IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cimolai v. British Columbia (Information and Privacy Commissioner),* 2024 BCSC 948

Date: 20240531
Docket: S233296
Registry: Vancouver

IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT, R.S.B.C., 1996, C. 241 (as amended) and the FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, R.S.B.C., 1996, C. 165 (as amended) and in the matter of Order 23-23 of the Delegate of the Office of the Information & Privacy Commissioner for British Columbia

Between:

Nevio Cimolai

Petitioner

And

The Office of the Information & Privacy Commissioner for British Columbia, Minister of Finance, Minister of Health, and Minister of The Attorney General

Respondents

Before: The Honourable Justice Iyer

On judicial review of a decision made by the Information and Privacy Commissioner, Order F23-23, dated March 28, 2023 (Decision indexed at 2023 BCIPC 27)

Reasons for Judgment

The Petitioner, appearing in person:	N. Cimolai
Counsel for The Office of the Information & Privacy Commissioner for British Columbia:	A. Hudson
Counsel for Minister of Finance, Minister of Health and Minister of The Attorney General:	J.T. Lovell J.A. Dutton
Place and Date of Hearing:	Vancouver, B.C. March 6 – 8, 2024
Place and Date of Judgment:	Vancouver, B.C. May 31, 2024

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OVERVIEW

[1] This is a judicial review of a decision made by the Information and Privacy Commissioner ("Commissioner") effectively staying all of his access to information requests presently before the Office of the Information and Privacy Commissioner ("OIPC").

[2] Dr. Cimolai, the petitioner, is a physician in British Columbia. Like other BC physicians, he billed the Medical Services Plan ("MSP") for his services. As a result of an audit in 2017, the Medical Services Commission ("MSC") ordered Dr. Cimolai to repay $682,744. The MSC also cancelled Dr. Cimolai's entitlement to bill MSP for a three-year period ("MSP Matter"). The three respondent ministries ("Ministries") have information relating to the MSP Matter.

[3] The *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("FIPPA") provides individuals with a right of access to their personal information that is in the custody and control of public bodies. From the time of the MSP audit onwards, Dr. Cimolai repeatedly sought access under FIPPA to compel the Ministries to disclose his personal information relating to the MSP Matter. Between 2017 and 2022, Dr. Cimolai made 126 requests for review and/or complaints to the OIPC challenging aspects of the Ministries' responses to his access requests, and he made 24 requests for reconsiderations of OIPC decisions that were unfavourable towards him.

[4] The Ministries are the public bodies to whom the vast majority of Dr. Cimolai's access requests were made. In October 2022, the Ministries applied to the OIPC for a determination that Dr. Cimolai's continuing access to information requests relating to the MSP Matter were an abuse of process.

[5] In Order F23-23, dated March 28, 2023 ("Decision", indexed at 2023 BCIPC 27 (CanLII)), Elizabeth Barker, a delegate of the Information and Privacy Commissioner ("Delegate"), granted the Ministries' application in part. She cancelled all of Dr. Cimolai's ongoing files relating to the MSP Matter as an abuse of process.

However, she declined to grant the Ministries' request to prohibit Dr. Cimolai from seeking access to information under FIPPA relating to the MSP Matter in the future.

[6] Dr. Cimolai applies for judicial review of the Decision. He argues that the process leading to the Decision was procedurally unfair and that the Decision itself was unreasonable. In their joint response, the Ministries oppose the petition. While the OIPC takes no position on the merits, its written submission helpfully set out FIPPA's scheme, the OIPC's jurisdiction and procedures, standard of review and the remedies available on judicial review.

[7] Dr. Cimolai's written submissions were 60 pages long. Parts raise matters outside the scope of this judicial review. He filed four affidavits that include material extraneous to the record, without having sought leave to file fresh evidence. I have disregarded those parts of his evidence and submissions that are irrelevant to the issues before me.

PRELIMINARY MATTERS

[8] At the outset of the hearing, I declined to grant Dr. Cimolai's application that I recuse myself on the ground of reasonable apprehension of bias and gave oral reasons for that determination. I granted the OIPC's application to remove Ms. Barker as a respondent to the petition because she acted exclusively in her capacity as a decision-maker: *Surrey (City) v. Oil and Gas Commission*, 2013 BCSC 1864 at paras. 116-120.

[9] I also agreed to receive under seal the affidavit material that had been provided to the Delegate *in camera*, as it forms part of the record. The only redactions in these four affidavits are the identities of the affiants. I have not found it necessary to review the unredacted versions of these affidavits.

