



Court File No. **VLC-S-S-262745**

No.  
Vancouver Registry

*In the Supreme Court of British Columbia*  
In the Matter of the *Judicial Review Procedure Act*, RSBC 1996, c 241

Between:

**HEALTH PROFESSIONS REVIEW BOARD**

Petitioner

And:

**THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA and ALDEN CHOW**

Respondents

**PETITION TO THE COURT**

**ON NOTICE TO:**

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

Alden Chow  
Foothills Manor  
201 - 4144 15th Avenue  
Prince George BC V2M 1V8

**AND ON NOTICE TO:**

The Attorney General of British Columbia  
Legal Services Branch  
PO Box 9280 Stn Prov Govt  
Victoria, BC V8W 9J7

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

The petitioner estimates that the hearing of the petition will take **two (2) days**.

- This matter is an application for judicial review.
- This matter is not an application for judicial review.

**This proceeding is brought for the relief set out in Part 1 below, by the person named as petitioner in the style of proceedings above.**

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,

- (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)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p><b>Ethos Law Group LLP</b>          630 – 999 West Broadway          Vancouver, BC V5Z 1K5</p> <p>Fax number for service of the petitioner: 1 866 591 0597          Email address for service of the petitioner: <a href="mailto:monique@ethoslaw.ca">monique@ethoslaw.ca</a></p>
(2)	<p>The name and office address of the petitioner’s lawyer is:</p> <p><b>Monique Pongracic-Speier, KC</b>  <b>Ethos Law Group LLP</b>          630 – 999 West Broadway          Vancouver, BC V5Z 1K5</p>

## Claim of the Petitioner

### Part 1: ORDERS SOUGHT

1. An order that the Office of the Information and Privacy Commissioner for British Columbia (“**OIPC**”) shall file the record of the proceeding in the Court.
2. An order setting aside OIPC Order F26-25 (the “**Order**”).
3. An order that the Order is remitted to the OIPC for redetermination, in accordance with the reasons and directions of the Court.
4. An order in the nature of *mandamus* for the OIPC to make orders with respect to records 217, 321 and 322.
5. Such other relief as this Honourable Court may deem meet and just.

### Part 2: FACTUAL BASIS

#### *The petitioner and the respondents:*

1. The Health Professions Review Board (the “**Review Board**”), is a quasi-judicial administrative tribunal created pursuant to the *Health Professions (Regulatory Reform) Amendment Act, 2008*, SBC 2008, c 29, and continued pursuant to the *Health Professions and Occupations Act*, SBC 2022, c 43, s. 308(1). The Review Board’s purposes include deciding reviews of certain types of complaint dispositions made by health professions colleges.
2. At all times material to the matters at issue in this petition, the Review Board was governed by the *Health Professions Act*, RSBC 1996, c 183 (the “**HPA**”), as amended.
3. The Review Board is a “tribunal” within the meaning of s. 1 of the *Administrative Tribunals Act*, SBC 2004, c 45 (the “**ATA**”) and a “public body” pursuant to s. 1 and Schedules 1 and 2 of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 (the “**FIPPA**”).
4. The Information and Privacy Commissioner of British Columbia and his delegates (collectively, the “**OIPC**”) are empowered to conduct reviews under Part 5 of the *FIPPA*.
5. Alden Chow and the Review Board were the parties to a review Mr. Chow brought before the OIPC pursuant to Part 5 of the *FIPPA*.

#### *Statutory Framework*

6. Pursuant to ss. 4 and 5 of the *FIPPA*, an applicant may request records in the custody or under the control of a public body.
7. Pursuant to s. 61(2)(a) of the *ATA*, the *FIPPA*, except for ss. 44(1)(b), (2), (2.1) and (3), does not apply to a personal note, communication or draft decision of a decision maker. “Decision maker” includes a tribunal member, adjudicator, registrar or other officer who

makes a decision in an application or an interim or preliminary matter: *ATA*, s. 6.

