Court File No. VLC-S-S-237320
No. .....
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NTT DATA CANADA INC.

PETITIONER

AND:

OFFICE OF THE INFORMATION & PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

RESPONDENT

PROVINCIAL HEALTH SERVICES AUTHORITY

RESPONDENT

BRENT STOKELL

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

Office of the Information & Privacy Commissioner for British Columbia
PO Box 9038 Stn. Prov. Govt.
Victoria B.C. V8W 9A4

Provincial Health Services Authority
200-1333 W Broadway
Vancouver B.C. V6H 4C1

Brent Stokell
bcstokell@shaw.ca
Phone: (604) 217-0581

Attorney General of British Columbia
PO Box 980 Stn. Prov. Govt.
Victoria B.C. V8W 9J7

Pursuant to the *Judicial Review Procedure Act*, s 16

This proceeding is brought for the relief set out in Part 1 below, by

[x] the person(s) named as petitioner(s) in the style of proceedings above

[ ] .....[*name(s)*]..... (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

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

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: Supreme Court of British Columbia Vancouver Registry 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: Gall Legge Grant Zwack LLP 1000 – 1199 West Hasting Street Vancouver, BC V6E 3T5

	Attention: Andrea L. Zwack Fax number address for service (if any) of the petitioner(s): N/A E-mail address for service (if any) of the petitioner(s): AZwack@glgzlaw.com
(3)	The name and office address of the petitioner's(s') lawyer is: Andrea L. Zwack Gall Legge Grant Zwack LLP 1000 – 1199 West Hastings Street Vancouver, BC V6E 3T5

CLAIM OF THE PETITIONER

PART 1: ORDER(S) SOUGHT

1. The Petitioner seeks the following orders:

   (a) An *order* in the nature of *certiorari* quashing Order F23-77 of Adjudicator Fedorak, dated September 20, 2023;

   (b) A Order that the Redacted Terms (as defined below) be withheld from disclosure by the Provincial Health Services Authority, pursuant to s. 21 of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 ("*FIPPA*" or the "*Act*");

   (c) Such further and other orders as the Court deems appropriate; and

   (d) Costs.

PART 2: FACTUAL BASIS

A. Overview

2. The respondent Brent Stokell ("**Stokell**") applied pursuant to *FIPPA* for the disclosure of a commercial agreement between the respondent Provincial Health Services Authority ("**PHSA**") (on behalf of the Fraser Health Authority, Interior Health Authority, Northern Health Authority, Provincial Health Services Authority, Vancouver Coastal Health Authority and Vancouver Island Health Authority) and the petitioner NTT Data Canada Inc. ("**NTT**"), entitled A Workplace Evolving Services and Technologies (WEST) Services Agreement and dated effective March 1, 2019 (the "**Agreement**").

OIPC Order F23-77, dated September 20, 2023 (the "**Decision**") at para 1; Exhibit "A" to Affidavit #1 of Sophie Harney ("**Harney Affidavit**").

Affidavit of Daniel Kjellgren at para 2; Exhibit "J" to Harney Affidavit.

3. The Petitioner will be seeking the consent of the respondents to a Sealing Order covering the Redacted Agreement and the Redacted Provisions (as defined below), and will thereafter make application to the Court for such a Sealing Order, following which the Redacted Agreement and the Redacted Provisions will be filed with the Court.

4. Between August 27, 2020 and May 12, 2021, three access requests were made by different applicants to the PHSA regarding the Agreement (the "**Access Requests**"). In each case the applicant sought disclosure of the entire Agreement between PHSA and NTT.

5. The Respondent Stokell made the second access request on November 24, 2020. Stokell is an NTT employee and is a member of the negotiating committee of the British Columbia General Employees' Union ("**BCGEU**") which is the bargaining agent for employees of NTT providing services under the Agreement. The BCGEU's current collective agreement with NTT expires in December 2024.

Investigator's Fact Report at para 1; Exhibit "F" to Harney Affidavit.