[10] In the "Legal Basis" part of his petition, Dr. Cimolai claims that the Delegate breached his *Charter* rights by denying him access to his personal information, but

he does not identify what *Charter* right is engaged. His written submission briefly refers to s. 7 as including a right to access one's personal information.

[11] Dr. Cimolai did not serve the notice required by s. 8 of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68. After some discussion, he clarified that he was not alleging a breach of s. 7 or seeking a constitutional remedy. He was referring to s. 7 to underscore the importance of statutory rights of access to personal information. Accordingly, I struck para. 8 from the "Legal Basis" section of the petition.

STATUTORY SCHEME

[12] The purpose of FIPPA is to make public bodies, including the Ministries, more accountable to the public and to protect personal privacy by, among other things, giving individuals a statutory right of access to, and a right to request correction of, their personal information: s. 2(1)(b).

[13] Privacy rights are *quasi*-constitutional and must be interpreted liberally: *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, 2006 SCC 13 at para. 63; see also *Douez v. Facebook, Inc*., 2017 SCC 33 at para. 76. However, such rights are not absolute. The laws that create those privacy rights also establish their limits.

[14] Section 4 of FIPPA gives individuals who make a request under s. 5 a right of access to records, including records containing their personal information. That right does not include information that is exempted from disclosure under Division 2 of FIPPA. In other words, the right of access to personal information is not unqualified; it is limited by the procedural and substantive provisions of FIPPA.

[15] With respect to the process, a person seeking access to information must apply in writing to the public body that the access applicant believes has the information and must provide enough detail that the public body can identify the information sought. Public bodies have a duty to assist access applicants and must respond within applicable time limits. The public body must inform the access

applicant if they are entitled to disclosure of the requested information and, if so, how that will occur: FIPPA, Division 1.

[16] FIPPA creates the OIPC, headed by the Commissioner. Section 42 of FIPPA makes the Commissioner responsible for administering FIPPA to ensure its purposes are achieved. This includes ensuring compliance with the rights and responsibilities created by the statute. The Commissioner may investigate, conduct audits, mediate and/or conduct inquiries for these purposes, and the Commissioner may delegate those functions to others: s. 49.

[17] Section 43 authorizes the Commissioner, upon application by a public body, to disregard an access request for specified reasons, including that it is an abuse of process.

[18] Section 52 provides that an individual who is dissatisfied by the public body's response to their request for access to information may request the Commissioner to review what the public body did. That review may include investigation, mediation and/or an inquiry.

[19] Section 56 governs inquiries. Importantly, s. 56(1) states that the Commissioner "may" conduct an inquiry. The Court of Appeal has interpreted this section to mean that public bodies may apply under s. 56 to aske the Commissioner not to conduct an inquiry: *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2014 BCCA 259 at para. 4. The OIPC has relied on abuse of process as one reason to decline to hold an inquiry under s. 56: *West Vancouver (District) (Re)*, 2007 CanLII 67284 (B.C.I.P.C.). This conclusion was implicitly endorsed by this Court in *Gichuru v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 835 [*Gichuru* BCSC] at para. 27, rev'd on other grounds, 2014 BCCA 259.

ISSUES

[20] Dr. Cimolai says the Decision was procedurally unfair because:

a) the Delegate accepted information *in camera*, including allegedly defective affidavits;

b) the OIPC did not provide a fair process for making submissions and putting evidence before the decision-maker; and

c) the Delegate was biased.

Dr. Cimolai claims that the Decision is substantively flawed because:

a) FIPPA does not authorize the Delegate to grant the remedies she did; and

b) the Decision was unreasonable.

[21] Throughout his submissions, Dr. Cimolai relies on the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. That statute does not apply to the Commissioner or the OIPC.

STANDARD OF REVIEW

[22] The standard of review for procedural questions is correctness: *Murray Purcha & Son Ltd. v. Barriere (District)*, 2019 BCCA 4 at para. 3. The presumptive standard of review for substantive decisions is reasonableness. This includes jurisdictional questions that do not concern the boundaries between two or more administrative tribunals or between courts and administrative bodies with concurrent jurisdiction: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 16-17.

