Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

RECONSIDERATION ORDER PO-4253-R

Appeals PA15-113 and PA15-199

Order PO-4022

Human Rights Tribunal of Ontario

April 26, 2022

Summary: The appellant requested a reconsideration of Order PO-4022. In that order, the adjudicator found that the Human Rights Tribunal of Ontario had conducted a reasonable search for records responsive to two requests submitted to the institution under the *Freedom of Information and Protection of Privacy Act* by the appellant. The appellant requested reconsideration of the adjudicator's decision, claiming that it contained a number of errors. The appellant also alleged bias on the part of the adjudicator.

In this Reconsideration Order, the adjudicator finds that the appellant has not established bias or a reasonable apprehension of bias on the adjudicator's part. The adjudicator also finds that the appellant's arguments in support of her reconsideration request amount to a re-arguing of the appeal and do not fit within any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure*. The appellant's reconsideration request is denied.

Statutes and Rules Considered: IPC *Code of Procedure*, sections 18.01, 18.02, 18.04 and 18.08.

Orders Considered: Orders MO-2227, PO-2538-R, PO-3062-R, PO-4088 and PO-4241-R.

Cases Considered: Toronto Star v. Ontario (Attorney General), 2018 ONSC 2586; Dagenais v. Canadian Broadcasting Corp., 1994 CanLII 39 (SCC); R. v. Mentuck, 2001 SCC 76; and Chandler v. Alberta Assn. of Architects, 1989 CanLII 41 (SCC).

BACKGROUND:

[1] This reconsideration order assesses and denies the appellant's request for reconsideration of Order PO-4022.

[2] By way of background, the appellant filed a human rights complaint to the Human Rights Tribunal of Ontario (HRTO or tribunal), which was resolved by a settlement in 2009. The respondent to the human rights complaint matter was represented by a lawyer. For the remainder of this order the respondent's lawyer will be referred to as the "opposing party's lawyer."

[3] The appellant filed a subsequent complaint with the tribunal alleging that the respondent in the human rights complaint matter had breached the terms of the settlement. That complaint was resolved by an order and the appellant filed a request with the tribunal to reconsider the order, which was also resolved by an order. The appellant then filed a complaint with the tribunal's Registrar, who decided to take no further action.

[4] Over the years, the appellant has filed several requests under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) with the tribunal for access to records relating to her human rights complaint matter. The appellant was granted full access to records identified as responsive to those requests. In addition, the appellant attended the tribunal's office to view her application file on several occasions. However, the appellant believed that additional records should exist and filed further access requests with the tribunal in an effort to identify records she thought should be in the application file.

[5] This order, like Order PO-4022 which is the subject of this reconsideration request, addresses the appellant's January 22, 2015 and February 10, 2015 requests under the Act to the tribunal. The January 22, 2015 request sought access to records which would verify when the application file was misplaced and subsequently located (misplaced file request). The February 10, 2015 request sought access to records related to the release and reprisals issue which arose in the appellant's human rights matter (release request).

[6] The tribunal issued two access decisions to the appellant, granting her full access to the records it located.[1] The appellant appealed both decisions to the Information and Privacy Commissioner's of Ontario (the IPC) claiming that additional records should exist. The two appeals were assigned separate appeal numbers, PA15-113 and PA15-199, but were addressed together by the IPC.

[7] After conducting an inquiry into the appeals, I issued Order PO-4022 on January

[1] The tribunal's access decision dated February 20, 2015, was in response to the appellant's January 22, 2015 access request. The tribunal's access decision dated March 31, 2015, was in response to the appellant's February 10, 2015 access.

10, 2020, in which I found that the tribunal had conducted a reasonable search for responsive records and dismissed the appeals. The appellant sought a reconsideration of Order PO-4022 in a letter dated April 6, 2020, on the basis that I made errors in deciding it. The appellant also alleged that I was biased in deciding Order PO-4022 and should recuse myself from deciding her reconsideration request.

[8] The appellant submitted several letters in support of her recusal and reconsideration requests.[2] For the purposes of this order, the appellant's letters will be referred to as her reconsideration submissions.

[9] As explained in greater detail below, I denied the appellant's request for reconsideration initially on the basis that the time for the appellant to file a reconsideration request had expired.