Affidavit of Trevor Anderson at para 36; Exhibit "I" to Harney Affidavit ("**Anderson Affidavit**").

6. The OIPC indicated that since the three access requests all involved the same Agreement between PHSA and NTT, the outcome of one inquiry "will essentially determine all three files". The OIPC chose Stoker's application in the inquiry which would determine all three files.

Email from Gary Harris to Harj Gill; Exhibit "C" to Harney Affidavit.

B. Redaction of the Agreement

7. The Agreement contains a number of confidential terms pertaining to, for instance, NTT's financial compensation, the manner in which NTT will provide services under the agreement, the technology employed in providing those services, and service levels and performance metrics for the provision of these services, the assessment of extensions to the agreement, and the compensation NTT will receive if the agreement is terminated at different points in time.

Anderson Affidavit at paras 4, 5, 10, 12, 17, 28 and 32; Exhibit "I" to Harney Affidavit.

8. In the access request at issue in this proceeding (the "**Access Request**"), Stokell requested that the PHSA disclose the entire Agreement.

9. PHSA sought input from NTT in response to each of the three Access Requests. NTT provide input to PHSA seeking that certain terms in the Agreement be withheld from disclosure pursuant to s. 21 of *FIPPA*. PHSA informed NTT that it intended to withhold some information pursuant to s. 21 (the "**PHSA Redacted Terms**"), but intended to disclose the remainder of the Agreement.

Decision at para 1; Exhibit "A" to Harney Affidavit.

10. While NTT agreed with the PHSA that the PHSA Redacted Terms were properly redacted by the PHSA, NTT's position was that section 21(1) of *FIPPA* required that additional terms also be withheld from disclosure (the "**Additional Redacted Terms**").

11. PHSA disclosed the Agreement with the PHSA Redacted Terms and the Additional Redacted Provisions (together the "**Redacted Terms**") withheld (the "**Redacted Agreement**").

12. NTT requested that the OIPC review PHSA's decision to disclose the Additional Redacted Terms.

Decision at para 2.

13. Meanwhile, PHSA disclosed the Agreement to Stokell, but withheld both the PHSA Redacted Terms and the Additional Redacted Terms pending the outcome of the OIPC inquiry.

Decision at para 3.

14. Stokell continued to seek the disclosure of the entire Agreement, and therefore requested the OIPC review PHSA's decision to redact the PHSA Redacted Terms from the Agreement.

15. The OIPC decided to hold a single inquiry under Part 5 of *FIPPA* (the "**Inquiry**") that consolidated both NTT's and the Respondent Stokell's challenges to the disclosure proposed by PHSA (OIPC Files F22-91711 and F21-85605, respectively).

Decision at para 4.

C. Submissions to the OIPC

16. The PHSA, NTT and Stokell all made submissions to the OIPC during the Inquiry. PHSA's initial submissions and accompanying affidavit, NTT's initial submissions and accompanying affidavits, the Respondent Stokell's submissions, and NTT's reply submissions are Exhibits "H" through "N" to the Harney Affidavit.

17. Among other evidence provided by NTT and PHSA to the OIPC, both parties to the Agreement provided evidence about the negotiating process which led to the Agreement.

18. Specifically, the Agreement emerged out of a new negotiating process advanced by the PHSA called "Vested Outsourcing". Vested Outsourcing eschews the traditional outsourcing strategy of seeking the lowest price, because that strategy often results in the acquisition of lower quality services. Vested Outsourcing seeks to achieve better results, and it is based on the fundamental principles of confidentiality and trust.

19. The Vested Outsourcing process focuses on shared values and goals, and each party discloses much more information than would normally be disclosed in such a transaction.

The intended goal of this increased disclosure is the generation of mutual benefits for both parties to the outsourcing agreement.

Affidavit of Daniel Kjellgren at paras 5 and 6; Exhibit "J" to Harney Affidavit ("**Kjellgren Affidavit**").

