



Order F22-21

## ORGANIZATION OF CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA

Jay Fedorak  
Adjudicator

April 28, 2022

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**Summary:** The applicant requested access to her own personal information from the Organization of Chartered Professional Accountants of British Columbia (CPABC) relating to a complaint that she had made against a member of the CPABC. The CPABC disclosed some records, but withheld information under ss. 12(3) (local public body confidences), 13(1) (advice and recommendations), 15 (harm to law enforcement) and 22(1) (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The CPABC also withheld all of the information under s. 69 of the *Chartered Professional Accountants Act* (CPAA). The adjudicator found that s. 3(7) of FIPPA overrides s. 69 of the CPAA. The adjudicator also found that ss. 12(3), 13(1) and 15 of FIPPA did not apply. The adjudicator found that s. 22(1) applied to some but not all of the information. The adjudicator ordered the CPABC to disclose some information to the applicant and withhold the remainder.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 3(7), 12(3)(b), 13(1), 15(1)(a), 15(1)(c), 15(2)(b), 22(1), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(a), 22(3)(b), 22(3)(d), 22(3)(f); *Chartered Professional Accountants Act*, s. 69.

### INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Organization of Chartered Professional Accountants of British Columbia (CPABC) for her personal information contained in a particular investigation file. The applicant was the complainant for that case. The applicant clarified that her request was restricted solely to her own personal information and excluded the personal information of any third parties, other than the statements and opinions any third parties expressed about them. The CPABC disclosed some information to the applicant but withheld other information under ss. 12(3), 13(1), 15(1), and 22(1). The CPABC also asserted

that s. 69 of the *Chartered Professional Accountants Act* (CPAA) also prohibited disclosure of that information.

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the decision of the CPABC. It subsequently disclosed further information to the applicant and indicated that it was also applying s. 15(2)(b) to some of the remaining information.

[3] Mediation failed to resolve the matter and the applicant requested that it proceed to an inquiry.

### ***Preliminary Matter***

#### *Section 15(1)*

[4] In its submissions, the CPABC introduces the application of s. 15(1)(c) for the first time. In its correspondence with the applicant, it cited only s. 15(1)(a).

[5] The notice of inquiry identified the specific issues to be decided in this inquiry and indicated that, in general, the adjudicator will only consider the issues listed in the investigator's fact report. The notice of inquiry also advised the parties to review the OIPC's Instructions for Written Inquiries, which require parties to seek the OIPC's permission prior to introducing new issues and they make such a request before the date for initial submissions. Previous orders and decisions have reinforced this principle by finding that a party may only introduce a new issue into an inquiry with the permission of the OIPC.<sup>1</sup>

[6] The purpose of the requirement to identify issues in advance of the inquiry is to ensure administrative fairness. All parties must know the case to answer and have a fair opportunity to be heard. When one party raises a new issue without the knowledge of the other party, it may deprive their opponent of a full opportunity to make their case.

[7] It is important to note that s. 15(1) includes a wide range of paragraphs under the general umbrella of protecting investigations. The provision in s. 15(1)(a) protects information the disclosure of which would harm a law enforcement matter. This refers to a specific law enforcement investigation. The provision in s. 15(1)(c) protects information the disclosure of which would harm investigative techniques. This refers to ongoing or future investigations. Some information might fall into both provisions, while other information might only fall into one.

[8] In this case, the applicant did not object to the CPABC raising s. 15(1)(c) and addressed both paragraphs of s. 15(1) in her response submission. I also

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<sup>1</sup> For instance, see Order F21-21, 2021 BCIPC 26 at para. 8 as well as the cases cited there.

note that both of these provisions are similar in nature. Therefore, I have decided for the sake of completeness to consider the application of s. 15(1)(c) in this case.

## ISSUES

[10] The issues to be decided in this inquiry are:

1. Does s. 69(1) of the CPAA apply?
2. Does s. 12(3) of FIPPA permit the CPABC to withhold information?
3. Does s. 13(1) of FIPPA permit the CPABC to withhold information?
4. Do ss. 15(1)(a), 15(1)(c) and 15(2)(b) permit the CPABC to withhold information?
5. Does s. 22(1) of FIPPA require the CPABC to withhold personal information?

[11] Under s. 57(1) of FIPPA, the CPABC has the burden of proving that it is authorized to refuse access to the information withheld under ss. 12, 13, and 15. Under s. 57(2) of FIPPA, the applicant has the burden of proving that the disclosure of the personal information in dispute would not be an unreasonable invasion of the personal privacy of the third parties under s. 22(1) of FIPPA.<sup>2</sup> Previous orders have found that the public body has the burden of proving that the applicant has no right to access records, where it claims the application of another statute prohibiting disclosure.<sup>3</sup> Therefore, the CPABC has the burden of proving that s. 69(1) of the CPAA prevents disclosure of the information.

## DISCUSSION

[12] **Background** – The CPABC is the professional regulatory body for chartered accountants. Its governing statute is the CPAA, which assigns the CPABC responsibility for, among other powers, establishing and enforcing professional conduct. It receives and investigates complaints of member misconduct, including the contraventions of the bylaws of the CPABC. It is a local public body under schedule 3 of FIPPA.

[13] The applicant previously held a temporary power of attorney for another individual. After the individual revoked the power of attorney, the applicant complained to the CPABC with allegations of misconduct by the individual's accounting firm. The CPABC investigated the complaint and the Investigation Committee of the CPABC found that there were no grounds for disciplining the accounting firm. The applicant subsequently requested all of her own personal information that the CPABC holds, including statements she herself made,

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<sup>2</sup> However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information. Order 03-41, 2002 BCIPC 49220 (CanLII), paras 9-11.

