



Order F24-24

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Erika Syrotuck
Adjudicator

March 28, 2024

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Summary: The College of Physicians and Surgeons of British Columbia requested that the Commissioner exercise his discretion under s. 56(1) to refuse to conduct four matters under review by the Office of the Information and Privacy Commissioner on the basis that the applicant is abusing FIPPA's processes. The adjudicator found that the applicant was abusing FIPPA's processes and ordered that the upcoming matters be canceled.

Statutes Considered: *Administrative Tribunals Act*, SBC 2004, c 45, s. 1.1; *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, s. 56(1); *Interpretation Act* RSBC 1996, c 238 s. 29, (definition of "must"); *Lobbyists Transparency Act*, SBC 2001, c 42, s. 7(1).

INTRODUCTION

[1] This inquiry is about an application by the College of Physicians and Surgeons of British Columbia (College) asking the Commissioner to exercise his discretion under s. 56(1) not to conduct four matters (Current Matters) that involve the same applicant. The basis for the College's application is that the applicant is abusing FIPPA's processes.

[2] The Current Matters relate to three access requests made by the applicant to the College. One of the matters is an adequate search complaint and three are requests for review of the College's responses to those requests. The Current Matters are at various stages of the Office of the Information and Privacy Commissioner's (OIPC's) review processes.

[3] The Registrar of Inquiries (Registrar) provided the parties with notice of this application and set out a schedule for submissions. Both the College and the applicant provided submissions in this inquiry.

PRELIMINARY ISSUES

[4] The applicant makes various submissions on several preliminary issues. I will address each in turn.

Materials for this application

[5] In his inquiry submissions, the applicant invited me to consider all his previous submissions in past inquiries including himself and the College. He also asked that I consider attachments to his submissions in a specific inquiry (which I will explain below). The applicant did not provide copies of this material as part of his inquiry submissions.

[6] The OIPC's *Instructions for Written Inquiries (Instructions)* sets out the procedures for written inquiries.¹ The *Instructions* say that a party's submissions must include supporting documentary evidence.

[7] I decline to consider all the applicant's previous submissions. Not only did the applicant not provide them to me, as he is required to do as per the *Instructions*, but in my view this request is broad and not well defined. In general, referring to materials is not sufficient to place those materials before the adjudicator as part of the record in an inquiry.

[8] However, I have decided to consider the attachments referenced by the applicant. The applicant notes that the College provided the applicant's submissions, but not the attached supporting materials, in an inquiry relating one of the Current Matters to support its argument in this inquiry. The applicant said it was unfair for the College not to have provided me with his corroborative evidence and, knowing that the Commissioner was already in possession of these materials, invited me to consider the attachments. I am persuaded by what the applicant says. I can see that his submissions refer directly to the attachments and so I find it fair to consider what the applicant says as a whole. I also note that the applicant's request with respect to the attachments is well defined. In addition, since the College is already relying on the applicant's submissions, I do not think there is any unfairness to the College in also considering the evidence the applicant provided in support of those submissions. For these reasons, I consider those attachments to be part of the record in this inquiry.²

Applicant's request for an independent decision maker

¹ <https://www.oipc.bc.ca/media/17752/2024-02-26-gd-instructions-for-written-inquiries.pdf>

² To be clear, in this inquiry, I am considering the attachments to the applicant's response submissions that he provided in OIPC file F21-87384.

[9] The applicant asks that a “neutral third party”, not the Commissioner or his delegate, decide this application.³ He provides extensive submissions alleging that there are various conflictual relationships between the College, legal counsel and the OIPC. In particular, he complains about three lawyers, including former Commissioner Loukidelis, who have represented the College in past inquiries involving him. He submits that these three lawyers also did legal work for the OIPC on contract around the same time.

[10] He also says that the Director of Adjudication (Director) is in a “factual conflict” in part because she decided that an inquiry to decide this application would proceed.⁴ In support of this argument, the applicant provided an email from the Registrar, indicating that the Director had decided that the College’s s. 56(1) request would be addressed “through the submission process laid out in the Notice of Application...”⁵

[11] The applicant also says the fact that the OIPC and the Office of the Registrar of Lobbyists share the same office, staff and leadership is further evidence of the OIPC’s conflict of interest.

[12] For all of these reasons, the applicant says that the OIPC should not adjudicate this inquiry.

[13] In response, the College says that the applicant’s accusations are unrelated to the subject matter of this application and so it will not make submissions on it. However, the College also notes that, in Order F23-23, which also involved the applicant, the applicant made a similar argument that the Director was biased in allowing that s. 56(1) application to proceed.⁶

[14] For the reasons that follow, I am not persuaded that I, as the Commissioner’s delegate, should not decide this application because of what the applicant says about conflict of interest.

[15] First, I gather that the applicant thinks the Director was biased in her decision to allow this inquiry to proceed and that this supports his argument that a delegate of the Commissioner should not decide this inquiry.

[16] Bias is inextricably linked to impartiality which directly translates to the need for a decision maker to approach the case with an open mind.⁷ Bias is not just about actual bias, but about the appearance of a fair process.⁸ For this

³ Applicant’s response submissions, page 18.

⁴ Applicant’s response submissions, page 23.

⁵ Attachment “K” to the applicant’s response submissions.

⁶ Order F23-23, 2023 BCIPC 27 (CanLII), paras 4-6.

⁷ *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 (CanLII), paras 22-23 citing *Wewaykum Indian Band v Canada*, 2003 SCC 45 at paras 57-58.

⁸ *Ibid* at para 22.

reason, the test is whether there is a *reasonable apprehension* of bias. The test for whether there is a reasonable apprehension of bias is:

“what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would [they] think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”⁹

[17] Nothing in the applicant’s submissions persuades me that there has been any unfairness due to bias. All the applicant’s evidence shows is that the Director instructed the Registrar to give the parties an opportunity to make submissions on the College’s application. I do not think that a reasonable person, having thought the matter through, would conclude that the Director’s decision to allow the parties an opportunity to comment on the s. 56(1) application before the Commissioner or his delegate decides that application, suggests there was a reasonable apprehension of bias.

