



Order F22-50

COLLEGE OF MESSAGE THERAPISTS OF BRITISH COLUMBIA

Lisa Siew
Adjudicator

October 27, 2022

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Summary: An individual complained the College of Massage Therapists of British Columbia (College) contravened the *Freedom of Information and Protection of Privacy Act* (FIPPA) by improperly disclosing his personal information. The individual is a registrant of the College who was investigated for his conduct towards a patient. The College argued the disclosure was authorized under various subsections of ss. 33.(1) or 33.2 of FIPPA. The adjudicator determined the College did not contravene FIPPA since the disclosure was authorized under an enactment of British Columbia in accordance with s. 33.1(1)(c) of FIPPA. Given that finding, the adjudicator did not find it necessary to consider the College’s application of the other FIPPA provisions at issue.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, Schedule 1 (definitions of “personal information” and “contact information”) and s. 33.1(1)(c). *Health Professions Act*, RSBC 1996, c 183, ss. 32, 32.4(1), 32.4(2)(a), 32.4(3), 33.1(1)(c), 33(6)(a), 50.53(1)(b), 50.58(1)(a) and 50.63(1). *Interpretation Act*, RSBC 1996, c. 238, s. 1 (definitions of “Act” and “enactment”) and s. 2.

INTRODUCTION

[1] This inquiry is about a massage therapist’s (Massage Therapist) complaint that the College of Massage Therapists of British Columbia (College) contravened the *Freedom of Information and Protection of Privacy Act* (FIPPA) by improperly disclosing his personal information. In response to the complaint, the College informed the Massage Therapist that the disclosure was authorized under s. 33.1(1)(l) [disclosure for the purpose of investigation or discipline of persons regulated by a governing body] of FIPPA.

[2] The Massage Therapist was dissatisfied with the College’s response and requested the Office of the Information and Privacy Commissioner (OIPC) investigate the matter. As part of the OIPC’s investigation and mediation process, the College revised its position and informed the Massage Therapist that it was instead relying on s. 33.1(1)(c.1) [personal information available to the public] of

FIPPA as the authority for its disclosure. Ultimately, the matter was not resolved and proceeded to this inquiry.

[3] During the inquiry, the OIPC's registrar of inquiries approved the College's request to add s. 33.1(1)(c) [disclosure authorized or required under another enactment], s. 33.1(1)(l) [disclosure for the purpose of investigation or discipline by a governing body] and s. 33.2(a) [disclosure for the purpose for which it was obtained or compiled or for a use consistent with that purpose] of FIPPA to the inquiry.

PRELIMINARY MATTERS

Previous FIPPA applies

[4] I note that FIPPA was amended in late 2021 resulting in ss. 33, 33.1 and 33.2 being changed or parts repealed. For instance, s. 33.1(1)(c) [disclosure authorized or required under another enactment] was replaced with s. 33(2)(e) with no substantive changes to the wording between the prior version and its replacement.

[5] For this inquiry, I will apply the version of FIPPA as it existed at the time of the College's alleged disclosure. The parties cite the previous section numbers in their submissions and do not dispute that they are the relevant provisions in this inquiry. Therefore, my citations in this order are to the previous section numbers, which were the provisions in force at the time of the relevant events.

Additional submissions from the parties

[6] As part of this inquiry, I offered the parties an opportunity to provide additional submissions on a matter that I found applicable to the s. 33.1(1)(c) analysis.¹ I considered it fair to do so since this specific matter was not addressed by the parties in their previous inquiry submissions. Both parties provided additional submissions and I will refer to that information where relevant in my analysis under s. 33.1(1)(c).

ISSUES AND BURDEN OF PROOF

[7] The issues that I must decide in this inquiry are as follows:

1. Did the College disclose the Massage Therapist's "personal information"?
2. Was the College authorized under s. 33.1(1)(c) to make the disclosure?
3. Was the College authorized under s. 33.1(1)(c.1) to make the disclosure?

¹ Letter to the parties dated September 14, 2022.

4. Was the College authorized under s. 33.1(1)(l) to make the disclosure?
5. Was the College authorized under s. 33.2(a) to make the disclosure?

[8] Section 57 sets out which party has the burden of proof at an inquiry, but it does not identify which party has the burden to prove the above-noted issues, which fall under Part 3 of FIPPA. However, previous OIPC orders have determined that in the absence of a statutory burden of proof, it is up to each party to provide evidence and argument to support their position where the inquiry engages Part 3 of FIPPA.² I adopt that approach here, but recognize “that the public body is ordinarily best placed to offer evidence of its compliance” with FIPPA.³

Additional matters in the Massage Therapist’s submission

[9] The Massage Therapist’s submission addresses other matters not set out in the OIPC investigator’s fact report or the notice of inquiry. For instance, the Massage Therapist’s submission includes various allegations of wrongdoing and other alleged privacy breaches by the College, the Third Party and other named individuals. The Massage Therapist also contests the College’s investigation and decision about him and its investigation and handling of other complaints. As well, the Massage Therapist alleges the College did not comply with ss. 19, 21 and 22 of FIPPA.