[10] However, the submissions the appellant sent after my denial raised an allegation that I failed to offer her reasonable accommodation during my inquiry into the appeals that led to Order PO-4022. As I will explain below, one of the accommodations I afforded the appellant during my inquiry was extra time to submit her representations. In light of this and in all the circumstances, I decided to open a reconsideration file, notwithstanding the lateness of the reconsideration request, to address the appellant's request for reconsideration, including her request that I recuse myself on the grounds of bias. I then invited and received further submissions from the appellant on her reconsideration request.

[11] For the reasons set out below, I find that the appellant has not established bias or a reasonable apprehension of bias on my part. In addition, I find that none of the appellant's remaining arguments in support of her reconsideration request meet the reconsideration criteria. In particular, I find that the accommodation provided to the appellant was reasonable and there was no defect in the process on that basis. The remainder of the appellant's arguments amount to a re-arguing of the appeals and do not meet the criteria for reconsideration in section 18.01 of the IPC's *Code of Procedure* (the *Code*). Accordingly, I deny the appellant's request for reconsideration of Order PO-4022.

OVERVIEW:

[12] The appellant asks that Order PO-4022 be reconsidered, and also asks that I recuse myself from adjudicating her reconsideration request on the basis that I am biased. Though the appellant's reconsideration request cites section 18 of the *Code*, she does not specify any of the grounds for reconsideration set out in section 18.01 of the *Code*. The appellant simply alleges that I made several errors and procedural flaws in Order PO-4022.

[2] The appellant's letters dated April 6, 2020, January 25, 2021 (x2), March 1, 2021, March 17, 2021 and May 14, 2021.

The IPC's reconsideration criteria and procedure

[13] There is no express reconsideration power in the *Act*. The IPC's power to reconsider a decision is therefore limited to the grounds at common law, which are reflected in the IPC's reconsideration criteria and procedure set out in section 18 of the *Code of Procedure*. Section 18.01 reads in part as follows:

> 18.01 The IPC may reconsider an order or other decision where it is established that there is:
>
> (a) a fundamental defect in the adjudication process;
>
> (b) some other jurisdictional defect in the decision; or
>
> (c) a clerical error, accidental error or omission or other similar error in the decision.
>
> 18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.
>
> 18.08 The individual who made the decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to the request.

The appellant's reconsideration request

[14] Order PO-4022 was issued on January 10, 2020 and was sent to the appellant by regular mail. The appellant was advised by the IPC by email on January 14, 2020 that Order PO-4022 had recently been issued and had been mailed to her. The appellant was given the order number and asked to confirm receipt of the email. The appellant did not confirm receipt of the email.

[15] On April 6, 2020, the appellant sent an email requesting that I reconsider Order PO-4022. I responded by sending a letter to the appellant by email on April 9, 2020 denying her reconsideration request. The reason given for the denial was that the appellant's April 6, 2020 correspondence requesting a reconsideration of Order PO-4022 was received after the expiry of the 21-day timeframe for submitting such requests required by section 18.04(b) of the *Code*, which I address further in this decision, below.

[16] My April 9, 2020 letter to the appellant acknowledged that I had extended the time for her to file a reconsideration request in relation to an order issued in another appeal but noted that, in that case, she had provided evidence that she experienced a

delay in receiving a copy of the relevant order.[3]

[17] No further communication was exchanged with the appellant until January 23, 2021 when she emailed the IPC seeking an update regarding her reconsideration request filed on April 6, 2020. The IPC responded by resending a copy of my April 9, 2020 letter denying the request to the appellant on January 25, 2021.

[18] The appellant confirmed receipt of my April 9, 2020 letter and sent two letters raising an allegation of bias and requested that I recuse myself from "anything involving [her] requests."[4] One of the arguments the appellant made in support of her recusal request was that I failed to accommodate her disability during the inquiry into the appeal that led to Order PO-4022. The appellant also requested that a new adjudicator be assigned to her files so that she could "start this process from the beginning." The appellant's letters also set out her reasons for why she believed that Order PO-4022 should be reconsidered and the tribunal should be ordered to conduct further searches.