[18] Second, none of the other circumstances in which the applicant raises conflict of interest exist in this case. For example, none of the three lawyers that the applicant complains are in a conflict of interest are involved in this inquiry in any way.

[19] Third, no provision in FIPPA allows this application to be decided by someone other than a delegate of the Commissioner. The legislature clearly intended that the Commissioner’s power to decide the issues in an inquiry would be exercised by the Commissioner personally or a person to whom he has delegated his powers.¹⁰ I have been delegated the power to decide inquiries under s. 56(1).¹¹ The only provision for an independent adjudicative process is where the OIPC is the public body that is the subject of a complaint, an access request, or a request for correction of personal information.¹² Otherwise, the only independent oversight of the Commissioner’s decisions is through judicial review.¹³

[20] Finally, the *Lobbyists Transparency Act* specifies that the person holding the office of, or acting as, Information and Privacy Commissioner under FIPPA, is the registrar under that act.¹⁴ Since the statute dictates that the Registrar of Lobbyists and the Information and Privacy Commissioner are the same person, I do not find this is evidence of any kind of conflict of interest, as argued by the applicant. It is also not apparent how the Commissioner’s dual roles are relevant

⁹ *Ibid* at para 20.

¹⁰ Sections 56 and 49 of FIPPA.

¹¹ The Commissioner publishes his delegations on the OIPC website on this page: <https://www.oipc.bc.ca/about/legislation/>

¹² Section 60(1) of FIPPA.

¹³ Section 59 of FIPPA.

¹⁴ *Lobbyists Transparency Act*, SBC 2001, c 42, s. 7(1).

for this inquiry when the College's s. 56(1) application only engages FIPPA and not the *Lobbyists Transparency Act*.

[21] In summary, the applicant's submissions do not persuade me that I should not decide this inquiry because I am a delegate of the Commissioner.

90-day review period – s. 56(6)

[22] Section 56(6) says:

(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.

[23] The applicant says that the OIPC has not followed its own statute, nor has it provided any rationale for why it has disregarded the law. I gather he thinks that this s. 56(1) application should not proceed because at least one of the four matters was not completed by the timeline set out in s. 56(6).

[24] With respect to one of the Current Matters, the applicant asked the OIPC to review the College's response on September 16, 2021.¹⁵ There is no question that 90 days have elapsed since then.¹⁶ What then, is the impact of failing to meet the timeline set out in s. 56(6)?

[25] Section 56(6) says that the inquiry "must" be completed within 90 days after receiving the request for review. As set out in s. 29 of the *Interpretation Act*, the word "must" is to be construed as imperative.¹⁷

[26] However, where a government body fails to do something that a statute says it "must" or "shall" do, in some circumstances, the use of imperative language can be construed as directory rather than mandatory.¹⁸ The effect of construing a provision as directory is that a breach of the obligation does not lead to a nullity.¹⁹

[27] In *Blueberry River Indian Band v Canada (Department of Indian Affairs and Northern Development)*, Justice McLaughlin (as she then was), in concurring reasons, applied the following principle:

¹⁵ OIPC file F21-87384.

¹⁶ I note that, under the definition in schedule 1 of FIPPA, "day" does not include a holiday or a Saturday.

¹⁷ RSBC 1996 c 238.

¹⁸ See *Peters v East 3rd Street North Vancouver Limited Partnership*, 2023 BCSC 879 (CanLII) at paras 25-26.

¹⁹ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis 2014) at 4.81.

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only²⁰

[28] Justice McLaughlin also said that “the object of the statute, and the effect of ruling one way or the other, are the most important considerations in determining whether a directive is mandatory or directory”.²¹

[29] In Order No. 291-1999, Commissioner Flaherty found that s. 56(6) of FIPPA was directory rather than mandatory, and therefore did not result in loss of jurisdiction to continue with the inquiry. In making this finding, he said the following:

Section 2(1) of the Act provides that one of the purposes of the Act is to provide “an independent review of decisions made under this Act.” In my view, the ninety-day period in section 56(6) of the Act is not intended to create a technical barrier which robs applicants, public bodies, or third parties of my Office’s independent review of decisions made under the Act. The ninety-day period is intended to benefit the independent review process by requiring that inquiries proceed in a timely way, but without creating a structure of strict compliance which would be, in itself, counterproductive to the delivery of a fair yet flexible review process to those who are affected by decisions under the Act.²²

[30] I agree with Commissioner Flaherty’s comments. To hold that failing to meet the timeline in s. 56(6) results in this office losing jurisdiction to conduct an inquiry or hear an application would seriously impede the OIPC’s ability to carry out its function of independently reviewing decisions made under FIPPA. A loss of jurisdiction to conduct inquiries would also result in a serious injustice to applicants, who would not be able to get a resolution from the OIPC about their matter under review. For these reasons, I find that s. 56(6) is directory, rather than mandatory.

[31] All of this is to say that, in my view, failing to meet the timeline in s. 56(6) does not result in this office losing jurisdiction to conduct inquiries. For the same reasons, I find that failing to meet the timeline in s. 56(6) does not bar me from hearing this application with respect to any of the Current Matters.

²⁰ *Blueberry River Indian Band v Canada (Department of Indian Affairs and Northern Development)*, 1995 CanLII 50 (SCC) at para 42 citing *Montreal Street Railway Co. v. Normandin*, 1917 CanLII 464 (UK JPC), [1917] A.C. 170 (P.C.)

²¹ *Ibid* citing *British Columbia (Attorney General) v Canada (Attorney General)* 1994 CanLII 84 (SCC).

²² Order No. 291-1999, 1999 CanLII 2725 (BC IPC).

Timing of the College's s. 56(1) Application

[32] The applicant says that I should not consider the merits of the College's application because the application is too late with respect to some of the Current Matters and premature in others.

