds office for a term of 5 years.  <b>(2)</b> A person holding office as Commissioner continues to hold office after the expiry of that person’s term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.  <b>(3)</b> A person is eligible for reappointment as Commissioner.
Resignation, removal or suspension of Commissioner	<b>47(1)</b> The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly.  <b>(2)</b> The Lieutenant Governor in Council must remove the Commissioner from office or suspend the Commissioner for cause or incapacity on the recommendation of the Legislative Assembly.  <b>(3)</b> If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.
Acting Commissioner	<b>48(1)</b> The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

- (a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Commissioner is suspended when the Legislative Assembly is not sitting, or
- (c) the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under section 45(1) before the end of the session.

(2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

(3) An acting Commissioner holds office until

- (a) a person is appointed under section 45(1),
- (b) the suspension of the Commissioner ends, or
- (c) the Commissioner returns to office after a temporary absence.

Remuneration **49** The Commissioner must be remunerated as determined by the Standing Committee, and it must review that remuneration at least once a year.

Oath **50(1)** Before beginning the duties of office, the Commissioner must take an oath to faithfully and impartially perform the duties of the office and not to disclose any health information received by the Office of the Health Information Commissioner under this Act except as provided in this Act.

(2) The oath must be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

Office of the Commissioner **51(1)** There may be a part of the public service of Alberta called the Office of the Health Information Commissioner consisting of the Commissioner and those persons employed pursuant to the *Public Service Act* that are necessary to assist the Commissioner in carrying out the Commissioner's duties and functions under this or any other enactment.

(2) The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's duties and functions.

(3) On the recommendation of the Commissioner, the Standing Committee may order that

- (a) any regulation, order or directive made under the *Financial Administration Act*, or
- (b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

does not apply to, or is varied in respect of, the Office of the Health Information Commissioner or any particular employee or class of employees in the Office.

(4) An order made under subsection (3)(a) operates despite section 2 of the *Financial Administration Act*.

(5) The *Regulations Act* does not apply to orders made under subsection (3).

(6) The chair of the Standing Committee must lay a copy of each order made under subsection (3) before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the start of the next sitting.

(7) Every person employed or engaged by the Office of the Health Information Commissioner must, before beginning to perform duties under this Act, take an oath, to be administered by the Commissioner, not to disclose any health information received by that person under this Act except as provided in this Act.

General  
powers of  
Commissioner

**52** In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure its purposes are achieved, and may

- (a) conduct investigations to ensure compliance with any provision of this Act,
- (b) make an order described in section 69 whether or not a review is requested,
- (c) inform the public about this Act,
- (d) receive comments from the public concerning the administration of this Act,
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act,



- (f) comment on the implications for protection of health information of proposed legislative schemes or programs of custodians,
- (g) comment on the implications for protection of health information of using or disclosing health information for record linkage,
- (h) authorize the collection of health information from sources other than the individual the information is about, and
- (i) give advice and recommendations of general application to a custodian on matters respecting the rights or obligations of a custodian under this Act.

Power to  
resolve  
complaints

**53** Without limiting section 52, the Commissioner may investigate and attempt to resolve a complaint that

- (a) a fee charged under this Act is inappropriate,
- (b) a correction or amendment of health information requested under section 10 has been refused without justification, or
- (c) health information has been collected, used or disclosed by a custodian in violation of Part 2 or 3.

Advice and  
recommendations

**54(1)** A custodian may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.

**(2)** The Commissioner may provide the custodian with advice and recommendations that

- (a) state the material facts either expressly or by incorporating facts stated by the custodian,
- (b) are based on the facts referred to in clause (a), and
- (c) may be based on any other considerations the Commissioner considers appropriate.

Power to  
authorize a  
custodian to  
disregard  
requests

**55** At the request of a custodian, the Commissioner may authorize the custodian to disregard requests under section 4(1) that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to access.

Powers of  
Commissioner  
in conducting  
investigations  
or inquiries

**56(1)** In conducting an investigation under section 52(a) or an inquiry under section 67 or in giving advice and recommendations under section 54, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* and the powers given by subsection (2) of this section.

