



Order F23-23

**MINISTRY OF ATTORNEY GENERAL, MINISTRY OF FINANCE AND
MINISTRY OF HEALTH**

Elizabeth Barker
Director of Adjudication

March 28, 2023

CanLII Cite: 2023 BCIPC 27
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 27

Summary: The Ministry of Attorney General, the Ministry of Finance and the Ministry of Health (Ministries) submitted that an individual was abusing the *Freedom of Information and Protection of Privacy Act* (FIPPA) and requested the commissioner grant certain remedies. The adjudicator found that the individual was abusing FIPPA’s review and inquiry processes and cancelled 10 files that were at inquiry and 12 files that were at investigation and mediation. The adjudicator declined, however, to make the orders the Ministries requested regarding future matters that did not yet exist.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 42(1), 42(2), 55, 56(1), 56(4) and 58.

INTRODUCTION

[1] For a number of years, a medical practitioner (Physician) has been engaged in a dispute with the Province regarding its audit of his Medical Services Plan billings and a subsequent Medical Services Commission hearing and decision (together the “MSP Matter”). Throughout, the Physician has made numerous requests to the Province under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for access to records that relate to the MSP Matter. Many of those access requests have led to complaints and requests for review to the Office of the Office of the Information and Privacy Commissioner (OIPC).

[2] This order decides a joint application by the Ministry of Attorney General, the Ministry of Finance and the Ministry of Health (Ministries) requesting the Commissioner exercise his discretion under s. 56(1) to not conduct any more of the Physician’s inquiries that relate to the MSP Matter. This includes “all currently active inquiries and pre-inquiries involving [the Physician] as well as any future inquiries [he] may request for access requests about his personal dispute with

the Province over his MSP billings.”¹ The Ministries submit that the Physician’s inquiries relating to the MSP Matter are an abuse of process and conducting further inquiries for him is unreasonable in the circumstances.

[3] I am deciding this matter as the Commissioner’s delegate.² The parties’ submissions and evidence are extensive and I will discuss only what I deem necessary to explain my reasons. In addition, I will refer to the Ministry of Attorney General Legal Services Branch (LSB) lawyer who prepared the Application as Lawyer #1. This is necessary for clarity because the Physician’s materials refer to him extensively.

Preliminary matters

Bias

[4] When the OIPC received the Application, I arranged for the Physician to have an opportunity to provide a response and the Ministries to provide a final reply. The Physician submits that because I allowed the Application to proceed and did not reject it outright I am biased and should not be allowed to decide the matter. He believes I will not decide it impartially. He says:

Furthermore, [the OIPC Registrar] has particularly identified Ms. Elizabeth Barker, Director of Inquiries and past Senior Adjudicator, to have somehow enabled [Lawyer #1] to both initiate such an application and thereafter allow it to proceed to some form of nebulous process that indeed has been very ill-defined to this point. For example, times for [Lawyer #1’s] submission, a response from me, and now presumably some form of second submission for [Lawyer #1] have taken on timelines on an ad hoc basis and without much preconception.³

[It] would not be wise for Ms. Barker to be a decision-maker regarding [Lawyer #1’s] proposal. As indicated above, I understand directly from..., Registrar of the OIPCBC, that Ms. Barker has somehow, and on an unknown precedence, allowed [Lawyer #1] to proceed and in a circumstance where there are no rules and no definitive timings.⁴

[5] Procedural fairness means an affected person has an opportunity to present their case fully and fairly, and have decisions affecting them made using a fair, impartial and open process appropriate to the statutory, institutional and social context of the decision.⁵ The concept of bias is linked to the need for impartiality, which is the requirement that a decision-maker approach a case with

¹ Ministries’ initial submission at para. 5. The Ministries refer to the OIPC investigation and mediation process as “pre-inquiries”.

² The powers delegated to me include those under s. 56.

³ Physician’s submission at p. 1.

⁴ Physician’s submission at p. 14.

⁵ *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), para. 28.

an open mind.⁶ There is a strong presumption of impartiality and it is displaced only where a real likelihood or probability of bias has been shown.⁷ The burden of proof is high and it lies with the party alleging bias.⁸ The test for a reasonable apprehension of bias is: “what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”⁹

[6] In my view, the fact that I concluded that the Application should be heard and the parties should have an opportunity to make submissions prior to a decision, would not lead a reasonable and informed person to conclude I would not be impartial or decide the Application fairly. There was no reasonable basis to refuse to hear the Application and, thus, it was necessary to arrange for both parties to have the chance to provide submissions. I find that the Physician has not shown that there is any reasonable apprehension of bias in my deciding the Application, so there is no reason to recuse myself.

In camera evidence

[7] The Physician submits the Ministries’ affidavit evidence is improper and should not be permitted because he cannot see the affiants’ names.¹⁰ This is in reference to my decision to permit the Ministries to provide the names and signatures of all four of its affiants *in camera*.

[8] The affidavits are from the following people:

- a financial analyst with LSB who provides information about the hours legal counsel and paralegals have spent working on the Physician’s OIPC inquiry files;
- a lawyer with LSB (Solicitor) who provides information about the Physician’s behaviour during OIPC inquiry proceedings; and,
- two managers with the Ministry of Citizen Services’ Information Access Operations (Managers 1 and 2). Manager 1 provides information about the Physician’s access requests and OIPC matters involving the Ministry of Attorney General and the Ministry of Health. Manager 2 provides details about his access requests and OIPC matters involving the Ministry of Finance, which includes the Crown Agencies Secretariat.

⁶ *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 (CanLII) [*Yukon*], at para. 22.

⁷ *Yukon, ibid* at para. 25.

⁸ *Yukon, ibid* at para. 26.

⁹ *Yukon, ibid* at para. 20.

¹⁰ Physician’s submission at pp. 2-3.

[9] Section 56(4) of FIPPA provides the OIPC authority to consider *in camera* materials during an inquiry. In general, the OIPC will permit material to be submitted *in camera* if it reveals the actual information in dispute or is information that a public body would be required or authorized to refuse to disclose under FIPPA. The principles of procedural fairness guide the OIPC when making decisions about *in camera* materials. This requires balancing a party's ability to fully present its case with the other party's ability to know and respond to the materials being considered by the Commissioner. Fairness also requires that the OIPC provide clear and intelligible reasons and *in camera* materials constrain the ability to do so. For these reasons, the OIPC exercises the discretion to accept *in camera* material sparingly and only to the extent necessary to ensure fairness during the inquiry process.

[10] I authorized the Ministries to submit the four affiants' names and signatures *in camera* because I was satisfied, based on the nature of the issues raised in this case, that s. 19(1)(a) may apply to that information. Section 19(1)(a) permits a public body to refuse to disclose information that could reasonably be expected to threaten a person's safety or mental or physical health. I also concluded that the Physician would be able to fully understand and respond to the affiants' evidence without seeing their names and signatures. Their open evidence includes their job titles and an explanation of their work roles and duties. Their evidence is about the work of their offices and it is not about them as individuals. I found that nothing relevant to the issues to be decided in this matter hangs on the identity of the affiants.

[11] Having considered what the Physician says about this in his submission, I remain satisfied that the affiants' names and signatures were appropriately provided *in camera*.

ISSUES

[12] The issues to be decided in this application are as follows:

1. What are the Commissioner's powers under s. 56(1)?
2. Is the applicant's use of FIPPA an abuse of process?
3. If the applicant's use of FIPPA is an abuse of process, what remedy, if any, is appropriate?