[33] First, the applicant says that in one of the Current Matters the submissions phase is closed, and the file is awaiting assignment. The applicant argues that, by filing this s. 56(1) application, the College is conducting a collateral attack on the decision to hold that inquiry.²³ He further says that, by asking the Commissioner not to hold that inquiry, the College is trying to avoid responding to the evidence and argument in that file. I understand the applicant to be saying that the Commissioner does not have discretion to decide whether to conduct an inquiry under s. 56(1) when the submissions phase is complete, and the file is waiting for assignment to an adjudicator. I gather the applicant's position is that, because the Commissioner has already made a decision to hold an inquiry, the decision cannot be revisited.

[34] The applicant also says that the College's s. 56(1) application is premature with respect to the other Current Matters because they are still in the mediation phase. The applicant says that the power under s. 56(1) is limited to where the matter is not referred to a mediator. I gather the applicant is saying that I do not have the power under s. 56(1) to use my discretion not to hold an inquiry where an investigation has not concluded.

[35] For the reasons that follow, I am not persuaded that I should not hear the s. 56(1) application on its merits due to the timing of the College's application.

[36] First, I note that the investigation regarding one of the Current Matters is complete, and the file is awaiting a notice of inquiry, so I do not see how either of the applicant's arguments apply to that file.²⁴

[37] Second, I am not persuaded that the doctrine of collateral attack prevents the Commissioner from using his discretion not to hold an inquiry after the submissions phase has closed. A collateral attack is an "attack made in proceedings other than those whose specific object is the reversal, variation or nullification of the order or judgment."²⁵ The object of this doctrine is to balance finality of decision-making and fairness to the parties.²⁶ The decision to hold an inquiry was only a preliminary decision and did not dispose of the issues on the merits. Thus, I find the decision to hold an inquiry was not an order or judgement

²³ OIPC file F21-87384.

²⁴ OIPC file F22-90376.

²⁵ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 (CanLII) [*Toronto*] at para 33 citing *Wilson v The Queen*, 1983 CanLII 35 (SCC) at p. 599.

²⁶ *Ibid* at para 55.

to which the doctrine of collateral attack applies. For this reason, I am not persuaded that the doctrine of collateral attack bars me from hearing this s. 56(1) application because the submissions phase has closed with respect to one of the Current Matters.²⁷

[38] Finally, I find that the Commissioner has the authority to control an abuse of process at the investigation/mediation stage. In Order 01-16, former Commissioner Loukidelis referred to the Ontario Commissioner's finding that there was an implied power under Ontario's act to control a requester's abuse under that act. Former Commissioner Loukidelis said he agreed with the Ontario Commissioner's comments and concluded that:

"In light of the role and powers given to the Commissioner under the Act, as well as the Act's structure and purpose, I conclude that I have the power to control an abuse of process in the context of reviews and inquiries under part 5 of the Act."²⁸

[39] I interpret the former Commissioner's comments to mean that the Commissioner and his delegates have an implied power under FIPPA to control an abuse of process.

[40] Therefore, even if the applicant is right, and s. 56(1) does not provide me with the authority to decide an abuse of process where the investigation has not concluded, I find that I have an implied power under FIPPA to control an abuse of process at any stage of responding to a request for review or a complaint. Consequently, I find that I am not barred from considering the College's abuse of process application with respect to the two Current Matters that are awaiting investigation.

[41] Overall, nothing about the timing of the College's application prevents me from considering its application that the OIPC to refuse to conduct the Current Matters on the basis of abuse of process.

Charter violation

[42] The applicant says that the right to access one's personal information is part of the right to life, liberty, and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*. The applicant relies on the Supreme Court of Canada's decision in *Ruby v Canada (Solicitor General)*²⁹ for this proposition. For this reason, the applicant says that I must apply the Charter values analysis set out in *Doré v Barreau du Québec*.³⁰

²⁷ I refer to this as the "Closed Inquiry" below.

²⁸ Order 01-16, 2001 CanLII 21570 (BCIPC) at para 39.

²⁹ 2002 SCC 75 (CanLII) [*Ruby*].

³⁰ 2012 SCC 12 (CanLII) [*Doré*].

[43] In *Ruby*, the Supreme Court of Canada declined to decide whether access to personal information formed part of the rights conferred under s. 7 of the Charter. Writing for the Court, Justice Arbour said:

In my view, it is unnecessary to the disposition of this case to decide whether a right to privacy comprising a corollary right of access to personal information triggers the application of s. 7 of the *Charter*.³¹

[44] Therefore, I find that *Ruby* does not stand for the proposition that a person's rights under s. 7 of the *Charter* includes the right to access their personal information. Nothing else the applicant says persuades me that accessing personal information is a *Charter* right. In my view, the applicant has not satisfactorily demonstrated that limiting his access rights under FIPPA engages the *Charter*. Therefore, I see no reason to conduct any further analysis, including the one set out in *Doré*.

Violation of Administrative Tribunals Act

[45] The applicant says that the OIPC is breaching the *Administrative Tribunals Act*. Specifically, he says that the OIPC has not published any rules of practice and procedure as required by s. 11 of that act.

[46] The *Administrative Tribunals Act* explicitly states that it does not apply, except as made applicable by another enactment.³² As FIPPA does not incorporate any provisions of the *Administrative Tribunals Act*, I find that it is not applicable and therefore the OIPC is not breaching the *Administrative Tribunals Act*.

ISSUE AND BURDEN OF PROOF

[47] At this inquiry, I must decide whether to exercise the Commissioner's discretion under FIPPA, including under s. 56(1), not to conduct the Current Matters on the basis of abuse of process.

[48] In accordance with past orders, the burden is on the College to show why an inquiry should not be held.

DISCUSSION

Background

[49] The applicant is a physician who has, for a number of years, been involved in a dispute about an audit of his Medical Services Plan (MSP) billings

³¹ At para 33.

³² *Administrative Tribunals Act*, SBC 2004, c 45, s 1.1.

and a subsequent Medical Services Commission (MSC) hearing and decision about those billings (the MSP Matter). I note that the applicant disputes that the MSC even held a hearing.³³

[50] The applicant appealed the hearing panel's decision, but it was dismissed because the time period for filing an appeal had passed.³⁴

[51] The parties both make arguments about Order F23-23, so I will give a brief background here.

