

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

S 233296
No. _____
Vancouver Registry

MAY 01 2023



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT, R.S.B.C., 1996, C.241
(as amended) and the FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY
ACT, R.S.B.C., 1996, C.165 (as amended) and in the matter of Order 23-23 of the Delegate of
the Office of the Information & Privacy Commissioner for British Columbia

BETWEEN:

NEVIO CIMOLAI

PETITIONER

AND:

ELIZABETH BARKER and the OFFICE OF THE INFORMATION & PRIVACY
COMMISSIONER FOR BRITISH COLUMBIA

RESPONDENTS

ON NOTICE TO:

Elizabeth Barker
P.O. Box 9038, Stn. Prov. Govnt.
Victoria, B.C.
V8W9A4
Phone (250) 387-5629

Office of the Information & Privacy Commissioner for BC
P.O. Box 9038, Stn. Prov. Govnt.
Victoria, B.C.
V8W9A4
Phone (250) 387-5629

PETITION TO THE COURT

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must:

- (a) file a response to the Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and,
- (b) serve on the Petitioner,
 - (i) 2 copies of the filed response to the petition, and,
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including Orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to the Petition within the time for response.

TIME FOR RESPONSE TO THE PETITION

A response to the Petition must be filed and served on the Petitioner,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by Order of the Court, within that time.

The address of the Registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia
V6Z2E1

The address for service of the Petitioner is:

5246 Turquoise Drive
Richmond, British Columbia
V7C4Z7

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. The Petitioner seeks the following orders against the Respondents Elizabeth Barker and the Office of the Information & Privacy Commissioner for British Columbia (OIPCBC):

(a) That the orders set out in paragraphs 86(1) and 86(2) of Order F23-23 issued by Elizabeth Barker, Director of Adjudications, Office the Information & Privacy Commissioner for British Columbia and dated March 28, 2023, be set aside; and,

(b) That this Court direct the Office of the Information & Privacy Commissioner for British Columbia to continue and complete the Inquiries previously planned and scheduled as detailed in paragraph 86(1) of Order 23-23.

(c) That this Court direct the Office of the Information & Privacy Commissioner for British Columbia to continue and complete the files for investigation and mediation as detailed in paragraph 86(2) of Order 23-23.

(d) That this Court rule that Elizabeth Barker is ineligible to act as a Delegate, convener, or participant otherwise in any matters concerning the Petitioner's information access files or Inquiries for those detailed in paragraphs 86(1) and 86(2) of Order F23-23 or any of the Petitioner's requests thereafter.

(e) That this Court rule that the OIPCBC provide the Petitioner with the *in camera* materials submitted by the public bodies in these matters.

(e) That this Court direct that an independent authority, given the conflict herein of the Ministry of Attorney General, be given the mandate to consider section 65 (formerly section 74) of *FOIPPA* as it is applicable to an offence to wilfully mislead, obstruct, or fail to comply with information access. Such direction would be applicable both to the s.56 application of the Respondents and all other Inquiry or investigative files having been before the Commissioner, OIPCBC and duly on record for the Respondent's application matters for information access.

2. The Petitioner seeks an order granting him costs of this Petition as against the Respondents.

Part 2: FACTUAL BASIS

A. Procedural History of the s.56 Submission of the Public Body

1. The Appellant sought information regarding himself and in the context of several government Ministries or affiliated persons and/or entities. During the deliberations of the files corresponding to these requests, some of the matters were already in cue for Inquiries before the OIPCBC and others were yet subjects of pending investigation and/or mediation before the OIPCBC. Yet others had already been subjected to Inquiry steps with due provision of full submissions by both parties and pending imminent adjudication.

2. On September 26, 2022, Mr. John Tuck, Legal Services Branch, Ministry of Attorney General (MAG) submitted an e-mail to several Registrars of the OIPCBC. (*Exhibit A, Cimolai Affidavit, p.1*) The e-mail made specific citation of 6 Inquiry and pre-Inquiry files yet before the OIPCBC. Mr. Tuck indicated his intent to make an application under s.56 of the *Freedom of Information and Protection of Privacy Act (FOIPPA)* to dismiss any further actions of the 6 files. As detailed, Mr. Tuck acknowledged, "The Ministries are aware that parties may apply in writing to the OIPC to ask that all or part of a request for review not proceed to any inquiry. beyond this, the Ministries are not aware of any OIPC published guidance or policy regarding timing or process for s.56 applications."

3. On September 29, 2022, Mr. Tuck then submitted another e-mail to the OIPCBC which included an attached formal letter. (*Exhibit A, Cimolai Affidavit, pp.2-4*) Mr. Tuck refers in the first instance to "The position taken in your [Harris] email is contrary to past OIPC practice ". Copy of that email was not made available to the Appellant. Nevertheless, the remaining sentence of the same paragraph alludes to the specifications apparently returned to Mr. Tuck from Mr. Gary Harris, Registrar of Inquiries, OIPCBC in regards to matters of existing Inquiries. Mr. Tuck further writes, "The OIPC has not published any procedural document in relation to section 56 It is unclear why the OIPC has deviated from traditional practice in this instance." Mr. Tuck also writes, "... failure to accept the public bodies' submissions in relation to an Inquiry that was the subject of a section 56 application would likely be seen by the BC Supreme Court as an unreasonable exercise of the OIPC's discretion."

4. On September 29, 2022, Mr. Harris, OIPCBC responded to Mr. Tuck. (*Exhibit A, Cimolai Affidavit, p.5*) Mr. Harris writes, " ... it would not be possible to simply generally adjourn all matters, out of fairness to the applicant."

5. On September 29, 2022, Mr. Tuck, MAG responded to the above e-mail. (*Exhibit A, Cimolai Affidavit, p.6*) He writes, "The Ministries were under the impression that the OIPC would set a schedule for the s.56 application in the same manner as it does when it received notice from a public body that the public body intends to make a s.43 application."

6. On October 3, 2022, Mr. Harris, OIPCBC responded to the above e-mail. (*Exhibit A, Cimolai Affidavit, p.7*) Mr. Harris clarifies, "... we are not in a position to set a schedule for submissions, or determine if we need to receive submissions from either party. Once we receive your application, an adjudicator will review it ... we will set out a submissions schedule."

7. On October 3, 2022, an e-mail was received from Stephanie Malo, Paralegal, Ministry of Attorney General which included a letter from Mr. John Tuck, MAG. (*Exhibit A, Cimolai Affidavit, pp.8-9*) The e-mail was addressed to Mr. Harris, OIPCBC and copied to both Mr. Tuck and his associate junior counsel Ms. Layli Antinuk. The letter from Mr. Tuck was dated October 3, 2022 and was written to Mr. Harris with the proposed intent to make an application under s.56(1) of the *Act (FOIPPA)*. S.56(1) has no option for any remedy subsequently sought by Mr. Tuck on behalf of the Government.

8. Mr. Tuck wrote that the application was being made on behalf of several government ministries including the Ministry of Health, Ministry of Finance, and Ministry of Attorney General. The

application did not indicate in any form as to what relief Mr. Tuck sought. The application was specific to Inquiry-stage files F20-84430, F21-85563, F20-84270, and F20-83622. The application was also specific to pre-Inquiry files F21-87716 and F20-83622.(6 files in total) Although Mr. Tuck stated that he would provide submissions and evidence by October 21, 2022, there was no formal notice of any related Inquiry to these matters as given by the OIPCBC. There was also no formal instruction from the OIPCBC on any procedure that was applicable to any such process.

9. Mr. Tuck's letter of October 3, 2022 also made request to stay all activities relating to these files in the interim, and the OIPCBC functionally acceded to such a stay until the Order of Ms. Barker was made subsequently some five months later on March 28, 2023. There was no provision in *FOIPPA* to accede to any such stay, and *FOIPPA* rather mandates as per s.56(6) that should have been applied to existing files:

Subject to subsection (8), an inquiry into a matter under review must be completed within 90 days after receiving the request for the review.

10. A letter dated October 4, 2022 was received from Mr. Gary Harris, OIPCBC.(*Exhibit A, Cimolai Affidavit, p.10*) The letter acknowledged receipt of the letter from Mr. Tuck for October 3, 2022. The letter of Mr. Harris makes specific reference to OIPC File No. F20-84270 HTH-2020-02416 which was then due for Inquiry. Mr. Harris in his letter makes mandate for Mr. Tuck to provide his s.56 application by October 21, 2022 and that failing such provision, new Inquiry dates would be rescheduled to the above OIPC file without delay. No formal notice of any timeline nor notice of procedure for a subsequent deliberation was received from the OIPCBC.

11. On October 24, 2022, an e-mail was received from Mr. Harris, OIPCBC in which he acknowledged that Mr. Tuck's materials were first sent to me on October 24, 2022 through a File Transfer system.(*Exhibit A, Cimolai Affidavit, p.11*) No new Inquiry dates were rescheduled as for Mr. Harris' indication in his letter of October 4, 2022.

12. On the same day October 24, 2022, I sent Mr. Harris an e-mail message.(*Exhibit A, Cimolai Affidavit, p.12*) I raised the issue of timing. I indicated that the materials were received in problematic fashion because the File Transfer system would only allow the materials from Mr. Tuck to be accessed temporarily and would not permit downloading for consistent use.

13. Given the concerning nature of events, I submitted more formal correspondence to Mr. Harris, OIPCBC dated October 25, 2022.(*Exhibit A, Cimolai Affidavit, pp.13-14*) The letter continued to raise due concern for the events that transpired to that date. In particular, a brief view of the Transfer File contents permissible showed that defective affidavits had been attached.