<sup>3</sup> See for example, Order F21-27, 2021 BCIPC 34 (CanLII).

statements about her, and the opinions that any third parties expressed about her.

[14] **Records at issue** – The CPABC has identified a collection of approximately 1300 pages of records that it considers to be responsive to the complaint. It has already disclosed approximately 194 pages to the applicant. The CPABC describes the records in dispute as its “investigative and deliberative records” comprising its investigative file concerning the applicant’s complaint.

[15] The records withheld include a copy of the complaint, a copy of the minutes of the Investigation Committee, multiple drafts and copies of the Investigation Report, multiple copies of correspondence that the applicant provided, and multiple copies of correspondence with the accounting firm and others.

[16] The applicant has requested access only to her own personal information. FIPPA defines “personal information” as recorded information about an identifiable individual, other than contact information. Information is an individual’s personal information if it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.<sup>4</sup>

[17] I see that some of the records that the CPABC has produced as responsive records do not actually contain the applicant’s personal information. I conclude that the records that do not contain any of the applicant’s personal information are outside the scope of the applicant’s request and are not at issue in this inquiry. For that reason, I will make no decision about them. In addition, there are records that include both personal information about the applicant and other information that is unrelated to the applicant.

[18] The records that I will consider are those that actually contain the applicant’s personal information and these records are the complaint, minutes of the Investigation Committee, a draft and a final version of the Investigation Report and correspondence. In addition, I will consider only those portions of the records that contain the personal information of the applicant.

[19] A number of the records at issue are duplicates. In this order, my findings regarding the application of a section to a record also apply to its duplicate. The records also include some personal information of the applicant that the CPABC indicates that it has disclosed to her.

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<sup>4</sup> Order F19-13, 2019 BCIPC 15 (CanLII), para. 16; Order F18-11, 2018 BCIPC 14, para. 32.

**Section 69(1) of the CPAA**

[20] I will first determine the application of s. 69(1) of the CPAA and whether it prohibits disclosure of the requested information. The CPABC says that ss. 69(1) and (3) apply in this case.

[21] The relevant provision is as follows:

- 69** (1) A person acting under this Act must keep confidential all facts, information and records obtained or provided under this Act or under a former enactment, except so far as the person's public duty requires or this Act or the bylaws permit the person to disclose or to report or take official action on the facts, information and records.
- (2) Insofar as the laws of British Columbia apply, a person must not give, or be compelled to give, evidence in a court or in proceedings of a judicial nature concerning knowledge gained in the exercise of a power or in the performance of a duty under Part 7 [*Practice Reviews, Investigations and Hearings*] unless
- (a) the proceedings are under this Act, or
  - (b) disclosure of the knowledge is authorized under subsection (1) or under the bylaws.
- (3) The records relating to the exercise of a power or the performance of a duty under Part 7 are not compellable in a court or in proceedings of a judicial nature insofar as the laws of British Columbia apply unless
- (a) the proceedings are under this Act, or
  - (b) disclosure of the knowledge is authorized under subsection (1) or under the bylaws.

[22] The CPABC submits that s. 69(1) of the CPAA requires that it refuse to disclose to the applicant all records that it had received during the course of investigating the complaint, other than records that the complainant had provided or had already received. It notes that s. 69(3) of the CPAA also prohibits a court or proceeding of a judicial nature from compelling the production of records collected as part of a complaint investigation. It argues: "As this Inquiry is a 'proceeding of a judicial nature', the OIPC must give full effect to this provision by refusing to compel their production under the Act."<sup>5</sup>

[23] The CPABC has not clarified whether it is referring to my ability to compel the production of records for my review or my ability to order the CPABC to disclose the records to the applicant. I note that the CPABC has already produced the records to me as part of its submissions to this inquiry. Therefore,

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<sup>5</sup> The CPABC's initial submission, paras. 25-26.

I assume that it is arguing that s. 69(3) prevents me from ordering it to disclose the records to the applicant.

[24] The CPABC acknowledges that there is a provision in s. 3(7) of FIPPA that overrides the confidentiality provisions of other enactments, but it argues that this provision does not apply in this case for two reasons. The first is that it would be unreasonable. It states:

The [CPAA] was enacted twenty years after [FIPPA]. It is surely not the case that the [CPAA] was intended by its legislative drafters to be interpreted so as to specifically prevent courts and adjudicators from compelling disclosure of CPABC's investigative records, but that an applicant could circumvent and defeat these same provisions simply by making an access request under Part 2 of [FIPPA]. Such an interpretation leaves section 69 entirely devoid of meaning.<sup>6</sup>

[25] The second reason is, the CPABC argues, that there is, in fact, no conflict between FIPPA and s. 69 of the CPAA because the provision applies “in so far as the laws of British Columbia apply.” The records must be kept confidential and are not compellable in any proceedings of a judicial nature. Therefore, it argues that I must give full effect to the provision of s. 69.<sup>7</sup>

[26] The applicant does not contest these arguments.

### **Analysis**

[27] The first issue that I must determine is whether there is a conflict between FIPPA and ss. 69(1) and (3) of the CPAA. Section 4 of FIPPA gives individuals a right of access to information in records in the custody or under the control of a public body. This right applies to information in all records subject to FIPPA, limited only by disclosure exceptions in Part 2 of FIPPA. Section 69(1) of the CPAA prohibits disclosure of records collected as part of the investigative process of the CPABC, except where disclosure is necessary for purposes of the CPAA.

[28] I will now examine how these two enactments apply in the circumstance of this case. The CPABC is a local public body subject to FIPPA. Therefore, the applicant has a right of access to records in the custody or under the control of the CPABC, subject to a series of exceptions. The applicant has requested her own personal information in the custody of the CPABC. Therefore, FIPPA gives the applicant a statutory right of access to this information.

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<sup>6</sup> The CPABC's initial submission, para. 28.

