

**REACHING OUT
TO ONTARIO**

Latest Developments at the IPC

Brian Beamish
Information and Privacy Commissioner of Ontario

Thunder Bay, Ontario

May 3, 2017



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

www.ipc.on.ca

The Three Acts

The IPC oversees compliance with:

- *Freedom of Information and Protection of Privacy Act (**FIPPA**)*
- *Municipal Freedom of Information and Protection of Privacy Act (**MFIPPA**)*
- *Personal Health Information Protection Act (**PHIPA**)*

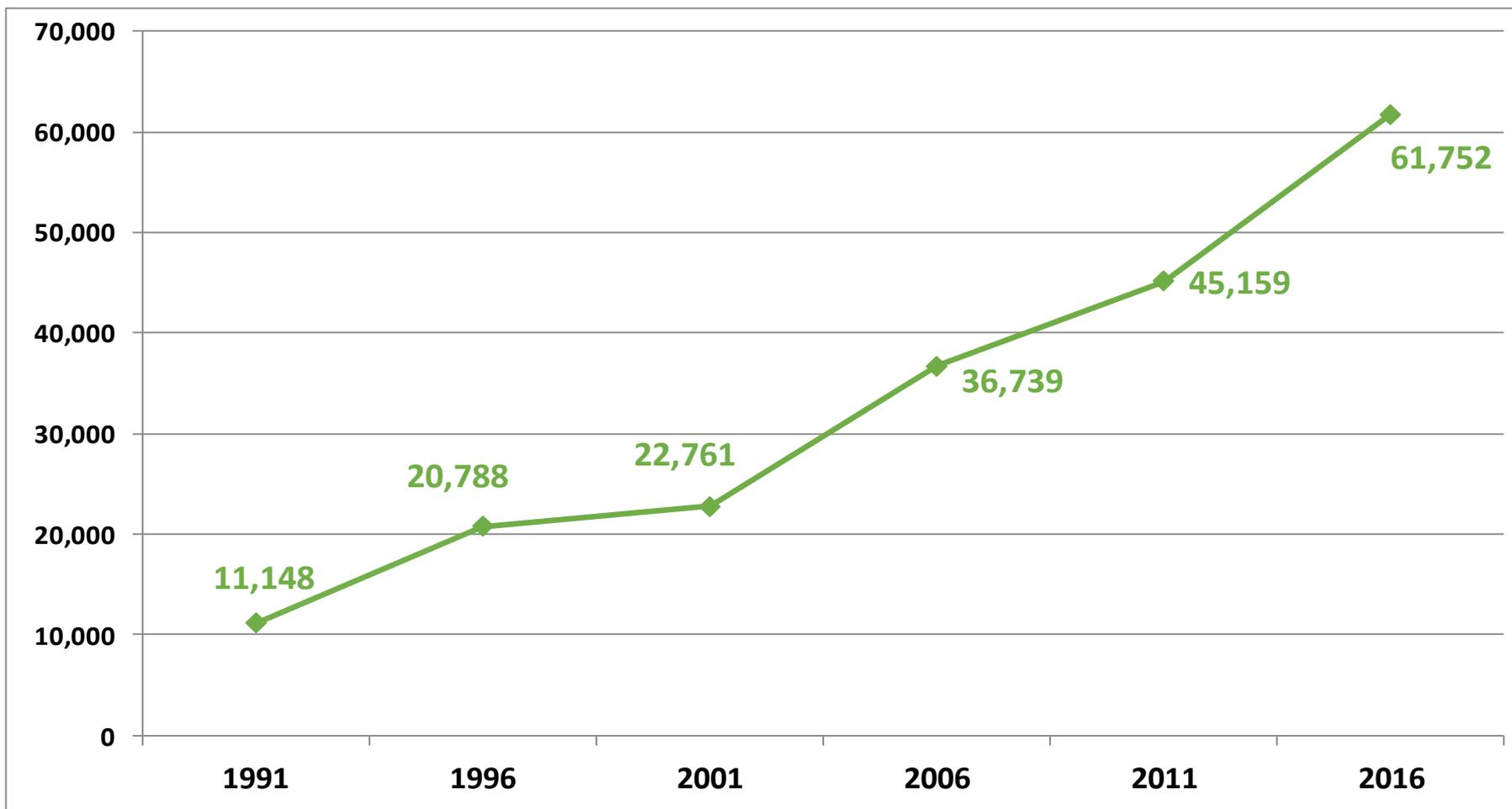
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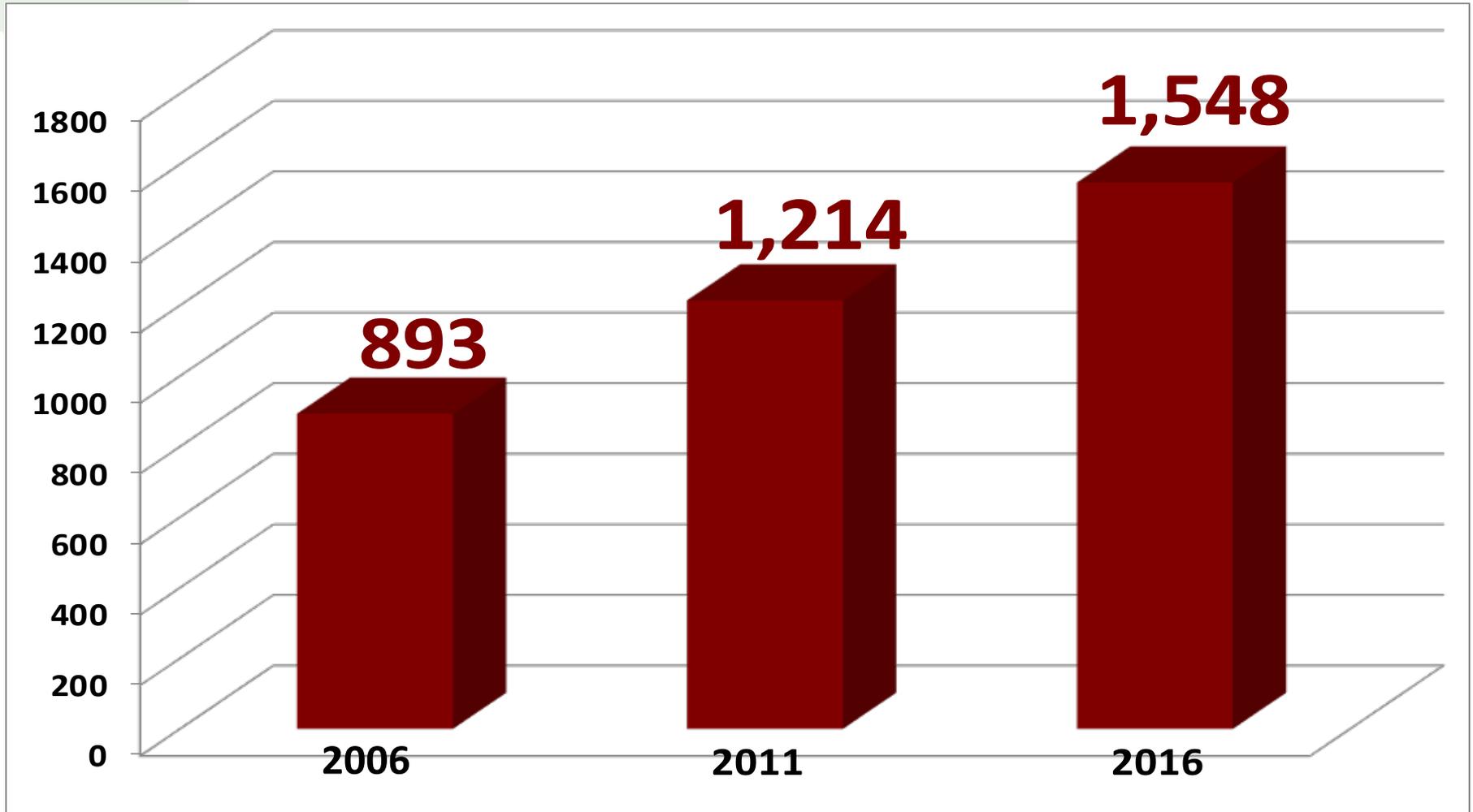
ACCESS