[19] I decided to open a reconsideration file relating to Order PO-4022 to address the appellant's allegation that I failed to accommodate her disability, which she argues demonstrates reasonable apprehension of bias on my part. I have also considered whether there are any other grounds on which I should reconsider Order PO-4022.

[20] In this order, I decline the appellant's request that her reconsideration request be assigned to a different adjudicator. I find that there is no basis under the *Code* for reconsidering Order PO-4022 and I deny the reconsideration request.

ISSUES:

A. Is there bias, or a reasonable apprehension of bias, on my part?

B. Has the appellant established any other grounds to reconsider Order PO-4022?

DISCUSSION:

A. Is there bias, or a reasonable apprehension of bias, on my part?

[21] A finding of reasonable apprehension of bias would be a ground for reconsidering Order PO-4022 as a fundamental defect in the adjudication process (paragraph (a) of section 18.01 of the *Code*). Such a finding would also be a basis for my recusing myself from deciding the reconsideration request to begin with. However, for the reasons that follow, I find that the appellant has not established that a

[3] Order PO-3699 issued on February 21, 2017, disposed of Appeal PA15-114. The appellant's reconsideration request regarding Order PO-3699, was denied in Reconsideration Order PO-3994-R issued on September 30, 2019.
[4] Both letters are dated January 25, 2021.

reasonable apprehension of bias existed in my adjudication of her appeals.

[22] The appellant alleges that I failed to accommodate her during the inquiry process, and that this is evidence of bias. Therefore, some background into the accommodations offered to the appellant during that process is necessary. After receiving the tribunal's representation, I sought the appellant's representations. The appellant then asked that her appeals be placed on hold for an indeterminate period of time. I denied the appellant's request to place the files on hold indefinitely, but placed the files on hold for several months. In response, the appellant sent a letter to the IPC on September 28, 2018 complaining that my correspondence responding to her request that her files be placed on hold indefinitely was condescending and biased. The appellant requested that I be removed from adjudicating her appeals. The Director of Adjudication responded to the appellant's letter advising that she would not be assigning a new adjudicator.[5] The Director told the appellant that if she wanted to pursue her request that I be removed as the adjudicator of her appeals on the basis of bias, she would have to make her recusal request directly to me.

[23] The appellant did not submit her recusal request to me until January 2021, after Order PO-4022 was issued and after I denied her April 2020 request to reconsider Order PO-4022. As noted above, I denied the reconsideration request on the basis that it was not received within the 21-day timeframe set out in section 18.04(b) of the *Code*.

[24] In support of her recusal request, the appellant refers to her 2018 complaint about me during the inquiry into the two appeals that led to Order PO-4022, which was responded to by the Director of Adjudication, and states:

> One would think that if a client has a reasonable apprehension of bias, as discussed as far back as 2018 and the fact that there has been nothing put forward by you to reduce those concerns over the past 2½ years, that you would want to remove yourself from the discussion out of a sense of fairness.

[25] The appellant argues that the following occurrences demonstrate my "inherent bias" against her:

1. I failed to provide her reasonable accommodation during the inquiry into the appeals that led to Order PO-4022,

2. I denied her initial reconsideration request of Order PO-4022 by applying a rule in the *Code* that I did not provide her prior notice of,

3. During the inquiry into the appeals that led to Order PO-4022, I sent a letter to her which I copied to another IPC adjudicator, who "has a documented record of arbitrarily refusing information to [her] that [she] is entitled to under [the *Act*],

[5] The Director's letter is dated October 2, 2018.

4. I declined to make a finding in Order PO-4022 on a different request of the appellant's for records exchanged between the tribunal and the opposing lawyer in the human rights complaint, and

5. I declined to revisit my findings in PO-3699 and PO-3994-R that the Vice-Chair's notes were not in the custody or under the control of the tribunal.

[26] The appellant has raised these arguments in the context of her bias allegation, and I will address them in the context. However, although she frames her arguments as evidence of bias on my part, she appears to take issue with the procedures I employed during the inquiry and reconsideration process, in and of themselves. I will therefore address her concerns under Issue B as well.