<sup>7</sup> The CPABC's initial submission, para. 29.

[29] In the event that there is a conflict between the access provisions of FIPPA and a confidentiality clause in another enactment, the following provision of FIPPA applies:

- 3 (7)** If a provision of this Act is inconsistent or in conflict with a provision of another Act, this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[30] As noted above, s. 69(1) requires that the CPABC keep confidential all records that it creates or obtains in the course of exercising its duties under the CPAA. The CPABC created and obtained the personal information the applicant requested during the course of investigating a complaint under the CPAA. Therefore, s. 69(1) requires that the CPABC not disclose the records the applicant requested. As a result, FIPPA gives a right of access to records that the CPAA requires the CPABC to keep confidential. This constitutes a conflict between the two statutes.

[31] As noted above, FIPPA includes a provision that determines which enactments apply in the event of a conflict. Section 3(7) stipulates that FIPPA applies unless the other enactment includes a provision stating expressly that the other enactment applies despite FIPPA.

[32] The CPAA does not contain a provision indicating that s. 69 applies despite FIPPA. The phrase “in so far as the laws of British Columbia apply” is not an equivalent. Therefore, I find that, in accordance with s. 3(7) of FIPPA, the applicant’s access rights prevail over the general prohibition on disclosure in s. 69 of the CPA. This is consistent with the finding in Order F19-31, where the adjudicator found that the access rights in FIPPA trumped the prohibition on disclosure in s. 16(3) of the *Assessment Act* of information collected under that enactment. The reason was because the *Assessment Act*, like the CPAA, did not include express language indicating that it applied despite FIPPA.<sup>8</sup>

[33] The CPABC’s arguments that it would be unreasonable for FIPPA access rights to override the confidentiality provision of the CPAA because it would make s. 69 of the CPAA “devoid of meaning” do not persuade me. This provision of the CPAA protects information and records that the CPABC collects or obtains during the investigative process of the CPABC. This protection remains in place in most circumstances. However, there is nothing in the CPAA to prevent disclosure where there is an overriding legal requirement, as is the case with respect to ss. 3(7) and 4 of FIPPA.

[34] If the legislative intent was to exempt from access under FIPPA the information subject to s. 69 of the CPAA, the legislature could have included a clause to that effect, as it did with the other enactments.

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<sup>8</sup> Order F19-31, 2019 BCIPC 33 (CanLII), para. 14.

[35] There are a number of enactments that include such clauses. For example, s. 51 of the *Evidence Act* prohibits a committee of a board of management established for specific purposes under the *Hospitals Act* from disclosing information that it receives. There is a provision in s. 51(7) that stipulates expressly that it applies despite any provision of FIPPA. In addition, s. 26.2 of the *Health Professions Act* includes a similar provision prohibiting the disclosure of information collected by quality assurance committees. It also contains a clause indicating that it applies despite FIPPA. The *Adult Guardianship Act* includes mandatory reporting provisions relating to neglect or abuse. It also includes a provision in s. 46 prohibiting the disclosure of the identity of an individual who makes a report. This prohibition explicitly applies despite FIPPA. Previous Orders have found that applicants do not have a right of access to records subject to these provisions.<sup>9</sup>

[36] To interpret s. 69 of the CPAA as granting the same level of protection from access under FIPPA, in the absence of such a clause, would render s. 3(7) of FIPPA meaningless.

[37] Therefore, I find that, in accordance with s. 3(7) of FIPPA, the applicant's right of access under FIPPA overrides the confidentiality provisions of s. 69 of the CPAA. In other words, s. 69(1) and 69(3) of the CPAA do not apply in this case.

[38] I will now turn to the application of the exceptions to disclosure that the CPABC identified.

### ***Section 12(3) – local public body confidences***

[39] The relevant provision of s. 12(3) is as follows:

**12(3)** The head of a local public body may refuse to disclose to an applicant information that would reveal

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(b) the substance of the deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public

[40] FIPPA defines a local public body as follows:

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<sup>9</sup> *Evidence Act* RSBC 1996 Chapter 124; *Hospitals Act* RSBC 1996 Chapter 200; *Health Professions Act* RSBC 1996 Chapter 183; *Adult Guardianship Act* RSBC 1996 Chapter 6; Order F06-15, 2006 BCIPC 22 (CanLII); Order F21-27, 2021 BCIPC 34 (CanLII).; Order F21-39, 2021 BCIPC 47 (CanLII).

**"local public body"** means

...

- (d) a governing body of a profession or occupation, if the governing body is designated in, or added by regulation to, Schedule 3;

[41] The CPABC is designated as the governing body of the profession of accountants in Schedule 3.

[42] Previous BC Orders have established that, for a local public body to rely on this provision, it must meet the following three conditions:

1. A statute authorized the local public body to meet in the absence of the public;
2. The meeting took place in the absence of the public; and
3. The information would, if disclosed, reveal the substance of the deliberations of the meeting held in the absence of the public.<sup>10</sup>

[43] I take a similar approach here.

*Is there a statutory authority for the CPABC to meet in the absence of the public?*

[44] The CPABC has applied this provision to materials prepared for, or submitted to, the Investigation Committee of the CPABC. These consist of the Investigation Report and attachments. The CPABC submits that CPAA establishes a Board of the CPABC to which it grants the authority to establish bylaws, including bylaws relating to investigations and disciplinary proceedings related to members. The CPABC cites the relevant bylaws relating to the Investigation Committee: Bylaws 303 and 303(2). In addition, under Bylaw 308(f), the Board has the authority to establish Regulations governing the procedures of the Investigation Committee.