14. Mr. Harris, OIPCBC responded by e-mail on October 25, 2022 to confirm that his bureau had received a public body submission on October 21, 2022, but that the materials were not duly directed to me until October 24, 2022.(*Exhibit A, Cimolai Affidavit, p.15*)

15. In response to my formal letter of October 25, 2022, I received yet another e-mail from Mr. Harris, OIPCBC dated October 26, 2022.(*Exhibit A, Cimolai Affidavit, p.16*) The letter had an attachment which portrayed an e-mail of October 21, 2022 from Mr. Tuck as submitted directly to Mr. Michael McEvoy, Commissioner, OIPCBC and Ms. Jeannette Van den Bulk, Deputy

Commissioner, Policy Adjudication & Audit, OIPCBC but without copy to me. (*Exhibit A, Cimolai Affidavit, p.17*) That e-mail from Mr. Tuck again makes reference to relief under s.56(1) of the *Act* for which there is no remedy in statute. Mr. Tuck writes, “ will decide this application in accordance with your office’s internal practices.” No such practices are defined then or ever after. Mr. Tuck’s e-mail also cites, “The Applicant’s copy contains as yet unapproved *in camera* material. We sought OIPC approval for this material but have not yet received a response.”

16. Mr. Harris’ e-mail of October 26, 2022 (above) made reference to *in camera* materials received from Mr. Tuck. No generic description of such materials were provided. No prior correspondence on the submission of *in camera* materials was given to the Appellant nor was there any proper opportunity by that time to rebut the provision given that Mr. Harris indicated that some unknown entity within the OIPCBC had already given Mr. Tuck permission to proceed in that fashion. Mr. Harris also indicates that the proposal to submit *in camera* materials was by then considered by an “adjudicator”. No notice of the adjudicator was given to this Petitioner by that time. Mr. Harris also further writes, “In regards to a timeline, there is currently no timetable or structure for submissions.” Mr. Tuck’s submission could not be accessed again even by this date and after the initial brief viewing as detailed above.

17. I submitted another formal letter to Mr. Harris, OIPCBC dated October 26, 2022. (*Exhibit A, Cimolai Affidavit, pp.18-19*) The letter continued to raise concern about timings, availability of files, and structure of any formal review. The issue of defective affidavits is again raised.

18. I received a second e-mail from Mr. Harris, OIPCBC dated October 26, 2022. (*Exhibit A, Cimolai Affidavit, p.20*) The e-mail confirms that Mr. Tuck’s submission of October 21, 2022 was forwarded from Mr. McEvoy, OIPCBC and Ms. Van den Bulk, OIPCBC to Elizabeth Barker, Director of Adjudications, OIPCBC. The e-mail confirms the stay of pending files and Inquiries. The e-mail confirms that Ms. Barker “ .. was the adjudicator that reviewed and approved the material.” Mr. Harris indicates that “The material that is blacked out in the submission package is the only *in camera* materials approved in this matter. ... the redacted information from the affidavits is the material that was approved to be *in camera*. ... I am unable to provide you with unredacted copies” Proper receipt of the Tuck submission and the accompanying affidavits was yet pending by this date. There was yet no indication as to why any such redactions, now stated to be *in camera* submissions, were being made. No formal notice of Ms. Barker becoming the adjudicator proper for any possible subsequent ‘Inquiry’ is given.

19. I submitted formal correspondence again to Mr. Harris, OIPCBC dated October 27, 2022. (*Exhibit A, Cimolai Affidavit, pp.21-22*) I continued to raise concern with several key issues not yet resolved in these matters. In particular, I made a specific request to know who the “Delegate or ‘adjudicator’” would be in the process. I continued also to pointedly request the unredacted proper affidavits. I also continued to indicate that Mr. Tuck’s submission in its entirety could not be properly accessed.

20. I received another e-mail from Mr. Harris, OIPCBC dated October 27, 2022. (*Exhibit A, Cimolai Affidavit, p.23*) He now indicates, “It has not been determined who will ultimately be

deciding this matter. That determination is not made until all submissions are in.” He continued to refuse provision of the unredacted affidavits.

21. I again submitted formal correspondence to Mr. Harris, OIPCBC dated October 28, 2022.(*Exhibit A, Cimolai Affidavit, p.24*) The submissions of Mr. Tuck were yet not accessible. Various issues were once again defined for the OIPCBC with the request to make corrections for any misgivings. In particular, the status and then actions of Ms. Elizabeth Barker were at issue. No responses were made thereafter in these regards from the OIPCBC.

22. The issue of proper access to Mr. Tuck’s submission continued to be problematic as shown in the e-mail string and in the least from October 24 - November 1, 2022.(*Exhibit A, Cimolai Affidavit, pp.25-30*) Mr. Harris, OIPCBC specifically itemizes in his e-mail of November 1, 2022 within this e-mail string that, “I have asked Mr. Tuck to send you a CD with the submission package.” No such CD has been received to April, 2023.

23. The submission of Mr. Tuck continued to be problematic to access, but parts of it could be discerned prior to the computer system crashing with direct downloads. The file of Mr. Tuck consisted of 637 pages. The key component of his submission (his cover letter) and the key components of the accompanying Affidavits (listed as Tabs 2,3,4,&5) are shown.(*Exhibit B, Cimolai Affidavit, pp.31-98*) The entirety has not been reproduced herein but is available on request if it is yet accessible with the existing file in possession. Tab 1 (*Exhibit B, Cimolai Affidavit, p.32*) lists potentially four unique affidavits, but the affiants are undetailed. Tab 2 (*Exhibit B, Cimolai Affidavit, p.79*) is followed by two pages of an Affidavit where the affiant is not shown and where the signature of the affiant is blanked out. Tab 3 (*Exhibit B, Cimolai Affidavit, p.82*) is followed by seven pages of an Affidavit where the affiant is not shown, where the signature of the affiant is blanked out, and where the Exhibits are undetailed as to whose Affidavit/affiant the Exhibit belongs. Tab 4 (*Exhibit B, Cimolai Affidavit, p.90*) is followed by two pages of an Affidavit where the affiant is not shown and where the signature of the affiant is blanked out. Tab 5 (*Exhibit B, Cimolai Affidavit, p.93*) is followed by five pages of an Affidavit where the affiant is not shown and where the signature of the affiant is blanked out. No such proper Affidavits have been received by April, 2023.

24. Given the uncertainty of the entire proceedings as detailed in the considerable correspondence shown above, given apparent conflicts within the OIPCBC, given the defective affidavits, given the lack of identification for who any Delegate or ‘adjudicator’ otherwise would be, and many other concerns that were in the least apparent after the receipt of the Tuck submission, I submitted a letter to Mr. Michael McEvoy, Commissioner, OIPCBC dated November 10, 2022.(*Exhibit C, Cimolai Affidavit, pp.99-123*) No response to the same was ever received from Mr. McEvoy then or up to April, 2023.

25. A Reply Submission was submitted in an accompanying e-mail from Mr. Tuck, MAG and dated November 25, 2022.(*Exhibit D, Cimolai Affidavit, pp.124-133*)

26. The Order F23-23 (2023 BCIPC 27) was issued by Elizabeth Barker, OIPCBC, and dated March 28, 2023.

27. After receiving the Order above, I submitted a formal letter to Ms. Barker, OIPCBC dated March 31, 2023, and I raised several concerns again about the process. (*Exhibit E, Cimolai Affidavit, p.134*)

28. In an e-mail from Mr. Harris, OIPCBC, he responds on behalf of the 'adjudicator'. (*Exhibit E, Cimolai Affidavit, p.135*) Although Ms. Barker is not directly named in Mr. Harris' correspondence, the reference to 'she' and 'her' presumably confirms the 'adjudicator' on this occasion as Ms. Barker and as per Order F23-23 of the OIPCBC. No further correspondence from either Ms. Barker or the OIPCBC has been received on this direct matter to date.

B. Other Facts and Evidence Relating to the Audit Process and Its Status

1. As both the Respondent's positions on the s.56 application and in other Inquiries have often been misleading, and given the OIPCBC's frequent repetition of the Respondent's submissions or statements in several Orders without due regard to direct corroboration with evidence, it is essential to have the Court with ready access to the facts in more plenary form than have been attested in the defective Affidavits tendered by Mr. Tuck.

2. The Appellant's "Applicant's Memorandum of Argument" for leave to appeal to the Supreme Court of Canada is shown. (*Exhibit F, Cimolai Affidavit, pp.136-247*)

3. The Respondent's "Response" for leave to appeal to the Supreme Court of Canada is shown. (*Exhibit G, Cimolai Affidavit, pp.248-250*)

4. The Appellant's "Reply" for leave to appeal to the Supreme Court of Canada is shown. (*Exhibit H, Cimolai Affidavit, pp.251-276*)

5. The Billing Integrity Program (BIP), Ministry of Health first raised concern for an audit of Medical Services Plan (MSP) billings for the Appellant in August, 2014 and the Audit and Inspection Committee (AIC; of the Ministry of Health) first recorded mandate to conduct the audit in October, 2014. The stated rationale for the audit proved to be falsified and/or based on data which would not thereafter be shared with the Appellant. The Appellant was first notified of a pending audit not until March, 2017 (3 yrs. later) without any direct indication of concerns after which an on-site audit of one clinic was performed in May, 2017. The audit report was given to the Appellant in November, 2018 (1.5 yrs. later; then some 4.5 yrs. after the AIC meeting). The latter receipt occurred despite the medical auditor's verbal and witnessed indication that a report would be forthcoming in 1-3 months and with the provision that there were no major issues arising and that there would be no surprises.

6. The report eventually received claimed conduct of two on-site audits when the Appellant was only involved in one. The latter falsity was also reiterated in affidavits from the Ministry of Health and in an ad hoc Panel (of the Ministry of Health BIP) Decision contrary to the truth.

7. The report made claims of negligence on patient records never acquired by the auditors in their totality. The report made misrepresentations on patient records that were made available but in truncated form. The audit report did not consider claims made but not paid to the Appellant for

work duly performed. The audit report was based on information that was later acknowledged by the audit team, BIP, and Legal Services Branch (LSB) (of the Ministry of Attorney General representing the Ministry of Health) to have been clearly misrepresented. The audit team did not follow proper and proscribed procedure for the audit processes.

8. The audit team, BIP, AIC, MSC (Medical Services Commission) representation, and LSB denied the Appellant access to the full patient records including patient attendance daysheets which are duly part of that record and which would continue to illustrate the improprieties of the audit claims.