FAIRNESS OF THE PROCESS

[23] Recently, in *Airbnb Ireland UC v. Vancouver (City)* 2023 BCSC 1137, Justice Basran summarized the principles of procedural fairness:

> [71] The duty of procedural fairness is triggered whenever an administrative body's decision affects the rights, privileges, or interests of an individual: *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320 at para. 28 [*Taseko*] citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 20, 1999 CanLII 699.
>
> [72] The content of this duty is inherently contextual and must be determined having regard to the circumstances of a given case: *Taseko* at para. 30 and *Baker* at para. 21.
>
> [73] A non-exhaustive list of factors that inform the content of the duty of procedural unfairness includes:
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> > a)The nature of the decision being made, and the process followed in making it;
> >
> > b)The nature of the statutory scheme;
> >
> > c) The importance of the decision to the affected individual or individuals;
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> > d) The legitimate expectations of the person challenging the decision; and
> >
> > e) the choices of procedure made by the administrative decision-maker itself.
>
> See *Baker* at paras. 23-27, cited with approval in Vavilov at para. 77.
>
> [74] The purpose of the participatory rights contained within the duty of procedural fairness is to "ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker": *Baker* at para. 22, cited with approval in *Taseko* at para. 29.

[24] Justice L'Heureux-Dube's often-cited comments in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, are worth repeating:

> [21] The existence of a duty of fairness... does not determine what requirements will be applicable in a given set of circumstances. As I wrote in *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653, at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural fairness: *Knight*, at pp. 682-

> 83; *Cardinal*, supra, at p. 654; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170, per Sopinka J.
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> [22] Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.
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> [Emphasis added.]
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> (See also *Downing v. Strata Plan VR2356*, 2023 BCCA 100.)

[25] A statutory regime prevails over the common law principles of natural justice and procedural fairness unless the regime is shown to be constitutionally invalid: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at paras. 19-21; *Sturgeon Lake Cree Nation v. Hamelin*, 2018 FCA 131 at paras. 52-53.

[26] These principles guide my analysis of Dr. Cimolai's procedural unfairness claims.

The Delegate accepted information *in camera*, including defective affidavits

[27] Dr. Cimolai's written submissions suggest that he considers the affidavits defective because the identities of the affiants are redacted. The OIPC permitted the Ministries to make these redactions. I must therefore consider whether the OIPC's *in camera* process and its outcome were procedurally unfair.

[28] Section 56(2) of FIPPA expressly provides that an inquiry may be conducted in private, while s. 56(4) gives the Commissioner discretion to decide whether a hearing proceeds orally or in writing and whether a person is entitled "to have access to or comment on representations made to the commissioner by another person." This legislative authorization means that it is not procedurally unfair for the

OIPC to create a process to receive material *in camera*. The question is confined to the fairness of the process used and the materials redacted in this case.

[29] The OIPC has published instructions for written inquiries. With respect to requests to receive information *in camera*, the instructions set out the what the Commissioner considers when making these decisions:

- the impact on the ability of the party who does not have access to the information to know and respond to the other side's case;
- whether disclosure of the information reveal the information in dispute or information that FIPPA mandates or permits a public body to refuse to disclose; and
- whether receipt of the *in camera* information is necessary to ensure fairness in the inquiry process.

[30] As the instructions explain, a person seeking to submit information *in camera* must apply in writing, explaining how each part of the proposed *in camera* material satisfies these considerations. The person must also provide a full copy of the material to be submitted with the portions proposed to be redacted highlighted. The Registrar will notify all parties whether the Commissioner has decided to receive any material *in camera*. The OIPC does not inform the other party that a party has made the application or the grounds relied on.

[31] Dr. Cimolai claims that this process was unfair. First, he says he should have been told that the Ministries' application was based on the exemption in s. 19(1)(a) (exempting from disclosure information that could reasonably be expected to threaten anybody else's safety or mental or physical health) and given the opportunity to respond to it.

[32] I disagree. The written instructions on receiving *in camera* material explain that the Commissioner assesses the negative impact on the ability of party who does

not receive the information to meet the case against them and to conduct the assessment from a fairness perspective. In a statutory context that expressly authorizes a decision-maker to receive material *in camera* and to conduct hearings in private, the process created by the Commissioner is procedurally fair because it establishes criteria to guide the analysis

[33] As explained at para. 10 of the Decision, the Delegate applied these criteria in deciding to permit the Ministries to redact the four affiants' identities:

> [10] I authorized the Ministries to submit the four affiants' names and signatures in camera because I was satisfied, based on the nature of the issues raised in this case, that s. 19(1)(a) may apply to that information. Section 19(1)(a) permits a public body to refuse to disclose information that could reasonably be expected to threaten a person's safety or mental or physical health. I also concluded that the Physician would be able to fully understand and respond to the affiants' evidence without seeing their names and signatures. Their open evidence includes their job titles and an explanation of their work roles and duties. Their evidence is about the work of their offices and it is not about them as individuals. I found that nothing relevant to the issues to be decided in this matter hangs on the identity of the affiants.