8. Pursuant to s. 3(3)(e) of the *FIPPA*, the legislation does not apply to a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity.
9. Pursuant to ss. 13(1) and 14 of the *FIPPA*, respectively, the head of a public body may withhold a record if the record:
  - a. would reveal advice or recommendations developed by or for a public body; or
  - b. is subject to solicitor client privilege.
10. Pursuant to s. 22(1) of the *FIPPA*, the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
11. Pursuant to s. 52(1) of the *FIPPA*, a person may apply to the OIPC to review a public body's decision concerning a request to access records, and, pursuant to s. 56(1), the OIPC may conduct an inquiry with respect to the decision and decide all questions of fact and law arising in the course of the inquiry.
12. The OIPC's *Instructions for written inquiries* provide that, in an inquiry, the records at issue are reviewed *in camera*.
13. In the inquiry, the OIPC may order a person to produce to the OIPC a record in the person's custody or control: s. 44(1)(b) of the *FIPPA*.
14. The solicitor client privilege of a record ordered produced under s. 44(1) is not affected by the disclosure: s. 44(2.1) of the *FIPPA*.
15. Pursuant to s. 58 of the *FIPPA*, on completing an inquiry into a public body's decision to give or refuse to give access to all or part of a record, the OIPC must make an order that does one or more of the following:
  - a. require the head of the public body to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;
  - b. either confirm the decision of the head of the public body or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access; or
  - c. require the head of the public body to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.

***Events leading to the Order:***

16. On November 1, 2016, Mr. Chow applied to the Review Board to review the College of Physicians and Surgeons of British Columbia’s disposition of Mr. Chow’s complaint against a registrant (the “**Complaint Disposition Review**”). On July 23, 2019, the Review Board decided the Complaint Disposition Review. On December 17, 2019, the Review Board issued a corrigendum to its final decision.
17. On December 23, 2021, Mr. Chow requested “one paper copy record and one digital copy record” of the Review Board’s file for the Complaint Disposition Review. The file is comprised of many records, spanning thousands of printed pages. Some of the records are duplicates of each other.
18. On August 4, 2022, the Review Board disclosed records from the Complaint Disposition Review file to Mr. Chow. Some records, or parts thereof, were withheld pursuant to s. 61(2)(a) of the *ATA* or ss. 3(1)(b) (now 3(3)(e)), 14 or 22(1) of the *FIPPA*.
19. On September 5, 2022, Mr. Chow applied to the OIPC to review the Review Board’s decision concerning his request to access records.
20. The application was not resolved by mediation pursuant to s. 55 of the *FIPPA*.
21. On October 31, 2023, the Review Board asserted s. 13(1) of the *FIPPA* as an additional ground to withhold records from disclosure, and revised redactions in pages 1 to 1067 of the record.
22. On September 24, 2024, the OIPC issued a notice of written inquiry, pursuant to s. 56(1) of the *FIPPA*, to consider whether:
  - a. some records are outside the scope of the *FIPPA*, pursuant to s. 3(3)(e) of the *FIPPA* and s. 61 of the *ATA*;
  - b. the Review Board is required to refuse to disclose the information at issue under s. 22 of the *FIPPA*; and
  - c. the Review Board is authorized to refuse to disclose the information at issue under ss. 13 and 14 of the *FIPPA*.
23. Three hundred seventy two (372) records, some of which were duplicates or partial duplicates of each other, were at issue in the inquiry. The records were comprised of 334 emails or email strings, 24 log entries, 10 mailing labels or email addresses, three memos and a draft decision.
24. Between October 9, 2024 and November 7, 2025, the Review Board and Mr. Chow made representations in the inquiry. The Review Board provided records to the OIPC *in camera*, with redactions to protect solicitor-client privilege. The Review Board also filed affidavit evidence in support of its claims under s. 61(2)(a) of the *ATA* and ss. 3(3)(e), 13(1), 14 and 22 of the *FIPPA*.