[52] In March 2023, the Director issued Order F23-23 in response to a joint s. 56(1) application to from the Ministries of Attorney General, Finance and Health.³⁵ Those public bodies requested that the Commissioner refuse to conduct inquiries relating to the MSP Matter because the applicant was abusing FIPPA's processes. In Order F23-23, the Director canvassed the applicant's history of making access requests about the MSP Matter and his behaviour during the related proceedings. The Director concluded that the applicant has been disproportionately and unreasonably using OIPC resources in his fight with the Province over the MSP Matter. As a result, she cancelled the applicant's files that related to the public bodies who made the s. 56(1) request.

[53] As the applicant notes, Order F23-23 is the subject of a judicial review but as of the issuance of this order, the BC Supreme Court has not made a decision in that matter.

Current Matters

[54] The College has asked the Commissioner not to conduct the Current Matters. Those matters are:

1. A request for review based on an access request for the College's correspondence with an inspector appointed under the *Health Professions Act (Inspector)*.³⁶ Mediation concluded and the matter was forwarded to inquiry. The submissions phase is complete, and the file is awaiting assignment to an adjudicator pending the outcome of this inquiry. Only s. 14 (solicitor-client privilege) of FIPPA is at issue in the inquiry. (I will refer to this inquiry as the Closed Inquiry.)
2. A request for review of the College's response to an access request for correspondence relating to complaints he had made about five physicians. The OIPC's investigation and meditation is complete and the

³³ Applicant's response submissions, page 7.

³⁴ See: *Cimolai v. British Columbia (Medical Services Commission)*, 2022 BCCA 396 (CanLII) leave to appeal to SCC refused 40604 (6 June 2023) [*Cimolai*].

³⁵ Order F23-23, 2023 BCIPC 27 (CanLII).

³⁶ OIPC file F21-87384.

matter was forwarded to inquiry. However, the Registrar has not issued a notice of inquiry.³⁷

3. A request for review of the College's response to an access request for communications between the College and the Medical Services Commission. The file has not been assigned to an investigator.³⁸
4. A complaint that the College did not adequately search for records in response to the same access request as in item 3 immediately above. The file has not yet been assigned to an investigator.³⁹

Section 56(1) – discretion to hold an inquiry

[55] The College says I should use my discretion under s. 56(1) to refuse to conduct the Current Matters. Section 56(1) gives the Commissioner or his delegate broad discretion to decide whether to hold an inquiry. It reads:

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.

[56] Past orders have used the authority under s. 56(1) not to hold an inquiry because the outcome is plain and obvious, or on the basis of mootness, *res judicata*, or abuse of process.⁴⁰

[57] The applicant says that past orders have said that all four of those bases must apply in order for the Commissioner to use his discretion not to hold an inquiry. I reject this argument. That is not how the Commissioner has applied his discretion in the past; one basis has been sufficient.⁴¹

[58] The applicant also says that, for a s. 56(1) application to succeed, it must be clear that there is no arguable case that merits an inquiry. It is true that past orders have said this. However, adjudicators have almost exclusively applied this principle where the issue under s. 56(1) is whether it is plain and obvious that the requested records are either outside the scope of FIPPA or that an exception under Part 2 applies.⁴² This makes sense because whether there is an arguable case is directly related to whether it is plain and obvious that an exception applies. However, mootness, *res judicata* and abuse of process are common law doctrines for which having no arguable case is not a requirement. Rather, these

³⁷ OIPC file F22-90376.

³⁸ OIPC file F23-93791.

³⁹ OIPC file F23-93970.

⁴⁰ Decision F08-11, 2008 CanLII 65714 (BC IPC) at para 8.

⁴¹ For example, Order F15-18, 2015 BCIPC 19 (CanLII).

⁴² For example, Order F21-05, 2021 BCIPC 5 (CanLII); Order F23-09, 2023 BCIPC 11 (CanLII); and Order F23-76, 2023 BCIPC 91 (CanLII).

doctrines are rooted in policy objectives such as judicial efficiency and coherence. Accordingly, I find that there is no requirement for a public body to prove that there is no arguable case that merits an inquiry when abuse of process is the basis of a s. 56(1) application.

Abuse of Process

[59] As explained above, the College asks me to use the Commissioner's discretion to refuse to conduct the Current Matters because it says that the applicant is abusing FIPPA's processes. Abuse of process is a flexible doctrine that can apply in a variety of legal contexts.⁴³ It "... engages the inherent jurisdiction of a court to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation or would in some other way bring the administration of justice into disrepute."⁴⁴ In all of its applications, abuse of process is about preserving the integrity of the adjudicative functions of courts and tribunals.⁴⁵

[60] In some cases, abuse of process is applied to bar re-litigation of what is essentially the same issue "where the strict requirements of issue estoppel... are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice."⁴⁶

[61] Abuse of process also "extends to any circumstance in which the court process is used for an improper purpose."⁴⁷ The BC Supreme Court said the following about the types of circumstances that may be an abuse of process:

The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression...⁴⁸

[62] However, individual instances of these types of behaviours may not amount to an abuse of process. As the Supreme Court of Canada said:

⁴³ *Toronto supra* note 25 at para 36.

⁴⁴ *Ibid* at para 37 citing *Canam Enterprises Inc. v. Coles* (2000), 2000 CanLII 8514 (ON CA) at paras 55-56, Goudge JA, dissenting.

⁴⁵ *Ibid* at paras 42-44.

⁴⁶ *Ibid* at para 37.

⁴⁷ *Ahmed v Vancouver (City)*, 2012 BCSC 301 (CanLII) at para 25 citing *Babovic v Babowech* [1993] B.C.J. No. 1802 (S.C.). Upheld on appeal: *Ahmed v. Vancouver (City)*, 2013 BCCA 26 (CanLII).

⁴⁸ *Ibid*.