[34] Although the Commissioner does not inform a party that another party is asking to submit *in camera* material before making the decision, this is not procedurally unfair because the party will not be able to respond meaningfully to the application without knowing the substance of the information in issue.

[35] Dr. Cimolai also argues that s. 19(1)(a) does not apply to evidence in a s. 56 inquiry, relying on *British Columbia (Ministry of Justice) v. Maddock*, 2015 BCSC 746. That case does not support Dr. Cimolai's position. In *Maddock*, this Court upheld the Commissioner's decision rejecting a ministry's reliance on s. 19(1)(a) and requiring the ministry to disclose the names of certain employees. There was no procedural fairness issue, the Court found the decision was reasonable, and s. 56 was not discussed. *Maddock* does not stand for the proposition that ministry employee names must always be disclosed or that s. 19(1)(a) is irrelevant in a s. 56 application.

[36] Treating the statutory exemptions from disclosure in Division 2 of FIPPA as relevant considerations in an application to accept information *in camera* promotes the purposes set out in s. 2 of FIPPA. Those purposes recognize that rights of access to information must give way to the countervailing interests protected by Division 2, including health and safety.

[37] I conclude that the Delegate's receipt of the *in camera* information in this case was not procedurally unfair.

The OIPC did not provide a fair process for making submissions and putting evidence before the decision-maker

[38] Under this heading, Dr. Cimolai argues that the Delegate failed to adequately notify him about the process it would use to determine the Ministries' application. In particular, he says that the schedule for submissions was unfair, characterizing it as "randomly occurring," with the Ministries continuing to "negotiate" timelines, making the entire proceeding uncertain. Dr. Cimolai also denies that his communication to the Commissioner on November 10, 2022 was a submission and says that he has never made a "formal submission to any such Inquiry as duly structured."

[39] The written instructions published by the OIPC do not address situations where the applicant is invoking s. 56(1) to argue that the Commissioner should decline to hold an inquiry. However, as I have noted, s. 56(1) gives the Commissioner that power: *Gichuru* BCSC at paras. 42-48.

[40] As established in *Baker* and subsequent cases, the hallmarks of a fair process in most situations are: notifying each party about the nature of the case, providing them an opportunity to present information and argument, and ensuring that an impartial decision-maker renders a decision.

[41] Procedural fairness does not require a fixed or published timetable for the exchange of submissions. The OIPC's written instructions establish a sequence of submissions that accords with long-standing practice in adjudicative proceedings: an initial submission followed by a response, followed by a reply. The record shows

that, upon receipt of an application, the Registrar proposes a schedule giving the parties an opportunity to respond to it. Even after a schedule is set, the parties may seek extensions.

[42] This approach enhances procedural fairness by allowing submission timetables to vary with the complexity of the issues in a particular case.

[43] In this case, the submission timetable was set as follows.

[44] On September 26, 2022, Dr. Cimolai received notice of the Ministries' intention to apply under s. 56 to ask the Commissioner to decline to conduct inquiries on six specified files on the ground that proceeding with them would be an abuse of process. The OIPC's Registrar informed the parties that the Ministries' submission would be delivered on October 21, 2022. The Ministries complied with that deadline.

[45] Dr. Cimolai received a copy of the Ministries' submission. He said that he did not actually get it until October 24, 2022. He was unable to open it and wrote to the Registrar repeatedly about that, as well other matters, such as his lack of access to the *in camera* material. There was a great deal of correspondence between Dr. Cimolai, the Registrar and the Ministries about ensuring Dr. Cimolai was able to download the Ministries' submission.

[46] The Registrar first asked Dr. Cimolai to propose a deadline for his response submission on October 24, 2022. Dr. Cimolai did not do so. Instead he asked what the timetable was. On October 26, the Registrar wrote to Dr. Cimolai explaining that there was no timetable for submissions because he understood that the application was voluminous and he did not want to impose unrealistic timeframes. He suggested that Dr. Cimolai file his response by November 10, 2022, and that he would set a deadline for the Ministries' reply after seeing Dr. Cimolai's response materials. He also invited Dr. Cimolai to propose a different timetable.