[13] FIPPA does not specify who has the burden of proof regarding whether an inquiry should be conducted under s. 56(1). However, past orders and decisions of this office have said that the burden is on the public body to show why an inquiry should not be held.¹¹ I agree that it is appropriate to place the burden on the Ministries in this case.

¹¹ Decision F08-11, 2008 CanLII 65714 (BC IPC) at para 8; Decision F10-07, 2010 BCIPC 37 (CanLII) at para. 5; Order F16-37, 2016 BCIPC 41 (CanLII) at para. 10.

DISCUSSION

Background

[14] The Physician is a medical practitioner who was entitled to bill the Medical Services Plan (MSP), which is the Province's health insurance plan. MSP is funded by the Ministry of Health and governed by the Medical Services Commission (MSC).

[15] In 2017, the Ministry of Health's Billing Integrity Program audited the Physician's MSP billings, and in September 2020, the MSC conducted a hearing under the *Medicare Protection Act* (MPA).¹² The Physician chose not to participate in the hearing. In March 2021 the MSC hearing panel found that the Physician had erroneously billed MSP and ordered him to repay \$682,744 along with additional costs. It also cancelled his enrollment in MSP for a three-year period.

[16] The Physician appealed the MSC order to the Supreme Court of British Columbia. His appeal was struck because it was filed outside the statutory limitation period prescribed in the MPA.¹³ He also made two unsuccessful attempts to have the lower court's decision overturned by the BC Court of Appeal, the most recent was decided in late November 2022.¹⁴

The Physician's files

[17] Since 2017, when the audit of his MSP billings took place, the Physician has made 126 requests for review and complaints to the OIPC. All 126 relate to the MSP Matter and the people involved. In addition, the Physician has made an additional 24 requests for a reconsideration of an investigator's decision to close such files.¹⁵ The vast majority of the requests for review and complaints involve the three Ministries who have made this application. However, some relate to the Public Service Agency, the MSC, the Ministry of Citizens' Services, the College of Physicians and Surgeons, the medical clinic whose records were part of the MSP audit and several individuals who were involved in their professional capacity in the MSP Matter.

¹² *Medicare Protection Act*, R.S.B.C. 1996, c. 286.

¹³ *Cimolai v. British Columbia (Medical Services Commission)*, 2022 BCSC 528.

¹⁴ *Dr. Nevio Cimolai v. British Columbia (Medical Services Commission)* (12 May 2022), Vancouver CA48235 (BCCA Chambers) and *Cimolai v. British Columbia (Medical Services Commission)*, 2022 BCCA 396.

¹⁵ Reconsideration are decided by the Director of Investigation or the Assistant Commissioner.

[18] In the last two years, the OIPC has adjudicated and issued nine orders related to the Physician's requests for records about the MSP Matter.¹⁶ Seven of the orders were about the application of FIPPA exceptions, and they resulted in him receiving a bit more information of an inconsequential nature, such as page numbers, document headers, a tax ID number related to a medical inspector's stay at a hotel, hotel contact details, the name of the medical clinic and the date of medical services on an MSP claim report, short excerpts from MSC meeting minutes, and civil servants' work contact information in emails.

[19] Two of the nine orders, Orders F21-04 and F22-08, decided public bodies' applications for authorization under s. 43 to disregard certain of the Applicant's access requests related to the MSP Matter. In Order F21-04, I authorized the Ministry of Health and the MSC to disregard the Physician's 16 outstanding access requests and all but one open access request at a time for a two year period.¹⁷ In Order F22-08, the Ministry of Attorney General established the Physician's access request was part of a series of systematic requests, but it failed to prove that responding to that single request would unreasonably interfere with the Attorney General's operations.¹⁸

[20] Currently, the Physician has 22 outstanding matters with the OIPC that relate to the MSP Matter. Ten are with the OIPC's adjudication division (Current Inquiries).¹⁹ In three of the Current Inquiries, the inquiry has not yet commenced as the notice of inquiry has not been issued.²⁰ In another four Current Inquiries, the notice of inquiry was issued but the inquiry was adjourned before the parties provided their submissions.²¹ In the remaining three Current Inquiries, the notice of inquiry was issued and the parties have provided their submissions, but the matter has not yet been assigned to an adjudicator to decide.²²

[21] The remaining 12 outstanding matters are with the OIPC's investigation and mediation division (Current Investigations/Mediations).²³

¹⁶ Order F20-12, 2020 BCIPC 14 (MSC); Order F21-47, 2021 BCIPC 55 (Health); Order F21-50, 2021 BCIPC 58 (Health); Order F22-38, 2022 BCIPC 43 (Health); Order F22-43, 2022 BCIPC 48 (Finance), Order F22-11, 2022 BCIPC 11 (Health) and Order F22-26, 2022 BCIPC 28 (Health).

¹⁷ Order F21-04, 2021 BCIPC 44. An open access request is a request for records under s. 5 of FIPPA to which the Ministry of Health and MSC had not yet responded under s. 8 of FIPPA. The Ministry of Health and MSC were also authorized to decide what is "one" request. The authorization expired January 28, 2023.

¹⁸ Order F22-08, 2022 BCIPC 8.

¹⁹ OIPC Files: F20-82368, F20-82798, F20-83622, F20-83995, F20-84270, F20-84430, F21-85563, F21-87440, F21-87716 and F21-88066.

²⁰ OIPC Files: F21-87440, F21-88066, F21-87716.

²¹ OIPC Files: F20-83622, F20-84270, F20-84430, and F21-85563.

²² OIPC Files: F20-82368, F20-82798 and F20-83995.

²³ OIPC Files: F21-88161, F22-88960, F22-89351, F22-89930, F22-90007, F22-90590, F22-90619, F22-90872, F22-91251, F22-91797, F22-91907, F23-02027 (request for reconsideration of closed complaint file F22-91421).

[22] Based on my review, I find that the Current Inquiries and Current Investigation/Mediations are as follows:

- Multiple, sequential requests for all LSB records that contain information about the Physician and all Ministry of Health and MSC records about him and his medical practice for time frames that coincide with the MSP Matter.
- Requests for all records regarding the Physician in the custody or under the control of two Ministry of Attorney General contractors who were involved in the MSP Matter.
- A request for the details of the contract or terms of employment of an LSB lawyer who worked on the MSP Matter.
- A request for information from the Ministry of Health’s Billing Integrity Program related to the Physician and other physicians.
- A request for all the records of a Billing Integrity Program’s senior auditor that contain information about the Physician.
- A request for Ministry of Health and MSC data about how the Ministry decides what is a walk-in clinic and which physicians work in walk-in clinics. (The MSP audit of the Physician’s billings related to his clinic work.)
- A request to the Ministry of Citizens Services for the contracts of four individuals’ who were appointed to MSC Hearing panels.
- A request to the Ministry of Health for “hit lists, heatmaps, top tens or similar compendia” related to the Billing Integrity Program, Audit and Inspection Committee, Medical Services Commission, Medical Services Plan, or Ministry of Health records about the Physician.

Issue 1 – What are the Commissioner’s powers under s. 56(1)?

[23] At the outset, and before discussing the parties’ submissions, it is necessary to provide some context for the Commissioner’s powers under s. 56(1).