[27] In administrative law, there is a presumption that, in the absence of evidence to the contrary, an administrative decision-maker will act fairly and impartially.[6] The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.[7] However, actual bias need not be proven. The test is whether there exists a "reasonable apprehension of bias". In Order MO-2227, former Senior Adjudicator John Higgins, in addressing an allegation of bias against this office, explained the test as follows:

> A recent statement of the law by the Supreme Court of Canada concerning allegations of bias against an adjudicator is found in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259. In that decision, the court stated:
>
> > In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpre J. in *Committee for Justice and Liberty v. National Energy Board*, supra, at p. 394, is the reasonable apprehension of bias:
> >
> > > …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.
> >
> > …

[6] Orders MO-3513-I, MO-3642-R and MO-4003-R.

[7] See, for example, Blake, S., *Administrative Law in Canada*, (3rd. ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519.

> *The grounds for this apprehension must, however, be substantial*, and I … refuse to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added.]

[28] Furthermore, neither procedural rulings "against" a party, nor an order dismissing an appeal, are in and of themselves, evidence of bias.[8]

[29] The law is clear that an allegation of bias, or reasonable apprehension of bias, is to be raised before the decision-maker in question.[9] If the appellant establishes that there is a reasonable apprehension of bias, it would be a ground for reconsidering Order PO-4022. It would also be a ground for my recusal and for the appellant's reconsideration request to be assigned to another adjudicator.

[30] However, for the reasons that follow, I find that the appellant has not established that there is a reasonable apprehension of bias on my part and I decline to recuse myself from this matter.

Review of the appellant's submissions, my analysis and decision

The appellant's submissions do not establish a reasonable apprehension of bias on my part. Accordingly, there is no basis to reconsider Order PO-4022 on the basis of bias and I deny the appellant's request that I recuse myself from deciding her reconsideration request.

1. The accommodation the appellant was provided during the inquiry into the appeals that led to Order PO-4022 does not establish a reasonable apprehension of bias on my part

[31] In accordance with the IPC's accessibility policies and procedures, the *Accessibilities for Ontarians with Disabilities Act*, and the *Ontario Human Rights Code*, the IPC is committed to creating an accessible organization by removing barriers for people with disabilities. The IPC is ultimately responsible for determining and offering accommodation to individuals accessing its services.

[32] In this case, at the time the Notice of Inquiry was issued, the appellant was provided accommodation in the form of being afforded extra time to prepare responses or written representations to the IPC. In addition, the appellant identified a support person and this person received copies of any correspondence the IPC sent to the appellant. The support person was also able to communicate and correspond with the IPC on the appellant's behalf.

---

[8] *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at paragraph 164, affirmed 2018 BCCA 264.
[9] Orders PO-4128 at paragraph 40 and MO-4003-R.

[33] After the issuance of Order PO-4022, the appellant asked that I recuse myself from her file matters. One of the reasons she provided for her request was that I failed to accommodate her disability during the inquiry of the appeals that led to Order PO-4022. In the appellant's view, this is evidence of bias.

[34] After I opened the reconsideration file, I wrote to the appellant on February 5, 2021 to gather information about her present accommodation needs. This information was needed before I moved on to consider the appellant's recusal request. The appellant responded by providing a letter, dated March 1, 2011 from her doctor addressed to her lawyer in the human rights complaint matter. The appellant takes the position that the letter demonstrates that she has a disability that requires accommodation to access IPC services. The appellant also made other arguments in support of her recusal and reconsideration request in this letter which will be addressed later in this order.

[35] I wrote back to the appellant on March 11, 2021 and confirmed that when I sent the Notice of Inquiry to her on September 29, 2017 in appeal files PA15-113 and PA15-199 that I was aware that she had a medical condition that may result in her requiring additional time to respond to requests for information or written representation. I also confirmed in that letter that I had reviewed appeal files PA15-113 and PA15-199 and could not locate an instance in which I denied a request from the appellant for additional time to provide her representations. Finally, in that letter I shared my preliminary assessment with the appellant that the accommodation provided her during the inquiry into the appeals that led to Order PO-4022 was reasonable and invited her to identify any further accommodation during the reconsideration process she required *in addition* to the accommodation that has already been provided to her.