[45] The CPABC explains that, in response to a complaint that a member may have breached the Bylaws, an investigator gathers evidence and prepares a report for the Investigation Committee. The Investigation Committee then deliberates on the report in the absence of the public. Under Bylaw Regulation 308/5, the Investigation Committee has the authority to meet in the absence of the public under s. 27(3)(b) of the CPAA, including "for the purpose of protecting the privacy of any individual whose personal information is being considered or discussed." The CPABC submits that the Investigation Committee has a consistent practice of meeting in the absence of the public for this reason.<sup>11</sup>

[46] The applicant does not contest the fact that the Investigation Committee has the statutory authority to meet in the absence of the public.

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<sup>10</sup> See for example, Order 00-11, 2000 BCIPC 10554 (CanLII).

<sup>11</sup> The CPABC's initial submission, para. 39, citing Bylaw Regulation 308(f).

[47] The CPABC has established that s. 27(3)(b) of the CPAA and CPABC Bylaw Regulation 308/5 under Bylaw 308(f) authorize the Investigation Committee to meet in the absence of the public.

*Did the meeting take place in the absence of the public?*

[48] For reasons that will become apparent, I will first consider the third part of the test: whether disclosure of the information at issue would reveal the substance of the deliberations.

*Would the information at issue reveal the substance of the deliberations?*

[49] The CPABC submits that any records showing the evidence that the Investigation Committee considered and how it assessed that evidence would reveal the substance of the deliberations of the committee. It asserts that the Investigation Report and its attachments constitute information the investigator prepared for the purpose of the deliberations of the Investigation Committee. It argues that disclosure of this information would permit the reader to draw accurate inferences about the deliberations. In addition, it submits that the minutes of the meeting would disclose the substance of the deliberations.<sup>12</sup>

[50] The applicant does not contest whether the disclosure of these records would reveal the substance of the deliberations of the Investigation Committee.

[51] The minutes of the meeting provide an indication of the purpose of the meeting, the substance of the interrogation of witnesses, and the ultimate finding of the committee. I note that the minutes do not record any description of the discussions of the committee members after the witnesses left the meeting. I also note that the purpose of the meeting was to evaluate the actions of the accounting firm, not the complainant. The only evidence of the substance of the deliberations is in the ultimate conclusion and finding of the Investigation Committee, which relates solely to the accounting firm.

[52] The Investigation Report and the minutes of the meeting contain some factual information about the applicant that I find has no bearing on the actions of the accounting firm under investigation. The CPABC has not demonstrated how the disclosure of this information would reveal the substance of the deliberations of the Investigation Committee. I find that this information does not reveal the substance of the deliberations.

[53] The records also contain a summary of the applicant's complaint and copies of correspondence between the applicant and third parties. While the members of the Investigation Committee may have read these materials, there is

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<sup>12</sup> The CPABC's initial submission, paras. 51-52.

no indication in the records or the submissions before me that members discussed at the meeting the personal information of the applicant in these records. There is nothing in the minutes of the meeting to indicate that there were specific discussions about these materials. Nor has the CPABC indicated how disclosure of this information would enable anyone to infer anything about the deliberations. The CPABC makes a bald assertion that all materials provided to the Investigation Committee would reveal the substance of deliberations. It does not explain the direct connection between all the information in the records and the substance of the deliberations.

[54] Moreover, as the information at issue here is her complaint and the contents of her correspondence with the third parties, the applicant is aware of the details of this information. No one has added any information to the face of the records by annotation or other means. These records remain just as the applicant would have seen them previously. Disclosure of this information would not reveal anything to the applicant. The CPABC has also informed the applicant of the outcome of the investigation. The CPABC has failed to establish that disclosing the applicant's own personal information would reveal the substance of the deliberations of the Investigation Committee.

[55] Therefore, I find that s. 12(3)(b) does not apply to the applicant's own personal information. This finding makes it unnecessary for me to consider whether the meeting of the Investigation Committee at issue was indeed held in the absence of the public.

### **Section 13 – advice and recommendations**

[56] The CPABC is withholding the Investigation Report and other documents relating to the deliberations of the Investigation Committee under s. 13(1), which states:

**13** (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[57] The courts have described the purpose of protecting advice and recommendations from disclosure as to ensure public servants are able to provide full, free and frank advice, because some degree of deliberative secrecy can increase the effectiveness of the decision-making process.<sup>13</sup> The term "recommendations" includes material that relates to a suggested course of action that the decision-maker will ultimately accept or reject. The term "advice" includes expert opinions on matters of fact on which a public body must make

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<sup>13</sup> *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College of Physicians*], para. 105; *John Doe v. Ontario (Finance)*, 2014 SCC 36 [*John Doe*], paras. 34, 43, 46, 47.

a decision for future action.<sup>14</sup> The courts have also found advice includes policy options prepared in the course of the decision-making process.<sup>15</sup> Previous orders have upheld the application of s. 13(1) both when information reveals advice or recommendations and when it would enable a reader to draw accurate inferences about advice or recommendations.<sup>16</sup>

[58] Order F21-16 sets out the process for determining if s. 13(1) applies:

The s. 13 analysis involves two steps. First, I must determine if disclosure of the information in dispute would reveal advice or recommendations developed by or for the public body. If it would, then I must determine whether the information falls into any of the categories listed in ss. 13(2) or 13(3). If it does, the public body cannot refuse to disclose it. Section 13(2) lists categories of information that public bodies cannot withhold under s. 13(1).<sup>17</sup>

[59] In arriving at my decision on s. 13(1), I have considered the principles for applying s. 13(1) set out in the court decisions and orders cited above.