[47] Dr. Cimolai continued to write to the Registrar about the difficulty of downloading the Ministries' submission but did not propose any other deadline for his response submission. On October 31, 2022, the Registrar wrote to the parties, noting that Dr. Cimolai had confirmed that he had been able to access the Ministries' submission but had expressed concern about receiving multiple "packages." The Registrar confirmed that Dr. Cimolai's response was due on November 10, 2022, and attached the OIPC's copy of the Ministries' submission to his email.

[48] However, it appears that Dr. Cimolai's difficulties in downloading the Ministries' submission persisted. Finally, on November 8, 2022, the Ministries sent their submission to Dr. Cimolai in six separate pdf files and asked the Registrar if Dr. Cimolai had been able to access it. The Registrar emailed Dr. Cimolai, but he did not respond.

[49] On November 10, 2022, Dr. Cimolai wrote a 21-page letter to the Commissioner, complaining about the process and setting out in detail his response to the Ministries' submission. He stated:

> To supplement my arguments herein, I also attach all previous submissions, related attachments and correspondence that I have submitted to the OIPCBC whether in preliminary interactions or during Inquiries proper. I will not append the same directly herein because the material is clearly in the hands of the OIPCBC already and does not need repetition for provision.

Dr. Cimolai added that he considered that all affidavits "ever submitted to the OIPC by the public bodies in previous Inquiries are also referred to you given their relevance herein, both for informatics and especially for the numerous falsifications that they maintain."

[50] The Commissioner forwarded Dr. Cimolai's letter to the Delegate. The Registrar sent it to the Ministries, identifying it as Dr. Cimolai's response submission, and proposing November 28 as the deadline for their reply. The Ministries requested a deadline of December 2, to which the Registrar agreed. Dr. Cimolai was copied on this correspondence. The Ministries submitted their reply on November 25, 2022.

[51] The record shows there is no merit to Dr. Cimolai's argument that the submission timetable was unfair. The process was explained to him. He chose not to avail himself of the opportunity to propose a deadline for his response submission. While the difficulty he had accessing the Ministries' submission could well have merited an extension of the time set for his response, he did not ask for one.

[52] Turning to Dr. Cimolai's second argument under this heading, it is disingenuous to claim that his communication to the Commissioner on November 10, 2022 was not a submission. In all respects other than its formatting and the addressee, it was a response submission. It contained argument, referred to evidence and cases, and responded to the issues raised in the Ministries' submission. The Registrar treated it as such, sending it to the Ministries and setting a deadline for a reply. The Ministries' reply was based on the November 10 letter.

[53] I conclude that the process followed by the OIPC was procedurally fair.

The Delegate was biased

[54] There is was some confusion about whether Dr. Cimolai raised this issue before the Delegate. The Delegate considered that Dr. Cimolai had and addressed that argument in the Decision.

[55] However, after receiving the Decision, Dr. Cimolai wrote to the Delegate denying that he had raised a bias issue, arguing that he did not know at the time who the delegate would be.

[56] It is not necessary for me to decide whether Dr. Cimolai raised bias before the Delegate. He raises it in his petition and the Ministries respond to it. No one argues I should not decide it.

[57] The petition alleges both individual and institutional bias, citing numerous instances of both in great detail. The following summary is illustrative rather than comprehensive.

[58] With respect to individual bias, Dr. Cimolai says the Decision demonstrates the Delegate's bias against him in the following ways:

- the Delegate "falsified in the Order and made libellous comments" (referring to Order F21-04, a 2021 decision by the same delegate granting the Ministry of Health and MSC's application to disregard Dr. Cimolai's outstanding disclosure relating to the MSP Matter for a fixed period);

- the Delegate's criticisms of Dr. Cimolai's past conduct in the abuse of process analysis portion of the Decision, for example, describing his submissions in past inquiries as "lengthy diatribes", and saying that he is "acting in bad faith and has ulterior and vindictive motives for using the FIPPA review and inquiry process"; and

- numerous alleged conflicts of interest between the Delegate and various counsel involved in OIPC files and conflicts of interest between counsel of which the Delegate was aware.

[59] With respect to institutional bias, Dr. Cimolai makes the following points:

- lawyers, in particular those from the firm Lovett Westmacott, have acted as counsel for particular public bodies and also as counsel for the Commissioner on different OIPC files;

- government lawyers who were working for the OIPC were subsequently hired by public bodies and acted for them in OIPC matters; and

- the OIPC and the Office of the Registrar of Lobbyists for British Columbia share the same premises.