25. On March 31, 2026, the OIPC issued the Order. The Order confirms some, but not all, aspects of the Review Board's decision concerning access to records. In part material to this application for judicial review, the Order does not confirm certain of the Review Board's claims to:
- a. immunity from disclosure under s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA* (the "**Deliberative Privilege Claims**"); and
  - b. solicitor client privilege under s. 14 of the *FIPPA* (the "**Solicitor Client Privilege Claims**").
26. Further, the Order requires the Review Board to disclose:
- a. to the OIPC, by April 16, 2026, and in un-redacted form, certain records subject to claims under s. 13(1) of the *FIPPA*; and
  - b. to Mr. Chow, by May 14, 2026, certain records.

### **Part 3: LEGAL BASIS**

#### ***The Order is, in parts, incomplete, misconceived or internally inconsistent***

27. The Order is incomplete. The OIPC failed to make any order with respect to records 217, 321 and 322 and thus failed to discharge part of the task which the *FIPPA* assigns to the Commissioner. An order for *mandamus* should issue: *Wu v. Vancouver (City)*, 2019 BCCA 23, para 40; *Paldi Khalsa Diwan Society v. Cowichan Valley (Regional District)*, 2014 BCCA 335, para 56.
28. The Order is misconceived in part. It orders the Review Board to produce record 309 to the OIPC to assess the applicability of s. 13(1) of the *FIPPA*, although the Review Board did not assert s. 13(1) as a ground to withhold record 309 from disclosure.
29. The Order is internally inconsistent in parts. In particular, the OIPC:
- a. ordered the Review Board to disclose record 24 (a log entry) to Mr. Chow but confirmed the Review Board's Solicitor Client Privilege Claim to record 8, a duplicate of the same log entry;
  - b. ordered the Review Board to disclose record 70 (an email) to Mr. Chow but confirmed the Review Board's Solicitor Client Privilege Claim to record 68, a duplicate of the same email, continued on a different page;
  - c. ordered the Review Board to disclose record 133 (an email) to the OIPC for consideration of claims under s. 13(1) of the *FIPPA* but confirmed the Review Board's Solicitor Client Privilege Claim to record 111, a duplicate of the same email;
  - d. ordered the Review Board to disclose records 182 and 183 (both of which are

emails) to Mr. Chow but also ordered the Review Board to disclose records 193 and 194, duplicates of the same emails, to the OIPC for consideration of claims under s. 13(1) of the *FIPPA*;

- e. ordered the Review Board to disclose records 193 and 194 to the OIPC for consideration of claims under s. 13(1) of the *FIPPA* although the OIPC already had the records in full;
- f. ordered the Review Board to disclose record 340 (an email) to Mr. Chow but confirmed the Review Board's Deliberative Privilege Claim to record 334, a duplicate of the same email; and
- g. failed to make an order with respect to records 321 and 322 (duplicates of an email) but confirmed the Board's Deliberative Privilege Claim with respect to record 319, another copy of the same email.

***The OIPC erred with respect to Deliberative Privilege Claims and erroneously interpreted s. 61(2)(a) of the ATA and s. 3(3)(e) of the FIPPA***

- 30. The OIPC interpreted and applied s. 61(2)(a) of the *ATA* to the Deliberative Privilege Claims. The OIPC then adopted the analysis of s. 61(2)(a) of the *ATA* in respect of s. 3(3)(a) of the *FIPPA*: Order, para. 64.
- 31. The standard of review for the interpretation and application of the provisions is correctness or, alternatively, reasonableness. On either standard, the OIPC erred in interpreting and applying s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA*.
- 32. Pursuant to s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA*, the *FIPPA* does not apply to a personal note, communication or draft decision “of” a decision maker or a person acting in a judicial or quasi-judicial capacity.
- 33. As the Order acknowledged, s. 61(2)(a) of the *ATA* applies to records, not to information in a record: Order, paras 27, 37; see also *British Columbia (Education and Child Care) (Re)*, 2026 BCIPC 13, para 40.
- 34. Nonetheless, the OIPC ordered that “information” at records 195 (p. 699), 196 (p. 700), 220 (p. 752), 221 (p. 753), 225 (p. 755), 226 (p. 755), 237 (p. 760), 242 (p. 762), 246 (p. 768), 247 (p. 768), 250 (p. 769), 265 (p. 797), 269 (p. 801), 334 (p. 334) and 347 (p. 980) may be withheld from disclosure pursuant to s. 61(2)(a) of the *ATA* but that “information” in the same records must be disclosed to Mr. Chow, pursuant to s. 13(1) of the *FIPPA*. This term of the Order involves three errors.
- 35. First, the application of s. 61(2)(a) of the *ATA* to “information” is inconsistent with the OIPC's interpretation of the provision.
- 36. Second, as a matter of law, s. 61(2)(a) of the *ATA* does not apply to “information”.
- 37. Third, as a matter of law, s. 13(1) of the *FIPPA* does not apply to a record to which s.