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

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

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

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

Statements  
made to the  
Commissioner  
not admissible  
in evidence

**57(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.

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

Privileged  
information

**58** 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.

Restrictions on disclosure of information by the Commissioner and staff

**59(1)** The Commissioner and anyone acting for or under the direction of the Commissioner must not disclose any information obtained in performing their duties, powers and functions under this Act, except as provided in subsections (2) to (5).

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

(a) to conduct an investigation or inquiry under this Act, or

(b) to 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 must take every reasonable precaution to avoid disclosing and must not disclose

(a) any information a custodian would be authorized to refuse to disclose if it were contained in a record requested under section 4, or

(b) whether information exists, if a custodian in refusing to provide access does not indicate whether the information exists.

(4) The Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an 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 57(1)(c).

Immunity from suit

**60** No action lies and no proceeding may be brought 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 duty, power or function under this Part or Part 5.

Delegation by Commissioner

**61(1)** The Commissioner may delegate to any person any duty, power or function of the Commissioner under this Act, except

(a) the power to delegate under this section,

(b) the power to examine information described in section 7, and

(c) the duties, powers and functions specified in section 52(b), 56 or 69.

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

Annual report  
of  
Commissioner

**62(1)** The Commissioner must report annually to the Speaker of the Legislative Assembly on

(a) the work of the Commissioner's office, and

(b) such other matters relating to the protection of health information as the Commissioner considers appropriate.

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

## **PART 5**

### **REVIEWS AND COMPLAINTS**

#### **Division 1**

#### **Reviews by the Commissioner**

Right to ask  
for a review

**63(1)** An individual who makes a request to a custodian for access to or for correction or amendment of health information may ask the Commissioner to review any decision, act or failure to act of the custodian that relates to the request.

(2) An individual who believes that his or her own health information has been collected, used or disclosed in violation of Part 2 or 3 may ask the Commissioner to review that matter.

(3) A relative of a deceased individual may ask the Commissioner to review a decision of a custodian under section 7 not to disclose health information.

How to ask for  
a review

**64(1)** To ask for a review under this Division, a written request must be delivered to the Commissioner.

(2) A request for a review under section 63 of a decision of a custodian must be delivered within

- (a) 60 days after the person asking for the review is notified of the decision, or
- (b) any longer period allowed by the Commissioner.

**(3)** 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 subsection (2)(a) for delivering a request for a review does not apply.

Notifying  
others of  
review

**65** On receiving a request for a review, the Commissioner must as soon as practical

- (a) give a copy of the request
  - (i) to the custodian concerned, and
  - (ii) to any other person who in the opinion of the Commissioner is affected by the request,
- 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.

Mediation may  
be authorized

**66** The Commissioner may authorize a mediator to investigate and attempt to settle any matter that is the subject of a request for a review.

Inquiry by  
Commissioner

**67(1)** If a matter is not settled under section 66, the Commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

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

**(3)** The person who asked for the review, the custodian concerned and any other person given a copy of the request for the review must 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.

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

(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.

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

(a) notifies the person who asked for the review, the custodian 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.

Burden of  
proof

**68** If the inquiry relates to a decision to refuse an individual access to all or part of a record, the onus is on the custodian to prove that the individual has no right of access to the record or part of the record.

Commis-  
sioner's orders

**69(1)** On completing an inquiry under section 67, the Commissioner must dispose of the issues by making an order under this section.

(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 access to all or part of the record, 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.

(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 9;

- (c) confirm or reduce a fee required to be paid under this Act or order a refund, in the appropriate circumstances, including if a time limit is not met;
  - (d) confirm a decision not to correct or amend health information or specify how health information is to be corrected;
  - (e) require a custodian to stop collecting, using or disclosing health information in violation of Part 2 or 3;
  - (f) require a custodian to destroy health information collected in violation of Part 2.
- (4) The Commissioner may specify any terms or conditions in an order made under this section.
- (5) The Commissioner must 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 a clerk of the Court of Queen's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

No appeal      **70** An order made by the Commissioner under this Act is final.

Duty to comply with order      **71(1)** Not later than 30 days after being given a copy of an order of the Commissioner, the custodian concerned must comply with the order unless an application for judicial review of the order is made before that period ends.