[24] FIPPA’s purposes are to make public bodies more accountable to the public and to protect personal privacy by, amongst other things, giving the public a right of access to records and providing for an independent review of decisions made under FIPPA. A person has a right of access to a record in the custody or under the control of a public body subject to information that is excepted from disclosure under the exceptions to disclosure in ss. 12 - 22.1. FIPPA also sets

out the public bodies' duties and the procedures they must follow when responding to an access request.

[25] A person who makes a request to a public body for access to a record may ask the Commissioner under s. 52 to review the public body's decision, act or failure to act (other than to require an application fee) that relates to that request, including any matter that could be the subject of a complaint under s. 42(2). The Commissioner may investigate and attempt to resolve the matter (ss. 42 and 55).

[26] In the normal course, the Commissioner assigns complaints and requests for review to delegates, specifically OIPC investigators, who investigate and attempt to mediate a resolution. If the investigator is unable to close or settle a matter, and the person wishes it to advance to the next stage, the investigator refers the matter to the OIPC's entirely separate and distinct adjudication division.

[27] Section 56(1) of FIPPA provides that if a matter is not referred to a mediator or is not settled under section 55, the Commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry. The use of the word "may" in s. 56(1) gives the Commissioner the discretion to decide whether to adjudicate a matter.²⁴ On completing an inquiry under s. 56 the Commissioner must dispose of the issues by making an order under s. 58.

[28] The Ministries submit that the Commissioner's broad discretionary power under s. 56(1) is an important remedial tool that should be used to curb the Physician's current abuse of the FIPPA inquiry process and prevent any future abuse.²⁵

[29] The Physician disagrees. He submits that because OIPC investigators have referred his matters on to the adjudication division "it has already been affirmatively decided that the Inquiries would take place."²⁶ While he concedes the Commissioner can refuse to conduct an inquiry if it is plain and obvious the FIPPA exceptions apply and there is no arguable case that merits an inquiry,²⁷ he submits the Commissioner cannot refuse to conduct an inquiry on the basis the inquiry is an abuse of process. He says, "If there is any abuse for either party,

²⁴ It is unclear if the adjudicator in Decision F10-07, *supra* note 11, meant that a person has a right to a review and a right to an inquiry. If that is what he meant, respectfully I do not agree. Sections 55 and 56(1) use the term "may" which clearly indicate the Commissioner has the discretion to decide whether to investigate and mediate or conduct an inquiry.

²⁵ Ministries' initial submission at paras. 25-28 and 44-45.

²⁶ Physician's submission at p. 4.

²⁷ Physician's submission at pp. 4 and 9, citing Order F21-13, 2021 BCIPC 17 and Order F22-27, 2022 BCIPC 30.

there is the opportunity for the Commissioner/Delegate to comment so during the Inquiry proper...”²⁸

[30] On its face the Physician’s argument is contradictory. He submits that on the one hand the Commissioner is without discretion and is bound to conduct an inquiry based on the investigator’s referral while on the other hand the Commissioner might still be able to exercise limited discretion in certain circumstances. Neither of these submissions accurately reflect what the statute and the law provides.

[31] First, the Commissioner is clearly not barred from deciding whether to conduct an inquiry under s. 56(1) because a matter is referred from the investigation division to the adjudication division. As an administrative tribunal exercising quasi-judicial functions, the OIPC has the power to control its own procedures.²⁹ The Supreme Court of Canada has said that it is well established that the powers of a statutory body or tribunal extend beyond the express language of its enabling legislation to the powers reasonably necessary to perform its intended functions.³⁰ The powers conferred by an enabling statute are to be “construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature.”³¹ Canadian Courts have applied that principle to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate.³² OIPC procedures provide that if an investigator does not settle or close a matter, it is referred to the adjudication division. Transferring a matter in this way does not fetter the Commissioner’s discretion under s. 56(1) to decide whether an inquiry will take place.

[32] Second, s. 56(1) gives the Commissioner a broad discretionary power to decide whether to hold an inquiry.³³ The Commissioner is clearly not restricted in the manner suggested by the Physician. Past OIPC orders have concluded that

²⁸ Physician’s submission at p. 7.

²⁹ *Prasad v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC) at pp. 568-569.

³⁰ *R. v. 974649 Ontario Inc.*, 2001 SCC 81 (CanLII) at para. 70. *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1989 CanLII 67 (SCC) [*Bell Canada*] at p. 1756.

³¹ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 51 [ATCO], citing *Bell Canada*, *ibid* at p. 1756.

³² ATCO *ibid* at para. 51, citing *Re Dow Chemical Canada Inc. and Union Gas Ltd.* (1982), 1982 CanLII 3238 (ON SCDC), at pp. 658-59, *aff’d* (1983), 1983 CanLII 1879 (ON CA); *Interprovincial Pipe Line Ltd. v. National Energy Board*, 1977 CanLII 3163 (FCA); *Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission*, 1982 CanLII 5204 (FCA), *aff’d* 1985 CanLII 63 (SCC).

³³ *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 835 at para. 47. The same point has been restated in Order F21-05, 2021 BCIPC 5 at para.10 and Order F22-27, *supra* note 27 at para. 11.

the grounds under which the Commissioner may decline to conduct an inquiry are open-ended and include mootness, situations where it is plain and obvious the records fall under a particular FIPPA exception or outside the scope of FIPPA, *res judicata*, issue estoppel and - the ground that is claimed in this case - abuse of process.³⁴

[33] For instance, in Order 01-16, former Commissioner Loukidelis said that the Commissioner has an implied authority to control abuse of process in the context of reviews and inquiries under Part 5 of FIPPA.³⁵ This power is in addition to the express statutory authority under s. 43 of FIPPA to provide relief to public bodies when an applicant is abusing their access rights. He said, “In light of the role and powers given to the Commissioner under the Act, as well as the Act’s structure and purpose, I conclude that I have the authority to control abuse of process in the context of reviews and inquiries under Part 5 of the Act.”³⁶

[34] The Legislature has given the Commissioner authority to accomplish the statutory mandate of administering the Province’s freedom of information regime and ensuring its objectives are fulfilled. Section 42(1) says that in addition to the Commissioner’s powers and duties with respect to reviews, the Commissioner is generally responsible for monitoring how FIPPA is administered to ensure that its purposes are achieved. I am satisfied that wherever a matter is in the procedures the OIPC uses to handle reviews and inquiries, the Commissioner has the authority and responsibility to not conduct the matter if it would facilitate an abuse of process or be counter to FIPPA’s purposes.

[35] In conclusion, I find that the Commissioner has the power to decide under s. 56(1) whether the Physician’s reviews and inquiries related to the MSP matter should be cancelled because they are an abuse of process.

Issue 2 - Is the applicant’s use of FIPPA an abuse of process?

[36] The doctrine of abuse of process is rooted in a judge’s inherent and residual discretion to prevent abuse of the court’s process.³⁷ The administration of justice and fairness lie at the heart of the doctrine and it is flexible and unencumbered by specific requirements.³⁸

[37] The Supreme Court of Canada has said the following about abuse of process:

³⁴ Order F21-05, *ibid* at para. 11; Order 01-16, 2001 CanLII 21570 (BC IPC) at para. 39; Decision F08-11, *supra* note 11 at para 8; Decision F10-07, *supra* note 11 at paras. 5-6.

³⁵ Order 01-16, *ibid* at para. 39.

³⁶ Order 01-16, *ibid*.