[60] The CPABC argues that s. 13(1) applies to all of the records in dispute. It states:

The CPABC submits that it applies to the entirety of the Disputed Records as they were all compiled and created in the course of, and were integral to, an internal deliberative process of the CPABC Investigation Committee. In fact, all of the actions and materials developed by the Investigator were prepared for the express purpose of identifying, assessing and analysing for the Investigation Committee the evidence relevant to its deliberations.<sup>18</sup>

[61] I note, however, that this assertion conflicts with the information that the CPABC presents in Appendix A to its submission and its annotations on each page of the records. This appendix is a table of the records in dispute, which provides a description of specific pages of records and indicates that exceptions to disclosure that the CPABC was applying to those particular pages. This table indicates that it applied s. 13(1) only to a portion of the records in dispute. Therefore, I will only review the application of s. 13(1) to the pages that the CPABC has indicated in Appendix A that it has applied s. 13(1) and the pages that it has marked that it has applied s. 13(1), and only with respect to the passages containing personal information of the applicant.

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<sup>14</sup> *College of Physicians*, *ibid* at para. 113.

<sup>15</sup> *John Doe*, para. 35.

<sup>16</sup> See, for example, Order F15-60, 2015 BCIPC 64 (CanLII), para. 12. See also Order F16-32, 2016 BCIPC 35 (CanLII). Order F15-52, 2015 BCIPC 55 (CanLII), also discusses the scope and purpose of s. 13(1).

<sup>17</sup> Order F21-16, 2021 BCIPC 21 (CanLII), paras. 14 and 15.

<sup>18</sup> The CPABC's initial submission, para. 54.

[62] The CPABC cites the decision of the BC Court of Appeal in *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)* [*College of Physicians*] in arguing that s. 13(1) applies broadly, rather than to specific recommendations in the records. It also cites several BC Orders that have held that s. 13(1) applied to complete sets of records. The CPABC asserts that all of the records at issue consist of advice or recommendations that were integral to the decision making of the Investigation Committee with respect to the actions of the accounting firm. These records consist of advice or recommendations or constitute information that would permit the advice or recommendations to be inferred.<sup>19</sup>

[63] The CPABC asserts that none of the provisions in s. 13(2) or 13(3) apply.

[64] The applicant does not contest the application of s. 13(1).

### **Analysis**

[65] While the CPABC rightly notes that I must not interpret the terms “advice and recommendations” too narrowly, it is equally important not to interpret them too broadly. The essence of the decision in *College of Physicians* is that the concept of advice is broader than just recommendations and that it includes expert opinions on matters of fact.

[66] While other adjudicators have found that s. 13(1) applies to a set of records in their entirety in some cases, this does not mean that it will always apply to records in their entirety. The application of s. 13(1) depends on the circumstances of the case and the exact nature of the information.

[67] In this case, the advice and recommendations relate to deliberations on the actions of a third-party business to which the applicant had no connection. The applicant has not requested information about the third-party business, the investigation or the deliberations of the Investigation Committee. The information the applicant requested that appears in the records is as follows:

- The applicant’s description of a complaint against that third party business.
- Biographical information about the applicant that I find has no bearing on the evaluation of the actions of the third-party business.
- Communications between the applicant and third parties prior to the submission of the complaint.

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<sup>19</sup> The CPABC’s initial submission, paras. 54-60; *College of Physicians, ibid*; Order F14-52, 2014 BCIPC 56 (CanLII); Order F17-33, 2017 BCIPC 35 (CanLII); Order F19-28, 2019 BCIPC 30 (CanLII).

[68] I cannot see the way in which the applicant worded her complaint or the contents of the applicant's communications with the third-party business could reveal the nature of the advice that the investigator provided to the Investigation Committee.

[69] From my reading of the applicant's own personal information, I am unable to see how anyone could infer the nature of the advice that the investigator was providing. While the investigator included this information in the Investigation Report, the investigator did not give any indication what they thought with respect to the actions of the accounting firm or what the conclusion of the Investigation Committee should or would be.

[70] Therefore, I find that s. 13(1) does not apply to the personal information of the applicant.

### **Section 15(1) – harm to law enforcement**

[71] The relevant provision of s. 15(1) is as follows:

- 15 (1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) harm a law enforcement matter
  - ...
  - (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement
  - ...
- (2) The head of a public body may refuse to disclose information to an applicant if the information
- ...
  - (b) is in a law enforcement record and disclosure could reasonably be expected to disclose to civil liability the author of the record or a person who has been quoted or paraphrased in the record.

[72] FIPPA defines "law enforcement" as follows

**"law enforcement"** means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanctions being imposed.

### **Analysis**

[73] To assess whether disclosure of the information at issue would harm a law enforcement matter in accordance with s. 15(1)(a), I must determine the following:

1. Whether the information in dispute relates to law enforcement;
2. Whether disclosure would harm a law enforcement matter.

*Does the information in dispute relate to law enforcement?*

[74] The CPABC submits that the CPAA grants it powers to conduct investigations and issue penalties and sanctions on members who breach professional standards of conduct. Therefore, the investigation in this case could lead to a penalty or sanction being imposed and constitutes law enforcement for the purposes of FIPPA.<sup>20</sup>

[75] The applicant does not contest that the records relate to law enforcement.

[76] From my review of the CPAA, I agree that the CPABC has the authority to conduct investigations and proceedings that could lead to a penalty or sanction being imposed. I am also satisfied that the information in the records relates directly to the CPABC exercising those powers in this case. Therefore, I find that the records at issue relate to law enforcement in accordance with FIPPA.

*Would disclosure harm a law enforcement matter?*

[77] The CPABC submits that it is essential to maintain the confidentiality of records of investigations to preserve the effectiveness of its investigations. It argues that witnesses may not provide full and frank information, if they fear that information could be disclosed to third parties. The CPABC asserts that potential witnesses could be reluctant to participate fully in investigations for fear of being harassed, criticized or confronted about their testimony.<sup>21</sup>

[78] The applicant submits that, as the current law enforcement matter has been settled for three years, disclosure of information in the records could not harm that matter.