[60] The test for individual reasonable apprehension of bias is well-settled: would a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly?

See *R. v. S. (R.D.),* [1997] 3 S.C.R. 484 at para. 31; see also *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369. Members of administrative tribunals benefit from the same presumption of impartiality as judges: *Huerto v. College of Physicians and Surgeons of Saskatchewan*, 2019 SKCA 139 at para. 130.

[61] The test for institutional bias is whether a fully-informed person would have a reasonable apprehension of bias in a substantial number of cases decided by the tribunal: *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 1995 at para. 72. If a statute authorizes the same body to act in what might otherwise be seen to be conflicting roles (for example, investigator, prosecutor and judge), that is insufficient, on its own, to give rise to institutional bias: *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36 at para. 40.

[62] Applying these tests, I find that Dr. Cimolai has not established a reasonable apprehension of bias with respect to the Delegate or to the OIPC.

[63] The only evidence supporting Dr. Cimolai's allegation that Order F21-04 is false and libellous is in his letter (exhibited to his May 1, 2023 affidavit) to the Commissioner and the Delegate complaining about that Order after it was issued.

[64] There is nothing improper about the way the Decision describes Dr. Cimolai's conduct. The ground for the Ministries' application was abuse of process. Legal analysis of that issue required the Delegate to assess and make findings about whether Dr. Cimolai's conduct was abusive. The language used was appropriate in that context.

[65] Dr. Cimolai's allegations about the interactions of counsel and decision-makers involved in his OIPC files reflect his personal views about what "conflict of interest" means. He refers to no authority -- and I am unaware of any -- that supports his beliefs.

[66] Dr. Cimolai's institutional bias claims fail for the same reasons. His beliefs about conflicts of interests that apply to lawyers, whether in private practice or in the employ of government entities, are not grounded in the Rules of Professional Conduct or an equivalent ethical guideline. Since s. 7 of the *Lobbyists Transparency Act*, S.B.C. 2001, c. 42 designates the Commissioner as the Registrar of Lobbyists, institutional bias on that basis does not arise.

[67] I conclude that Dr. Cimolai has failed to establish any of his procedural unfairness claims.

REASONABLENESS OF THE DECISION

[68] As noted, Dr. Cimolai argues that the Decision was unreasonable because the Delegate granted a remedy that applies to more of his OIPC files relating to the MSP Matter than the Ministries sought in their application and it failed to meet the reasonableness standard.

[69] In *Vavilov*, the SCC explained what the reasonableness standard of review for administrative decisions means. The central question is:

> [83] … whether the decision made by the administrative decision maker -- including both the rationale for the decision and the outcome to which it led -- was unreasonable.

[70] A reviewing court must not substitute its view for that of the administrative body or assess the decision against a standard of perfection: paras. 83, 91. Instead, the court must read the decision holistically, with sensitivity to the statutory scheme, the context of the proceedings and the record: paras. 94-97. A decision is not unreasonable unless it lacks justification, transparency or intelligibility such that it is internally incoherent, or it is not justified in relation to the constellation of law and facts relevant to the decision: paras. 102-105. Those flaws must central or significant, not a "minor misstep": para. 100.

[71] The reasons given for a decision need not address all of the evidence and arguments advanced by the parties. Reasons are sufficient if they are responsive to

the case's live issues and the parties' key arguments in the sense that they permit meaningful appellate review: *Khan v. Gilbert*, 2019 BCCA 80 at para. 12, citing *R v. Walker*, 2008 SCC 34 at para. 20.

Reasonableness of Remedy

[72] Dr. Cimolai argues that the Delegate granted relief beyond what was sought by the Ministries because she cancelled more of his ongoing OIPC files relating to the MSP Matter than the files identified in the Ministries' submission. He adds that s. 56 of FIPPA does not confer authority to cancel an inquiry after a file has reached the inquiry stage.

[73] At para. 5 of its lengthy s. 56(1) application dated October 21, 2022, the Ministries describe the remedy they are seeking:

> …[we are] asking the Commissioner to exercise his discretion not to conduct further inquiries for the Applicant [Dr. Cimolai]. This includes all currently active inquiries and pre-inquiries involving the Applicant, as well as any future inquiries the Applicant may request for access request about his personal dispute with the Province over his MSP billings.