20. Previously, NTT submitted a freedom of information ("**FOI**") request to access a similar "vested contract" between Vancouver Coastal Health ("**VCH**") and Compass Groups Canada Ltd. ("**CGC**"), dated February 25, 2015.

21. In response to that request, NTT did receive a copy of that 2015 contract. However, the contract was redacted, and many of the provisions NTT is currently seeking to redact from its Agreement are the equivalents of provisions which were redacted in the 2015 contract between VCH and CGC.

Kjellgren Affidavit at para 17; Exhibit "J" to Harney Affidavit.

22. In addition to these specific points, NTT relies on all of the evidence and submissions contained in its submissions and affidavits provided to the OIPC on this judicial review application, as well as the submissions and evidence provided by PHSA to the OIPC.

D. OIPC Decision

23. On September 20, 2023, the OIPC released the Decision. The Decision is Exhibit "A" to the Harney Affidavit.

24. The Decision ordered the disclosure of the entire Agreement to Stokell, without withholding any of the Redacted Terms.

PART 3: LEGAL BASIS

25. The Petitioner pleads and relies on the *Judicial Review Procedure Act*, RSBC 1996, c 241, the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 ("***FIPPA***"), the *Supreme Court Civil Rules*, BC Reg 168/2009, and to the extent necessary, the Court's inherent jurisdiction.

26. The Petitioner seeks relief in relation to the Decision – i.e. Order F23-77, dated September 20, 2023 – in which the OIPC concluded that section 21(1) of the *FIPPA* does not apply to the Redacted Terms of the Agreement, and therefore that the Agreement must be disclosed in its entirety.

27. For the reasons set out below, the Decision was unreasonable and was rendered in a manner that breached the duty of procedural fairness, and must be set aside.

A. Key Legal Principles

28. The standard of review that applies to the decisions of the OIPC in relation to an access request, and in particular to the interpretation and application of section 21(1) of the *Act*, is "reasonableness".

Plenary Group (Canada) Ltd v British Columbia (Minister of Technology, Innovation and Citizens' Services), 2018 BCSC 444

29. In order to be upheld as "reasonable", the reasons underlying the statutory or administrative decision must be both rational and logical, and the decision itself must be justifiable in light of the relevant facts and the law.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at paras 101-106.

30. In addition, in order to be upheld as reasonable, the decision must be "justified in light of the facts"; a "decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them".

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at para 126.

31. Similarly, a "decision may be unreasonable where the decision-maker fails to consider relevant criteria or turn their mind to 'all the factors relevant to the proper fulfilment of its statutory decision-making function'…".

The Architectural Institute of British Columbia v Langford (City), 2020 BCSC 801 (CanLII) at para 94.

32. A statutory or administrative decision maker must also comply with the applicable duty of procedural fairness, including the right to be heard.

33. In this context, the duty of fairness includes, amongst other obligations, the right to have key submissions and evidence seriously considered and the key matters at hand grappled with by the decision maker.

34. That is because to "solicit the representations of a party and, subsequently, to fail to consider them, renders hollow the hallowed principle of the right to be heard".

Ayr Motors Express Inc. v. Canada (Employment Workforce Development and Labour), 2017 FC 514, citing *Tiedeman v Canada (Human Rights Commission)* [1993] FCJ No. 667 at para 12.

35. The principles of procedural fairness relating to the right to have submissions and evidence substantively heard and considered by the decision maker can often overlap with the reasonableness standard, and in particular the obligation to issue a decision that reasonably responds to the key submissions of the parties and the relevant evidence before the decision-maker.

36. Where reasons are required, as with respect to the Decision, the reasons themselves must be intelligible, transparent, and justifiable, must demonstrate that the decision-maker grappled with the substance of the matter and the live issues at play, and must permit the reviewing court to understand and assess the basis for the decision.