9. The audit team, BIP, AIC, MSC, and LSB denied the Appellant access to a Final Errors List which is required to summarize any deficiencies found in the audit process. The Appellant only received provisional lists. When the Appellant was required to request the same information through information access, an unintelligible printout of a large Excel file was deliberately provided which was not consistent with the Final Errors List. (*Exhibit F, Cimolai Affidavit, pp.178-182* and *Exhibit U, Cimolai Affidavit, pp.429-432*) No legible Final Errors List has yet been provided to the Appellant by May, 2023.

10. The audit team, BIP, AIC, MSC, LSB, and Mr. Kent Ashby, Chair, ad hoc Panel denied access to full relevant and mandated document disclosure and often referred the Appellant to acquire documents through information access. (*Exhibit F, Cimolai Affidavit, pp.183-195*)

11. The MSC and LSB both blocked information access despite having referred the Appellant to acquire his information through the same avenue. (*Exhibit I, Cimolai Affidavit, pp.277-279* and *Exhibit J, Cimolai Affidavit, pp.280-298*)

12. Inherent prejudice against the Appellant was ingrained well prior to receipt of the Audit Report and prior to AIC deliberations of June, 2018. BIP representative Mr. John Longhurst had prematurely decided pursuit of recovery, "I thought I'd give you an informal 'heads up' that the CIMOLAI audit (being presented at AIC on June 27) will be the first on my 'hit list' for LSB disclosure at the start of July." (*Exhibit F, Cimolai Affidavit, pp.196-197*)

13. An ad hoc Panel hearing was not requested by the Appellant given the lack of proper disclosure by December, 2018 (*Exhibit F, Cimolai Affidavit, pp.198-202*), but the Panel's proceedings were unilaterally promoted thereafter by the LSB counsel via a Mr. Robert Musto and continued through by Mr. Kent Ashby, Chair, ad hoc Panel. The Panel was promoted, chosen, and instructed by the Ministry of Health. Decisions of some meetings claimed that the Appellant "self represented" or provided "written" submissions when neither had occurred. When details of some Panel meetings were requested through information access, government information operations declared that no such meetings had ever taken place.

14. Statistical calculations were made by the BIP and a consultant with the use of data that was known to be highly misrepresented.

15. The ad hoc Panel all had contracts directly with the BIP. Some of those contracts were expired, some contracts were for a totally different Panel, and some were not for a Panel member but rather to be an inspector as per the *Medicare Protection Act (MPA)*. The Legal Services Branch, MAG, provided legal services to some of these Panel members through the Health Care Practitioners Special Committee.

16. The ad hoc Panel was not properly constituted as per *MPA* s.6(1) ("Power to delegate") since there were no representatives of the Doctors of BC (formerly 'BCMA').(*Exhibit F, Cimolai Affidavit, p.203*)

17. The auditors, BIP, AIC, Dr. Halpenny of the MSC, LSB, and ad hoc Panel breached mandates of both *MPA* and *Physician Master Agreement (PMA)* on many issues. Eventually, by April 4, 2021, the Appellant received notification from Dr. Robert Halpenny, Chair, MSC that he had unilaterally taken a Decision from the ad hoc Panel as the substance to invoke a de-enrollment of the Appellant with the MSP payments for patient care. The letter was received with the notice of a retroactive application of de-enrollment which the Respondent thereafter used as the date for limitations.(*Exhibit F, Cimolai Affidavit, p.204*) It was also confirmed shortly thereafter that the de-enrollment was activated by Dr. Halpenny on his own accord and not the MSC proper, and that he relied on a decision from the ad hoc Panel.(*Exhibit F, Cimolai Affidavit, pp.215-216*)

18. After receiving the notice of de-enrollment unilaterally implemented by Dr. Robert Halpenny, the Appellant sought to activate his opportunity to appeal on the first working day of April 6, 2021.(*Exhibit F, Cimolai Affidavit, p.209*) Any delay in filing the appeal was on account of the dilatory actions of counsel and the Notice of Appeal if Directions Required was filed in the Supreme Court of British Columbia on May 17, 2021.(*Exhibit F, Cimolai Affidavit, pp.210-212 & 217-219*)

19. The Respondent very well knew of the limitations issue and did not make claim despite knowing that an appeal was to be immediately filed.(*Exhibit F, Cimolai Affidavit, pp.213-214*) The Respondent did not raise claim of time limitation until informally for the first time on February 15, 2022, some 9 mo. after an Appeal was filed in May, 2021. The request to adjourn the hearing of application for directions in the lower court, as originally scheduled for June 21, 2021, was made by the Respondent party on June 17, 2021 with full knowledge of the pending proceedings. No declaration for time limitations was made at that time or thereafter. By consent and to accede, a Requisition for adjournment of the matters was filed by the Appellant's counsel on June 18, 2021. The Respondent's party was duly notified of the same intent by consent on the same day by e-mail. The Respondent continued to offer available times for a Stay and an Appeal.(*Exhibit F, Cimolai Affidavit, pp.220-231*)

20. The Respondent filed a Notice of Motion on February 23, 2022 under *Supreme Court Civil Rules 9-5(1)(a)* and *9-5(1)(d)* to strike the Appellant's pleadings solely on the basis of time limitation. (*Exhibit F, Cimolai Affidavit, pp.232-235*)

21. The Respondent refuses to rescind the de-enrollment to this day despite the many irregularities so defined in the audit processes and the aftermath of the same. The position continues to be repeated that it is only the limitation argument which would annul the appeal.

22. In proceedings in the lower court and in the application for leave to appeal, the Appellant was denied solely on the basis of time limitations said to be mandated in the *Medicare Protection Act*. (2022 BCSC 528; 2022 BCCA 396) No reference was made to the binding *Physician Master Agreement* between the parties. No time limit was running as there was no order *per se* of the MSC proper.

23. The decisions of the Supreme Court of British Columbia and the British Columbia Court of Appeal have been submitted for leave to appeal to the Supreme Court of Canada. (*Exhibits F, G, & H Cimolai Affidavit, pp.136-276*)

C. The Order F23-23 of Elizabeth Barker, Director of Adjudication, OIPCBC

1. Ms. Barker, as the self-appointed Delegate/adjudicator and otherwise the Director of Adjudication, issued Order F23-23 on March 28, 2023 (2023 BCIPC 27) which is the key subject of this Petition. Order F23-23 of Ms. Barker summarily cancelled all 10 pending files which were either due in line for Inquiry before the OIPCBC or were already completed by full submissions and were awaiting adjudication. The Order also summarily cancelled 12 information access files which were pending in investigation and/or mediation. In total, 22 files were closed on account of the Order in the least. There were several errors in both fact and law:

a) Errors of Fact

2. [1] "... a subsequent Medical Services Commission hearing and decision ... ". There was no MSC hearing at any time. An ill-constituted ad hoc Panel proceeded under the direction and account of counsel from the LSB, MAG. The decision for de-enrollment of the Appellant from the Medical Services Plan occurred at the behest of Dr. Robert Halpenny, Chair, MSC on his own accord, without review by the MSC proper, and in discord with both statute and the *Physician Master Agreement (PMA)*. (*Exhibits F, G, & H, Cimolai Affidavit, pp.136-276 and Exhibit F, Cimolai Affidavit, pp.204,215,216*)

3. [6] "There was no reasonable basis to refuse to hear the Application ... ". Order F22-08 (2022 BCIPC 08) had already been decided on an application of the Ministry of Attorney General to deny the Appellant's request under s.43. The *Order* was affirmative in dismissing that previous attempt:

The adjudicator found that s.43(a) did not apply because the adjudicator was not satisfied that responding to the request would unreasonably interfere with the Attorney General's operations. The adjudicator also found that the request was not frivolous or vexatious under s.43(b). For the reasons above, I do not given

the Attorney General permission to disregard the request at issue under s.43(a) or (b) of FIPPA. I also decline to given the Attorney General relief from future requests or to decide what constitutes "one" request.

Rather than adhering to Order F22-08, the s.56 application of Mr. Tuck was yet another attempt to deny many of the same files but now through yet another, but undefined by his own admission, route. That is, Mr. Tuck had attempted to re-litigate matters already tried by the OIPCBC in another Inquiry.

4. [15] " ... the MSC conducted a hearing ...". There was no hearing conducted by the MSC proper. There was no hearing elected due to the shortfall of provision of necessary documents. An ad hoc Panel proceeded to hold hearings at the request unilaterally of the Ministry of Health's counsel Mr. Robert Musto of the MAG.(*Exhibits F,G,&H, Cimolai Affidavit, pp.136-276*)

5. [16] "The Physician appealed the MSC order to the Supreme Court ...". There was no appeal of the MSC order to the Supreme Court because there was no MSC order. The Appellant appealed the unilateral actions of Dr. Robert Halpenny, Chair, MSC who acted *ultra vires* on his own accord to de-enroll the Appellant from the Medical Services Plan fee-for-service.(*Exhibit F, Cimolai Affidavit, pp.204,215,216*)

6. [17] " ... requests ... all .. relate to the MSP Matter and the people involved." The requests were varied, and although there was a focus on the issues relating to the audit process, there were various requests including access to public Minutes of the Medical Services Commission, a diabetes pilot project, government employee contracts, among others. Ms. Barker then admits that, " .. some relate to the College of Physicians and Surgeons ... " which is a completely separate entity.

7. [18] " ... orders ... resulted in him receiving a bit more information of an inconsequential nature ...". The information acquired has set the groundwork for key affidavit and corroborative information as shown in the Supreme Court of Canada appeal process.(*Exhibits F,G,&H, Cimolai Affidavit, pp.136-276*)

8.[30] "On its face the Physician's argument is contradictory ...". Ms. Barker makes this comment in an evidentiary vacuum. The Appellant's Response provides the full text of the arguments.(*Exhibit C, Cimolai Affidavit, pp.99-119*)

9. [44] "The Ministries jointly request .. not conduct any more inquiries or requests for review ... ask the Commissioner to cancel the Current Inquiries, refuse to send the Current Investigations/Mediations in inquiry and not send any future matters to inquiry ... ". This position is in distinct contradiction to the specific pleadings of Mr. Tuck in which he made specific file-directed petitions.(*Exhibit A, Cimolai Affidavit, pp.1,2,3,6,&9 and Exhibit B, Cimolai Affidavit, pp.37,38*) Ms. Barker considerably broadened the issues and in the face of conflict discussed below.