61(2)(a) of the *ATA* applies.

38. The Order's treatment of s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA* is in other respects unprincipled, internally inconsistent, or arbitrary.
39. The provisions of a statute are to be given such fair, large, and liberal construction as is required to attain their objects: *Interpretation Act*, RSBC 1996, c 238, s. 8. Interpretations which would yield an absurd result should be avoided: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at para 27.
40. The OIPC acknowledged that s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA* are intended to codify common law deliberative secrecy (Order, paras 38 and 64) but interpreted the provisions so as to narrow the privilege.
41. First, notwithstanding an affirmation that s. 61(2)(a) of the *ATA* codifies the common law, the OIPC characterized common law deliberative secrecy "as an aid to interpreting s. 61(2)(a)" and held that not all records captured by deliberative secrecy are caught by s. 61(2)(a): Order, para 55. This treatment of deliberative privilege is inconsistent and improperly narrows the privilege. A provision that codifies the common law necessarily includes what is captured at common law.
42. Second, the OIPC correctly held that the "core of the principle of deliberative secrecy is protection of the substance of the matters decided and the decision-maker's thinking with respect to such matters" (Order, para 39; see also *Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 389, para 33 ("**Chestacow**")) and acknowledged that disclosure of advice provided to a decision-maker may allow a reader to draw inferences about the decision-maker's thinking (Order, para 57). However, the OIPC reasoned that because advice to a decision-maker would not "actually tell the reader what the decision maker thought or how they arrived at their decision", the advice does not lie within the core of deliberative secrecy: Order, para 57.
43. The distinction drawn by the OIPC is unprincipled, arbitrary and inconsistent with the law that "all deliberative steps" are protected by deliberative secrecy, and that deliberation "encompasses the gathering of information, its assessment, and the formulation of an opinion or conclusion in respect of it": *Chestacow*, para 33; *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2010 BCSC 931, paras 31, 33.
44. Third, the OIPC interpreted the word "of" in s. 61(2)(a) of the *ATA* and s. 3(3)(e) of the *FIPPA* to mean "written by" or "on behalf of" a decision-maker. This interpretation of "of" is inconsistent with the scope of deliberative privilege and yields absurd results. On this interpretation, emails written by or for the decision maker will be immune from disclosure, but emails to the decision-maker that allude to the decision-maker's reasoning or that contain suggestions for the decision-maker's consideration, will not. The result is to render disclosable records to which deliberative privilege applies, impairing the



privilege and defeating the purpose of ss. 61(2)(a) of the *ATA* and 3(3)(e) of the *FIPPA*.