It is not every example of unfairness or vexatiousness in a trial which gives rise to concerns of abuse of process. Abuse of process connotes unfairness and vexatiousness of such a degree that it contravenes our fundamental notions of justice and thus undermines the integrity of the judicial process.⁴⁹

Parties' submissions

[63] The College relies on the Director's findings in Order F23-23 to argue that the OIPC has already found the applicant's use of FIPPA relating to the MSP Matter to be an abuse of process. The College says that the applicant is engaging in similar conduct here. The College acknowledges that the College's involvement with the applicant and his access requests relating to the MSP matter is not as extensive as with the public bodies who made the application in Order F23-23. Despite this, the College says that allowing the Current Matters to proceed would provide the applicant with another route by which to repeat the same abuses that the Director identified in that order, namely:

- Including irrelevant information unrelated to FIPPA in his submissions;
- Making an excessive volume of complaints, requests for review, and inquiries relating to the MSP Matter;
- Making irrelevant and malicious comments about people relating to the MSP Matter;
- Making allegations about the lack of integrity of the public body and its employees; and
- Continuing to pursue FIPPA matters through to inquiry to provide him with another opportunity to say the same thing again.

[64] The College submits that the applicant's behaviour in the Current Matters is the same or can reasonably be expected to be the same set out in Order F23-23. For these reasons, it says that allowing the Current Matters to proceed would undermine the Director's decision in Order F23-23.

[65] The College makes several points to support its arguments.

[66] First, the College says that the applicant's submissions in the Closed Inquiry further demonstrate that he is abusing the OIPC's review process. The College says that the issue in that inquiry is the College's decision to refuse to disclose the records in dispute under s. 14 of FIPPA (solicitor-client privilege). The College says that the applicant:

- Repeatedly raises issues which are not at issue in the inquiry;
- Makes arguments about concluded matters (for example, an adequate search complaint) and argues the OIPC should revisit past orders;

⁴⁹ *R v Scott*, 1990 CanLII 27 (SCC).

- Uses his inquiry submissions to air his grievances with respect to the MSP Matter and to challenge previous decisions of the OIPC and courts;
- Repeatedly alleges that the College has falsified its submissions and evidence in the inquiry, for example by alleging that the College falsified its affidavit in an unrelated judicial review;
- Makes various allegations of abuse by the College; and
- Makes personal attacks on the Inspector.

[67] The College provided examples of each of these points. The College also says that these submissions are time consuming to wade through and completely irrelevant to the issues to be decided.

[68] Second, the College says that the applicant is abusing FIPPA's processes by making repetitious access requests and then submitting complaints to the OIPC about issues which have already been determined. It says that the access request that is the subject of Current Matters 3 and 4, as I have described above, repeats an earlier request. It says that the OIPC already considered an adequate search complaint relating to the earlier request and so it is an abuse of process to consider the adequate search complaint again. In support of this argument, the College points to Order 01-16 where Commissioner Loukidelis found that an applicant's request for review was an abuse of process because the applicant had previously accepted the outcome of OIPC mediation regarding an earlier request for the same records.⁵⁰

[69] Finally, the College says that the volume of the applicant's complaints, requests for review and inquiries related to the MSP matter are further evidence that the applicant is abusing FIPPA's processes. It says the applicant has made six access requests to the College which relate in some way to the MSP matter (including the three that are the basis of the Current Matters) and 13 complaints or requests for review to the OIPC which relate to those access requests. It provided a table describing the applicant's access requests and complaints and requests for review to the OIPC.⁵¹

[70] Overall, the College says that the applicant's behaviour demonstrates that, like in Order F23-23, he does not have a genuine interest in the FIPPA issues he raises with the OIPC or in accessing the information in dispute. The College relies on the Director's findings in Order F23-23 that the applicant's behaviour is unreasonable and indicates that he is acting in bad faith and has ulterior and vindictive motives for using FIPPA's review processes. For these reasons, the College says that the Commissioner should refuse to conduct the Current Matters.

⁵⁰ Order 01-16, 2001 CanLII 21570 (BCIPC).

⁵¹ Affidavit of the College's Deputy Registrar and Chief Legal Counsel, Exhibit A.

[71] In response, the applicant says that the access requests are not for the purpose of airing his grievances, rather, they are for the purpose of acquiring information from a professional body that relates to him. He says that the volume of information at issue in each of the Current Matters is relatively small and it would not take that much time to review or provide. The applicant says that the information he has requested may have inaccuracies or deliberate falsifications and he wishes to have any irregularities corrected.

[72] The applicant also disputes the College's assertion that the purpose of his access requests is to make various allegations against the College. Rather, the applicant says that "whether or not the College largely or individuals of the College are impugned in the matters is a direct consequence of the facts."⁵²

[73] The applicant does not explicitly comment on the College's submission that his request overlaps with an earlier one. However, the applicant says that the details of past requests are irrelevant because only four files are at issue in this inquiry.

[74] The applicant says that the College is relying on Order F23-23, which is under judicial review, rather than provide its own relevant arguments. He says the College has not provided any evidence that illustrates that his access requests that are the basis of the Current Matters are an abuse of process. Rather, he says that the College's behaviour and this s. 56(1) application are abuses of process and "frankly deceptive in their totality."⁵³

[75] Further, the applicant says that the College's reliance on Orders F23-23 and another past order involving the Ministry of Health and the Medical Services Commission raises the issue of collusion between the College, its lawyer, and others.⁵⁴ Specifically, he says that the College's submissions in this inquiry indicate that the College has direct knowledge of the applicant and materials relating to the background of Order F23-23 and other orders relating to the applicant.

[76] As previously noted, the applicant is seeking access to the College's correspondence with an Inspector appointed under the *Health Professions Act*. The Applicant alleges that the Inspector has been "found culpable of supressing considerable relevant information that could be used in a potential hearing."⁵⁵ He refers to a past Human Rights Tribunal decision.⁵⁶ The applicant says that the parallels between that case and the issues in the Closed Inquiry are telling. The

⁵² Applicant's response submissions, page 8.