10. [48] "He claims these various public servants are all biased, corrupt, have conflicts of interest, and are criminals." The latter falsity is juxtaposed to the letter duly sent to Mr. Michael McEvoy, Commissioner, OIPCBC on these matters by the Appellant and dated November 10, 2022.(*Exhibit C, Cimolai Affidavit, pp.99-123*)

11. [52] “No one in the inquiry process is safe.” Ms. Barker repeats the exaggerations forwarded by the public bodies.

12. [54]-[64] Ms. Barker selects small citations when the facts of the matters are best seen in the entire letter to Mr. Michael McEvoy dated November 10, 2022. (*Exhibit C, Cimolai Affidavit, pp.99-123*)

13. [64] Conflicts (p.18, Barker Order F23-23) regarding statements made by Government MAG counsel were fact-based. (*Exhibit C, Cimolai Affidavit, pp.99-119 and Exhibits F,G,&H, Cimolai Affidavit, pp.136-276*)

14. [66] “ .. his allegations of wrongdoing are unsubstantiated ...”. The corroborative information appended to the totality of the Inquiries and related correspondence/interactions overwhelmingly illustrates the wrongdoing of several within the public bodies. (*Exhibit C, Cimolai Affidavit, pp.99-123 and Exhibits F,G,&H, Cimolai Affidavit, pp.136-276*)

15. [66] “ .. s.74 (now s.65.2) of FIPPA ... The adjudicators either refused to add s.74 as a new issue or expressly said there was no merit “. In distinct contrast, Ms. Barker previously writes in Order F21-04 (*2021 BCIPC 04*):

[7] Section 74 creates offences that only the appropriate authority can prosecute. The Attorney General is responsible for prosecuting offences under s.74 of FIPPA, and the courts are responsible for deciding those matters. I have no authority respecting anything covered by s.74, including issuing orders for breaches of s.74(1).

Adjudicator Jay Fedorak, OIPCBC previously writes in Order F21-47 (*2021 BCIPC 55*):

[3] Footnote 14. I also do not have jurisdiction to address s.74 of FIPPA. The Attorney General prosecutes offences under that section and the courts decide those matters ... Should the applicant want, he can pursue it through the OIPC complaint process, which is a different procedure than this inquiry.

Adjudicator Ian C. Davis, OIPCBC previously writes in Order F22-26 (*2022 BCIPC 28*):

[7] Footnote 7. The applicant also invokes s.74 of FIPPA (now s.65.2) I do not have jurisdiction to decide this issue ... “.

16. [75] “ ... there has been no noticeable reduction in his use of the OIPC’s request for review ..”. Ms. Barker’s Order F21-04 reduced the ability to make requests to the Ministry of Health to a single outstanding request at any one time which was thereafter maintained. In contrast, the Order F22-08 of Adjudicator Syrotuck recognized that the MAG plea to block access had been duly exaggerated. Many of the existing files are simply carried forward from past events and have not been completed in large part due to deliberate public body delays and in small part due to delays inherent with COVID-19 pandemic confines.

17. [76] “ ... how the MSP Matter progressed and ended.” The “MSP Matter” if translated into the unilateral actions of Dr. Robert Halpenny, Chair, MSC on his own accord to de-enroll the Appellant from Medical Services Plan fee-for-service is far from over. (*Exhibits F,G,&H, Cimolai Affidavit, pp.136-276 and Exhibit F, Cimolai Affidavit, pp.204,215,216*)

18. [76] “ ... the appropriate place to challenge the outcome of the audit and the MSC hearing is the courts – not the OIPC.” There has not been any such MSC hearing. (*Exhibit F, Cimolai Affidavit, pp.204,215,216*) The Appellant seeks information about himself as maintained through several government Ministries and to correct the same when such information has been duly falsified; those are options and mandates available to the Appellant through *FOIPPA*.

19. [77] “The purpose of an inquiry under s.56 is to decide the FIPPA issues ... OIPC adjudicators have repeatedly explained that point ... “. There have not been any previous s.56 applications by the public bodies on the Petitioner’s matters prior to this current s.56(1) submission. There were two s.43 applications – one of the MAG failed and the other was acceded to through an Order of Ms. Barker.

20. [78] “ ... OIPC adjudicators have repeatedly concluded are irrelevant or unfounded.” In Order F22-08 of Adjudicator Syrotuck, it was recognized that the MAG plea to block access with the use of s.43 had been duly exaggerated and inconsistent with the truth of the matters.

21. [81] “The Ministries request ... 1. Cancel the Current Inquiries; 2. Refuse to send the Current Investigations/Mediations to Inquiry ... “. The Ministries pleadings in argument were much more reduced than Ms. Barker states. The pleading from Mr. Tuck initially included 6 and then after 12 particular files as discussed below in b) 1. (*Exhibit A, Cimolai Affidavit, pp.1,2,3,6,&9* and *Exhibit B, Cimolai Affidavit, pp.37,38*)

b) Error in Law

1. [Summary] Ms. Barker cancelled “ ... 10 files that were at inquiry and 12 files that were at investigation and mediation.” (n=22 files) The Respondent’s pleas however requested dismissal of much fewer files – 6 files total on September 26, 2022; then later 6 files total on October 3, 2022; then later (with duplication of the latter) 12 files total in the Tuck submission dated October 21, 2022. (*Exhibit A, Cimolai Affidavit, pp.1,2,3,6,&9* and *Exhibit B, Cimolai Affidavit, pp.37,38*)

2. [2] “ ... requesting the Commissioner exercise his discretion under s.56(1) to not conduct any more of the Physician’s inquiries ...”. S.56 as an article of statute in *FOIPPA* gives no such opportunity:

Inquiry by commissioner

56(1) If the 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.

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

(3) The person who asked for the review, the head of the public body concerned and any person given a copy of the request for a review must be given an opportunity to make representations to the commissioner during the inquiry.

(4) The commissioner may decide

(a) whether representations are to be made orally or in writing, and

(b) whether a person is entitled to be present during or to have access to or to comment on representations made to the commissioner by another person.

(5) The person who asked for the review, the head of the public body concerned and any person given a copy of the request for a review may be represented at the inquiry by counsel or an agent.

(6) Subject to subsection (8), an inquiry into a matter under review must be completed within 90 days after receiving the request for the review.

(7) If the commissioner has required a person to attempt to resolve a matter under section 44 (3.1), the commissioner may defer beginning or may adjourn an investigation under section 42 or an inquiry under this section to enable the resolution of the matter in the way required under section 44 (3.1).

(8) The period of an adjournment or deferral under subsection (7) must not be included for the purpose of calculating a deadline under subsection (6).

By the Respondent's own concerns in correspondence with the OIPCBC, there was never any statute-directed opportunity to do so for Inquiries already set for hearing, "... the Ministries are not aware of any OIPC published guidance or policy regarding timing or process for s.56 applications."(*Exhibit A, Cimolai Affidavit, p.1*) and then "... The OIPC has not published any procedural document in relation to s.56."(*Exhibit A, Cimolai Affidavit, p.3*) S.43 would apply to pre-Inquiry matters if pleaded for relief, but none such were made for any of the pre-Inquiry files of subject herein. Despite the Appellant's directed requests for any precedent or process, no responses in regard to the s.56 were provided.(*Exhibit A, Cimolai Affidavit, pp.13,14,18,19,21,22,24*) Such broad application to deny information access and for similar reasons though the attempted application of s.43 from this same Government was quashed in Order F19-34 (2019 BCIPC 37) of the OIPCBC.(*Exhibit K, Cimolai Affidavit, pp.299,300*)

3.[3] Ms. Barker writes, "I am deciding this matter as the Commissioner's delegate." and footnotes "2 The powers delegated to me include those under s.56." There are no powers delegated to the Commissioner in s.56 to deny Inquiry. The Inquiry stage is pre-dedicated, and after the matter is set for and goes to Inquiry, a Delegate is thereafter appointed to hear the matter. The Respondent's opportunity if any is to invoke a s.43 application well ahead of time.

4. [4]-[6] Ms. Barker writes, "When the OIPC received the Application, I arranged ... an opportunity to provide a response and .. to provide a final reply." In addition, Ms. Barker was identified as the pre-(this)Inquiry director of matters as written by Mr. Harris, OIPCBC: "... submission made by Mr. Tuck forwarded to the director of adjudication, Elizabeth Barker, and then forwarded to me." and "I can confirm that director of adjudication, Elizabeth Barker, was the adjudicator that reviewed and approved the material [*in camera* submissions]. The material that is blacked out in the submission package ..." and "... in consultation with the director of adjudication, Elizabeth Barker, made the decision to adjourn all active inquiries pending ..." .(*Exhibit A, Cimolai Affidavit, pp.20,23*) The OIPCBC through Mr. Harris denied identification of the Delegate or 'adjudicator' proper for the Respondent's petition until it was formally made aware through Ms. Barker's Order of March 28, 2023. There were no formal submissions requested to nor fully made by either the Appellant or Respondent on the issue of Ms. Barker's potential bias, especially given that the identity of the Delegate/'adjudicator' was unknown until the Order was issued.

5. [6] Ms. Barker writes, "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." There were no formal submissions requested to nor fully made by either the Appellant or Respondent on the issue of Ms. Barker's potential bias, especially given that the identity of the Delegate/'adjudicator' was unknown until the *Order* was received in 2023. Further facts on the issue of Ms. Barker are detailed below in *D*. Further issues on the conflicts posed by the OIPCBC of past are also detailed below in *E*. The latter show that Ms. Barker denied completion of Inquiries not requested by the Respondent but which drew considerable concern about the counsel that was

hired by the government while simultaneously being directly-contracted employees of the OIPCBC.