[10] The College objects to the inclusion of these additional issues on the basis they are irrelevant to the issues to be determined at this inquiry and fall outside the scope of this inquiry. The College also submits the OIPC does not have the jurisdiction to determine some of those matters such as reviewing the College’s past investigations and decisions.

[11] I can see how important these other matters are to the Massage Therapist; however, I will not consider these additional matters as part of this inquiry. As the Commissioner’s delegate, my role is limited to determining the issues identified above, at paragraph 7 of this order, based on the facts and circumstances relevant to those issues. It is not within my jurisdiction under FIPPA to decide the Massage Therapist’s other grievances involving the College, the Third Party and other named individuals.

[12] It is also outside the scope of this inquiry to address the Massage Therapist’s other allegations such as the College’s failure to comply with other provisions of FIPPA unrelated to this inquiry and that certain individuals allegedly acted in contravention of the *Personal Information Protection Act*. Therefore,

² Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 11; Order F14-26, 2014 BCIPC 29 (CanLII) at para. 6; Decision F10-03, 2010 BCIPC 15 (CanLII) at para. 6.

³ Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 11.

although I have reviewed the Massage Therapist's entire submission, I will only refer to those submissions where it is relevant to the issues in this inquiry.

DISCUSSION

Background

[13] The *Health Professions Act (HPA)*⁴ governs the licensing and discipline of persons engaged in designated health professions in British Columbia.⁵ Massage therapy is a designated health profession under the *HPA*. The College is a self-governing body established under the *HPA* to regulate the practice of massage therapy. As part of its regulatory functions, the College is required to investigate complaints made against a registrant in accordance with Part 3 of the *HPA*.

[14] However, the College's investigations and how it disposes of complaints against registrants are reviewable by the Health Professions Review Board (Review Board). The Review Board is a specialized tribunal that exercises independent oversight in reviewing certain actions and decisions made by a health profession college.

[15] The events that are central to this inquiry occurred when the Massage Therapist operated his practice out of a clinic owned by another registrant of the College (Third Party). The Massage Therapist had treated a patient at the clinic for pain symptoms. Not long after the treatment, the patient submitted a complaint to a clinic employee alleging the Massage Therapist had engaged in inappropriate behaviour during the appointment, including not having their consent for certain actions taken during the treatment. The Third Party and the Massage Therapist were both informed of the patient's allegations.

[16] The Third Party reported the complaint to the College. The College's inquiry committee (Inquiry Committee) investigated the matter and appointed an inspector under s. 27 of the *HPA* to assist with the investigation. The patient, the Third Party and the Massage Therapist were interviewed as part of the investigation. The Massage Therapist denied any wrongdoing.

[17] Following the completion of an investigation, an inquiry committee may take one of the following four actions under s. 33(6) of the *HPA* to dispose of the matter:

- a) take no further action if the inquiry committee is of the view that the conduct or competence to which the matter relates is satisfactory;

⁴ RSBC 1996, c. 183.

⁵ The information in this background section is compiled from the parties' submission and evidence.

- b) take any action it considers appropriate to resolve a matter between a complainant and a registrant;
- c) act under s. 36 of the *HPA* to seek a consent agreement with remedial terms; or
- d) direct the issuance of a citation for a discipline hearing under s. 37 of the *HPA*.

[18] At the end of its investigation, the Inquiry Committee sought a consent agreement under s. 33(6)(c) of the *HPA* which allows an inquiry committee to request that the registrant under investigation consent to a number of remedial conditions. The Massage Therapist refused to consent to the proposed agreement and its conditions. As a result, the matter was referred back to the Inquiry Committee for a new decision.

[19] Before a new decision was issued, the Review Board received a complaint about the timeliness of the Inquiry Committee's investigation into the matter.⁶ The issue before the Review Board concerned the Inquiry Committee's failure to issue a "disposition" for the complaint within the prescribed legislative time period.⁷ After a review of the complaint, and further events which I will discuss later in this order, the Review Board issued an order requiring the Inquiry Committee to make a disposition about the complaint by a set date.⁸

[20] Ultimately, the Inquiry Committee decided to take no further action in accordance with s. 33(6)(a) regarding the complaint, but it issued a caution to the Massage Therapist regarding his future conduct towards patients. The Inquiry Committee communicated this decision to the Massage Therapist in a letter (Decision Letter).

[21] The Third Party was also sent a letter about the outcome of the Inquiry Committee's investigation and notified of their right to request a review of that decision with the Review Board (Notification Letter). The Third Party did not file a request for review to the Review Board and the College closed the investigation file.

Was there a disclosure of the Massage Therapist's personal information?

[22] The Massage Therapist alleges the Inquiry Committee breached his privacy by disclosing his personal information to the Third Party and to two of his former workplaces. I will address each of these alleged disclosures below.