⁵³ Applicant's response submissions, page 11.

⁵⁴ Order F21-04, 2021 BCIPC 4 (CanLII).

⁵⁵ Applicant's response submissions, page 14.

⁵⁶ *Johar and others v. College of Veterinarians of BC and another*, 2020 BCHRT 179 (CanLII) [Johar].

applicant also says that the College admits that s. 14 does not apply to the information in dispute in the Closed Inquiry because it confirms the Inspector was not acting as a lawyer.

[77] Further, the applicant alleges that the College's lawyers in this inquiry have falsified their inquiry submissions and obstructed the applicant's efforts to gain information through FIPPA. He says that the College's lawyers have colluded with lawyers from another firm who are representing five physicians who are the subject of the applicant's access request relating to one of the Current Matters.⁵⁷

[78] Finally, the applicant alleges that the College has a culture of abuse. He provides a lengthy explanation of past matters involving the College. The applicant provides the following explanation for why the College's past actions are relevant:

The College's attempt to suppress such information must be viewed in the totality of its previous efforts to suppress information due to the applicant herein, its falsification in previous events relating to information access, its conflict with those doubly representing both the College and OIPCBC, and the animus within its ranks at several levels. In this light, it is evident that the College's main thrust at times is protection of those found to be in the wrong rather than protecting the public. It truly is a sad indictment.⁵⁸

[79] The applicant says that a decision under s. 56(1) to refuse to conduct an inquiry limits his access rights under FIPPA. He points to Order F10-07 where the adjudicator said that a decision to deny an inquiry "must be made on unquestionable grounds".⁵⁹ The applicant says that the OIPC has largely denied s. 56(1) applications.

[80] In its reply, the College says that the applicant's submissions in this inquiry are further evidence that he is abusing the process. Specifically, the College says the applicant:

- Repeatedly raises issues which are not at issue in this application and are unrelated to FIPPA and/or have already been concluded under the OIPC's review process, for example, the applicant's allegations about conflict of interest in previous OIPC matters and court decisions;
- Uses his submissions as a further opportunity to air his grievances with respect to the MSP Matter, related litigation and those involved;

⁵⁷ OIPC file F22-90376.

⁵⁸ Applicant's response submissions, page 25.

⁵⁹ Applicant's response submissions, page 6 citing Order F10-07.

- Repeatedly alleges that the College has falsified its evidence in this matter, is suppressing information and is engaging in various abuses, including making this s. 56(1) application; and
- Makes personal attacks on the Inspector.

[81] The College says that the applicant's allegations about conflict of interest on the part of the OIPC and the Director (addressed in the preliminary matters section of this order) demonstrate that when the applicant is dissatisfied with the outcome of a matter, he subsequently engages in a campaign against those involved. The College reiterates its position that the Commissioner should refuse to conduct the Current Matters because allowing them to proceed would only serve to allow the applicant to continue in his abuse and harm the administration of FIPPA.

Findings and Analysis

[82] I will first address the parties' submissions on the relevance of Order F23-23 to this inquiry before turning to the other arguments raised by the parties.

i. Effect of Order F23-23

[83] Both parties make submissions about the significance of Order F23-23. As I explained above, the College says the applicant is repeating the behaviours found by the Director to be an abuse of process and allowing these matters to proceed would only undermine her decision. The applicant's position is that the College did not adequately provide its own evidence and instead relies too much on Order F23-23.

[84] I acknowledge that Order F23-23 was decided by a different adjudicator on evidence and submissions that are not before me. In addition, the College was not involved in that inquiry. However, I think it is significant that Director found that the applicant's behaviour relating to his access requests and inquiries relating to the *MSP Matter* constituted an abuse of process.⁶⁰

[85] The College submits that the Current Matters stem from access requests that relate to the *MSP Matter*. The applicant does not dispute this. I accept that the Current Matters also relate to the *MSP Matter*. Therefore, the applicant's past use of FIPPA with respect to the *MSP Matter* is highly relevant to, but not determinative of, whether the applicant is abusing FIPPA's processes with respect to the Current Matters. For this reason, I think the Director's findings in Order F23-23 ought to be the starting point for my decision in this inquiry.

⁶⁰ Order F23-23, 2023 BCIPC 27 (CanLII) at para 80.

[86] I will examine whether the applicant is continuing any of the following behaviours that the Director found constituted an abuse of process in Order F23-23:

- The applicant continued to include arguments in his submissions that OIPC adjudicators have repeatedly said are irrelevant and/or unsubstantiated including:
 - complaining that public bodies committed an offence under s. 74 (now s. 65.2) of FIPPA;
 - alleging that communications were not privileged because they were made in furtherance of fraud and crime;
 - complaining about OIPC *in camera* decisions;
 - raising new issues without permission;
 - referring to information he received in earlier FIPPA processes which he uses to extensively argue about why the MSP audit and outcome of his hearing were wrong;
 - complaining extensively about the MSP hearing and audit process; and
 - including a very large volume of attachments consisting of past correspondence regarding the MSP Matter and records he received and sent in past inquiries.
- The applicant repeatedly used his inquiry submissions to vent his anger and berate the people involved in the MSP Matter, including having searched the internet to say rude and irrelevant things about the public bodies' legal counsel.
- The overall volume of the applicant's access requests, complaints and requests for review relating to the MSP Matter has been excessive and unreasonable.⁶¹

[87] The Director found that these behaviours were an abuse of FIPPA's processes because they demonstrated that the applicant was unreasonable and was using FIPPA's review and inquiry processes for ulterior and vindictive motives, which are purposes other than which FIPPA is intended to be used.⁶²

[88] I will next determine whether the applicant is continuing any of the above behaviours.

ii. Volume of access requests and complaints

[89] The College says that the applicant's overall volume of access requests to the College relating to the MSP Matter (six) and complaints and requests for review based on those requests (13) demonstrate that the applicant is abusing

⁶¹ Order F23-23 2023 BCIPC 27 (CanLII) at para 66.