[36] In response, the appellant sent a letter dated March 17, 2021 stating:

> I am in receipt of your letter dated March 11, 2021 and am surprised that, after over five (5) years of being informed of my disability that you are finally asking what accommodations I require. You list, as your attempts to accommodate my disability, your willingness to allow me extra time to prepare responses to your decisions. I would suggest that this is not an unusual accommodation given to any appellant who requests more time to prepare their responses. As that is the only type of accommodation provided to date, your submission that you have been accommodating me is rather disingenuous.

[37] Enclosed with her March 17, 2021 letter to me, the appellant enclosed a May 12, 2009 letter her doctor provided her lawyer in the human rights complaint matter. Also enclosed was a letter, dated May 12, 2009 her lawyer sent to the opposing party's lawyer in the human rights complaint matter.

Analysis and decision

[38] Having considered the appellant's evidence along with my review of the appeal files that led to Order PO-4022, I am satisfied that the appellant was provided reasonable accommodation during the inquiry. As noted above, I could not identify an instance in which the appellant's request to extend the time to provide representations was denied and the appellant does not allege that her extension requests were denied. In addition, I granted several requests made by the appellant that the appeals be placed on hold. In addition, though the last hold period expired without the appellant requesting an extension, I did not close her file. Instead, I wrote to the appellant on August 9, 2019 and stated:

> It has been almost two years since I sent the Notice of Inquiry to you in this matter. Given the passage of time, I have decided that should this matter proceed, I should obtain your submissions, if you choose to make any, in the short future.

[39] The appellant subsequently submitted representations on September 30, 2019 and further submissions were accepted on October 22, 2019. As noted, Order PO-4022 was issued on January 10, 2020.

[40] Furthermore, the appellant does not allege that her support person was denied access to communicate with the IPC on her behalf. When given the opportunity to identify gaps in the past accommodation provided to her, or to identify further ongoing accommodation needs, the appellant did not raise additional accommodation needs.

[41] Instead, the appellant makes bald assertions that she did not receive adequate accommodation and has provided copies of letters exchanged over 10 years ago which appear to relate to her ability to access services at the human rights tribunal. The services being provided to the appellant at the IPC are confined to her participation in a written inquiry process, whereas many of the recommendations the appellant's lawyer and doctor set out in the three letters related to anticipated in-person meetings or hearings in the context of the appellant's human rights complaint, and are not relevant to the process followed in the appellant's IPC appeals.

[42] The appellant argues that any appellant would have been granted two years to respond to a Notice of Inquiry and submit representations. However, the issue before me is not whether other individuals would be granted similar extensions of time given similar or different fact scenarios. The issue is whether the appellant had been provided reasonable accommodation during the inquiry into the appeals that led to Order PO-4022.

[43] I am satisfied that accommodations provided the appellant during the inquiry that led to Oder PO-4022 were reasonable and adequately addressed the appellant's request for accommodation. There is no dispute that the appellant has a medical

condition which may result in her needing additional time to respond to requests for information or prepare representations. I am satisfied that the appellant was given ample opportunity to make written representations during my inquiry into the appeals that resulted in Order PO-4022. The appellant was also provided with duplicate copies of the Notice of Inquiry and the tribunal's representations before she submitted her representations, given the length of time that had passed due to her extension and hold requests. In addition, throughout the inquiry, the appellant's support person maintained contact with the IPC on the appellant's behalf.

[44] Having regard to the above, I find that the appellant's evidence does not establish that I failed to provide her reasonable accommodation during the inquiry into the appeals that led to Order PO-4022. A failure to provide reasonable accommodation is not necessarily evidence of bias. In any event, I do not accept the appellant's argument that I failed to accommodate her disability. Accordingly, her allegation of bias or a reasonable apprehension of bias on my part on this ground must fail.

[45] As an aside, I wrote to the appellant on April 8, 2021 and confirmed that the IPC was prepared to *continue* to provide the following accommodation during the reconsideration process:

- additional time to respond to requests for information and to submit written representations; and

- commitment to deal with the appellant's designated support person, when asked to do so.

[46] My April 8, 2021 letter also told the appellant that unless she submitted a new accommodation request and the IPC decided to offer her other accommodations, she would continue to be accommodated during the reconsideration process as set out above. As of the date of this order, I have not received an updated accommodation request from the appellant or her support person.