⁶ College's submission dated May 24, 2022 at para. 14.

⁷ *HPA* at s. 50.55 and *Health Professions General Regulation*, BC Reg. 257/2008 at s. 7(1).

⁸ A copy of the Review Board's order dated April 13, 2016 is found at Exhibit "C1" of K.P.'s affidavit #1.

[23] In conducting the necessary analysis, I have taken into account that schedule 1 of FIPPA defines “personal information” as “recorded information about an identifiable individual other than contact information.” Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁹

[24] Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.” As noted, information that qualifies as contact information is explicitly excluded from the definition of “personal information” under FIPPA.

Alleged disclosure to the Third Party

[25] For the reasons to follow, I am satisfied the Inquiry Committee disclosed the Massage Therapist’s personal information to the Third Party. As previously mentioned, the Inquiry Committee ultimately decided to take no further action in accordance with s. 33(6)(a) of the *HPA*, but it issued a caution to the Massage Therapist regarding his future conduct towards patients. The Inquiry Committee’s decision was communicated to the Massage Therapist via the Decision Letter.

[26] The College provided a copy of the Decision Letter in its submissions.¹⁰ I can see that the Decision Letter reveals details about the Inquiry Committee’s investigation of the Massage Therapist and the caution issued by the Inquiry Committee regarding his future conduct. I find all of this information is clearly about the Massage Therapist and does not qualify as contact information.

[27] Furthermore, I can see that the Third Party is identified at the end of the Decision Letter as an individual who is copied on the letter.¹¹ The evidence then establishes that the way the Inquiry Committee actually provided a copy of the Decision Letter to the Third Party was by enclosing a copy with the Notification Letter.¹² The College does not dispute these facts.¹³ As a result, I am satisfied the Inquiry Committee disclosed the Massage Therapist’s personal information by providing a copy of the Decision Letter to the Third Party.

⁹ Order F16-36, 2016 BCIPC 40 at para. 17 and the orders cited therein.

¹⁰ Exhibit “C” of K.P.’s affidavit #1.

¹¹ The Massage Therapist’s lawyer and the Review Board were also copied on the Letter. The Massage Therapist did not submit a complaint to the OIPC about those disclosures and they are not at issue in this inquiry.

¹² The Notification Letter is located at Exhibit “D” of K.P.’s affidavit #1. The Massage Therapist did not submit a complaint to the OIPC about the Notification Letter and I conclude that it is not at issue in this inquiry.

¹³ College’s submission dated May 24, 2022 at paras. 31 and 42.

Alleged disclosure to former workplace

[28] The Massage Therapist also submits the College breached his privacy by incorrectly sending the Decision Letter to two of his former clinics even though his updated contact details were available to the College.¹⁴ The Massage Therapist says there is no evidence that the College retrieved the wrongly addressed letters. The Massage Therapist submits that it is common practice for the receptionist at the two clinics to accept and open the mail. Therefore, he contends that it is likely his privacy was breached when the receptionist opened the envelope and read the Decision Letter.¹⁵

[29] In response, the College submits that the Massage Therapist's allegations about this alleged privacy breach are speculative and "baseless."¹⁶ The College says the Decision Letter was sent to the business address that the Massage Therapist provided to the College and that it has no record of receiving an updated business address from him. The College also says the letters were returned unopened by the two clinics; therefore, it submits there was no privacy breach. In support of its position, the College provided a copy of the returned envelopes as part of its submission.

[30] Based on the submissions and materials before me, I am satisfied copies of the Decision Letter were sent by registered mail to two of the Massage Therapist's former clinics. I can see the envelopes were addressed to the Massage Therapist's attention with the words "Personal and Confidential" in uppercase and in bold above his name.¹⁷ There is no evidence to suggest the envelopes were opened. Instead, I can see that the envelopes are stamped "Return to Sender" with the reason for returning the mail checked off as "Moved/Unknown."

[31] Taking all of this into account, I am satisfied the two clinics returned the unopened envelopes containing the Decision Letter to the College. As a result, I find the College did not disclose the Massage Therapist's personal information to his two former clinics, as alleged by the Massage Therapist. In other words, there is no evidence that the clinic's receptionist or another clinic employee opened the envelope and read the Decision Letter. I also find the fact that the envelopes were personally addressed to the Massage Therapist and labeled "Personal and Confidential" would discourage a clinic employee from opening the envelopes and viewing its contents.

¹⁴ Massage Therapist's submission dated June 16, 2022 at p. 5.

¹⁵ The Massage Therapist did not complain about the disclosure of his personal information located on the outside of the envelope (e.g. his name). Therefore, I will not consider it as part of this inquiry.

¹⁶ College's submission dated June 20, 2022 at p. 2.

¹⁷ Copies of the returned envelopes are located in the College's submission dated June 20, 2022.

[32] Therefore, I conclude the only disclosure at issue in this inquiry occurred when the Inquiry Committee sent a copy of the Decision Letter to the Third Party. I will consider below whether that disclosure was authorized under FIPPA.