6. [7]-[11] Ms. Barker accepted defective Affidavits in evidence. There was no pre-Inquiry opportunity to understand either the nature of what proved to be *in camera* materials in the Affidavits nor to understand the extent or generic nature of any such redactions until the Tuck submission was eventually operable for view by the end of October, 2022. Ms. Barker writes, “ ... 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. ...” It was evident therefore that Ms. Barker must have received correspondence directly or indirectly from the Respondent on these matters which was never addressed, generically itemized, or provided to the Appellant herein for argument. S.19 specifically refers to the disclosure of information after an applicant for information access makes an inaugural request for information:

Disclosure harmful to individual or public safety

19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else's safety or mental or physical health, or
- (b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

The above s.19 does not apply to Affidavits made under an Inquiry for the truth of the matters, but rather only to the information package that may be available to an information access applicant. Furthermore, the lack of indication that s.19 would have been applied should have been made aware to the Appellant for either pre-Inquiry argument or intra-Inquiry argument. The s.19 subject was raised for the first time in Ms. Barker’s *Order*.

7. [10] Ms. Barker writes, “I found that nothing relevant to the issues to be decided in this matter hangs on the identity of the affiants.” As the Appellant requested for evidence to be before any subsequent hearing on the s.56 application, all of the submissions and their evidence were to be before the eventual Delegate if the matters were to proceed. (*Exhibit C, Cimolai Affidavit, pp.99-123*) Within such materials before the Commissioner, there were more than a dozen government-posed affidavits which contained falsifications and for which there was provided considerable tangible evidence to prove the same. Even more so were the considerable falsifications contained in the government-posed arguments. Ms. Barker decided that there was nothing relevant in the identity of the affiants but did so without recruiting any argument and in an evidentiary vacuum.

8. [12]-[13] Ms. Barker cites in footnote 11 three Decisions/Order that establish the tests for guiding potential s.56 applications but all of them suggest a mandatory inclusion of the criterion, “... it must in each case be clear that there is no arguable case that merits an inquiry.”

9. [20] Ms. Barker makes admission that “ ... three Current Inquiries ... the parties have provided their submissions, but the matter has not yet been assigned ... “.

10. [23] “ ... context for the Commissioner’s powers under s.56(1).” S.56(1) simply indicates:

56 (1) If the 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 only possible power given to the Commissioner is that he/she “may” conduct an inquiry. The facts however are that nearly every such file of request either in Inquiry or pending Inquiry has already been considered by a mediator, and the mediator has passed the matter on to Inquiry. S.56(1) only bestows the “may” action “If the matter is not referred to a mediator ..”.

11. [25] “The Commissioner may investigate and attempt to resolve the matter ... “. The Commissioner does not investigate and attempt to resolve matters at that stage; that work is undertaken within the OIPCBC by individuals variably named file managers, mediators, investigators, or case review officers.

12. [26] “... the Commissioner assigns complaints and requests for review to delegates, specifically OIPC investigators ... “. A Delegate historically and frequently has been the person to whom the Commissioner appoints to adjudicate an Inquiry on his/her behalf as required.

13. [27] In footnote 24 of this section and referring to previous OIPCBC Decision F10-07, Ms. Barker writes, “It is unclear if the adjudicator ... 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. ... the term “may” which clearly indicate the Commissioner has the discretion ... “.

14. [28] “ ... the Commissioner’s broad discretionary power under s.56(1) ...”. S.56(1) rather restricts the Commissioner or Delegate in that the conduct of the inquiry is only raised when, “.. the matter is not referred to a mediator or is not settled under section 55 ... “.

15. [31] “... the Commissioner is clearly not barred from deciding whether to conduct an inquiry under s.56(1) “. S.56(1) is clear and unambiguous that the matter “may” be considered when, “the matter is not referred to a mediator or is not settled under section 55 ... “.

16. [32] “.. s.56(1) gives the Commissioner a broad discretionary power ... The Commissioner is clearly not restricted “. S.56(1) is clear and unambiguous that the matter “may” be considered when, “the matter is not referred to a mediator or is not settled under section 55 ... “.

17. [51] “Individuals in the public service ... they are not comfortable providing affidavit evidence ...”. Such lack of willingness to provide affidavit evidence does not give reason to provide redacted affidavits *in camera*.(Exhibit C, *Cimolai Affidavit*, pp.99-123)

18. [65] “ .. it is essential to take into account the full continuity of FIPPA’s procedures ... from what takes place during the investigation and mediation process. Those processes must be viewed as a whole ... “. S.56(1) is clear and unambiguous that the matter “may” be considered when, “the matter is not referred to a mediator or is not settled under section 55 ... “.

19. [66] [page 20] “ .. His submissions in the past and current inquiries contain lengthy diatribes ... “. Ms. Barker’s comment here illustrates the animus from within. When coupled to her past actions and knowledge of conflicts both personally and those of the OIPCBC generally, these

comments illustrate a state of mind in which she further should have recused herself in this s.56 application.

20. [67] “ ... he is using FIPPA for an ulterior motive that is unrelated to FIPPA’s intended purposes.” Ms. Barker’s comment here continues to illustrate her animus and again must be illustrative of her state of mind that is relevant to her recusal and in the context of all other factors arising.

21. [79] “... the Physician does not have a genuine interest in the FIPPA issues he raises with the OIPC or in accessing the information in dispute. 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.” Ms. Barker’s comment here continues to illustrate her animus and again must be illustrative of her state of mind that is relevant to her recusal and in the context of all other factors arising as shown herein.

22. [84] “.. the appropriate remedy ... This is an extraordinary remedy .. “. S.56(1) does not afford the public body the opportunity to challenge an Inquiry process or other matters once they have gone through the mediation stage. S.56(1) is clear and unambiguous that the matter “may” be considered when, “the matter is not referred to a mediator or is not settled under section 55 ... “. Any such interpretation by Ms. Barker is patently unreasonable.

D. Past Behaviour of Ms. Elizabeth Barker and the Appellant’s Inquiries

1. After receiving Order OIPC F21-04 (Files F20-84040 and F20-84041) from Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), it was evident that the Adjudicator had both falsified in the Order and made libellous comments. A letter was submitted in this regard and other to the Commissioner proper and Ms. Barker.(*Exhibit L, Cimolai Affidavit, pp.301-303*) The response from Ms. Barker is that, despite the aforementioned, she has no further role in the matters and does not make corrections; she makes recommendation to correct any improprieties through a Judicial Review to this Court.(*Exhibit L, Cimolai Affidavit, p.304*)

For Order 05-06 (2005 BCIPCD 36), Adjudicator Jay Fedorak first created the Order. On August 23, 2005, however, he created the “Supplement to Order F05-06 (Amended)” afterwards due to an error in not resolving the applicability of a yet another section of statute to the information access request.

For Order F19-15 (2019 BCIPC 17), Adjudicator Lisa Siew created the Order dated March 28, 2019. On May 7, 2019, the same Adjudicator issued an “Addendum to Order F19-15” in which she made modification to the Order due to inadvertently omitting references to some withheld material under analysis.

For Order F17-43 (2017 BCIPC 47), Adjudicator Carol Wittmore created the Order dated October 2, 2017. Thereafter on October 10, 2017, Ms. Elizabeth Barker, Senior Adjudicator issued “Addendum to Order F17-43” in which she indicated that there was an administrative oversight in that a Ministry’s final submission on an issue was not before the adjudicator and there Ms. Barker made further assessment and comment on the subject at hand.

For Order F08-13 (2008 BCIPCD 21), Adjudicator Catherine Boies-Parker created the Order dated June 27, 2008. Thereafter on March 16, 2010, Ms. Celia Francis, Senior Adjudicator added to the latter Order through a reconsideration summarized in "Decision F10-04 (Additional to Order F08-13)". Senior Adjudicator Francis details considerably on the options and rights of the OIPCBC to re-open OIPCBC reviews and Orders and to consider new evidence:

"[Summary] .. The test for re-opening to consider new evidence is akin to the test for admission of new evidence on appeal and the application for re-opening must be made promptly. [40] .. Principle of Finality – In Chandler [*Chandler v Alberta Association of Architects* 1989 2 SCR 848] Sopinka J., speaking for the majority of the Court ... [41] ... concluded that the finality of administrative proceedings should be recognized by a more flexible and less formalistic doctrine than the English rule of *functus officio* ... The law is clear that an administrative tribunal that is without a statutory provision for reconsideration, and the decisions of which are not subject to a full right of appeal, can re-open its decisions to consider new evidence or argument in wider circumstances than can a court. ... *Chandler* struck a more flexible application of the principle of finality, 'in order to provide relief which would otherwise be available on appeal.

Senior Adjudicator Francis also compiles numerous examples of "re-opening decisions".

For Order No. 37-1995 (1995 BCIPCD 9) of then OIPCBC Commissioner David Flaherty, the Commissioner wrote: "I acknowledge that I may accept fresh evidence after the completion of an inquiry, where fairness requires it ... ".

2. In the matters relating to the Ministry of Health and Medical Services Commission promotion to suspend then all active requests with application under OIPC Files F20-84040 and F20-84041 which thereafter led to the Order F21-04 of Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), the public bodies (through their counsel Ms. J. Alexander Dutton) submitted defective Affidavits with no signatures for taking oaths and no dates specified for the oaths and testimony of the affiants. (*Exhibit M, Cimolai Affidavit, pp.305-308*) The matter of defective Affidavits was raised with the Registrar and Commissioner, OIPCBC. (*Exhibit M, Cimolai Affidavit, pp.309-312*) The OIPCBC thereafter confirmed the impropriety of the Affidavits, and Ms. Dutton, MAG was mandated to provide proper ones. (*Exhibit M, Cimolai Affidavit, pp.313*) One month later, Ms. Dutton, MAG finally provided the proper Affidavits. (*Exhibit M, Cimolai Affidavit, pp.314-317*) While allowing defective affidavits for the matters in the s.56 application of dispute herein, Ms. Barker was well aware of similar and unexpected improprieties for the previous OIPC Files F20-84040 and F20-84041 in which she had participated (re: Order F21-04).