[74] Later in the Ministries' submission, under the heading "Inquiries at Issue", six OIPC files are identified by number and defined as "the Current Inquiries" and six other OIPC files are identified by file number and defined as "the Current Mediations/Investigations." Under the heading, "Relief Sought," the Ministries ask that the Current Inquiries be cancelled, that none of the Current Mediations/Investigations be sent to inquiry and that the Ministries be granted an opportunity to make submissions under s. 56(1) before the Commissioner sends any future requests for review by Dr. Cimolai to inquiry.

[75] At the outset of the Decision, the Delegate quotes from para. 5 of the Ministries' submission and refers to it as the remedy the Ministries are seeking. Later, she identifies, by OIPC file number, 10 files at the inquiry stage and 12 files at the investigation/mediation stage, defining them as "Current Inquiries and "Current Investigations", respectively. Elsewhere in the Decision, the Delegate notes that Dr. Cimolai made requests for review after the date the application was filed. At the

conclusion of the Decision, the Delegate cancels all 22 files, but declines to make any order as to the handling of any future requests for review by Dr. Cimolai.

[76] On a reasonable reading of the Decision in the context of the Ministries' application, it is evident that the application sought to end all of Dr. Cimolai's active OIPC files, regardless of whether had been referred for inquiry or were at an earlier stage. The discrepancy between the files identified by the Ministries and the Delegate may arise from the fact that Dr. Cimolai continued to make requests for review after the date of the Ministries' application, and work on his files continued.

[77] In any event, this difference is relatively minor and is not the kind of flaw capable of making the Decision unreasonable.

[78] By contrast, Dr. Cimolai's argument about the extent of the authority conferred by s. 56(1) is central to the Decision. I must therefore consider whether the Delegate's interpretation of this section of FIPPA was reasonable.

[79] The Decision identifies the scope of authority conferred by s. 56(1) as an issue. The Decision discusses the purpose of FIPPA and the statutory regime it creates, focussing on the request for review process. The Decision sets out the words of s. 56(1) and emphasizes that the section provides that the Commissioner "may" conduct an inquiry.

[80] The Decision cites judicial authority for the proposition that a *quasi*-judicial tribunal such as the OIPC has the power to control its procedures, including powers not set out in its enabling statute that are necessary to carry out its functions. It refers to a decision of this Court that has interpreted s. 56(1) as conferring a broad discretionary power to decide whether to hold an inquiry, as well as previous decisions of the Commissioner holding that the Commissioner has the power to control abuse of the OIPC process.

[81] The Delegate's interpretation of s. 56(1) contains all of the hallmarks of reasonableness set out in *Vavilov*. It is internally coherent, justifiable, transparent

and intelligible, and it is grounded in the law. I conclude that the Decision is reasonable with respect to remedy.

Reasonableness of Decision

[82] Unlike Dr. Cimolai's lengthy and detailed submissions on procedural unfairness, his submissions on the unreasonableness of the Decision are brief:

> The reasonableness aspect of Elizabeth Barker's *Order* failed for not properly considering the factual evidence, not respecting the law in the statute, not respecting past practices, and the effect of the decision in the least.
>
> …
>
> Elizabeth Barker also clearly did not undertake the necessary analysis in several important aspects which the Applicant had submitted to the Commissioner McEvoy on November 10, 2022, and which she took as the Applicant's Response Submission to Inquiry. The failure to undertake the critical and more fulsome analyses was fatal to her *Order F23-23. (Plenary Group v. BC (Minister) 2018 BCSC 444)*

[83] Although decided before *Vavilov*, *Plenary Group (Canada) Ltd. v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 444, is consistent with it, saying that a decision will be unreasonable if it fails to undertake the analysis necessary to resolve the central issue before the adjudicator: para. 20. In that case, the issue was the applicability of the "business interests" exemption from disclosure in s. 21 of FIPPA. The Court held that the decision was unreasonable because the adjudicator only considered whether all of the information was exempt from disclosure, without considering whether s. 21 exempted some of the information from disclosure.

[84] Turning to reasonableness review, I start with the form and content of the Decision.

[85] The Decision identifies the live issues: what powers s. 56(1) confers on the Commissioner, whether Dr. Cimolai's use of FIPPA is an abuse of process and what is the appropriate remedy. There is no question that these are the issues arising from the Ministries' application. As I have addressed the reasonableness of the

Decision with respect to the Commissioner's s. 56 powers and available remedies above, I now turn to the abuse of process part of the Decision.