Disclosure of personal information under FIPPA

[33] A public body is permitted to disclose personal information in its custody or control if that disclosure is authorized under FIPPA.¹⁸ The list of authorized disclosures are set out under ss. 33.1, 33.2 and 33.3 of FIPPA. The purpose of FIPPA's disclosure provisions is to give public bodies the statutory authority to disclose personal information in the course of carrying out their duties and functions.¹⁹

[34] The provisions that are relevant to this inquiry are:

- Section 33.1(1)(c) [disclosure authorized or required under another enactment];
- Section 33.1(1)(c.1) [personal information available to the public];
- Section 33.1(1)(l) [disclosure for the purpose of investigation or discipline by a governing body]; and
- Section 33.2(a) [disclosure for the purpose for which it was obtained or compiled or for a use consistent with that purpose].

[35] I will consider each provision below. However, if I find the disclosure was authorized under one of the above-noted sections, then it is not necessary to also consider whether the other sections apply.

Disclosure authorized under another enactment – s. 33.1(1)(c)

[36] Section 33.1(1)(c) of FIPPA states that a public body may disclose personal information inside or outside of Canada in accordance with an enactment of British Columbia, other than this Act, or Canada that authorizes or requires its disclosure. Simply put, the disclosure is permitted if another provincial or federal enactment other than FIPPA authorizes or requires the disclosure.

¹⁸ Sections 30.4 and 33 of FIPPA.

¹⁹ Order F08-08, 2008 CanLII 21700 (BCIPC) at para. 50.

College’s position on s. 33.1(1)(c)

[37] The College submits the disclosure of the Massage Therapist’s personal information to the Third Party was authorized or required under the *HPA* because:

- Section 16(2)(i.1) of the *HPA* requires an inquiry committee to employ inquiry procedures that are “transparent, objective, impartial and fair”;
- Section 32.4(3) of the *HPA* requires the Third Party who filed the complaint on behalf of the patient be treated as the “complainant”; and
- Section 34 of the *HPA* requires an inquiry committee to provide a written summary of the disposition to the complainant (in this case the Third Party) notifying them of their right to seek a statutory review under s. 50.6.²⁰

[38] The College also cites s. 2(2) of FIPPA which states in part that FIPPA “does not replace other procedures for access to information.” The College says s. 2(2) is “an important provision in this case because the mandatory investigation process imposed by Part 3 of the *HPA* confers access to information and participatory rights on complainants during a complaint investigation.”²¹

[39] In other words, the College argues the *HPA* provides individuals who file complaints against registrants of the College with access to personal information as part of the investigation and disposition process. Specifically, the College submits s. 34 of the *HPA* required the Inquiry Committee to notify the Third Party of its decision and to provide reasons outlining the basis for that decision to facilitate the Third Party’s right to seek a review.²² Therefore, the College contends that in the context of an investigation under Part 3 of the *HPA*, “the legislative scheme recognizes that regulated health professionals have a diminished right of privacy in their regulated activities.”²³

Massage Therapist’s position on s. 33.1(1)(c)

[40] The Massage Therapist accepts that the College was required under the *HPA* to send the Third Party a response, but he disputes the content of that response. The Massage Therapist says the College violated his privacy by providing the Decision Letter to the Third Party in its current form.²⁴ The Massage Therapist argues the Third Party had no right to the detailed information about

²⁰ College’s submission dated May 24, 2022 at para. 42.

²¹ *Ibid* at para. 38

²² *Ibid* at para. 35.

²³ *Ibid* at para. 37.

²⁴ Massage Therapist’s submission dated June 16, 2022 at p. 79.

the professional misconduct complaint in the Decision Letter because the patient, and not the Third Party, is the complainant.

[41] The Massage Therapist further contends that providing the Decision Letter to the Third Party was a breach of his privacy because the letter is framed as “an unjustified reprimand.”²⁵ The Massage Therapist notes that the College decided to dismiss the complaint made against him and none of the allegations were proven; however, the Decision Letter threatens him with “serious regulatory action in the future” which he says unfairly and prejudicially presumes that he is guilty.²⁶ Therefore, the Massage Therapist argues the College should have written another letter to the Third Party without “any case specific details” or information that reveals a determination of his “Fault or Guilt.”²⁷

Analysis and findings on s. 33.1(1)(c)

[42] For the reasons to follow, I conclude the disclosure at issue in this inquiry was authorized under an enactment of British Columbia in accordance with s. 33.1(1)(c) of FIPPA.

What is an “enactment” of British Columbia?

[43] Neither FIPPA nor its regulation define the term “enactment.” However, the *Interpretation Act* defines an “enactment” as “an Act or a regulation or a portion of an Act or regulation.”²⁸ It also partly defines an “Act” to mean “an Act of the Legislature, whether referred to as a statute, code or by any other name.”²⁹ As set out below, I conclude those definitions apply to FIPPA.