**(2)** If an application for judicial review is made before the end of the period referred to in subsection (1), the order of the Commissioner is stayed until the application is dealt with by the Court.

**Division 2**  
**Reviews of the Commissioner's**  
**Decisions by an Adjudicator**

Adjudicator	<p><b>72(1)</b> The Lieutenant Governor in Council may designate a judge of the Court of Queen's Bench of Alberta to act as an adjudicator under this Division.</p> <p>(2) An adjudicator may retain the services of any persons necessary to assist in performing the adjudicator's functions under this Act.</p> <p>(3) The Government of Alberta may pay out of the General Revenue Fund</p> <ul style="list-style-type: none"><li>(a) to an adjudicator, the expenses a judge is entitled to receive under section 57(3) of the <i>Judges Act</i> (Canada) while acting as an adjudicator, and</li><li>(b) to a person whose services are retained under subsection (2), remuneration for those services.</li></ul>
Right to ask for a review by an adjudicator	<p><b>73(1)</b> A person who is affected by a decision of the Commissioner under this Act may ask an adjudicator to review that decision if that person believes that the Commissioner, at the time the decision was made, was in a conflict of interest.</p> <p>(2) For the purposes of this Division, the Commissioner is in a conflict of interest if</p> <ul style="list-style-type: none"><li>(a) at any time, the Commissioner was a member, employee or administrator of a custodian whose decision was the subject of a review by the Commissioner, or</li><li>(b) the Commissioner otherwise has a conflict with a custodian whose decision was the subject of a review by the Commissioner.</li></ul>
How to ask for a review	<p><b>74(1)</b> To ask for a review under this Division, a written request for a review must be delivered to the Minister.</p> <p>(2) A request for a review of a decision must be delivered within</p> <ul style="list-style-type: none"><li>(a) 60 days after the person asking for the review is notified of the decision, or</li><li>(b) any longer period allowed by the adjudicator.</li></ul>



Notifying  
others of  
review

**75** On receiving a request for a review, the Minister must as soon as practical

- (a) give the request to an adjudicator,
- (b) give a copy of the request
  - (i) to the Commissioner, and
  - (ii) to any other person who in the opinion of the Minister is affected by the request,
- and
- (c) provide a summary of the review procedures
  - (i) to the person who asked for the review,
  - (ii) to the Commissioner, and
  - (iii) to any other person who in the opinion of the Minister is affected by the request.

Conduct and  
outcome of  
review

**76(1)** An adjudicator has the powers and duties given to the Commissioner by sections 66 and 67(1) and (2), and sections 67(3) to (6) and 68 apply to an inquiry conducted by an adjudicator.

**(2)** On completing an inquiry, an adjudicator has the same duty to dispose of the issues, the same power to make orders and the same duty to notify others of those orders as the Commissioner has under section 69(1), (2), (3)(a) to (d), (4) and (5).

**(3)** A copy of an order made by an adjudicator under this section may be filed with a clerk of the Court of Queen's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

Duty to comply  
with order

**77(1)** Not later than 30 days after being given a copy of an order of an adjudicator, the custodian affected must comply with the order unless an application for judicial review of the order is made before that period ends.

**(2)** If an application for judicial review is made before the end of the period referred to in subsection (1), the order of the adjudicator is stayed until the application is dealt with by the court.

**Division 3**  
**Disclosure to Commissioner**

Disclosure to  
Commissioner

**78(1)** An employee of a custodian may disclose to the Commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes is being collected, used or disclosed in violation of Part 2 or 3.

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

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

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

(a) for copying a record or disclosing it to the Commissioner,  
or

(b) for disclosing information to the Commissioner

unless the employee acted in bad faith.

(5) A custodian or person acting on behalf of a custodian must not take any adverse employment action against an employee because the employee, acting in good faith,

(a) has disclosed information to the Commissioner under this section, or

(b) has exercised or may exercise a right under this section.

(6) A person who violates subsection (5) is guilty of an offence and liable to a fine of not more than \$10 000.

(7) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 56, 59, 66, 67 and 69(1), (2), (3)(a) to (d), (4) and (5), and sections 57, 58, 60 and 62 apply.