Clifford v. Ontario Municipal Employees Retirement System, 2009 ONCA 670 at para. 29; *Ashurwin Holdings Ltd. v. British Columbia*, 2012 BCSC 1408 at paras 20-22;

Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16.

37. As the Supreme Court of Canada stated in *Vavilov*, in the course of discussing the justification and transparency analysis as to whether an impugned decision is reasonable:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (Newfoundland Nurses, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 6 at para 99.

See also *Patel v. Canada (Citizenship and Immigration)*, 2020 FC 77.

38. Thus, it is clear that the failure to consider key evidence or submissions is sufficient to have a decision quashed on judicial review, whether as a matter of procedural fairness or as a matter pertaining to the unreasonableness of the decision.

B. Application of the Legal Principles

39. NTT submits that OIPC made a number of unreasonable conclusions in support of the Decision, including adopting an unreasonable interpretation and application of the term

"supplied" in section 21(1); and failing to take into account or give sufficient weight to key factors or considerations bearing on the Decision.

40. In addition, NTT submits that the OIPC misinterpreted and applied section 57 of the *Act* causing the OIPC to fail to grapple with the key evidence and submissions of the parties, resulting in a procedurally unfair or, alternatively, unreasonable decision.

(a) Unreasonable Interpretation of the Term "Supplied"

41. First, the OIPC adopted an unreasonable interpretation of section 21(1), which requires information to have been "supplied" by one of the parties in order for section 21(1) to apply to prevent the information from being disclosed.

42. While there is a general rule established in the OIPC case law to the effect that most terms of a contract are not "supplied" by one of the parties, this rule can not be interpreted or applied so broadly that it negates the exception entirely in the context of commercial agreements.

43. However, that is what the OIPC did in this case, by concluding that as long as one of the parties "had the option of rejecting the terms, this information was negotiated and, therefore, not supplied".

Decision at para 27.

44. As a party is always at liberty to reject any terms in a commercial agreement, the impact of the OIPC's reading of the term "supplied" is to effectively negate the application of section 21(1) in the case of all commercial agreements.

45. Further, the two well-established exceptions in OIPC jurisprudence to the general rule that terms in a contract are not ordinarily "supplied" by one or the other party were applied in an unreasonably narrow fashion by the OIPC.

46. Specifically, the general rule that terms of a contract are not "supplied" by either party will not apply where:

> (a) the information is relatively immutable or not susceptible of change; or
>
> (b) the disclosure of the information in the contract would allow a reasonably informed observer to draw accurate inferences about underlying confidential information that was supplied by the third party, that is, about information that is not expressly contained in the contract.

47. In the Decision, the OIPC again narrowed these exceptions to such an extent that it robs them of any meaningful application.

48. In relation to whether information was "immutable", the OIPC held that information will not be "immutable" if the "information is included in the agreement as the result of negotiation".

Decision at paras 28, 30.

49. But that is not the meaning of "immutable", which the OIPC correctly articulated earlier in its Decision to mean that "the third party could not change *the information*, even if it wanted to".

Decision at para 26.

50. However, the OIPC did not ask whether the party could change the underlying information, but whether that information was or could be included or referred to or made subject to a term in a contract, or not, at the parties' discretion, and subject to negotiations.

51. For instance, the OIPC's unreasonably concluded that fixed non-compensable costs are not "immutable", simply because the parties could have agreed that the PHSA would pay for those costs.

52. However, this interpretation of immutable deprives the exception of any reasonable, or indeed any possible, application in the context of a commercial agreement and effectively conflates it with the general rule that terms in a contract are negotiated and thus not "supplied".

53. That is, if this understanding of "immutable" were adopted, nothing would ever be "immutable" as it relates to financial terms or costs included in a contract. That is because the paying party could always theoretically agree to pay for every penny spent by a provider in providing a particular service.

54. The same unreasonable application of the immutability principle was evident in the OIPC's decision in relation to the list of contractors' locations. It is clear that, according to the proper principle, this is not information that the third party (i.e. NTT) could change.