[44] Section 2 of the *Interpretation Act* provides that every provision of the *Interpretation Act* applies to every enactment unless a contrary intention appears in the *Interpretation Act* or in the enactment. There is no contrary intention in FIPPA or in the *Interpretation Act*; therefore, I find the definition of an “enactment” and an “Act” under s. 1 of the *Interpretation Act* applies to FIPPA. Applying those definitions, I conclude s. 33.1(1)(c) permits a public body to disclose personal information when another provincial statute authorizes or requires the disclosure.

[45] In this case, the relevant provincial statute is the *HPA*. The College argues the disclosure of the Decision Letter was authorized or required under ss. 16(2)(i.1), 32.4(3) and 34 of the *HPA*. As noted, the College submits these sections require it to employ transparent inquiry procedures, to treat the Third

²⁵ *Ibid* at p. 163.

²⁶ *Ibid* at p. 79.

²⁷ *Ibid*.

²⁸ Section 1 of the *Interpretation Act*, RSBC 1996, c. 238.

²⁹ *Ibid*.

Party as a complainant and for the Inquiry Committee to provide the Third Party with a written summary of its decision about the matter.

Who is the complainant under the HPA?

[46] A central question for this inquiry under the s. 33.1(1)(c) analysis is whether the Third Party qualifies as the complainant under the *HPA*. Only a complainant is entitled to certain participatory and procedural rights under the *HPA* such as being notified of the Inquiry Committee's decision about the complaint.³⁰ Therefore, if the Third Party is not the complainant under the *HPA*, which the Massage Therapist argues is the case, then the Inquiry Committee was not authorized or required under the *HPA* to share the outcome of its investigation with the Third Party.

[47] As previously noted, the College submits that s. 32.4(3) required it to treat the Third Party who filed the complaint as the complainant in the matter. The College submits that "section 32.4(3) expressly requires the Registrar to treat the statutory report as a 'complaint' because the filing of a complaint confers procedural rights on the registrant who filed the report to participate in the investigation and to seek a review [regarding] the outcome of a disposition decision under ss. 33(6)(a) to (c) of the *HPA*."³¹

[48] On the other hand, the Massage Therapist challenges the legitimacy of the Third Party filing a complaint under s. 32.4 of the *HPA*. First, the Massage Therapist contends the patient is the complainant under the *HPA* and not the Third Party. The Massage Therapist says the Third Party "has no rights to the information contained in the complaint" and that it was a violation of his privacy for the College to send the Decision Letter to the Third Party.³²

[49] Second, even if the Third Party could act on behalf of the patient, the Massage Therapist argues the Third Party did not have the patient's consent to file the complaint which is required under s. 32.4 of the *HPA*. The Massage Therapist alleges he has yet to receive any "confirmation or documentation" which shows the patient consented to the Third Party filing the complaint under s. 32.4.³³ I will discuss s. 32.4 and its requirements further below.

[50] Lastly, if there was consent, the Massage Therapist alleges that consent is invalid because the patient lacked the capacity to provide consent or the Third Party forced or coerced the patient's consent in order to harm him professionally.³⁴ The Massage Therapist alleges the Third Party "steam rolled"

³⁰ Section 34 of the *HPA*.

³¹ College's submission dated May 24, 2022 at para. 28.

³² Massage Therapist's submission dated June 16, 2022 at p. 79.

³³ Massage Therapist's submission dated September 21, 2022 at pp. 1 and 4.

³⁴ Massage Therapist's submission dated June 16, 2022 at pp. 3-4.

the patient into participating in the complaint and investigation because the Third Party wanted “to deflect her personal and company’s liability in this matter.”³⁵

[51] The question I must address at this point is: who qualifies as the complainant under s. 32.4 of the *HPA*? In order to resolve this issue, it is important to discuss the relevant sections of the *HPA*. The *HPA* provides for the investigation of complaints regarding the conduct or competence of registrants, including several provisions that impose a duty to report a registrant under certain prescribed circumstances.

[52] Section 32.4 of the *HPA* is one of those mandatory reporting provisions. It states:

Duty to report sexual misconduct

32.4(1) If a registrant has reasonable and probable grounds to believe that another registrant has engaged in sexual misconduct, the registrant must report the circumstances in writing to the registrar of the other registrant's college.

(2) Despite subsection (1), if a registrant's belief concerning sexual misconduct is based on information given in writing, or stated, by the registrant's patient, the registrant must obtain, before making the report, the consent of

- (a) the patient, or
- (b) a parent, guardian or committee of the patient, if the patient is not competent to consent to treatment.

(3) On receiving a report under subsection (1), the registrar must act under section 32 (2) as though the registrar had received a complaint under section 32 (1).