3. For OIPC File No. F20-82798 HTH 2019 94946, Ms. Barker would have duly have known of the OIPCBC conflicts with *Lovett Westmacott*. (see below)

4. For OIPC File No. F20-83995 HTH 2019 95732, Ms. Barker would duly have known of the OIPCBC conflicts with *Lovett Westmacott*. (see below)

5. For OIPC File No. F20-82368 MAG 2019 94124, Ms. Barker would duly have known of the OIPCBC conflicts with Layli Antinuk and her past role as an Adjudicator, OIPCBC of very recent timing. (see below)

6. For OIPC Files F20-84040 and F20-84041 which thereafter led to the Order F21-04 of Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), Ms. Barker would have duly known of the conflicts with Ms. Chelsea Lott of the Legal Services Branch, MAG and her past role as an Adjudicator, OIPCBC of very recent timing.(see below)

7. For OIPC File No. F22-91797 MAG 2021 13730, Ms. Barker added this file to those dismissed, regardless of Mr. Tuck's pleadings, and did not mention anything in her Order that this file had already been the subject of previous review. This file was previously numbered F21-87965 MAG 2021 13730 and was the particular subject for the MAG's attempt to quash the information access request through an s.43 application. As per Order F22-08 relating specifically that file, the Delegate (other than Ms. Barker) found:

The adjudicator found that s.43(a) did not apply because the adjudicator was not satisfied that responding to the request would unreasonably interfere with the Attorney General's operations. The adjudicator also found that the request was not frivolous or vexatious under s.43(b). For the reasons above, I do not give the Attorney General permission to disregard the request at issue under s.43(a) or (b) of FIPPA. I also decline to given the Attorney General relief from future requests or to decide what constitutes "one" request.

Rather than adhering to Order F22-08, the s.56 application of Mr. Tuck was yet another attempt to deny the same file but now through yet another route. That is, Mr. Tuck had re-litigated matters already tried. Ms. Barker would have well known of the latter.

8. For File No. OIPC F21-87965 and MAG 2021 13730 which became the substrate for the Order F22-08 in which the s.43 application of the Ministry of Attorney General was denied, the public body's counsel, a Ms. Kristina McKinnon, provided the initial argument submission for the Inquiry with redacted content.(*Exhibit N, Cimolai Affidavit, pp.318-320*) The redaction only relates to the putative number of hours so claimed that the lawyers and paralegals have spent " .. providing advice on files related to the respondent's access requests." Ms. McKinnon also writes, analogous to Ms. Dutton above, " ... litigation related to the MSC matter hearing to proceed for years.". In the same Inquiry, two Affidavits (Affidavit #1 of Darlene Kotchonoski and Affidavit #1 of Andrea Lee) were initially received without both the affiants' signatures and the signature of the commissioner for the oath.(*Exhibit N, Cimolai Affidavit, pp.321-330*) Eventually, the signed Affidavits were received.(*Exhibit N, Cimolai Affidavit, pp.331-333*) Both versions of the Affidavit of Andrea Lee however had redactions in bullet 6 with no clarification ever thereafter. Given this disparity, the Appellant herein petitioned the OIPCBC for the unredacted Affidavits. Among the responses received, the Registrar of the OIPCBC indicates on December 1, 2021 that " .. adjudicator Ian C. Davis reviewed the *in camera* request of the public body. I can provide no further information about the process."(*Exhibit N, Cimolai Affidavit, p.334*) Mr. Ian C. Davis proves not to be the adjudicator at any time thereafter on this Inquiry. A subsequent response is provided by Ms. Barker on the matters and dated December 3, 20221, and she writes, "The OIPC does not provide opposing parties a copy of the *in camera* application materials and decision letter... The OIPC will not be providing that material to you. However, I can safely disclose that Ian Davis, the Commissioner's delegate who decided the public body's request for approval of *in camera* material, stated in his decision letter that he applied the principles regarding *in camera* applications set out in the OIPC's *Instructions for Written Inquiries*."(*Exhibit N, Cimolai Affidavit, p.335*) Ms. Barker then indicates that a " .. formal request under FIPPA for access to the *in camera*

materials and decision letter... “ could be made, but then follows the latter with discourse in regards to how any such request would thereafter be denied. I continued to ask through a letter dated December 6, 2021 to the Commissioner, OIPCBC for the redacted material and the pre-Inquiry correspondence that was related to the same.(*Exhibit N, Cimolai Affidavit, pp.336-337*) Another response from Ms. Barker dated December 7, 2021 was received, and she writes “Your recourse if you are dissatisfied with a decision of the OIPC is to file a petition for judicial review.”(*Exhibit N, Cimolai Affidavit, p.338*) I again sent a letter to the Commissioner, OIPCBC now dated December 8, 2021 in which I raised concerns regarding procedural fairness.(*Exhibit N, Cimolai Affidavit, pp.339-340*) Ms. Barker then answered on behalf of the Commissioner on December 9, 2021 and states, “... any further communication the OIPC receives from you regarding these matters will be read, filed and not responded to.”(*Exhibit N, Cimolai Affidavit, p.341*)

9. In a request for information made by the Appellant to the College of Physicians and Surgeons of British Columbia, OIPC File No. F17-70921 CPSBC 2017022 ultimately led to the Order F20-17 (2020 BCIPC 19) by Ms. Barker, OIPCBC of April 29, 2020. Counsel of record for the College was identified as Mr. David Loukidelis.(*Exhibit O, Cimolai Affidavit, p.342-344*) In the Applicant’s Response Submission, the potential conflict of Mr. Loukidelis was directly raised with the OIPCBC.(*Exhibit O, Cimolai Affidavit, p.345*) The conflicts of Mr. Loukidelis and the OIPCBC became more established.(*Exhibit C, Cimolai Affidavit, pp.121-123 and Exhibit O, Cimolai Affidavit, p.346-360*) No response to the conflict with Mr. Loukidelis was received either from Ms. Barker or the OIPCBC to this day. Even as late as March 1, 2022, Mr. Loukidelis continued to represent the OIPCBC now as a Delegate and then issued Order P22-02.(*Exhibit O, Cimolai Affidavit, p.361*) Furthermore, during the timing of Ms. Barker’s Order F20-17, and with knowledge of Mr. Loukidelis’ involvement, she was duly “Director of Adjudication” and would have been in part responsible for proper and just adjudication procedures since at least November 1, 2019.(*Exhibit O, Cimolai Affidavit, p.362*)

10. In addition, shortly thereafter, Ms. Deborah Lovett of *Lovett Westmacott* represented the College of Physicians and Surgeons of British Columbia (OIPCBC File No. F19-79882 CPSBC 2019014) in denying the Appellant similar information and thereafter facilitated through Ms. Barker’s Order F21-27 (2021 BCIPC 34) dated June 25, 2021.(*Exhibit P, Cimolai Affidavit, pp.363-372*) In the latter Inquiry, Delegate Barker of the OIPCBC would have been aware of the representations of Ms. Lovett and the College directly. *Lovett Westmacott* acted then for the College near the same timing that it continued to receive OIPCBC contracts.(*Exhibit O, Cimolai Affidavit, pp.346-360*) Ms. Barker would also have had the previous letter from the Appellant indicating why her previous Order F20-17 rationale would have been in error.(see below E.5) Ms. Barker would have well known the OIPCBC conflicts with Ms. Lovett and *Lovett Westmacott*. The firm of *Lovett Westmacott* also would have been aware that Angela Westmacott has been a ‘legal member’ of the Discipline Committee of the College for a considerable time.(*Exhibit V, Cimolai Affidavit, pp.433-435*)

E. Conflicts and the OIPCBC

1. One of the Inquiries which was pending (prior to this s.56 application) for Delegate/adjudicator review before the Commissioner was OIPC File No. F20-82798 HTH 2019 94946.(*Exhibit Q, Cimolai Affidavit, p.373-375*) This file was included for dismissal by Ms. Barker's *Order* (see Order [86]1.) listed files but was not one directly petitioned for dismissal by the Mr. Tuck in his original application or related arguments. As seen from the schedule of submissions dated August 15, 2022, the last public body Reply submission was scheduled (and duly received) by September 27, 2022, and therefore the entirety was waiting for adjudication given the completed submissions. Counsel for the public body is listed as "Kaitlyn Chewka, *Lovett Westmacott*, ... Victoria". In another timing of the same file, I received correspondence from yet other counsel, Ms. Alandra K. Harlinton, of *Lovett Westmacott*, acting for the Ministry of Health.(*Exhibit Q, Cimolai Affidavit, p.376*) In my letter to Mr. McEvoy, Commissioner, OIPCBC dated November 10, 2022 and as part of these s.56 proceedings, the apparent conflicts of *Lovett Westmacott* and the OIPCBC were meticulously and overtly raised.(*Exhibit C, Cimolai Affidavit, pp.112-116*) It was apparent that lawyers within *Lovett Westmacott* were simultaneously representing government bodies in information access requests and serving as direct employees of the OIPCBC. It is of further concern that Ms. Barker added this file to those dismissed, regardless of Mr. Tuck's pleadings, and did not mention any such conflict in her *Order*.