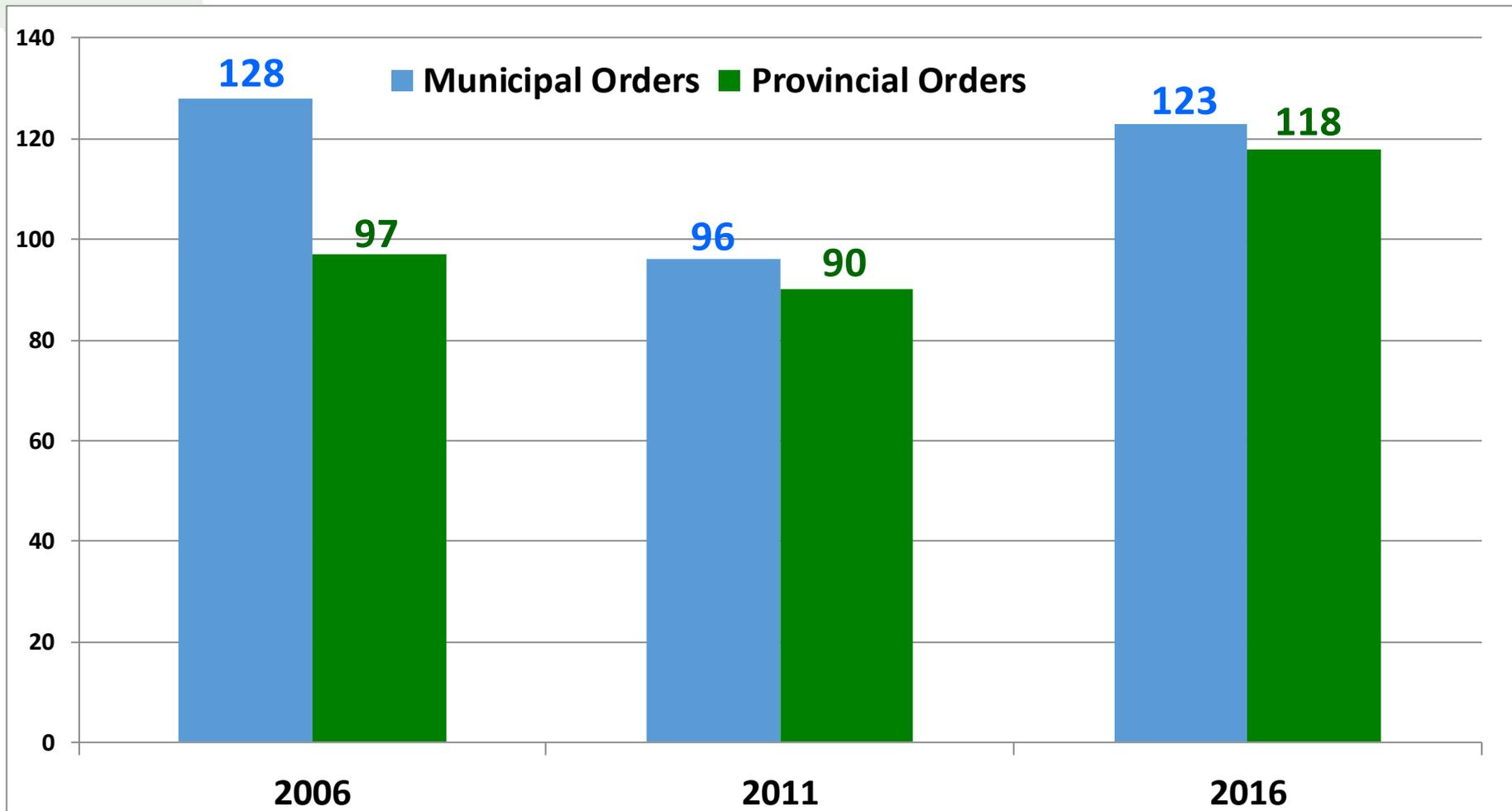
Total Access Requests Per Year



Total Appeals Received Per Year



Total Access to Information Orders



Mediation: Success Behind the Scenes

- Most appeals and privacy complaints are resolved by intake analysts and mediators
- Goal is to find a resolution which satisfies the needs of all involved
- Saves significant time and resources for all parties
- Usually, 75% of appeals and almost all privacy complaints are closed before adjudication/investigation

Bill 68, *Modernizing Ontario's Municipal Legislation Act*

- IPC Submission to Standing Committee on April 10
- Bill 68 proposes to expand open meeting exceptions of the *Municipal Act* and *City of Toronto Act*
- Could restrict the public's right of access - public may be excluded from more meetings
- Expanding the circumstances for closed meetings could lead to more refusals to disclose information under MFIPPA

Bill 68, Modernizing Ontario's Municipal Legislation Act (Cont'd)

- No evidence that these exceptions need to be expanded
- Proposed amendments should be struck from the bill unless there is compelling evidence
- If there is evidence, IPC recommends an amendment to limit the impact of the proposed amendments on access rights
- Amendment would ensure access requests could not be refused simply because a record was discussed in a closed meeting

Bill 84, *Medical Assistance in Dying Statute Law Amendment Act*

- IPC submission to Standing Committee in March, focused on proposed exclusion of names of facilities providing services related to medical assistance in dying
- No evidence provided to justify erosion of the public's right-to-know
- Access to government information promotes transparency and meaningful public debate