³⁷ *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), [*Toronto (City)*] at para. 35.

³⁸ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 (CanLII), at paras. 40-41.

In summary, abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.³⁹

[38] The Supreme Court of Canada also said:

In all of its applications, the primary focus of the doctrine of abuse of process is the integrity of the adjudicative functions of courts. Whether it serves to disentitle the Crown from proceeding because of undue delays ..., or whether it prevents a civil party from using the courts for an improper purpose ..., the focus is less on the interest of parties and more on the integrity of judicial decision making as a branch of the administration of justice.⁴⁰

[39] The following statement about abuse of process from the Supreme Court of British Columbia is also instructive:

The principle of abuse of process is somewhat amorphous. The discretion afforded courts to dismiss actions on the ground of abuse of process extends to any circumstance in which the court process is used for an improper purpose.

...

The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression.⁴¹

[40] The present case is not the first time the OIPC has considered whether an applicant's pursuit of a review, complaint or inquiry under FIPPA amounts to an abuse of process. For instance, in Order 291-1999, former Commissioner Flaherty said that the jurisprudence establishes that administrative and quasi-judicial decision-makers are masters of their own processes and that they have authority to control abuse of those processes. He considered that an applicant's refusal to comply with the OIPC's procedural directives in the inquiry was an

³⁹ *R. v. Scott*, 1990 CanLII 27 (SCC) at p. 1007. Cited with approval in *Toronto (City)* *supra* note 37 at para. 35.

⁴⁰ *Toronto (City)*, *supra* note 37 at para. 43.

⁴¹ *Babovic v. Babowech*, 1993 CarswellBC 2950 at paras. 17-18.

abuse of process, so he declined to consider the submissions delivered by the applicant after the close of the inquiry”⁴²

[41] In Decision F10-07, the adjudicator considered whether an applicant’s actions constituted an abuse of process because the applicant publicly disclosed information he obtained from the public body during mediation by the OIPC. The adjudicator concluded the applicant had not abused the process and he denied the public body’s request to not hold the inquiry. He said:

[An abuse of process] involves requesters making requests for records or requests for review for reasons other than for obtaining the information, making repeated attempts to obtain the same information after already receiving a fair settlement with respect to access to that information, or being deliberately obstructionist. In short, abuse of process relates to a party using a process for purposes other than that for which it was intended.⁴³

[42] Further, in Order 01-16 former Commissioner Loukidelis concluded that there was judicial authority for the proposition that an administrative tribunal has an implied power at common law to counteract an abuse of process, and he had power to control an applicant’s abuse of rights under FIPPA.⁴⁴ He also expressed concerns that the review and inquiry process not be allowed to “bog down or waste public resources through abuses of process by applicants or public bodies.”⁴⁵ In that case, he found that an applicant’s pursuit of a review under FIPPA was an abuse of process because she had previously accepted the outcome of OIPC mediation regarding an earlier request for the same records.

[43] I concur with previous BC Orders that the Commissioner has the implied authority to not permit a request for review or an inquiry to proceed based on a finding that allowing it to proceed would be an abuse of process. I will now turn to deciding if the Physician is abusing FIPPA regarding his requests for review and inquiries related to the MSP Matter.

⁴² Order 291-1999, 1999 CanLII 2725 (BC IPC) at p. 10.

⁴³ Decision F10-07, *supra* note 11 at para. 23. The following orders also made findings about abuse of process but did not discuss legal principles: Order 02-57, 2002 CanLII 42494 (BC IPC); Order F15-67, 2015 BCIPC 73 (CanLII); Order F17-40, 2017 BCIPC 44 (CanLII); Order F21-55, 2021 BCIPC 64 (CanLII) at paras. 24-25.

⁴⁴ Order 01-16, *supra* note 34 at para. 37 citing *Sawatsky v. Norris*, 1992 CanLII 7634 (ON SC) where the court said a review board under the *Mental Health Act* ‘has the common law right to prevent abuse of its process, absent an express statutory abrogation of that right’ (at p. 77).”

⁴⁵ Order 01-16, *supra* note 34 at para. 39. He also cites Order M-618, [1995] O.I.P.C. No. 385 where the Ontario Commissioner made a similar finding. Judicial review of Order M-618 was dismissed in *Riley v. Ontario (Information and Privacy Commissioner)*, Toronto Doc. 59/96 (Ont. Div. Ct.) where the Court agreed the Commissioner had statutory and common law authority to control abuse of process.

Ministries' submissions

[44] The Ministries jointly request the Commissioner not conduct any more inquiries or requests for review for the Physician that relate to the MSP Matter. They ask the Commissioner to cancel the Current Inquiries, refuse to send the Current Investigations/Mediations to inquiry and not send any future matters to inquiry without first considering this Application and allowing the Ministries to make a submission. They also request that the Commissioner only conduct future inquiries for the Physician if he explains in writing why the inquiry should occur and commits to keep his submissions and correspondence entirely free of prejudicial comments.⁴⁶

[45] The Ministries submit the Physician is acting vexatiously and in bad faith by weaponizing the FIPPA process to provoke and systematically challenge the legitimacy of the audit and MSC hearing.⁴⁷ They say his “abuse of process is so extensive and damaging that it has tainted the OIPC’s proceedings to such a degree that allowing further inquiries to proceed would harm the administration of the Act.”⁴⁸ The Ministries submit that conducting any more inquiries for the Physician is unreasonable in the circumstances.⁴⁹

[46] The Ministries argue that the volume of the Physician’s complaints and requests for review to the OIPC and the subsequent inquiries have been excessive and have consumed an unreasonable and unfair amount of the Ministries’ and the OIPC’s finite resources to the detriment of other access applicants.⁵⁰ Since 2017, the Ministries say, the Physician has made 108 access requests across government, all of which relate in some way to the MSP Matter.⁵¹ For 64 of them, they say he sought a review and/or made a complaint to the OIPC.⁵² Manager 1 and Manager 2’s affidavit evidence includes a table of the 108 requests and details of the subset of files that resulted in the OIPC’s involvement.⁵³

[47] The Ministries cite Orders F21-04 and F22-08, which both said that the Physician’s behaviour suggests that he has no plans to stop the flow of access requests, OIPC complaints and reviews related to the MSP Matter.⁵⁴ They also point out that in F21-04, I authorized the Ministry of Health and the MSC under s. 43 of FIPPA to disregard certain of the Physician’s access requests because

⁴⁶ Ministries’ initial submission at para. 138.

⁴⁷ Ministries’ initial submission at paras 42, 54, 58.

⁴⁸ Ministries’ initial submission at para. 43.

⁴⁹ Ministries’ initial submission at para. 41.

⁵⁰ Ministries’ initial submission at para. 125-128.

⁵¹ Ministries’ initial submission at paras. 9, 66 and 118.

⁵² Ministries’ initial submission at para. 125.

⁵³ Ministries’ initial submission at para. 129.