[53] Section 32(1) states that “a person who wishes to make a complaint against a registrant” must deliver the complaint in writing to the registrar of the registrant’s college. As soon as practicable after receiving a written complaint, a college’s registrar is required to deliver to the inquiry committee a copy of the complaint along with their assessment of the complaint and any recommendations for disposing of the complaint.³⁶ Upon receiving a copy of the complaint from the registrar, the inquiry committee is then required to investigate the matter raised by the complainant as soon as possible³⁷ and make a decision about the matter.³⁸

³⁵ Massage Therapist’s submission dated September 21, 2022 at p. 3.

³⁶ Section 32(2). A college’s registrar may dismiss a complaint without referring it to the inquiry committee in certain situations which are set out under s. 32(3) and none of which are applicable here.

³⁷ Section 33(1).

³⁸ In accordance with s. 33(6).

[54] For the reasons that follow, I conclude a registrant who files a report under s. 32.4(1) about professional misconduct involving a patient qualifies as the complainant under the *HPA*. As noted, the registrant is required to obtain the consent of the patient before making a professional misconduct report to a college's registrar if their belief about the misconduct is based on information given in writing or stated by a patient.³⁹ Without that consent, the registrant cannot file the complaint under s. 32.4(1).

[55] I find this consent provision under s. 32.4(2) an important factor in determining who qualifies as the complainant when a report is made to a college's registrar under s. 32.4(1). It allows the patient to determine whether they wish to personally file the complaint under s. 32(1) or, instead, allow the registrant to file the complaint under s. 32.4(1). If the patient wanted to assume the role of complainant under the *HPA* and all the informational and procedural rights that entailed, then they have the option to file the complaint personally under s. 32(1).

[56] Therefore, by allowing a registrant to file a complaint under s. 32.4(1), I find the patient is authorizing the registrant to act on their behalf. This interpretation is consistent with complaints that are made under s. 32(1) on behalf of another person such as a spouse on behalf of their partner. In those cases, the person filing the complaint is the complainant in the matter.⁴⁰ As a result, where a patient gives their consent for a registrant to file the complaint under s. 32.4(1), I conclude the registrant is acting on the patient's behalf and qualifies as the complainant in the matter.

[57] In the present case, the Massage Therapist disputes the existence or validity of any consent provided by the patient to the Third Party. However, it is an undisputed fact that the Inquiry Committee investigated the matter. Despite the Massage Therapist's allegations, there is no evidence that the College's registrar or the Inquiry Committee accepted and investigated the complaint under s. 32.4 without first assuring that the necessary statutory requirements regarding consent had been met.

[58] Moreover, the parties' submissions and evidence show that the patient participated in the investigation and was interviewed about the complaint.⁴¹ Therefore, it is clear that the patient knew the Third Party filed the professional misconduct complaint against the Massage Therapist. There is no evidence the patient had any concerns with the Third Party filing the complaint on their behalf

³⁹ If the patient is not competent to consent to treatment, then under s. 32.4(2)(b) the consent must be obtained from a parent, guardian or committee of the patient. This provision is not applicable to the facts in this inquiry.

⁴⁰ See, for example, *Complainant v. College of Physicians and Surgeons of British Columbia (No. 1)*, 2021 BCHPRB 69 (CanLII) at para. 5 and *Complainant v. College of Dietitians of British Columbia (No. 1)*, 2022 BCHPRB 44 (CanLII) at paras. 45-47.

⁴¹ For instance, Massage Therapist's submission dated June 16, 2022 at pp. 70-72.

under s. 32.4. If the patient had any concerns about the issue of consent, then I find it reasonable to conclude they had the opportunity during the investigation to bring those concerns to the attention of College staff or to the Inquiry Committee.

[59] The Massage Therapist alleges the patient lacks the capacity to provide consent or that the Third Party forced or coerced the patient into giving their consent. I can see the Massage Therapist strongly believes in what he is saying; however, based on the materials before me, I find there is insufficient evidence to support the Massage Therapist's allegations about the patient's consent. I require objective supporting evidence to support these serious allegations and there is none in the parties' submissions. Therefore, without more, I accept that the Third Party legitimately obtained the patient's consent to file a complaint against the Massage Therapist under s. 32.4. As a result, for the reasons given, I conclude the Third Party qualifies as the complainant under the *HPA*.

Was the disclosure required or authorized under the HPA?

[60] Having found the Third Party is the complainant under the *HPA*, the next question is whether the Inquiry Committee was required or authorized under the *HPA* to disclose the Decision Letter to the Third Party. The College submits that ss. 16(2)(i.1) and 34 of the *HPA* authorized or required the disclosure.

[61] However, based on the facts of this case, I find a complete answer to the disclosure at issue here is found under ss. 50.53(1)(b) and 50.58(1)(a).⁴² Those provisions of the *HPA* set out the review board's powers and duties regarding a delayed investigation complaint:

Powers and duties of review board

50.53(1) The review board has the following powers and duties:

...

(b) on application by a registrant or complainant under section 50.57(1), to review the failure, by the inquiry committee, to dispose of a complaint made under section 32(1) or an investigation under section 33(4) within the time required under section 50.55;

...