55. However, the OIPC concluded that this information was not immutable, because "(w)hile the addresses of the facilities cannot be changed in the sense that the buildings cannot be moved, their inclusion in the agreement is not 'immutable.'".

Decision at para 30.

56. Again, this application of the term deprives the immutability principle of all meaning, and is clearly unreasonable. The immutability principle is based on whether the third party could change the information, not whether or not parties could decide to refer or not to the information in the Agreement.

57. In short, while the OIPC articulated the correct standard of immutable, i.e. whether the party supplying the information could change that information, it then applied a different standard entirely, i.e. whether the parties could determine whether this immutable information was or was not contained or referred to in the contract.

58. This resulted in an unreasonable application of the immutability principle, and an unreasonably narrow interpretation of the term "supplied", rendering the Decision unreasonable.

59. Similarly, in applying the exception for information that could reasonably be used by a person to ascertain information supplied by a party, the OIPC required an unreasonably precise standard of proof that would defeat the purpose of the exception – i.e. demonstrating "exactly" how a party would ascertain the underlying information, and "precisely" what the resulting information is.

60. This interpretation of the exception would defeat the purpose of seeking to shield that confidential information from disclosure, as it would require the party to detail with precision exactly the information that it seeks to have shielded from disclosure. Moreover, it would be unduly burdensome and resource intensive for a Third Party to have to provide such detailed information to the OIPC. In this case, for example, when there were over 100 contractual terms in issue, the evidence and submissions required to meet the standard set by the OIPC could amount to thousands of pages. This type of burden on a Third Party cannot have been intended by the Legislature.

61. NTT submits that the information provided by NTT in its submissions to the OIPC, including in the Affidavit of Kevin Anderson, were more than sufficient to demonstrate what confidential information a reasonably informed person would be able to ascertain if the materials were disclosed.

62. The ultimate effect of the OIPC's interpretation and application of the term "supplied" is that any information contained in a contract is, almost by definition, not supplied by one of the parties, because all such information could be included or not included in the contract, at the parties' discretion. Further, the burden on a Third Party to meet the exceptions to disclosure, as defined and applied by the OIPC in this case, would be so extraordinary that no Third Party could reasonably afford to meet it.

63. This narrow interpretation of the term "supplied" effectively renders meaningless the exception to disclosure in cases involving contracts, and is clearly unreasonable.

(b) The Failure to Consider Relevant Factors, Evidence, or Submissions

64. Second, a decision can be unreasonable if the decision-maker fails to consider, or gives insufficient weight to, key factors, evidence, or submissions of the parties.

65. In this case, NTT submits that the OIPC unreasonably failed to take into account, or to give sufficient weight to, a number of essential arguments or considerations, rendering the decision unreasonable.

66. In particular, the OIPC unreasonably failed to consider the "chilling effect" that the disclosure of the disputed terms would have on the ability of PHSA and other similar public bodies to obtain free and frank disclosure from private sector proponents in the context of public procurement contracts.

67. The OIPC concluded, in a single paragraph, that the PHSA and NTT had failed to demonstrate "a clear and direct connection between disclosing the information in dispute and a reasonable expectation of the alleged harms", but did not explain why this standard was not met by the parties' evidence and submissions, and why there was no reasonable risk of a chilling effect in relation to the future supply of the disputed information.

Decision at para 55.

68. In reaching this conclusion, the Decision also relied on a previous order – Order F10-24, 2010 BCIPC 35, paras 54-58 – which had found that the appropriate standard is whether the disclosure of the information would "would *prevent* [the applicant] from bidding on future projects with the Province", or whether it would result in a "diminishing pool of contractors" for public procurement projects.

Order F10-24 at paras 55-56.

69. However, that is an unreasonably narrow interpretation of this provision, which only requires demonstrating that it may "result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied".

70. The key question, then, is whether there would be a meaningful "chilling effect" on the free and frank disclosure of similar information in future situations if that information could be revealed through an access request, not whether such contracts would <u>never</u> be concluded as a result of the disclosure or whether a particular party would refuse to participate in public procurement in the future.