⁵⁴ Ministries’ initial submission at para. 3 citing Order F21-04, *supra* note 17 at para. 81 and F22-08, *supra* note 18 at para. 56.

they were: “part of a plan or strategy to systematically challenge the legitimacy of the audit and hearing process”, “a tool to provoke and challenge” and “a weapon in the underlying dispute about his MSP billings.”⁵⁵

[48] The Ministries say the following about how Physician’s inquiries are an abuse of process:

The Applicant has made complaints and requests for review to the OIPC in relation to his access requests more than 60 times. He then abuses the OIPC inquiry process to hurl baseless, defamatory accusations against those involved in the Audit and MPA hearing as well as the Ministries’ legal representatives and affiants in the inquiries. He claims these various public servants are all biased, corrupt, have conflicts of interest, and are criminals. In essence, he has launched a weaponized access to information campaign consuming vast public resources to pursue his personal vendetta against the Province.⁵⁶

[49] They explain that he repeatedly makes the same inflammatory submissions during inquiries, although those arguments continue to be unsuccessful and he knows, or should know, they will fail. The Ministries say that it is obvious the Physician is not making those arguments in good faith because he actually believes they have a chance of success.⁵⁷

[50] The Ministries say the Physician fills his inquiry submissions with “demeaning, disrespectful, abusive insults” and “accusations of criminal behaviour.”⁵⁸ They submit that there is no probative value to any of those statements and they believe he makes them solely for their prejudicial effect. They assert that his repetition of these sentiments can erode an OIPC adjudicator’s confidence in the Ministries’ affidavits and submissions.

[51] The Ministries submit that the Physician’s rude language towards affiants and lawyers and his comments about what he finds online about their personal lives are “obviously meant to intimidate” and “to stoke fear and create a chilling effect.”⁵⁹ The Solicitor says:

I have seen the impact the [Physician’s] behaviour has on my teammates and others within LSB. Based on what I have witnessed, I believe that working on the [Physician’s] inquiries threatens the mental health of my colleagues and has harmful impacts.

⁵⁵ Ministries’ submission at paras. 64 and 126, citing Order F21-04, *supra* note 17 at paras. 75-76.

⁵⁶ Ministries’ initial submission at para. 11.

⁵⁷ Ministries’ initial submission at paras. 68-75.

⁵⁸ Ministries’ initial submission at para. 107.

⁵⁹ Ministries’ initial submission at para. 105

I have heard my colleagues express extreme discomfort, anxiety, and other negative impacts to their health. Individuals in the public service who could serve as helpful affiants in the inquiry process have told me that they are not comfortable providing affidavit evidence because of the [Physician's] abusive and intimidating behaviour toward inquiry affiants. This means that public bodies are sometimes unable to provide their best evidence in inquiries as a direct result of the [Physician's] behaviour.⁶⁰

[52] In addition, the Ministries submit that the Physician's "vexatious misuse of numerous inquiry proceedings violates the fundamental principles of justice underlying the community's sense of fair play and decency."⁶¹ They add that his inquiry submissions demonstrate that he "takes aim at all those participating in the inquiry process, whether as affiants or the Ministries' legal representatives. No one involved in the inquiry process is safe."⁶²

[53] To support what they say, the Ministries provide extensive quotes from, and copies of, the Physician's inquiry submissions and his inquiry-related emails with the OIPC registrars and LSB lawyers.⁶³

Physician's submissions

[54] The Physician denies he has been acting in bad faith or abusing FIPPA processes. He says, "There are claims that I am abusing information access when the fundamental issue is truly abuse from the public body and as identified in many past Inquiries with definitive corroborative information. Again, in regard to the latter, I refer you to the considerable corroborative information sent as attachments for all of the Inquiries to date."⁶⁴ He says the Ministries have provided no supporting evidence that his access requests diminish or compromise the rights of other access applicants.⁶⁵

[55] He also points out that in Order F22-08, the adjudicator found that the Ministry of Attorney General had not established that responding to his access request would unreasonably interfere with its operations.⁶⁶

[56] About the Ministries' allegation that his inquiries damage the integrity and fairness of the OIPC processes, he says it is "quite the theory of imagination. To the contrary, it is already the bureau of [Lawyer #1] that has been historically placed in the annals of information access comedy."⁶⁷

⁶⁰ Solicitor's affidavit at paras. 24-25.

⁶¹ Ministries' initial submission at para. 109.

⁶² Ministries' initial submission at para. 112.

⁶³ Solicitor's affidavit at exhibits A-O (Exhibit K is a 67-page compilation of quotes from A-J).

⁶⁴ Physician's submission at p. 5.

⁶⁵ Physician's submission at pp. 5-6.

⁶⁶ Physician's submission at p. 6.

⁶⁷ Physician's submission at p. 6.

[57] He disputes the Ministries' assertion that his past inquiry submissions contain "baseless, defamatory accusations" against those involved in the MSP Matter.⁶⁸ He says the Ministries have failed to provide evidence that denies the truth of his accusations. He insists that all of his inquiry submissions have provided: "overwhelming evidence of bad faith conduct on the part of [Lawyer #1] and associates and largely the public bodies in matters relating both to information access and the audit processes per se."⁶⁹

[58] He says that the Ministries' affidavits are defective because there "is no corroborative information outside of blind statements" and the affidavits are "duly defamatory on their face".⁷⁰

[59] The Physician does not dispute that his inquiry submissions contain the things the Ministries quote him saying about lawyers and affiants. However, he disagrees that such remarks are intended to be prejudicial or that they would undermine the Ministries' arguments and evidence in the eyes of an OIPC adjudicator. On that point, he says:

There is truly considerable paranoia, and repetition of the same, in [Lawyer #1's] submission that beckons consideration for his own state of health let alone that of his colleagues. For only his writing and thought patterns attributable to his submission, I highly recommend that he seek attention from his healthcare provider and in the least consider screening tools such as PQ-16 or MDQ. Should he not be able to find a primary care provider, he is referred to the Downtown Victoria Urgent and Primary Care Centre which has been established by his Ministry of Health colleagues....⁷¹

[60] The Physician disagrees with the Ministries submission that his inquiries do not benefit the public and are only important to him. He believes his inquiries are matters that engage the public interest because they are about "fraud, deception, and undermining of civility in the public service" and "nefarious actions to destroy primary care".⁷² He says, "Most, if hearing what truly transpires in either the Ministry of Health or Ministry of Attorney General at least in these causes, would storm the Bastille."⁷³

[61] In response to the Ministries claim that he sought a review or made a complaint to the OIPC for 64 of his access requests and a large number

⁶⁸ Physician's submission at p. 7.

⁶⁹ Physician's submission at p. 9.

⁷⁰ Physician's submission at p. 12.

⁷¹ Physician's submission at p. 11.

⁷² Physician's submission at p. 11.

⁷³ Physician's submission at p. 11.

proceeded to inquiry, he replies, “[Lawyer #1’s] statistics bear considerable review, perhaps at the grade 2, not 5, level.”⁷⁴

[62] In response to what the Ministries say about the impact of his requests for review, complaints and inquiries on the OIPC, the Physician says that any hardship imposed on the OIPC is due to the Province’s “deliberate and futile obfuscation.”⁷⁵ He says, “One must also consider that the government has developed a bureau led by [Lawyer #1] solely for the purpose of managing, and indeed blocking, information access requests.”⁷⁶ The Physician cites OIPC public reports and statements about the Province’s handling of FIPPA matters and says, “Once again, one needs to further and repeatedly acknowledge that [Lawyer #1] and his Legal Services Branch associates have largely been the directors of government (dys)action leading to the aforementioned concerns.”⁷⁷

[63] In response to the Ministries’ evidence about the impact his behaviour has on their staff, he replies:

[Lawyer #1] on his own accord has again brought his mental health and that of his colleagues in question. He again is referred to a healthcare provider in the short term... That the mental health of those individuals is being questioned by their own admissions begs due consideration by their mental health providers. That some would not wish to participate in related affairs is most likely due, knowing the truth, to be dependent on their knowledge of the treachery within their own bureau.⁷⁸

[64] The Physician also says the following to refute the Ministries’ submissions that he is abusing FIPPA:

- [Lawyer #1] makes a complex list of exaggerations and falsities but takes the tact of making the same in an evidentiary vacuum. [Lawyer #1] should provide his own affidavit attesting to the veracity of his statements.⁷⁹
- There is considerable repetition of falsity and fantasy in [Lawyer #1’s] writing. That repetition is considerable and will be obvious to the Commissioner. He and [another lawyer] are guilty of their own proposal that false repetition attempts to breed truth.⁸⁰

⁷⁴ Physician’s submission at p. 11. He did not elaborate on this statement.