2. Yet another Inquiry which was pending for Delegate/adjudicator review before the Commissioner was OIPC File No. F20-83995 HTH 2019 95732.(*Exhibit Q, Cimolai Affidavit, p.377*) This file also is included for dismissal by Ms. Barker's *Order* (see Order [86]1. listed files), but was not one directly petitioned for dismissal by Mr. Tuck in his original application or related arguments. As seen from the schedule of submissions dated August 8, 2022, the last public body Reply submission was scheduled (and duly received) by October 18, 2022, and therefore the entirety was waiting for adjudication given the completed submissions. Counsel for the public body is listed as "Kaitlyn Chewka, *Lovett Westmacott*, ... Victoria" and submissions are under her signature.(*Exhibit Q, Cimolai Affidavit, p.378-379*) The first four pages in the least of the Appellant's Reply (for this cancelled Inquiry already pending with submissions) were complete with concerns regarding "Conflicts and *Lovett Westmacott*" and OIPCBC conflict.(*Exhibit Q, Cimolai Affidavit, p.380-383*) Ms. Barker would have this information in evidence. Information on disclosure of contracts over \$10,000 are posted on the OIPCBC web-site:

<https://www.oipc.bc.ca/proactive-disclosure/contracts-over-10-000/>

The rationale and policy are detailed.(*Exhibit O, Cimolai Affidavit, p.346-349*) The names of Vendors in those contracts are detailed.(*Exhibit O, Cimolai Affidavit, p.350-360*) The latter names include many contemporary citations of *Lovett Westmacott* as contractors directly with the OIPCBC. Furthermore, although contracts over \$10,000 dollars are posted, those under \$10,000 are not posted but yet open for discovery in these matters.

3. Then again yet another Inquiry which was pending for Delegate/adjudicator review before the Commissioner was OIPC File No. F20-82368 MAG 2019 94124.(*Exhibit Q, Cimolai Affidavit, p.384*) This file also is included for dismissal by Ms. Barker's *Order* (see Order [86]1. listed files), but was not one directly petitioned for dismissal by the Mr. Tuck in his original application or related arguments. As seen from the schedule, initial, response, and reply submissions were due

on June, 8, June 29, and July 14 of 2022 respectively. This was a file with a specific request made through the Ministry of Attorney General. Counsel of the MAG, Ms. Layli Antinuk, petitioned the OIPCBC for an adjournment.(*Exhibit Q, Cimolai Affidavit, p.385*) The adjournment was unilaterally granted by the OIPCBC, and a new schedule of submissions was to be completed by August 25, 2022.(*Exhibit Q, Cimolai Affidavit, p.386*) The actual date for filing the MAG submission as deposited by Ms. Antinuk was September 14, 2022.(*Exhibit Q, Cimolai Affidavit, p.387*) Prior to the Order of Ms. Barker, all of the submissions had been tendered, and the entirety was clearly due for adjudication. Of concern however was the position of Ms. Antinuk in these matters. Whereas she was representing the MAG as late as May, 2022, she was only a few months previously working as an Adjudicator for the OIPCBC proper, and she released Order P21-07 (2021 BCIPC 61) and other Orders as proximal as November 1, 2021.(*Exhibit Q, Cimolai Affidavit, pp.388-390*) As shown in the e-mail of October 3, 2022 from Mr. Tuck, MAG, Ms. Antinuk continued to figure in this s.56 application which led to the Barker Order F23-23.(*Exhibit A, Cimolai Affidavit, p.8*)

4. In the matters relating to the Ministry of Health and Medical Services Commission promotion to suspend then all active requests with application under OIPC Files F20-84040 and F20-84041 which thereafter led to the Order F21-04 of Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), there were again further conflicts. A Ms. Chelsea Lott of the Legal Services Branch, MAG wrote correspondence to petition the OIPCBC Registrar on October 30, 2020.(*Exhibit Q, Cimolai Affidavit, p.391*) Defective Exhibits were also tendered from the public body with her unsigned commissioning for oath in 2020.(*Exhibit Q, Cimolai Affidavit, p.392*) Ms. Lott however was also duly an Adjudicator for the OIPCBC until at least August, 2019 as per her Order F19-31.(*Exhibit Q, Cimolai Affidavit, pp.393-394*) As per Ms. Lott's own public admission, she began work as legal counsel for Government as early as August, 2019.(*Exhibit Q, Cimolai Affidavit, pp.395-396*)

5. Of further relevance, both Ms. Deborah Lovett and Ms. Angela Westmacott represented the College in *College of Physicians and Surgeons of British Columbia v British Columbia Information and Privacy Commissioner* (2019 BCSC 354) which related to an Order of the Commissioner F18-01.(*Exhibit R, Cimolai Affidavit, pp.397-400*) Within the latter proceedings, information was deemed to have been ordered for release by the Commissioner/Delegate to a Dr. Keith Laycock (a registrant of the College). Ms. Lovett and Ms. Westmacott represented the College in denying Dr. Laycock the relevant information. By way of judicial review, Justice MacKenzie denied the information release to Dr. Laycock, but rested his decision on an affidavit from the College which was duly falsified. For the information denied to Dr. Laycock, the same information had been given to Dr. Cimolai in similar times. The firm of *Lovett Westmacott* also would have been aware that Angela Westmacott has been a 'legal member' of the Discipline Committee of the College for a considerable time.(*Exhibit V, Cimolai Affidavit, pp.433-435*)

General Service Agreements obtained from the OIPCBC illustrate the contractual nature of affiliation between the OIPCBC and both Ms. Lovett and Ms. Westmacott through at least 2018-2022 and through corporate entities as broad as LW Management Ltd., Deborah K. Lovett Law Corporation, and *Lovett & Westmacott*.(*Exhibit R, Cimolai Affidavit, pp.401-406*)

6. Relating to the above matters, correspondence was received from Ms. Barker dated April 24, 2019 in which it was said that the OIPCBC was intending to appeal the Decision of Justice MacKenzie (2019 BCSC 354) to the Court of Appeal.(*Exhibit R, Cimolai Affidavit, p.407*) On February 27, 2020, however, the OIPCBC submitted a Notice of Abandonment to the Court of Appeal for this very same file.(*Exhibit R, Cimolai Affidavit, p.408*) The OIPCBC file relating to these matters was never re-opened for the unambiguous new evidence that would have directly impacted the outcomes.

7. In a request for information made by the Appellant to the College of Physicians and Surgeons of British Columbia, OIPC File No. F17-70921 CPSBC 2017022 ultimately led to the Order F20-17 by Ms. Barker, OIPCBC of April 29, 2020.(*Exhibit R, Cimolai Affidavit, pp.409-412*) Counsel of record for the College was identified as Mr. David Loukidelis.(*Exhibit O, Cimolai Affidavit, p.342-344*) In the Applicant's Response Submission, the potential conflict of Mr. Loukidelis was directly raised with the OIPCBC.(*Exhibit O, Cimolai Affidavit, p.345*) In the interim, the Commissioner's Office submitted the Laycock Decision of Justice MacKenzie (2019 BCSC 354) for review and comment given the proximal issues.(*Exhibit R, Cimolai Affidavit, p.407*) On both October 30, 2019 and February 3, 2020, the Appellant submitted further information to Ms. Barker on the issues arising with the Laycock Decision and tendered considerable information as to how the College had previously waived on release of related information in several other matters which were in the public domain.(*Exhibit R, Cimolai Affidavit, pp.413-414*) After a reading of Ms. Barker's Order F20-17, it was evident that her citation of legislative changes and timings were duly in error and further correspondence in these regards was sent to Ms. Barker dated May 1, 2020 given that corrections of her legislative citations would have led to an entirely different outcome of the Inquiry.(*Exhibit S, Cimolai Affidavit, pp.415-424*) The response to the latter received from the OIPCBC was strictly that, "Our orders are final. If you believe errors were made, your recourse is judicial review in the Supreme Court."(*Exhibit S, Cimolai Affidavit, p.425*) The conflicts of Mr. Loukidelis and the OIPCBC were already established.(as detailed above in D.9) No response to the conflict with Mr. Loukidelis was received either from Ms. Barker or the OIPCBC to this day. No corrections to Ms. Barker's Order F20-17 were ever made thereafter. As per the discussion above in section D.1., there was considerable precedence for the re-opening of OIPCBC files and Orders in the wake of critical and new evidence. In the least, such precedence and its justification was previously detailed by Ms. Celia Francis, Senior Adjudicator in "Decision F10-04 (Additional to Order F08-13)". Senior Adjudicator Francis details considerably on the options and rights of the OIPCBC to re-open OIPCBC reviews and Orders and to consider new evidence; she cites numerous such examples.

8. In addition, shortly thereafter, Ms. Deborah Lovett of *Lovett Westmacott* represented the College of Physicians and Surgeons of British Columbia (OIPCBC File No. F19-79882 CPSBC 2019014) in denying Dr. Cimolai similar information and thereafter facilitated through Ms. Barker's Order F21-27 dated June 25, 2021.(*Exhibit P, Cimolai Affidavit, pp.363-372*) In the latter Inquiry, Delegate Barker of the OIPCBC would have been aware of the representations of Ms. Lovett and the College directly. *Lovett Westmacott* acted then for the College near the same timing that it continued to receive OIPCBC contracts. (*Exhibit O, Cimolai Affidavit, pp.346-360*) The OIPCBC would have been broadly then aware of conflicts with *Lovett Westmacott*. The firm of *Lovett*

Westmacott also would have been aware that Angela Westmacott has been a 'legal member' of the Discipline Committee of the College for a considerable time. (*Exhibit V, Cimolai Affidavit, pp.433-435*)

9. More concerning with the above travesties is that both the *Office of the Information and Privacy Commissioner for British Columbia* and the *Office of the Registrar of Lobbyists for British Columbia* share the same offices (4th Floor, 947 Fort Street, Victoria, British Columbia, V8V 3K3), staff, and indeed leadership as posted publicly. That such obvious conflicts simply elude both the staff and leadership is highly unlikely.

10. Although the response to the COVID-19 pandemic caused some delay in the response to requests and proceedings thereafter, any such delays were soon remedied in 2022 akin to changes that became evident in the Courts. As provided in statute nevertheless, "Inquiry by Commissioner s.56" states:

56(6) Subject to subsection (8), an inquiry into a matter under review must be completed within 90 days after receiving the request for the review.