⁶² Order F23-23, 2023 BCIPC 27 (CanLII) at para 79.

FIPPA's processes. As I explained above, the Current Matters relate to three of those six access requests.

[90] In Order F23-23, the Director had this to say about the volume of the applicant's access requests related to the MSP Matter:

In addition, the volume of his complaints, requests for review, and inquiries related to the MSP Matter have been excessive and unreasonable. This Application has given me the opportunity to review, as a whole, what has been going on over the years regarding the Physician's use of the OIPC's processes as it relates to the MSP Matter. Based on that review, I find that he has been disproportionately and unreasonably using OIPC resources in his fight with the Province over the MSP Matter. His use of the OIPC's processes in that regard has been ceaseless. As I pointed out above, he has made 126 complaints and requests for review regarding the MSP Matter since 2017, and the most recent ones were received by the OIPC in December 2022, during the course of this Application.

[91] It is not in dispute that the six access requests to the College relate to the MSP Matter. However, I find that the College's evidence shows that the applicant made 10, rather than 13, complaints and requests for review based on those access requests.⁶³ I find that these 10 complaints and requests for review to the OIPC are part of the applicant's pattern of behaviour identified by the Director in Order F23-23 of excessively and unreasonably using OIPC resources in his fight over the MSP Matter.

- iii. Is the applicant continuing to make arguments that are irrelevant and/or unsubstantiated?

[92] As I explained above, the College says that the applicant's submissions in the Closed Inquiry demonstrate that the applicant is continuing to abuse FIPPA's processes. While the applicant does address the s. 14 issue in the Closed Inquiry, he raises numerous issues that are irrelevant and/or unsubstantiated. For example, the applicant:

- asks that the adjudicator reopen the adequate search complaint when the OIPC Investigator's Fact Report explicitly states that the adequate search complaint has already been investigated and the file closed.⁶⁴
- alleges that the Chair of the MSC acted maliciously and without legal authority;⁶⁵

⁶³ The other three are: a response to the applicant's letter dated March 18, 2021, a deemed possible refusal, and a time extension by the public body; the College's Deputy Registrar and Chief Legal Counsel's affidavit, Exhibit A.

⁶⁴ Affidavit of the College's Deputy Registrar and Chief Legal Counsel, Exhibit B, page 4 and Exhibit C.

⁶⁵ Affidavit of the Deputy Registrar and Chief Legal Counsel, Exhibit B, pages 4 and 15.

- refers to several concluded inquiries and the Commissioner’s power to re-open inquiries;⁶⁶
- provides extensive submissions on conflicts of interest about people who have nothing to do with the Closed Inquiry;⁶⁷
- alleges that the College has a fundamental culture of abuse; and
- includes a large volume of attachments, some of which are documents he gained through past FIPPA requests.

[93] In addition, the applicant’s submissions in this inquiry further demonstrate that he is using FIPPA’s processes to air his grievances about the MSP Matter, the related court proceedings, and the College generally. For example, in his submissions, the applicant:

- challenges the legitimacy of the MSC hearing and audit process and asks the College’s lawyer in this inquiry or someone from the College to “testify in affidavit form” that the amount of money he owes is legitimate;⁶⁸
- alleges collusion between the College and the MSC, including that the chair of the MSC’s “malicious tactics” were furthered by “collaboration” with the College;⁶⁹
- disputes that his claim was time barred and clearly implies the deciding judge was biased because he previously acted as counsel for the MSC.⁷⁰ The BC Court of Appeal already rejected this argument.⁷¹
- alleges that the College falsified an affidavit in an unrelated judicial review;⁷²
- extensively argues that the College has a culture of abuse. He refers to incidents from the 1990s and says that those incidents are “akin to war crimes.”⁷³
- complains about a conflict of interest between a named lawyer at a private firm who acted for the Chair of the MSC.⁷⁴
- alleges that there is “potential criminal activity” due to conflicts of interest and collusion;⁷⁵ and
- says that s. 65.2 of FIPPA applies to the College in this application and all previous information access matters involving the College. The applicant acknowledges that he has been told the OIPC has no mandate

⁶⁶ Affidavit of the Deputy Registrar and Chief Legal Counsel, Exhibit B, pages 10- 11.

⁶⁷ The allegations are the same as what I have addressed in the preliminary matters section of this order.

⁶⁸ Applicant’s response submissions, pages 7 and 8.

⁶⁹ Applicant’s response submissions, pages 8 and 24.

⁷⁰ Applicant’s response submissions, page 9.

⁷¹ *Cimolai supra* note 34, at paras 20-22.

⁷² Applicant’s response submissions, page 18.

⁷³ Applicant’s response submissions, pages 25-27.

⁷⁴ Applicant’s response submissions, page 22.

⁷⁵ Applicant’s response submissions, page 22.

to apply penalties but says “there is a distinct mandate to consider section 65” and that the matter should be “directed to an independent authority.”⁷⁶

[94] In addition, the applicant makes several complaints about FIPPA matters, including that:

- several past inquiries should be re-opened because of errors;⁷⁷
- the College’s counsel have falsified evidence in this inquiry and in the Closed Inquiry;⁷⁸ and
- Suggests that the College’s lawyers in this inquiry have obstructed the applicant’s efforts to access information though FIPPA because the College refused access to some information.⁷⁹

[95] The applicant’s arguments about the above matters make his submissions lengthy, repetitious, convoluted and generally time consuming to work through.

[96] Further, the allegations that the applicant has made are quite serious but the evidence he provides does not adequately support his allegations. For example, with regards to the allegations that the MSC and the College colluded, the emails the applicant has provided show that the Chair of the MSC informed the College about the hearing panel’s decision and that the MSC would keep the College informed of the applicant’s enrollment status.⁸⁰ I do not see how these emails support an allegation of some kind of inappropriate collusion.

[97] The applicant says these matters have to do with the credibility of the College in matters of information access. Not only are the applicant’s allegations not adequately substantiated, but in my view, any relevance to the College’s credibility relating to the Current Matters is tenuous.