⁷⁵ Physician’s submission at p. 11.

⁷⁶ Physician’s submission at p. 11.

⁷⁷ Physician’s submission at p. 14.

⁷⁸ Physician’s submission at pp. 11-12.

⁷⁹ Physician’s submission at p. 6.

⁸⁰ Physician’s submission at p. 10.

- [Lawyer #1] should beware the Ides of March. By some, [Lawyer #1] is not liked much at all.⁸¹
- One might ask what has driven [Lawyer #1] and his colleagues to such pathological frenzy. One of the recent affidavits in Inquiry from a [lawyer] of the Legal Services Branch deposes the diametrically opposite that a [lawyer] of the same Branch has stated in the Supreme Court of British Columbia. The conflicts of [two lawyers] have been recently revealed. Numerous pending Inquiries are in line and coming to call but particularly those directly involving the Legal Services Branch, Ministry of Attorney General. Fraud within the Government bodies in regards to the audit processes generally are becoming more widely recognized and now dating back considerably. At the forefront of the entirety is [Lawyer #1] carrying the banner of information access impropriety. LSB, MAG staff unknowing of the latter, but newly recognizing their pending potential impeachments, have begun to squeal and scurry away. [Lawyer #1] ultimately becomes the centre of all such lunacy. More senior Ministry staff are now raising questions. [Lawyer #1] has developed an uncomfortable anxiety and sense of doom – hence the nonsensical repetitions and scurrilous arguments.⁸²
- The actions and words of [Lawyer #1] and his supporters raise the spectre of considerable impropriety. The Irish in my great-grandmother would likely have the Ministry of Attorney General renamed the Ministry of Shenanigans General. Rather than write or speak the great debate, she would likely have resorted to the justified and proper use of a shillelagh. In contemporary times, that would translate into the figurative baseball bat. I highly recommend that the Commissioner take the latter approach when ascribing to the past actions of then Commissioner Denham and directly pursuing a direct invigilation and discovery of documents and information within both the Ministry of Health and Ministry of Attorney General on-site. I must warn the Commissioner however to be wary of [Lawyer #1] et al. lurking behind the pillars.⁸³
- [Lawyer #1] in his submission makes frequent reference to weapons – the only ones pertinent that come to mind are the knife and fork and their provision to [Lawyer #1] et al. during their attendance at the trough.⁸⁴
- It has already become clear from inside the Legal Services Branch that some do not wish either to support, participate with, or provide affidavits to

⁸¹ Physician's submission at p. 10.

⁸² Physician's submission at p. 20.

⁸³ Physician's submission at p. 21.

⁸⁴ Physician's submission at p. 21.

[Lawyer #1] because of the fraud that has taken place within the Government bodies both at the Ministry of Health and thereafter the Ministry of Attorney General... The key individuals from the Ministry of Health who are directly responsible for the falsifications in the audit process are never engaged in providing any signed and witnessed testimony. The latter speaks more than volumes. It has also become clear within the Legal Services Branch that [Lawyer #1] has often engaged junior staff to advance fallacious arguments and affidavits; several of those junior staff have been surprised by the internal and unsuspected treachery in which they have been placed.⁸⁵

Analysis and Findings – abuse of process

[65] In order to decide if the Physician is abusing FIPPA, it is essential to take into account the full continuity of FIPPA's procedures. The Physician's inquiries flow directly from what takes place during the investigation and mediation process. Those processes must be viewed as a whole to fully appreciate how the Physician is using FIPPA. Therefore, I have also considered what the Current Investigations/Mediations reveal about whether the Physician is abusing FIPPA.

[66] The Ministries' provided extensive examples of what the Physician has said in his past and current inquiry submissions. Based on my review of that material, I find that the Physician's inquiry submissions contain an inordinate amount of material unrelated to the FIPPA issues to be decided in the inquiries. While he does say some things that relate to the FIPPA issues to be decided, the vast majority of what he says is a lengthy and complex stream of argument about why he thinks the MSP audit, the MSC hearing and the individuals involved are wrong and/or corrupt. In addition, he goes to great lengths to denigrate the lawyers whose job it is to draft the public bodies' inquiry submissions. Despite being told in numerous OIPC orders that such matters are outside the OIPC's jurisdiction, and his allegations of wrongdoing are unsubstantiated, he persists.⁸⁶ The following are examples from both his past and current inquiries that illustrate this:

- In seven past inquiries, he alleged the public bodies' contravened s. 74 (now s. 65.2) of FIPPA.⁸⁷ That provision makes it an offence to make a false statement or mislead or attempt to mislead the Commissioner or obstruct the performance of the duties or exercise of the Commissioner's powers. The adjudicators either refused to add s. 74 as a new issue or

⁸⁵ Physician's submission at p. 10.

⁸⁶ Order F20-12, Order F22-11, Order F22-26 and Order F22-38, all *supra* note 16; Order F21-04, *supra* note 17.

⁸⁷ Order F21-04, *supra* note 17; Order F21-50, Order F22-26, Order F22-38 and Order F22-43, all *supra* note 16; Order F22-08, *supra* note 18.

expressly said there was no merit to the Physician's allegations. He has made that same s. 74 argument in his Current Inquiries.⁸⁸

- He repeatedly alleged the Ministry of Health's communications with its lawyers were not privileged because they were made in furtherance of fraud and crime. OIPC adjudicators found that what he was saying was speculative and mere allegation unsupported by clear and convincing evidence.⁸⁹ His submissions for the Current Inquiries include the same types of allegations.⁹⁰
- The Physician repeatedly complains when the OIPC admits some of the Ministries' evidence *in camera*. In multiple orders, the adjudicators responded that they found no basis to fault the *in camera* approval process in those inquiries.⁹¹
- The Physician's response submissions routinely raise new issues that are not in the notice of inquiry. OIPC adjudicators have repeatedly refused to add the new issues and have told him that he needs to obtain the OIPC's prior approval to add issues into an inquiry.⁹²
- His inquiry submissions often refer to information he received in earlier FIPPA processes and he uses that information as an opportunity for extensive arguments about why he believes the audit of his MSP billings and the outcome of the MSC hearing were wrong.⁹³
- His submissions in the past and current inquiries contain lengthy diatribes about the flaws in the audit and MSC hearing process and how he was treated unfairly. The following is one example:

The conclusions of the preview to the audit process and the audit process outcome were both grossly falsified. Inherent prejudice against me was ingrained prior to receipt of the Audit Report and prior to deliberations from yet another committee of June, 2018... The then Audit and Inspection Committee claimed that one of the reasons for the audit was that I overly billed... What the

⁸⁸ For example: Physician's submissions in Current Inquiries F20-82368, F20-82798 and F20-83995.