## PART 6

### GENERAL PROVISIONS

Manner of  
giving notice

**79** 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 substitutional 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 by other  
persons

**80(1)** Any right or power conferred on an individual by this Act may be exercised

- (a) if the individual is 18 years of age or over, by the individual,
- (b) if the individual is under 18 years of age but understands the nature of the right or power and the consequences of exercising the right or power, by the individual,
- (c) if the individual is under 18 years of age but does not meet the criterion in clause (b), by the guardian of the individual,
- (d) 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,
- (e) if a guardian or trustee has been appointed for the individual under the *Dependent Adults Act*, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee,
- (f) 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, or
- (g) 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).

Employee  
empowered to  
carry out  
custodian's  
duties

**81** Any duty or obligation of a custodian under this Act or the regulations may be carried out by an employee of the custodian, if the employee has been authorized by the custodian to carry out that duty or obligation.

Immunity from  
suit

**82** No action lies and no proceeding may be brought against the Crown, a custodian or a health oversight agency or any person acting for or under the direction of a custodian or a health oversight agency for damages resulting from anything done or not done by that person in good faith while carrying out his duties or exercising his powers under this Act including, without limitation, any failure to do something when that person has discretionary authority to do something but does not do it.

Offences and  
penalties

**83(1)** No person shall knowingly

- (a) collect, use or disclose health information in violation of Part 2 or 3,
- (b) gain or attempt to gain unauthorized access to any health information,
- (c) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of 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 69 or by an adjudicator under section 76,
- (f) destroy any records subject to this Act with the intent to evade a request for access to the records, or
- (g) fail to comply with a requirement of a health oversight agency under section 35.

(2) A person who violates subsection (1) is guilty of an offence and liable to a fine of not more than \$50 000.

Fees	<p><b>84(1)</b> A custodian may charge for its services the fees provided for in the regulations.</p> <p>(2) Subsection (1) does not permit a custodian to charge a fee in respect of a request for access to an individual's own health information, except for the cost of producing the copy.</p> <p>(3) The custodian must give a person an estimate of the total fee for its services before providing the services.</p> <p>(4) The custodian may excuse the individual from paying all or part of a fee if, in the opinion of the custodian,</p> <ul style="list-style-type: none"> <li>(a) the individual cannot afford the fee or for any other reason it is fair to excuse payment, or</li> <li>(b) the record to which access has been requested relates to a matter of public interest, public health or public safety.</li> </ul> <p>(5) If the custodian refuses to waive a fee under subsection (4), the Commissioner may at the request of the individual waive the fee in accordance with subsection (4).</p> <p>(6) The fees referred to in subsection (1) must not exceed the actual cost of the services.</p>
Regulations	<p><b>85</b> The Lieutenant Governor in Council may make regulations</p> <ul style="list-style-type: none"> <li>(a) designating boards, committees, commissions, panels, agencies, corporations or other bodies as custodians;</li> <li>(b) respecting the steps a custodian must take pursuant to section 18(1);</li> <li>(c) respecting the conditions relating to the disclosure of health information for the purpose of a research project by custodians other than those referred to in section 34(1);</li> <li>(d) designating any body as a health oversight agency;</li> <li>(e) respecting fees to be paid under this Act and providing for circumstances when fees may be waived in whole or in part.</li> </ul>
Act binds Crown	<p><b>86</b> This Act binds the Crown.</p>

## **PART 7**

### **TRANSITIONAL AND COMING INTO FORCE**

Appointment  
of first  
Commissioner

**87(1)** For the purposes of appointing the first Health Information Commissioner, if the Legislative Assembly is not sitting, the Lieutenant Governor in Council on the recommendation of the Standing Committee on Legislative Offices may appoint a Health Information Commissioner, and unless the office sooner becomes vacant, the person so appointed holds office until the appointment is confirmed by the Legislative Assembly.

**(2)** Notwithstanding section 46, if the first Health Information Commissioner is, at the same time, appointed as any other officer of the Legislature, the term of office of the Health Information Commissioner expires when the other appointment as an officer of the Legislature expires or the office sooner becomes vacant.

Coming into  
force

**88** This Act comes into force on Proclamation.