Information
and Privacy
Commissioner
of Ontario

Comments of the
Information and Privacy
Commissioner of Ontario
on Bill 84



Brian Beamish
Commissioner
March 23, 2017



Ministry of the Environment and Climate Change Submission of False FOI Compliance Statistics

- June 2015, ministry alerted IPC to possible inaccuracy of FOI compliance statistics submitted to my office
- Government audit report revealed dates were systematically adjusted by FOI staff to show completion of requests within 30-day requirement
- Serious offence, raises concerns about systemic issues with compliance reporting

Ministry of the Environment and Climate Change

Submission of False FOI Compliance Statistics *(Cont'd)*

- Our office notified the Speaker of the Legislature, provided updated compliance rates, updated online statistics
- Ministry took corrective action against employees involved
- Ministry is implementing policies and procedures to:
 - strengthen accountability,
 - improve the reliability of its compliance statistics
 - improve quality of access decisions

Ministry of the Environment and Climate Change Submission of False FOI Compliance Statistics *(Cont'd)*

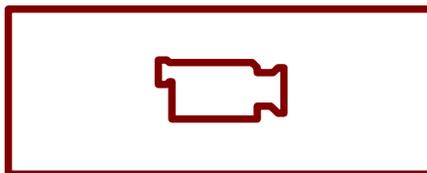
- At our request, the Information, Privacy and Archives Division audited five other ministries to determine whether issues identified at MOECC are widespread
- We look forward to reviewing the results of these audits
- Falsifying statistics can erode the public's trust and confidence in the public service and the reliability of information they receive from government

IPC Webinar

Understanding Exemptions

- Hosted webinar on exemptions under *FIPPA* and *MFIPPA* to enhance understanding of how they apply to FOI requests
- Topics covered:
 - principles behind exemptions and how they've been interpreted by the IPC
 - discretionary versus mandatory exemptions
 - other issues such as custody and control of records, and frivolous and vexatious requests

Watch It Here



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PRIVACY



Big Data Analytics

- Big Data Analytics have changed how we think about and use data
- New combinations of data may reveal hidden patterns and insights
- Data integration (sharing, linking and analysis of data) can enhance:
 - policy development
 - system planning
 - resource allocation
 - performance monitoring



Privacy Risks of Big Data

- Use of poorly selected data sets that:
 - lack information/are incomplete
 - contain incorrect or outdated information
 - disproportionately represent certain populations
- Pseudo-scientific insights that assume correlation equals causation
- Lack of knowledge/transparency regarding the inner “logic” of the system
- If not designed properly, can result in uses of PI that may be unexpected, invasive and discriminatory

IPC Fact Sheet on Big Data for the Public

- Helps members of the public understand what big data is, and how it can have an impact their privacy
- Discusses key issues, such as:
 - proportionality
 - accuracy of results
 - bias in data sets
 - individual rights



Legislated Framework for Data Integration

Reform of *FIPPA* and *MFIPPA*

- IPC recommends legislative changes that support greater data integration and information sharing
- Need effective governance, oversight and measures to prevent privacy risks, including:
 - additional investigation, order making and audit powers for the IPC
 - requirements for privacy impact assessments
 - mandatory breach notification and reporting
 - requirements for de-identification

Bill 114, Anti-Racism Act

- Bill 114 requires government to develop and maintain an anti-racism strategy, including targets and indicators
- *ARA* requires public sector organizations to collect race-based PI and use anti-racism impact assessment framework to promote racial equity in program delivery
- The handling of race-based PI would be subject to data standards and other privacy requirements, to be developed in consultation with the IPC

Bill 114, Anti-Racism Act (Cont'd)

- Privacy protections include ongoing oversight by our office, notably:
 - authority to review the collection and use of PI by public sector organizations, and
 - order an organization to change or discontinue any PI handling practice that contravenes the *ARA*.

Bill 89, *Supporting Children, Youth and Families Act*

- March 2017, IPC submission to the Standing Committee focused on privacy issues:
 - Ministry of Children and Youth Services must be subject to a greater degree of accountability and oversight than currently provided
 - legislation should be amended to strengthen privacy safeguards and narrow ministry's powers to collect, use and disclose PI to what is reasonably necessary
 - authority to share PI among government organizations and to disclose it to persons and entities that are not prescribed in the regulations must be removed from the legislation

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HEALTH



Unauthorized Access

- 300-350 health privacy breach complaints per year
- Most are caused by carelessness, such as the loss or theft of portable devices or misdirected emails or faxes
- Some are intentional “snooping,” unauthorized access to records of PHI
- Very few snooping cases have resulted in orders - custodians (mainly hospitals) take these cases seriously and take steps to address the IPC’s concerns about systemic issues