[79] The CPABC has not established that disclosure of the records at issue would harm the investigation at issue. That matter is now closed. There can be no harm to that investigation.

[80] In the case of this request, the applicant was not the subject of the investigation. There is little of her information contained in the records. The

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<sup>20</sup> The CPABC's initial submission, para. 93.

<sup>21</sup> The CPABC's initial submission, paras. 94-99.

CPABC has not addressed specifically the issue of the harm that would result from the applicant having access solely to her own personal information.

[81] Therefore, I find that the disclosure solely of the applicant's own personal information would not harm a law enforcement matter in accordance with s. 15(1)(a).

[82] **Section 15(1)(c)** – The CPABC has also submitted that disclosure of information in the investigation file would harm the effectiveness of investigative techniques. It argues that disclosure of how it investigates complaints could enable witnesses to infer the techniques that it employs, and this could influence how they respond to the investigator in ways to conceal evidence.<sup>22</sup>

[83] The applicant does not contest whether disclosure would harm law enforcement techniques.

[84] I accept that a general policy of preserving the confidentiality of evidence collected as part of the investigation process would assist in persuading potential witnesses to provide full and frank information. I also accept that a general practice of disclosing information collected during an investigation could dissuade some witnesses. Therefore, I agree that in some cases there is potential that disclosure of information relating to past investigations could harm future investigations.

[85] Nevertheless, in this case, the CPABC's submission is vague. It does not identify any specific investigative techniques that disclosure of the records would put at risk. From my review of the records, I cannot identify any particular investigative techniques that disclosure of the applicant's personal information would undermine. In addition, the scope of the request is limited to the applicant's own personal information. The applicant is not the subject of the investigation. I fail to see how disclosure solely of this information would put any unspecified investigative techniques at risk in future investigations.

[86] Therefore, I find that the disclosure solely of the applicant's own personal information would not harm investigative techniques in accordance with s. 15(1)(c).

[87] **Section 15(2)(b)** – Previous orders have established the test for determining the application of s. 15(2)(b).<sup>23</sup> The first step is to determine whether the information at issue is in a law enforcement record. The second step is to establish whether disclosure could reasonably be expected to expose either the author of the record or someone who has been quoted or paraphrased in the

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<sup>22</sup> The CPABC's initial submission, para. 94.

<sup>23</sup> See for example Order F06-11, 2006 BCIPC 25571 (CanLII), para. 21; Order 00-52, 2000 BCIPC 56 (CanLII); Order 01-48, 2001, BCIPC 50 (CanLII).

record to civil liability. This should include some evidence as to whether the disputed evidence is true or false, as well as evidence of the existence of lawsuits and establishing a connection between those lawsuits and the disputed information.

[88] The CPABC has already established that the information in dispute is in records that relate to law enforcement, meeting the first part of the test.

[89] With respect to the second part of the test, the CPABC also submits that disclosure of information from the investigation file could expose third parties to civil liability. It argues that the numerous complaints that the applicant has made previously indicates that she is litigious. The CPABC asserts that it is reasonable to expect that if the applicant obtained access to the investigation file that she would use it to pursue civil claims against parties and witnesses.<sup>24</sup>

[90] The applicant questions the grounds on which the CPABC believes that she is litigious.

[91] The only evidence the CPABC has to suggest that the applicant is litigious is a vague reference to past complaints that applicant says she made about other third parties. The CPABC has not provided any analysis of those complaints or identified whether they involve lawsuits or other proceedings that have the authority to determine civil liability. Nor has the CPABC provided any explanation as to whether any of the personal information of the applicant is true or false. Finally, the CPABC has not explained how the information in the record could expose anyone to civil liability. The CPABC has not provided sufficient evidence and argument to establish a reasonable expectation of harm. A bald statement that the applicant has made complaints in the past is not enough to meet the test.

[92] Therefore, I find that the CPABC has failed to establish that disclosure solely of the applicant's own personal information would expose the author of the record or someone who has been quoted or paraphrased in the record to civil liability in accordance with s 15(2)(b).

### ***Section 22(1) – unreasonable invasion of privacy***

[93] The proper approach for the application of s. 22(1) of FIPPA has been the subject of analysis in previous Orders. Order F15-03 provides a clear and concise description of this approach, where the adjudicator stated the following:

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<sup>24</sup> The CPABC's initial submission, para. 95.

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy.<sup>25</sup>

[94] I have taken the same approach in considering the application of s. 22(1) here.

*Step 1 – Is the information “personal information”?*

[95] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>26</sup>

[96] The information at issue is the personal information of the applicant. This includes entire records, such as the correspondence of the applicant. There are also passages in other records that contain the applicant’s personal information alone. Finally, there are passages in the records relating to the applicant that contain both the personal information of the applicant and the personal information of third parties.

[97] I find that all of this information constitutes personal information.

*Step 2 – Does s. 22(4) apply?*

[98] The CPABC submits that none of the provisions in s. 22(4) apply to the personal information at issue. The applicant does not contest the application of s. 22(4). I am unable to identify any provisions that apply.

*Step 3 – Does s. 22(3) apply?*

[99] The relevant provision reads as follows:

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<sup>25</sup> Order F15-03, 2013 BCIPC 3, para. 58.

<sup>26</sup> FIPPA provides definitions of key terms in Schedule 1.

- 22 (3)** A disclosure of personal information is presumed to be an unreasonable invasion of the personal privacy of a third party if
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
  - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or continue the investigation
  - ...
  - (d) the personal information relates to employment, occupational or educational history,
  - ...
  - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

[100] **Section 22(3)(a)** – The CPABC submits that the records contain medical information about a third party for which the applicant once acted as power of attorney.<sup>27</sup> The applicant does not contest this characterization of the information.