⁸⁹ Order F22-11, at paras. 46-51, Order F22-26, at paras. 50-55, Order F21-50, at paras. 51-56, all *supra* note 16.

⁹⁰ Physician's submissions in Current Inquiry for F20-82368 at p. 22.

⁹¹ See Order F22-26, Order F22-38 and Order F22-43, all *supra* note 16; Order F22-08, *supra* note 18.

⁹² Order F22-26, Order F22-38 and Order F21-50, all *supra* note 16. The OIPC's inquiry guidance materials, which have been sent to the Physician in each inquiry also explains the requirement to obtain prior approval for new issues.

⁹³ For example: Physician's submissions in Current Inquiries F20-82368, F20-82798 and F20-83995.

Government party failed to mention was that the latter was blatantly false. I attach a profile for 2012 which the BIP and AIC were said to have used for their reasoning.(Enclosed Si-Siii)... I attended to many more patients than average because I worked many more days than average. In that regard, I show cumulative data from summaries that I obtain yearly from the Government and Doctors of BC: [he has inserted a table] As can be seen, my number of days worked (billing days) were extra-ordinary, nearly double the average...⁹⁴

- His inquiry submissions are accompanied by a very large volume of attachments, consisting of his past correspondence regarding the MSP Matter and records he received and sent in past FIPPA access request and inquiries.

[67] The Physician's persistence in continuing to fill his submissions with the same types of arguments that previous orders have repeatedly said are irrelevant or unsubstantiated persuades me that he is using FIPPA for an ulterior motive that is unrelated to FIPPA's intended purposes. The nature of what he says in his submissions also demonstrates that he is operating in a systematic way and has no intention of stopping his use of FIPPA to air his grievances about the MSP Matter.

[68] I also find that the Physician is using FIPPA's inquiry process to vent his anger and berate the people involved in the MSP Matter. His submissions contain many spiteful comments about the public bodies' affiants and legal counsel, as well as inflammatory and unsubstantiated allegations of fraud and criminal conduct. The following are quotes from his recent inquiry submissions that illustrate this point:

- That I made billing errors as stated by [Ministry's external lawyer] is patently falsified. [She] is hereby invited to make her statements under oath in an affidavit. [Her] statements of such and the falsities inherent place her in the category of [two LSB lawyers] – fraudulent and political whorism.⁹⁵
- I would highly recommend that, if she [Ministry's external lawyer] does not so quickly and candidly understand the impropriety of such a nexus, she should return in a time tunnel to the University of Victoria law school effective end of winter session, 2014 and ask them for a tutorial extension on the same ... She might also ask ...if the species that she seeks political protection for are the rats from within the Ministry of

⁹⁴ Physician's submission for Current Inquiry F20-83995 at pp. 14-15. For other examples, see: Order F22-26, at paras. 5-7 and Order F22-38, at paras. 8-10, both *supra* note 16; Physician's submissions for Current Inquiry F20-82368 at pp. 20 and 34; Physician's submissions for Current Inquiry F20-82798 at pp. 27-29.

⁹⁵ Physician's submission for Current Inquiry file F20-83995 at p. 28.

Health or Legal Services Branch, Ministry of Attorney General. If the latter infestation is so grand that it is nearly impossible to extinguish, she should seek advisement...⁹⁶

- [Lawyer #1] is but a purveyor of falsehood generally. He should seek penance from [MSC hearing panelist's] father-in-law, but I doubt he would accede to being resurrected for the same... [Lawyer #1] makes reference to totalitarian states but clearly the conduct of mock panel hearing, falsified audits, related bizarre processes, and such all speak to matters duly contested in the hearing of war crimes during the Second World War aftermath. [Lawyer #1] should relook at the contour of his moustache...[Lawyer #1] must have smoked something of consequence on this statement.⁹⁷
- As for those in the Legal Services Branch and Billing Integrity Program - grow up. The Legal Services Branch through affidavit in Inquiry elsewhere has already admitted that it has pecuniary gain from any such representation of the public body and that such pecuniary gain is proportionate to the time it spends in either delaying or complicating such 'work'. That the monies transferred from the Ministry of Health to the Legal Services Branch to prevent the release of 4 pages will be used for some soirée or retirement luncheon for [LSB lawyer] is a sure bet. If the same is used to purchase [him] a retirement gift, I recommend a figurine ostrich but from a goodwill store.⁹⁸
- [LSB lawyer] began to manifest an unusually paranoid and phobic state complete with odd thoughts and behaviours. The promotion of falsities, falsified affidavits, fraudulent accounting, and similar continued thereafter.⁹⁹
- [Individuals in MSP Matter] could be seen as pathologically neurotic in some facets, but on the other hand, one can ascribe the malicious and twisted behaviours simply to be those attributed to 'cover-up' and simply attempting to save their day.¹⁰⁰
- [Auditor's] sullied reputation in peer review abuses has been ingrained in some of the most storied events in the history of medicine in British Columbia in which he was found to have abused a female physician colleague in administrative affairs ... and those supporting him in either the Ministry of Health or Legal Services Branch, Ministry of Attorney General are no strangers to fraudulent misrepresentation and physician abuse.¹⁰¹

⁹⁶ Physician's submission for Current Inquiry file F20-83995 at p. 5.

⁹⁷ Physician's submission in the inquiry resulting in Order F22-38, *supra* note 16 at pp. 24-28.

⁹⁸ Physician's submission from inquiry resulting in Order F22-38, *supra* note 16 at p. 58.

⁹⁹ Physician's submission from inquiry resulting in Order F22-26, *supra* note 16 at p. 8.

¹⁰⁰ Physician's submission in inquiry resulting in Order F22-26, *supra* note 16 at p.37.

¹⁰¹ Physician's submission in the Current Inquiry for file F20-82368 at p. 3.

- [Affiant's] infamy, or some such, is splattered in court hearings, media, and other. The intent herein is to determine whether their phenotypes of fish are confirmed with more concrete determinations through genotyping – are they fish, only skunks, or plainly vermin?¹⁰²

[69] The Physician's email communications with the OIPC registrar include the same kind of personal attacks directed at the Ministries' LSB legal counsel. For instance, he says things like the following:

I understand that [the LSB lawyer] has developed an acute paranoia about the material that the Delegate of the Commissioner should have for this Inquiry... if [the LSB lawyer] was overly paranoid about the information, she could duly forward it to the Commissioner *in camera*. I would accept that. I can assure [the LSB lawyer] that the Commissioner or Delegate or Registrar of the Inquiry will not eat or sit plainly on the file... [the LSB lawyer] should place a reality check on her lucidity in these regards. Sorry, but any future temper tantrums should be addressed to [name of the LSB lawyer's father who is a physician].¹⁰³

[70] I also find that the Physician has searched the internet for personal information about the Ministries' lawyers involved in the MSP Matter and the OIPC inquiries and used that irrelevant information in his inquiry submissions to verbally attack them. For example, in his inquiry submissions he says sarcastic and rude things about one lawyer's wedding, another lawyer's relationship with his daughters, another lawyer's father, another lawyer's father-in-law, and another lawyer's past work history. There is no doubt in my mind that he could only have found this information about their personal lives by searching their names online.