Duties and powers of review board — review of delayed investigations

50.58(1) Upon receipt of an application under section 50.57, the review board may

⁴² After being offered the opportunity, the parties provided submissions on this matter.

(a) by order, send the matter back to the inquiry committee, with directions the review board considers appropriate, to continue and complete the investigation and dispose of the matter within the time period directed by the review board, or

(b) investigate and dispose of the matter under section 33(6).

[62] The above-noted provisions relate to a health profession college's obligation to dispose of a complaint within set statutory deadlines. If the matter is delayed or not completed within the prescribed time period, then a complainant or a registrant may apply to the Review Board for a review of an inquiry committee's failure to complete an investigation within the time limits prescribed under the *HPA*.⁴³ This review is commonly referred to as a "delayed investigation review" and it requires the Review Board to determine whether it should grant one of the two "remedies" available under s. 50.58(1) of the *HPA*, which includes sending the matter back to the inquiry committee with directions.⁴⁴

[63] In the present case, the Third Party requested the Review Board conduct a delayed investigation review into the Inquiry Committee's handling of the professional misconduct complaint.⁴⁵ As a result of that review, the Review Board ordered the Inquiry Committee to complete the investigation and issue a disposition by a set date and communicate the results of the disposition to the "Complainant", the "Registrant" and the "Review Board" by a certain date.⁴⁶

[64] However, the evidence in this case shows that the Inquiry Committee missed the deadline and applied to the Review Board for a further extension.⁴⁷ The Review Board allowed the further extension and issued a subsequent order, under s. 50.58(1)(a) of the *HPA*, which required the Inquiry Committee to issue "a disposition" by a new date and also to communicate the results of that disposition to the "Complainant", the "Registrant" and the "Review Board" by a new deadline.⁴⁸

[65] In compliance with that order, the Inquiry Committee made a decision under s. 33(6)(a) and then issued the Decision Letter to the Massage Therapist (as the registrant) and to the Third Party (as the complainant) by the dates specified in the new order. The College notes that the Inquiry Committee also

⁴³ This application is made under s. 50.57 of the *HPA*.

⁴⁴ *Complainant v. The College of Physicians and Surgeons of British Columbia*, 2012 BCHPRB 92 (CanLII) at paras. 25 and 27.

⁴⁵ Massage Therapist's submission dated September 21, 2022 at p. 2 and his submission dated October 7, 2022 which includes a letter dated November 27, 2015 from the Review Board to the College's Director of Compliance regarding the s. 50.57(1) application made by the Third Party.

⁴⁶ A copy of the Review Board's order dated December 16, 2015 is found in the Massage Therapist's submission dated October 7, 2022.

⁴⁷ Exhibit "C1" of K.P.'s affidavit.

⁴⁸ A copy of the Review Board's order dated April 13, 2016 is found at Exhibit "C1" of K.P.'s affidavit #1.

copied the Review Board on its correspondence with the parties. The College says the Review Board did not at any time communicate any concerns regarding the manner in which the Inquiry Committee carried out the terms of the Review Board's order. The College emphasizes that the Review Board dismissed the delayed investigation review without taking any further action.⁴⁹ Therefore, the College submits s. 50.58(1)(a) of the *HPA* authorized the disclosure of the Decision Letter to the Third Party.

[66] The Massage Therapist disagrees and argues that a review board's authority on a delayed investigation review is limited. He submits that a review board can order an inquiry committee to issue a disposition, but once they do then their "job is over."⁵⁰ The Massage Therapist also submits that in a delayed investigation review, a review board would not comment on whether the contents of a disposition letter issued by an inquiry committee is appropriate or not. I understand the Massage Therapist to be arguing that a review board has no statutory power or duty to consider how the terms of its order are fulfilled.

[67] For the reasons to follow, I find the College is not in contravention of FIPPA since the disclosure at issue in this inquiry was authorized under s. 50.58(1)(a) of the *HPA*. To start, I am satisfied the Review Board had the authority under s. 50.53(1)(b) to conduct a delayed investigation review and to issue its orders under s. 50.58(1)(a) of the *HPA*. Section 50.58(1)(a) expressly allows a review board to send the matter back to an inquiry committee to continue and complete the investigation and dispose of the matter with any directions that the review board considers appropriate. As noted, the Review Board's two orders in this case included specific directions about who should receive the results of the Inquiry Committee's disposition.⁵¹

[68] I have carefully considered the Massage Therapist's submissions; however, there is nothing in my review of the *HPA* that suggests a review board's powers should be interpreted as narrowly as the Massage Therapist suggests. A review board's authority to issue an order with directions under s. 50.58(1)(a) would be meaningless if the review board did not also have the power to ensure compliance with that order. Put another way, if the Massage Therapist's interpretation was accepted, then a review board would be powerless to do anything if a party defied or violated a s. 50.58(1)(a) order.