[101] I can confirm that there is information in the records that consists of the medical information of the third party that is included in passages about the applicant. I find that disclosure of this information is presumed to be an unreasonable invasion of the personal privacy of the third party.

[102] **Section 22(3)(b)** – The CPABC submits that all of the personal information in the records was collected as part of an investigation into a possible violation of law. The CPABC asserts that this case fits all of the requirements for the application of s. 22(3)(b). The CPABC has the statutory authority to conduct investigations and to issue penalties and sanctions, and the case at issue involves an allegation of the contravention of the CPABC bylaws.<sup>28</sup> This includes the personal information of the complainant, the respondents, witnesses and other third parties.

[103] The applicant does not contest this point.

[104] As I have already found, for the purposes of the application of s. 15(1), that the investigation is a law enforcement matter, I also find that it is a law enforcement matter for the purposes of the application of s. 22(3)(b). I find that the CPABC collected all of the personal information of the applicant and the third parties as part of an investigation into a possible violation of law and disclosure of

<sup>27</sup> The CPABC's initial submission, paras. 73-75.

<sup>28</sup> The CPABC's initial submission, paras. 76-78.

that personal information is presumed to be an unreasonable invasion of the personal privacy of the third parties.

[105] **Section 22(3)(d)** – The CPABC submits that the personal information of representatives of the accounting firm consists of their employment history. It cites several BC Orders that have found that personal information of individuals subject to investigations by regulatory bodies falls within the scope of s. 22(3)(d). The CPABC also submits that s. 22(3)(d) applies equally to the nature of the respondent’s defence against the allegations and any information that would enable an informed reader to infer the nature of that defence.<sup>29</sup>

[106] The applicant does not contest the application of s. 22(3)(d).

[107] I agree that s. 22(3)(d) applies to workplace investigations and investigations of members by regulatory bodies. There are passages in the records about the applicant that contain both the personal information of the applicant and individual employees of the accounting firm that relate to the investigation. I find that s. 22(3)(d) applies to personal information of these employees in the passages about the applicant, and that disclosure is presumed to be an unreasonable invasion of the personal privacy of these third parties.

[108] **Section 22(3)(f)** – The CPABC submits that some of the information at issue relates to the finances of a third party. This is the individual for whom the applicant held a temporary power of attorney. The complaint at issue relates to the handling by the accounting firm of the personal finances of the third party. Some of the information at issue consists of financial information belonging to the third party.

[109] The applicant does not contest the application of s. 22(3)(f).

[110] From my review of the records, I can confirm that some of the information at issue consists of the financial information of the third party in passages about the applicant. Section 22(3)(f) applies to this information, and disclosure of this information is presumed to be an unreasonable invasion of personal privacy.

*Step 4 – Do the relevant circumstances in s. 22(2) rebut the presumption of unreasonable invasion of privacy of personal information subject to s. 22(3)?*

[111] The relevant provisions are these:

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<sup>29</sup> The CPABC’s initial submission, paras. 80-82; Order 01-02, 2002 BCIPC 42426 (CanLII); Order 00-11, 2000 BCIPC 10554 (CanLII); Order 01-53, BCIPC 56 (CanLII); Order F18-29, 2018 BCIPC 32 (CanLII); Order 04-16, 2004 BCIPC 7058 (CanLII); Order F17-29, 2017 BCIPC 31 (CanLII); Order F05-18 BCIPC 24734 (CanLII).

- 22 (2)** In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all of the relevant circumstances, including whether
- (e) the third party will be exposed unfairly to financial or other harm,
  - (f) the personal information has been supplied in confidence,
  - (g) the personal information is likely to be inaccurate or unreliable,
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

[112] **Section 22(2)(e) and (h)** – The CPABC submits that both ss. 22(3)(e) and (h) apply to personal information of individuals subject to disciplinary proceedings. It cites BC Orders that have found that these provisions applied to disciplinary proceedings.<sup>30</sup>

[113] The applicant does not contest the application of these provisions.

[114] In this case, the only information at issue is the personal information of third parties that appears in the applicant's correspondence or other passages about the applicant. In general, subjects of investigations, like the one at issue, could suffer harm to reputation, loss of income, stigma and embarrassment if the details of the investigation were disclosed. Therefore, while I find that ss. 22(3)(e) and (h) are relevant circumstances that support withholding the applicant's personal information of this nature, I do not give this consideration much weight because the applicant is aware of most of this information.

[115] **Section 22(2)(f)** – The CPABC submits that the third parties provided their personal information in confidence. It refers to s. 69(1) of the CPAA, which, according to it, confirms that information collected under that law is supplied and received in confidence.<sup>31</sup>

[116] The applicant does not contest whether the personal information was supplied in confidence.

[117] I note that s. 69(1) the CPAA requires the CPABC to keep confidential the information that it collects, but it does not specify that such information is submitted in confidence. However, I find that it is reasonable to conclude that, given the confidentiality requirements in the law, that parties to the investigation, including the applicant, would believe that they were submitting their own and other peoples' personal information in confidence.

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<sup>30</sup> The CPABC's initial submission, para. 84; Order 02-01; Order F08-11, 2008 BCIPC 65714 (CanLII).

<sup>31</sup> The CPABCs' initial submission, para. 85.

[118] Therefore, I find that s. 22(2)(f) is a relevant circumstance and supports the withholding of the information.

[119] **Section 22(2)(g)** – The CPABC submits that some of the information collected during the investigation is likely to be inaccurate and unreliable. It bases this conclusion on the fact that the Investigation Committee found the complaint to be unsubstantiated.<sup>32</sup>

[120] The applicant does not contest the issue of the accuracy or reliability of the personal information at issue.