[86] The Decision briefly summarizes the background leading to the application, including how the MSP Matter arose, and the number of complaints and/or requests for review Dr. Cimolai made to the OIPC relating to the MSP Matter. The Decision describes the nine decisions the OIPC has adjudicated with respect to these requests in the last two years and their outcomes. It sets out which of Dr. Cimolai's current OIPC files the Delegate considers to be the subject of the Ministries' application and summarizes the remedies sought.

[87] On the central issue of whether Dr. Cimolai's use of his access to information rights under FIPPA constitutes an abuse of process, the Decision identifies the legal principles underlying the doctrine: paras. 36-39. It cites and relies on previous OIPC decisions holding the Commissioner has the authority to not permit a request for review or inquiry to proceed on the ground of abuse of process: paras. 40-43.

[88] The Decision then summarizes the parties' submissions before undertaking the abuse of process analysis. At the outset, the Decision identifies the necessity of examining Dr. Cimolai's use of FIPPA's procedures respecting access to information:

> [65] In order to decide if the Physician is abusing FIPPA, it is essential to take into account the full continuity of FIPPA's procedures. The Physician's inquiries flow directly from what takes place during the investigation and mediation process. Those processes must be viewed as a whole to fully appreciate how the Physician is using FIPPA. Therefore, I have also considered what the Current Investigations/Mediations reveal about whether the Physician is abusing FIPPA.

[89] The Delegate reviews the evidence provided by the Ministries about Dr. Cimolai's previous and current requests for review. Having reviewed all of the material before her, she gives examples of the volume and content of his submissions, and she makes factual findings based on them. Those findings are:

- Most of Dr. Cimolai's inquiry submissions are not related to FIPPA issues but are about why he thinks the MSP Matter and the individuals involved in it are wrong and/or corrupt, and he denigrates the lawyers who draft the public bodies' inquiry submissions. These submissions are repeated persistently, despite OIPC decisions finding that these arguments fall outside the OIPC's jurisdiction and/or unsubstantiated: paras. 66-67.
- Dr. Cimolai's submissions repeatedly berate the individuals involved in the MSP matter and contain inflammatory and unsubstantiated allegations of fraud and criminal conduct: para. 68.
- Dr. Cimolai's email communications with the Registrar include personal attacks on the Ministries' legal counsel: para 69.
- Dr. Cimolai searched the internet for personal information about the Ministries' lawyers in the MSP Matter and OIPC inquiries, and he used that information to attack them in his submissions: para. 70.
- The volume of Dr. Cimolai's requests for review, complaints and inquiries are excessive and unreasonable, and they impose a significant burden on OIPC staff: paras. 71-72.
- Dr. Cimolai has previously been the subject of an order under s. 43 of FIPPA that authorized the Ministry of Health and Medical Services Commission to disregard Dr. Cimolai's access requests for three years on the basis that the volume, frequency and repetitiveness of his access requests were excessive (Order F21-04). He used information obtained from previous access requests to make further requests, using FIPPA as a "weapon". Since Order F21-04, Dr. Cimolai has made another 47 complaints and requests for review related to the MSP Matter: para. 73-76.

[90] The Delegate concludes that Dr. Cimolai's use of FIPPA's processes regarding the MSP Matter is an abuse of process:

> [79] In my view, all the above behaviours demonstrate that the Physician does not have a genuine interest in the FIPPA issues he raises with the OIPC

> or in accessing the information in dispute. His behaviour is unreasonable and indicates that he is acting in bad faith and has ulterior and vindictive motives for using the FIPPA review and inquiry processes - motives that are unrelated to the purposes for which FIPPA is intended to be used.

[91] In summary, the Decision sets out the applicable law and finds the material facts based on the evidence. In so doing, it addresses the arguments made by the parties. The Decision is both internally coherent and justified in light of the relevant facts and law. Dr. Cimolai has failed to show that it is unreasonable.

CONCLUSION

[92] I dismiss Dr. Cimolai's petition.

[93] The Ministries seek special costs against Dr. Cimolai. The OIPC does not seek costs. The parties did not make submissions on costs at the judicial review hearing. If the Ministries and Dr. Cimolai are unable to settle costs, they may apply to me in writing, with submissions no longer than 10 pages. The Ministries must send their submission to Dr. Cimolai by registered mail or courier. Dr. Cimolai's response submission must be filed no later than two weeks after the date that the Ministry sends its submission to him. The Ministries' reply, if any, must be filed five days after receipt of Dr. Cimolai's response.

"Iyer J."