[69] Based on my reading of the *HPA*, I also find the Massage Therapist's interpretation would be inconsistent with s. 50.63(1) of the *HPA* which states:

⁴⁹ College's submission dated September 28, 2022 at p. 1 and K.P.'s affidavit #2 at para. 4.

⁵⁰ Massage Therapist's submission dated September 21, 2022 at p. 1.

⁵¹ Those specific directions are found at para. 7 of Review Board's order dated December 16, 2015 and para. 3 of the Review Board's order dated April 13, 2016.

Exclusive jurisdiction of review board

50.63(1) The review board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a review or an investigation and disposition under this Part [i.e. Part 4.2 of the *HPA*] and to make any order permitted to be made.

[70] I find s. 50.63(1) shows clear legislative intent that a review board has the authority to inquire into, hear and determine all matters and questions of fact, law and discretion arising out of a delayed investigation review. In my opinion, this broad authority would include a review board's ability to ensure a party's compliance with an order issued under s. 50.58(1)(a) and any accompanying directions. As a result, I am not persuaded by the Massage Therapist's argument that the Review Board did not have the authority in the delayed investigation review to ensure the Inquiry Committee complied with the directions in its s. 50.58(1)(a) order.

[71] I also find it reasonable to conclude in this case that the Review Board did consider whether the Inquiry Committee complied with the terms of its order. The Review Board's subsequent s. 50.58(1)(a) order specifically states the "file remains open pending confirmation from the College that it has complied with the directions noted above" in the order.⁵² Thereafter, as previously mentioned, the Inquiry Committee copied the Review Board when it sent the Decision Letter to the Massage Therapist and then to the Third Party.⁵³ The Inquiry Committee also sent the Review Board a separate letter enclosing a copy of the previous letters that it had sent to the parties.⁵⁴

[72] I am satisfied that as a result of those actions the Review Board concluded its delayed investigation review by dismissing the application for review.⁵⁵ The Review Board sent the parties a letter informing them of the dismissal. In this letter, the Review Board confirms the College had notified it and the other parties that the Inquiry Committee had completed its investigation and issued its disposition.⁵⁶ I find it reasonable to conclude that the Review Board made that determination after reviewing all of the correspondence issued by the Inquiry Committee. Furthermore, I find the fact that the Review Board concluded its delayed investigation review shows that it had no concerns or objections to how the Inquiry Committee carried out the terms of its order.

⁵² Review Board's order dated April 13, 2016 at para. 4, which is located at Exhibit "C1" of K.P.'s affidavit #1.

⁵³ Copies of those letters are located at Exhibit "C" and "D" of K.P.'s affidavit #1.

⁵⁴ A copy of this letter is located at Exhibit "E" of K.P.'s affidavit #1.

⁵⁵ K.P.'s affidavit #2 at para. 5 and Exhibit "A" located in College's submission dated September 28, 2022.

⁵⁶ Letter found at Exhibit "A" of K.P.'s affidavit #2.

[73] Taking all of the above into account, I find the disclosure at issue here was authorized under s. 50.58(1)(a) the *HPA*. For the reasons given, I am satisfied that the Review Board had the legal authority to order the disclosure under that provision. As a result, I conclude the College is not in contravention of FIPPA since the disclosure to the Third Party was made in accordance with the *HPA*, an enactment of British Columbia that authorized the disclosure. Therefore, I find the disclosure was in compliance with s. 33.1(1)(c) of FIPPA.

[74] I understand the Massage Therapist objects to the amount of personal information that the Inquiry Committee disclosed to the Third Party and the inferences that could be drawn from that information. The Massage Therapist says the Inquiry Committee should have communicated the results of its decision differently by sending the Third Party a less detailed letter without “any case specific details” or information that reveals a determination of his “Fault or Guilt.”⁵⁷

[75] I can see the Massage Therapist feels the College disregarded his privacy interests and disclosed more information than necessary to the Third Party. While a public body should always consider whether there are more privacy-sensitive ways of achieving its statutory duties and functions, s. 33.1(1)(c) of FIPPA does not require the disclosure of personal information by a public body be limited to only what is necessary or reasonable. It only requires that the disclosure of personal information be made in accordance with a provincial statute that authorizes the disclosure, which I found to be the case here.

[76] Furthermore, I conclude any objections, questions or concerns about the Review Board’s order and its terms should be brought forward to the Review Board as the tribunal who issued the order and in accordance with its powers and duties under ss. 50.53(1)(b) and 50.63(1) of the *HPA* to review and manage delayed investigation complaints. The Review Board is a specialized tribunal empowered by statute to investigate certain decisions made by a college’s inquiry committee and I find it is best placed to assess the reasonableness of those decisions in the context of its governing law and procedures.

⁵⁷ Massage Therapist’s submission dated June 16, 2022 at p. 79.

CONCLUSION

[77] For the reasons given above, under s. 58(3)(e) of FIPPA, I confirm the College's decision to disclose the personal information at issue since the disclosure was made in accordance with s. 33.1(1)(c) of FIPPA.

October 27, 2022

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F20-82114