[98] I find that the applicant is continuing to use his inquiry submissions to make extensive irrelevant and unsubstantiated complaints relating not only to the MSP Matter, but about the public body, its lawyers and other FIPPA matters.

iv. Personal attacks

[99] The College says that the following portion of the applicant’s submissions in the Closed Inquiry constitute a personal attack on the Inspector:

“[Inspector] is not foreign to the suppression of relevant information She is already on record of have inappropriately done so and such action

⁷⁶ Applicant’s response submissions, page 23.

⁷⁷ Applicant’s response submissions, page 19.

⁷⁸ Applicant’s response submissions, page 7, 8 and 21.

⁷⁹ Applicant’s response submissions, page 21.

⁸⁰ Attachments Qi, Qii and Qiii, to the applicant’s inquiry submissions in F21-87384.

being recorded as a distinct violation during human rights matters. Both [Inspector] and the College would do well to review the *Charter*.”

[100] He repeats the same allegations in his submissions in this inquiry.

[101] In my view, the applicant’s above comments are not a malicious personal attack. Rather, the applicant refers to a Human Rights Tribunal decision where production of documents was in issue. The tribunal member found that the relevant party, which included the Inspector (acting in a different role at the time), had not provided sufficient justification for refusing to produce records on the basis of solicitor-client privilege and asked that the party provide more information.⁸¹ One of the specific issues was about whether the Inspector was acting as a lawyer in her capacity as a regulator.⁸²

[102] Although the applicant’s assertion that the Inspector “suppressed” information seems to me to be misguided, I am not persuaded that it is malicious. The case the applicant refers to is about whether documents should be produced because they are subject to solicitor-client privilege. I can see that solicitor-client privilege, and specifically whether the Inspector was acting as a lawyer, is at issue in the Closed Inquiry. So, while I do think the applicant mischaracterizes the Inspector’s actions in that case, I can see how the applicant’s comments relate to the s. 14 issue in the Closed Inquiry. The comments are not an attack directed at the Inspector’s personal life and I am not persuaded they are otherwise malicious. In this way, I find that the applicant is not continuing to make the types of personal attacks identified by the Director in Order F23-23.

v. Overlapping complaints

[103] Whether the applicant’s OIPC files involve overlapping complaints was not an issue specifically identified by the Director in Order F23-23 but the College has raised it and so I will consider whether the complaints do in fact overlap and if so, whether it is an abuse of process.

[104] The College argues that the applicant is attempting to revisit a complaint that has already been resolved by the OIPC.

[105] The College says Current Matters 3 and 4, which are an adequate search complaint and a request for review, stem from a request in June 2023 for:

1. All correspondence between [Chair of the Medical Services Commission] and [named individual] of the College and that relates to me.

⁸¹ *Johar supra* note 56 at para 123.

⁸² *Ibid* at paras 120-122.

2. All correspondence between [Chair of the Medical Services Commission] and any other representative or delegate of the College and that relates to me.

[106] The College's evidence is that, in response to the June 2023 request, the College identified 53 pages of responsive records.

[107] The College says that, in substance, the June 2023 request is the same as an earlier request made in April 2021 for:

Whether the College has received any correspondence about me from the Medical Services Commission or any of its representatives over the last 60 days inclusive to this date.

[108] In response to the April 2021 request, the College says it identified 50 pages of responsive records.

[109] The College says that the applicant complained that it did not adequately search for records in response to the April 2021 request and that in December 2021, the OIPC closed its file. Therefore, it says that Current Matter 4 has already, in substance, been addressed by the OIPC.

[110] The applicant says that the Current Matters 3 and 4 stem from the *April 2021* request. It's unclear to me whether the applicant is admitting that the April 2021 request is substantially the same as the June 2023 request.

[111] In any case, I prefer the College's more detailed evidence and am persuaded that the June 2023 request overlaps with the April 2021 request. More specifically, I am satisfied that any correspondence between the Chair of the Medical Services Commission and the named and other representatives of the College would have also been captured by the wording of the April 2021 request. I note that the June 2023 request was not limited to a specific period of time, so I am persuaded that the time period overlaps with the time period of the April 2021 request.

[112] In these circumstances, I am persuaded that by making the adequate search complaint that is the subject of Current Matter 4, the applicant is attempting to revisit the adequate search complaint relating to the April 2021 request that has already been resolved in mediation by the OIPC. In my view, this alone is an abuse of process.

vi. Conclusion on abuse of process

[113] As I outlined above, I find that the applicant is continuing to raise issues that are irrelevant and/or unsubstantiated. In particular, I find he is using his submissions to air his grievances and make serious but unsupported allegations

about the MSP Matter and the College in general. I also found that the Current Matters are part of the applicant's pattern of unreasonably using FIPPA's processes in relation to the MSP Matter. These behaviours follow the pattern of behaviour that the Director found to be an abuse of FIPPA's processes in Order F23-23. In addition, I found that one of the applicant's complaints overlapped with an earlier complaint that has already been resolved by the OIPC.

[114] However, I found that the applicant's comments about the Inspector were not the kind of personal attacks identified by the Director in Order F23-23. While this is a noticeable change, it does not outweigh the other behaviours that I found continue the pattern of abusing FIPPA's processes.

[115] I want to emphasize that in any given case, airing grievances, including irrelevant materials or even making multiple requests for review and/or complaints to the OIPC does not automatically equate to an abuse of process. In this case, it is the overall pattern and magnitude of the applicant's behaviour that persuades me that he is continuing to abuse FIPPA's processes.

[116] Overall, I find that allowing the Current Matters to proceed would allow the applicant to continue to disproportionately and unreasonably use FIPPA's processes in his dispute over the MSP Matter. Therefore, in my view, the appropriate remedy is to cancel the Current Matters.

CONCLUSION

[117] For the reasons above, I have decided that the College's abuse of process application is allowed. As a result, files F21-87384, F22-90376, F23-93790, and F23-93791 are canceled.

March 28, 2024

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F23-94634