F. Past Behaviour of the Ministries and Their Counsel Regarding the Appellant

1. In the matters relating to the Ministry of Health and Medical Services Commission promotion to suspend then all active requests with application under OIPC Files F20-84040 and F20-84041 which thereafter led to the Order F21-04 of Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), the public bodies, through their counsel Ms. J. Alexander Dutton, submitted defective Affidavits with no signatures for taking oaths and no dates specified for the oaths and testimony of the affiants. (*Exhibit M, Cimolai Affidavit, pp.305-308*) The matter of defective Affidavits was raised with the Registrar and Commissioner, OIPCBC. (*Exhibit M, Cimolai Affidavit, pp.309-312*) The OIPCBC thereafter confirmed the impropriety of the Affidavits, and Ms. Dutton, MAG was mandated to provide proper ones. (*Exhibit M, Cimolai Affidavit, pp.313*) One month later, Ms. Dutton, MAG finally provided the proper Affidavits. (*Exhibit M, Cimolai Affidavit, pp.314-317*)

2. For OIPC File No. F21-85144, the Ministry of Attorney General failed to respond to an information access request despite having been granted two time extensions. The request had been made on August 24, 2020. No response was made by February 25, 2021 (6 months later), and a Consent Order was required to force the MAG to comply. (*Exhibit T, Cimolai Affidavit, p.426*)

3. For OIPC File No. F22-89473 HTH 2021 15437, the Ministry of Health failed to respond to an information access request despite having been also granted two time extensions. The request had been made on November 23, 2021. No response was made by May 17, 2022 (6 months later), and a Consent Order was required to force the Ministry to comply. (*Exhibit T, Cimolai Affidavit, p.427*) The matters were at all times well-known to the MAG.

4. In the matters relating to the Ministry of Health and Medical Services Commission promotion to suspend then all active requests with application under OIPC Files F20-84040 and F20-84041 which thereafter led to the Order F21-04 of Ms. Elizabeth Barker, Director of Adjudication (2021 BCIPC 04), Ms. J. Alexander Dutton, Legal Services Branch, MAG provided the other parties'

initial submission. Ms. Dutton made admission that her position and that of the government parties was to draw out the MSC matters "... for years." (*Exhibit T, Cimolai Affidavit, p.428*)

5. For File No. OIPC F21-87965 and MAG 2021 13730 which became the substrate for the Order F22-08 in which the s.43 application of the Ministry of Attorney General was denied, the public body's counsel, a Ms. Kristina McKinnon, provided the initial argument submission for the Inquiry with redacted content. (*Exhibit N, Cimolai Affidavit, pp.318-320*) The redaction only relates to the putative number of hours so claimed that the lawyers and paralegals have spent "... providing advice on files related to the respondent's access requests." Ms. McKinnon also writes, analogous to Ms. Dutton above, "... litigation related to the MSC matter hearing to proceed for years." In the same Inquiry, two Affidavits (Affidavit #1 of Darlene Kotchonoski and Affidavit #1 of Andrea Lee) were initially received without both the affiants' signatures and the signature of the commissioner for the oaths. (*Exhibit N, Cimolai Affidavit, pp.321-330*) Eventually, the signed Affidavits were received. (*Exhibit N, Cimolai Affidavit, pp.331-333*) Both versions of the Affidavit of Andrea Lee however have redactions in bullet 6 with no clarification ever thereafter.

6. For File No. OIPC F21-87965 and MAG 2021 13730 which became the substrate for the Order F22-08 in which the s.43 application of the Ministry of Attorney General was denied, the public body's counsel tendered an Affidavit #1 of Andrea Lee. (*Exhibit N, Cimolai Affidavit, pp.331,333*) The Affidavits testifies that "... LSB employees have spent approximately 132 hours processing access requests from Dr. Cimolai.", but then afterwards makes the statement, "A lawyer with significant knowledge Estimated that it would take LSB employees at least 200 hours to collect the records and consult on the severing of the records." Ms. McKinnon's submission to the Inquiry also makes claim that, "Legal Services Branch estimates it will take at least 200 hours to process the respondent's most recent request to the applicant." (*Exhibit N, Cimolai Affidavit, p.319*) For the single MAG-directed request that was the subject of this file, however, the 200 hours stated would approximate more than 5 continuous work weeks for an individual. In the same matter, the Affidavit #1 of Darlene Kotchonoski claims that MAG access requests have generated 14,330 pages of records. (*Exhibit N, Cimolai Affidavit, p.324*) Yet the Table that is appended to her Affidavit records the files and leads to a stated total of 4446 pages.

7. From the audit matters, a Final Errors List of the errors used by the Ministry of Health was never forwarded to the Appellant and continues to be refused to this day. The List would necessarily include all audit file reviews and their associated computations. The Appellant has only received two prior preliminary Error Lists that were subsequently altered by the public bodies due to the many errors inherent. In OIPC File No. F21-86148 and MAG 2020 02520, the Appellant simply requested the Final Errors List. What was deliberately tendered by the MAG was an overly and deliberately enlarged 469 page printout of an Excel file, the contents of which are largely unintelligible. (*Exhibit F, Cimolai Affidavit, p.182* and *Exhibit U, Cimolai Affidavit, pp.429-432*) The MAG counsel would have known very well that such a printout in the format given and the massive redactions would yield a totality of unreadable and uninterpretable data.

8. The Legal Services Branch, MAG, which directs and assists the Ministry of Health and Medical Services Commission in these matters, would also have direct knowledge that the Ministry of Health has purposely directed the Appellant to acquire information directly through information

access, only thereafter to deny when the requests are made.(*Exhibit F, Cimolai Affidavit, pp.183-195*)

9. The Legal Services Branch, MAG through its Ministry of Health contacts would have duly known that all information relevant to the Appellant is mandated to be given as per Article 10.2(k) of the *Physician Master Agreement* between the Government and the Doctors of BC: “ ... the MSC will ... provide copies of all documents ... to the medical practitioner(s) at least 21 days prior to the hearing.”(*Exhibit F, Cimolai Affidavit, p.163*) In the *Medicare Protection Act*, the same mandate to provide relevant documents and information is given: “15(3) Before taking action ... the commission must notify the practitioner ... (b) of the circumstances giving rise to the commission’s intended action.”(*Exhibit F, Cimolai Affidavit, p.167*)

10. For the relevance of the *Physician Master Agreement* to the issues of information access and any audit process, the Government counsel has previously indicated in the matters before the Courts, “[Keith Hogg, Legal Services Branch, MAG] With respect to the Physician Master Agreement, I understand that to be a collective agreement of some sort between doctors in British Columbia and the Commission [MSC] and the Province. I have not been provided with a copy of it. ... And so the Physician Master Agreement ... are, firstly, not relevant ...”(*Exhibit F, Cimolai Affidavit, p.242*) In an Affidavit of Mr. Ross Alexander from the same Legal Services Branch, MAG, it is deposed that, “ ... the Physician Master Agreement (“PMA”). The PMA is the overarching agreement between the Province/Ministry and Doctors of BC that governs the relationship and economic arrangements for physicians in British Columbia.”(*Exhibit F, Cimolai Affidavit, p.247*)

Part 3: LEGAL BASIS

1. The Petitioner says that Ms. Elizabeth Barker, Director of Adjudications, Office of the Information & Privacy Commissioner for British Columbia (OIPCBC) erred considerably by misconceiving on many of the facts and misconceiving on her interpretation of law and statute. On both the standards of correctness and reasonableness, she failed to exercise proper authority and did not give a fair hearing of the essential matters.

2. The Petitioner says that Ms. Elizabeth Barker misinterpreted and exceeded the powers given under statute and acted *ultra vires*.

3. The Petitioner says that Ms. Elizabeth Barker inappropriately exceeded in her Order’s decisions beyond the public bodies’ pleadings.

3. The Petitioner says that Ms. Elizabeth Barker accepted defective affidavits.

4. The Petitioner says that Ms. Elizabeth Barker accepted *in camera* evidence without argument and did so for information that did not attract *in camera* redaction or protection.

5. The OIPCBC failed to provide proper precedence or structure or timelines for any such s.56(1) application.

6. The Petitioner says that Ms. Elizabeth Barker and the OIPCBC failed to acknowledge numerous inherent conflicts which impact on the veritable adjudication of the matters at hand and for the previous and/or upcoming inquiries or investigations.

7. The Petitioner says that Ms. Elizabeth Barker failed to properly hear arguments on her recusal as Adjudicator in the matters at hand.

8. The Petitioner says that Ms. Elizabeth Barker breached the Petitioner's *Charter* rights by denying access to his personal information so held by the public bodies and by failing to allow statute-driven processes which allow for the Petitioner to correct wrongful information in the public bodies' possessions.

Part 4: MATERIAL TO BE RELIED ON

Affidavit of Nevio Cimolai dated April 28, 2023

Freedom of Information and Protection of Privacy Act, RSBC 1996, C.165 (as amended)

Judicial Review Procedure Act, RSBC 1996, C.241 (as amended)

Administrative Tribunals Act, SBC 2004, C. 45 (as amended)

Medicare Protection Act, RSBC 1996, C.286 (as amended)

Medical and Health Care Services Act, SBC 1992, C.76 (former; now inactive)

Physician Master Agreement between the Doctors of British Columbia (formerly British Columbia Medical Association) and the Government of British Columbia (including the Medical Services Commission) – all such agreements of past and present.

Order F23-23, May 28, 2023, Ministry of Attorney General, Ministry of Finance, and Ministry of Health. Elizabeth Barker, Director of Adjudication. *2023 BCIPC 27*.

Order F21-04, January 28, 2021, Ministry of Health and Medical Services Commission, Elizabeth Barker, Director of Adjudication. *2021 BCIPC 04*.

Order F22-08, February 10, 2022, Ministry of Attorney General. Erika Syrotuck, Adjudicator. *2022 BCIPC 08*.

All other Orders and Decisions of the Office of the Information & Privacy Commissioner for British Columbia as may be deemed necessary in argument.

All case law as may be deemed necessary in argument.

Any Affidavits tendered by the Respondent parties.

The Petitioner estimates that the hearing of this Petition will require 2.5 days minimum but reserves a more precise timing given the inability to predict whether cross-examination on the Respondent's Affidavit(s) will be required.

Dated: April 28, 2023

A handwritten signature in cursive script, appearing to read "Nevio Cimolai", written over a horizontal line.

Signature of Petitioner

Nevio Cimolai