71. In addition, the OIPC unreasonably failed to take into account the extensive submissions – from both NTT and PHSA – establishing that the negotiating model they used involved the provision of much more information about NTT's business, operations and costs than would typically be provided in the negotiation of a service agreement.

72. This was as key aspect of the factual context in this case, as it renders previous decisions in this context – such as Order F10-24 – of limited relevance in identifying and applying the relevant statutory factors.

73. Moreover, parties may no longer be willing to engage in the extensive disclosure required by this new negotiating model if this additional disclosure of confidential information will then be publicly disclosed. The OIPC effectively ignored this essential context in its Decision.

74. The failure to take into account or give reasonable weight to these two key and related considerations – the "chilling effect" that could reasonably be expected to result from the disclosure of the information at issue, and the risk that parties would not be willing to engage in the new negotiation model – renders the Decision unreasonable.

(c) Misinterpretation of the Burden of Proof in section 57

75. Finally, the OIPC unreasonably concluded that, because section 57(1) imposes the burden on the public body (i.e. the PHSA) to justify its decision that the PHSA Redacted Terms should not be disclosed, the OIPC could or should exclusively or primarily consider the PHSA's *own* submissions in determining whether section 21(1) applied to the disputed terms.

76. The OIPC repeatedly referenced this burden of proof in the context of assessing whether section 21(1) applied to the PHSA Redacted Terms in issue, emphasizing the importance of PHSA supplying the reasons for its decision to withhold certain information from disclosure.

Decision at paras 6, 23, 36-37 and 55-56.

77. However, the real issue was whether the submissions and evidence of the parties, whether the PHSA or NTT, demonstrated that section 21(1) properly applied to the Redacted Terms. Section 57(1) can not have been intended and cannot be interpreted to mean that, because PHSA accepted NTT's initial submissions to it in relation to the PHSA Redacted Terms, the OIPC can then consider only the submissions and evidence provided by PHSA in determining whether the PHSA Redacted Terms were properly withheld.

78. Rather, in the case of section 21(1), it will normally be the third party, rather than the public body, that has the most relevant evidence and submissions in relation to why the material in question cannot be disclosed given the harm to the third party.

79. The OIPC cannot disregard or give lesser weigh to the evidence or submissions of the third party whose confidential information is directly in issue, simply because the public body agreed at first instance that certain terms should be withheld from disclosure under s. 21, as the Decision appears to assume.

80. This misunderstanding of the burden established by section 57 caused the OIPC to unreasonably fail to meaningfully grapple with the evidence and arguments of NTT that were relevant to the application of section 21(1) in relation to the PHSA Redacted Terms, on the basis that the evidence and submissions did not come directly from the PHSA.

81. This can be seen in a number of passages in the Decision, where the OIPC effectively disregarded submissions or evidence supplied by NTT on the basis that the PHSA "has the burden of proving that the exception applies", or that PHSA "merely relies on the submissions of the third party" on a particular point.

Decision at paras 36 and 55.

82. In failing to meaningfully grapple with the key evidence and submissions of NTT in this context, the OIPC breached the duty of procedural fairness owed to NTT, or in the alternative, rendered an unreasonable decision.

83. As such, on any or all of the above grounds, the OIPC's decision should be set aside.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Sophie Harney, made November 2, 2023;
2. *Judicial Review Procedure Act*, RSBC 1996, c 241;
3. *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165; and
4. *Supreme Court Civil Rules*, BC Reg 168/2009.

The petitioner(s) estimate(s) that the hearing of the petition will take two days.

Date: November 2, 2023 .....

Signature of [ ] petitioner [x] lawyer for petitioner(s)

Andrea L. Zwack

To be completed by the court only:	
Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date: .....[*dd/mmm/yyyy*].....	..... Signature of [ ] Judge [ ] Master