[71] Not only are all of these kinds of behaviours and comments abusive towards individuals, they are also an abuse of the inquiry process because they are extremely time consuming to wade through and are completely irrelevant to the FIPPA issues to be decided.

[72] In addition, the volume of his complaints, requests for review, and inquiries related to the MSP Matter have been excessive and unreasonable. This Application has given me the opportunity to review, as a whole, what has been going on over the years regarding the Physicians use of the OIPC's processes as it relates to the MSP Matter. Based on that review, I find that he has been disproportionately and unreasonably using OIPC resources in his fight with the Province over the MSP Matter. His use of the OIPC's processes in that regard has been ceaseless. As I pointed out above, he has made 126 complaints and requests for review regarding the MSP Matter since 2017, and the most recent

¹⁰² Physician's submission from inquiry resulting in Order F22-43, *supra* note 16 at pp. 11-12.

¹⁰³ Solicitor's affidavit, Exhibit M (email in inquiry that resulted in Order F21-47, *supra* note 16. Another example is in the Solicitor's affidavit, Exhibit N (email in Current Inquiry file F20-82368).

ones were received by the OIPC in December 2022, during the course of this Application.

[73] In Order F21-04, when I authorized the Ministry of Health and the MSC to disregard the Physician's access requests under s. 43, I found that in a three year period, he had made 66 access requests for information about almost every aspect of the MSP Matter, including the information of over a dozen people who were involved. I said that the volume, frequency and repetitiveness of his access requests were excessive and unreasonable and he was also using what he gleaned from previous access requests as a springboard to barrage the public bodies with further requests. In the end, I concluded that the Physician was using FIPPA as a weapon and in a systemic way to provoke, challenge and drive home his point, namely, that he believed the MSP audit, the MSC hearing and the people involved were biased, fraudulent and in a conflict of interest.

[74] I said the following in Order F21-04 about the need for the Physician to exercise his access rights responsibly:

It is important to recognize that other members of the public have an equal right to a share of the public resources allocated to respond to access requests. When an individual overburdens the FIPPA system in the way the respondent has been doing, it has a negative impact on others who want to legitimately exercise their FIPPA rights. It also adds to the public bodies' overall costs of complying with FIPPA. In my view, the respondent's behaviour reveals a failure on his part to recognize that the right of access to information under FIPPA comes with the responsibility to not abuse that right by making repetitious and systematic requests.¹⁰⁴

[75] It seems the Physician did not absorb that message because there has been no noticeable reduction in his use of the OIPC's request for review, complaint and inquiry processes. Since Order F21-04 was issued in late January 2021, he has initiated 47 complaints and requests for review that relate to the MSP Matter. In my view, he has continued the pattern of behaviour evidenced in Order F21-04 and he is systematically using OIPC processes as a weapon to attack those he holds responsible for the outcome of the audit and the MSC hearing.

[76] It is abundantly clear the Physician feels aggrieved with how the MSP Matter progressed and ended. However, the appropriate place to challenge the outcome of the audit and the MSC hearing is the courts - not the OIPC. The Physician obviously knows this as he has been to court regarding the MSP Matter.

¹⁰⁴ Order F21-04, *supra* note 17 at para. 88.

[77] The purpose of an inquiry under s. 56 is to decide the FIPPA issues in dispute between the parties – not to decide about matters unrelated to the application of FIPPA. OIPC adjudicators have repeatedly explained that point to the Physician in past orders. FIPPA’s inquiry process is also not meant to be a platform for making the sort of irrelevant, malicious and derogatory personal comments that permeate the Physician’s inquiry submissions. I am sure the Physician knows by now that such personal slurs are immaterial to the FIPPA issues because they have never factored into an adjudicator’s reasons, let alone to his advantage. Nonetheless, he continues to use this tactic in his inquiry submissions

[78] His inquiry submissions also raise issues and arguments about the merits of the MSP Matter and the lack of integrity of the public bodies witnesses and lawyers that OIPC adjudicators have repeatedly concluded are irrelevant or unfounded. In spite of that, he continues to pursue his FIPPA matters to inquiry, so he can have another opportunity to say the same things again.

[79] In my view, all the above behaviours demonstrate that the Physician does not have a genuine interest in the FIPPA issues he raises with the OIPC or in accessing the information in dispute. His behaviour is unreasonable and indicates that he is acting in bad faith and has ulterior and vindictive motives for using the FIPPA review and inquiry processes - motives that are unrelated to the purposes for which FIPPA is intended to be used.

[80] In conclusion, I find that the Physician’s use of FIPPA’s review and inquiry processes regarding the MSP Matter is an abuse of process.

Issue 3 - What remedy, if any, is appropriate?

[81] The Ministries request the Commissioner grant the following remedies:

1. Cancel the Current Inquiries;
2. Refuse to send the Current Investigations/Mediations to inquiry;
3. In all cases, before deciding to conduct an inquiry for the Physician, consider the present Application and allow the Ministries to make a submission;
4. Only conduct inquiries for the Physician if he provides a written submission explaining why the inquiry should occur and he commits “to keeping his submissions and correspondence entirely free of prejudicial comments, including: insults, baseless and defamatory accusations,

disrespectful comments, and references to anyone’s personal life or family members.”¹⁰⁵

[82] The Physician says the following in response:

The draconian proposals of [Lawyer #1] are not only Kafkaesque but duly deserving of public scrutiny. [Lawyer #1] must be viewed not only in regards to the direct matters within but also with the view that he has had a direct role in many of the government faux pas in abuses of information access.¹⁰⁶

[83] I found above that the Physician is abusing both FIPPA’s review and its inquiry processes to air his grievances regarding the MSP Matter. In view of what the facts reveal about the Physician’s consistent pattern of behaviour, it is reasonable to expect that if his current matters proceed, he will continue to use FIPPA processes as he has done in the past, namely as a means to complain about the MSP Matter and berate the public bodies’ lawyers and affiants. I am satisfied that both the Current Investigations/Mediations and the Current Inquiries are founded on the same animus and allowing them to proceed would perpetuate the Physician’s abuse of FIPPA’s review and inquiry processes and be an unreasonable use of public resources.

[84] Therefore, I have decided the appropriate remedy is to cancel both the Current Inquiries and the Current Investigations/Mediations. This is an extraordinary remedy but one I am convinced is warranted due to the scale of the Physician’s abuse of FIPPA, the length of time that abuse has continued, and the resources it has consumed.

[85] I do not find it necessary, however, to order the Ministries’ third and fourth requested remedies because they are about matters that do not exist. The OIPC can address concerns raised by the Ministries in the future when they pertain to existing matters.

CONCLUSION

[86] For the reasons given above, under s. 56(1) of FIPPA, I have decided as follows:

1. The Physician’s Current Inquiries are cancelled, specifically OIPC files F20-82368, F20-82798, F20-83622, F20-83995, F20-84270, F20-84430, F21-85563, F21-87440, F21-87716, F21-88066. Those files are now closed.

¹⁰⁵ Ministries’ initial submission at para. 138.

¹⁰⁶ Physician’s submission at p. 12.

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2. The Physician's Current Investigation/Mediation are cancelled, specifically OIPC files F21- 88161, F22-88960, F22-89351, F22-89930, F22-90007, F22-90590, F22-90619, F22-90872, F22-91251, F22-91907, F22-91797 and F23-92027. Those files are now closed.

March 28, 2023

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F23-92039