***The OIPC incorrectly determined Solicitor Client Privilege Claims***

45. The standard of review for the Solicitor Client Privilege Claims is correctness: *Legal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2003 BCCA 278 (“***Legal Services Society***”), para. 35; *British Columbia (Minister of Justice) v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 1787, paras 22-23.
46. Solicitor-client privilege is a fundamental class of privilege that is “nearly absolute” and is assiduously protected: *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 18. There is “absolutely no room for compromise” of solicitor client privilege and s. 14 of the *FIPPA* is paramount to other provisions that prescribe access to records: *Legal Services Society*, para. 35.
47. Once solicitor-client privilege is established, it applies to “all communications made within the framework of the solicitor-client relationship”, and to all communications in the continuum of communications in which the lawyer provides advice: *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219, paras 32 and 33.
48. The OIPC incorrectly held that the Review Board did not provide sufficient evidence to support Solicitor Client Privilege Claims to approximately 64 records including, especially, records within continuums of protected communications.
49. In the inquiry, the Executive Director of the Review Board gave evidence regarding the Review Board’s lawyer-client relationship with counsel and identified the specific records which formed continuums of email communications in which legal advice was sought, offered or discussed. The OIPC:
  - a. accepted that the Executive Director had first-hand knowledge of the records and why the Review Board asserted the Solicitor Client Privilege Claims (Order, paras 15-16, 77);
  - b. accepted as accurate the Executive Director’s description of the records (Order, para 79);
  - c. found that the evidence was sufficiently detailed for the OIPC to adjudicate the Solicitor Client Privilege Claims (Order, para 17); and
  - d. affirmed that the Review Board had a solicitor-client relationship with its lawyer, and that the Review Board intended its communications with the lawyer to be confidential (Order, para 78, 83).
50. The OIPC erroneously concluded that the Review Board opposed any order for production of the records to the OIPC: Order, para 25. In fact, the Review Board had confirmed that it would provide such additional evidence or information regarding the

Solicitor Client Privilege Claims as the OIPC might require.

51. The OIPC misapprehended the evidence before it, failed to consider relevant evidence and addressed evidence in an unprincipled manner. In particular:
- a. The OIPC incorrectly found that the Review Board's Executive Director deposed that she did not "intend to suggest that the Lawyer was a party to the emails" at issue in the continuums of communications subject to Solicitor Client Privilege Claims: Order, para 71. In fact, the evidence was that the lawyer was not party to "all the emails in the Records but to the communications they document and over which the Review Board claims solicitor-client privilege." The evidence continued,
 

In some instances, there are email strings involving [the lawyer], in which he provided real-time advice to members. In these strings, [the lawyer] was an author or a recipient of the emails which comprise the string. The Records also include emails which [the lawyer] did not send or receive but which discuss [the lawyer's] legal advice to the Board.
  - b. The Order concluded there was insufficient evidence to identify the emails within a continuum of solicitor-client privileged communications, although the Executive Director specifically identified the emails that comprised each continuum of communications in the provision of legal advice.
  - c. The Order placed undue weight on the fact that the Executive Director of the Review Board is not a member of the Law Society and ignored the involvement of counsel in listing the records in the inquiry.
  - d. The OIPC was critical of the Review Board for not listing the authors and recipients of email records but disregarded the evidence that the lawyer's client was the Review Board, and not members or staff of the Review Board.
52. To the extent that the OIPC was not satisfied with the sufficiency of the evidence, it erred by failing to exercise its discretion to order production of records for inspection *in camera* before deciding the claims, pursuant to ss. 44(1)(b) of the *FIPPA*. The failure to do so is inconsistent with the assiduous protection of the solicitor-client privilege which the law demands.
53. Further, the OIPC exercised its discretion under s. 44(1)(b) of the *FIPPA* arbitrarily. The OIPC ordered the Review Board to produce to it unredacted copies of 28 records subject to Solicitor Client Privilege Claims but solely to decide whether the records may be withheld from disclosure pursuant to s. 13. This aspect of the Order is unprincipled and improperly fetters the OIPC's discretion in evaluating the evidence.

54. Moreover, the Order erroneously relied on clearly distinguishable case law to conclude that the Review Board should not have further opportunity to substantiate Solicitor Client Privilege Claims.

**MATERIAL TO BE RELIED ON**

- 1. The record of the proceeding; and
- 2. Affidavit #1 of E. Soong made April 16, 2026.



Date: April 16, 2026

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Signature of lawyer for Petitioner  
**Monique Pongracic-Speier, KC**

<p><b><i>To be completed by the court only:</i></b></p> <p>Order made  <input type="checkbox"/> in the terms requested in paragraphs ..... of Part 1 of this petition  <input type="checkbox"/> with the following variations and additional terms:  .....  .....  .....</p>	
<p>Date: .....  [dd/mmm/yyyy]</p>	<p style="text-align: right;">.....  Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate Judge</p>