Most Recent Prosecution Under *PHIPA*

- March 2015, the IPC was notified that a Masters of Social Work student on educational placement illegally accessed health records of family, friends, and other individuals
- After investigating, IPC referred matter to the Attorney General
- In her plea, student admitted to unlawfully accessing PHI of 139 people between September 9, 2014, and March 5, 2015

Most Recent Prosecution Under *PHIPA*

- Ordered to pay:
 - \$20,000 fine
 - \$5,000 victim surcharge
- Highest fine to date for a health privacy breach in Canada
- Sends message: Unauthorized access will not be tolerated
- HICs are obligated to ensure safeguards in place to prevent unlawful access

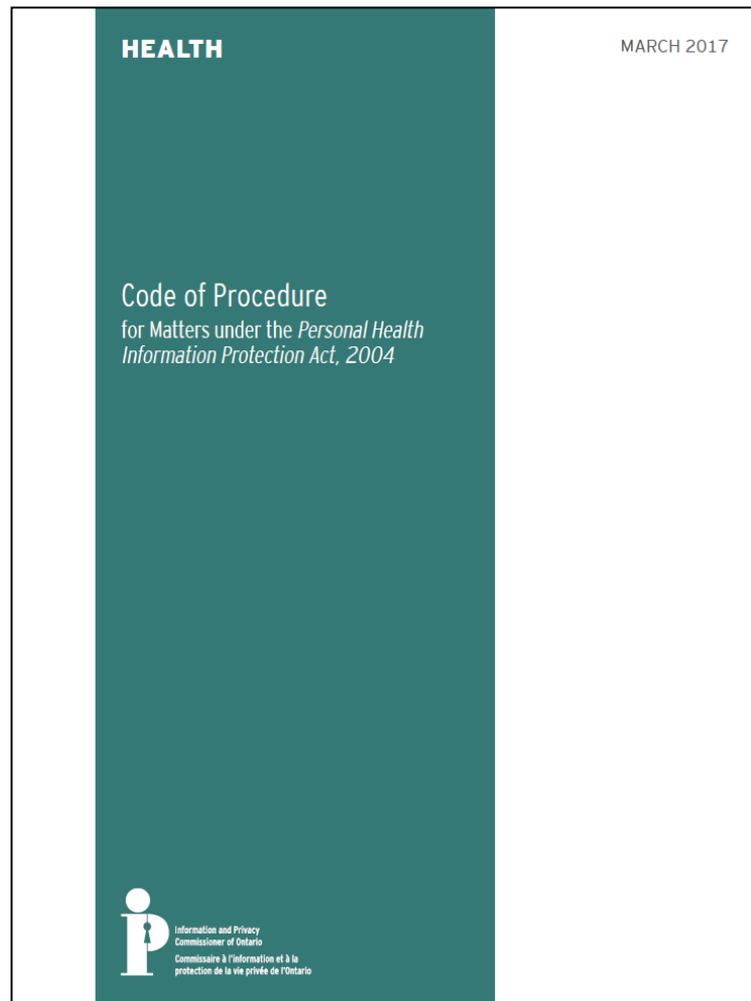
Most Recent Prosecution Under *PHIPA* (Cont'd)

- *“The various victims have provided victim impact statements which are quite telling in terms of the sense of violation, the loss of trust, the loss of faith in their own health care community, and the utter disrespect [the accused] displayed towards these individuals.”*
- *“I have to take [the effect of deterrence on the accused] into consideration, but realistically, it’s general deterrence, and that has to deal with every other health care professional or someone who is governed by this piece of legislation. This is an important piece of legislation ...”*

– Justice of the Peace, Anna Hampson

New *PHIPA* Code of Procedure

- New code arising from internal review
- Effective March 15, 2017, applies to all IPC files under *PHIPA*
- Now a single code applicable to all matters arising under *PHIPA*
- New practice directions provide guidance to parties exercising their rights and complying with their obligations under the new code



Coming Soon

Spring/Summer 2017

- The Divisional Court of Ontario will hold a hearing, in June, concerning an order to release the names of the top 100 doctors billing OHIP.
- The IPC will be issuing new publications focusing on:
 - breach notification guidelines regarding compliance with recent amendments to *PHIPA*
 - guidelines for institutions considering big data projects involving personal information

Next - Panel Sessions

Session A: Key Developments in Access to Information and Privacy (Scandia Room)

- Brian Beamish, Commissioner
- David Goodis, Assistant Commissioner

Session B: Key Developments in Protecting Personal Health Information (Ballroom)

- Manuela DiRe, Director of Legal Services
- Debra Grant, Director of Health Policy

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