[121] I note that, while the Investigation Committee found that the accounting firm had not contravened the bylaws of the CPABC, it did not find specifically that the information collected during the investigation was inaccurate or unreliable. It did not dispute the facts the applicant presented. It applied those facts to the requirements of the bylaws and found that they did not constitute a contravention. The CPABC did not provide any other arguments or evidence to substantiate its claim that the personal information may be inaccurate or unreliable.

[122] Therefore, I find that s. 22(2)(g) is not a relevant circumstance in this case.

[123] **Other relevant circumstances** – The key circumstance in this case is that most of the personal information at issues is the personal information of the applicant. The personal information of third parties appears only in the context of the applicant's own information.

[124] I note that one of the specific purposes of FIPPA is to provide individuals with access to their own personal information. It was the applicant herself who provided much of her own personal information to the Investigator. In addition, some of the records involve the correspondence of the applicant with third parties. Previous orders have held that the fact the applicant already knows the personal information at issue can be a relevant circumstance supporting disclosure of the information.<sup>33</sup>

[125] It is also relevant that the applicant in this case is also the complainant whose actions initiated the investigation. She provided personal information in the records about both herself and third parties. It is difficult to envision how disclosure to the applicant of the personal information of third parties that she herself provided would cause harm to the third parties.

[126] Therefore, I find the fact that the applicant has requested access only to her own personal information to be a relevant circumstance supporting disclosure

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<sup>32</sup> The CPABCs' initial submission, para. 86.

<sup>33</sup> See for example, Order F21-40, 2021 BCIPC 48 (CanLII); Order F17-02, 2017 BCIPC 2 (CanLII); Order F20-26, 2020 BCIPC 31 (CanLII).

of her personal information. I also find the fact that the applicant supplied, created or already received some of the third-party personal information at issue to be a relevant circumstance supporting disclosure of that information.

***Conclusion on s. 22(1)***

[127] I have found that the information the applicant requested is personal information in accordance with FIPPA. This includes her own personal information and the personal information of third parties in passages about the applicant.

[128] I have found that none of the provisions of s. 22(4) apply.

[129] I have found that s. 22(3)(a) applies to the medical information of a third party and disclosure of this information is presumed to be an unreasonable invasion of privacy. I have found that s. 22(3)(b) applies to the personal information collected during the investigation and that disclosure is presumed to be an unreasonable invasion of personal privacy. I have found that s. 22(3)(d) applies to the personal information of the respondents under investigation and disclosure is presumed to be an unreasonable invasion of personal privacy. I have found that s. 22(3)(f) applies to the financial information of a third party and disclosure is presumed to be an unreasonable invasion of personal privacy.

[130] I have found that a number of relevant circumstances apply supporting withholding the personal information at issue. The disclosure of some of the personal information may damage the reputations and cause other similar harm to the respondents in the investigation, in accordance with ss. 22(2)(e) and (h). Some of the personal information was supplied in confidence in accordance with s. 22(2)(f).

[131] I have also found that there are relevant circumstances that support disclosure of some of the information. The fact that the applicant has requested only her own personal information is a key consideration. That the applicant is also the complainant who initiated the investigation and supplied some of the personal information is relevant. Another relevant circumstance is that some of the records at issue include correspondence between the applicant and third parties. Therefore, most of the personal information at issue is information about the applicant or information the applicant already knows because it is in her own correspondence. The only personal information at issue in this request of which the applicant would not be aware is comments by third parties about the applicant.

[132] Considering all of the relevant factors, I give the greatest weight to the statutory right of access to individuals to their own personal information enshrined in s. 4(1) of FIPPA. In cases where the personal information of third

parties appears in the correspondence of the applicant or passages about the applicant, I give weight to where the applicant provided or already knows the information. Where the applicant does not already know the information, I give weight to the relevant factors supporting the withholding of the personal information of third parties.

[133] I find that the applicant's right of access to her own personal information and information that she provided rebut the presumption in s. 22(3) that disclosure would be an unreasonable invasion of personal privacy. I find that it does not rebut the presumption with respect to the identities of third parties that provided personal information about the applicant that the applicant did not already know.

[134] Therefore, it is necessary for me to identify the information that the CPABC must disclose to the applicant. For some of the records, it will involve me marking the pages for disclosure. However, there are some records that the CPABC must disclose in their entirety. As there is extensive duplication in the records, it will be necessary for the CPABC only to disclose one copy of each record.

[135] The CPABC has indicated that it has highlighted in yellow passages of records that it has already disclosed to the applicant in response to this request. It need not disclose additional copies.

[136] The CPABC must disclose the following pages in their entirety: 5-40; 1174-1176; 1179; 1182-1185; 1193-1197.

[137] The CPABC must disclose the following pages as I have marked for disclosure: 2-4; 637-640, 642; 643-646, 1198-1200; 1213; 1215; 1223; 1310.

## **CONCLUSION**

[138] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. As s. 3(7) of FIPPA overrides s. 69(1) of the CPAA, the latter does not require the CPABC to withhold any of the applicant's personal information.
2. Section 12(3)(b) of FIPPA does not authorize CPABC to withhold any of the applicant's personal information.
3. Section 13(1) of FIPPA does not authorize CPABC to withhold any of the applicant's personal information.
4. Sections 15(1)(a), 15(1)(c) and 15(2)(b) do not authorize CPABC to withhold any of the applicant's personal information.

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5. Section 22(1) requires the CPABC to withhold some of the personal information of third parties, but it must disclose the remainder.
  6. The public body is required to give the applicant access to the information I have highlighted in the copy of the records, which are provided to the public body with this order. The public body also is required to disclose the following pages in their entirety: 5-40; 1174-1176; 1179; 1182-1185; 1193-1197.
  7. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 6 above.

[137] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **June 10, 2022**.

April 28, 2022

**ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

OIPC File No.: F19-78687