2. My not having notified the appellant of a procedural rule before I applied it does not establish a reasonable apprehension of bias on my part

[47] As I noted above, Order PO-4022 was issued on January 10, 2020. On April 6, 2020, the appellant made her original reconsideration request.

[48] I wrote to the appellant on April 9, 2020 denying her reconsideration request on the basis that the time for me to have received a reconsideration request for Order PO-4022 had passed. I relied on the 21-day time frame specified by section 18.04(b) of the *Code*, which states:

> A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

> (b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision.

[49] The appellant takes the position that my not having notified her of this requirement in the *Code* demonstrates a reasonable apprehension of bias on my part. In a letter, dated January 25, 2021, the appellant stated:

> You have denied my request for reconsideration based on a rule that you never advised was in effect. As a lay person, I cannot be held responsible to understand the IPC processes. I find your reasoning to be disingenuous and a demonstration of your bias against my concerns and your refusal to accommodate my disability.

[50] The appellant also stated the following in a letter, dated May 14, 2021:

> You are trained as a lawyer, I am not. You reference certain rules and case law that you feel are supportive of your position. As a lay person, I would have no knowledge of, or ability to respond in kind.
>
> …
>
> There was no indication in your denial letter of a time sensitive appeal period, so your unilateral decision to deny was rather severe and certainly not conducive to a respectful working relationship, let alone with a person with a disability. Instead, you direct me to regulations that are available to the public, knowing that I have limited skills to research them and memory issues. You expect me to retain information that I cannot. This is an example of where you expect me to have the ability to research and understand rules and regulations that I cannot, given my disability.

[51] In this case, the IPC's *Inquiry Procedure at the Adjudication Stage* insert was provided to the appellant at the start of the inquiry process. The insert states that the IPC's Code, which is found on the IPC's website, "governs appeals under the *Freedom of Information and Protection of Privacy Act*."

[52] As noted above, a procedural ruling "against" a party, is not itself, evidence of bias.[10] I am not satisfied that my reliance on the *Code*, of which the appellant had notice, is any evidence of bias. In any event, in this case, I reversed my original decision and opened a reconsideration file. Having regard to the above, I find that the appellant's allegation of bias or a reasonable apprehension of bias on my part on this ground must fail.

---

[10] *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at paragraph 164, affirmed 2018 BCCA 264.

3. The appellant's allegation that I copied another adjudicator on correspondence does not establish a reasonable apprehension of bias on my part

[53] In the appellant's letter, dated January 25, 2021 submitted as part of her reconsideration representations, the appellant states:

> I note, in your prior communications, that you have included a colleague in the file. This is the same person who denied, in an unrelated matter, my access to a video for years, until I had an unbiased adjudicator review the file and order that to deny access to the video was an absurd result and ordered it to be released to me.

[54] In response, I wrote to the appellant and indicated that further information was needed regarding the connection between this allegation and a reasonable apprehension of bias on my part. I asked that the appellant provide me with the following information:

- a copy of the correspondence she said I had sent to her in which I "included a colleague in the file",
- the name of the colleague/adjudicator, and
- the relevant IPC file number or order number.

[55] The appellant was also asked to provide an explanation of why my reference to another colleague/adjudicator in correspondence to her would give rise to a reasonable apprehension of bias on my part.

[56] The appellant responded in a letter, dated May 14, 2021, challenging my request for further information by commenting that she did not see how it related to her request that I recuse myself. The appellant expanded her allegation and said that in addition to including a colleague in correspondence to her, I "included the names of the persons involved in that appeal". The appellant did not provide a copy of the correspondence but did provide the name of the adjudicator in question. The appellant went on to state:

> You asked that I provide a copy of the correspondence that you copied to a colleague. I find that baffling as you clearly know who that colleague is. You also require that I provide additional information on that matter.
>
> I do not see where the other matter is relevant to my request that you recuse yourself. Also, it would take me months to go through material that I have to find the reference given my limitation, particularly with respect to filing documents.
>
> …

> You have brought [this adjudicator] into matters before you and she has a documented record of arbitrarily refusing information to me that I am entitled to under the [*Act*]. I am confident that this information, along with your letter to me that indicates that [the adjudicator] was copied, is in the IPC system and can be retrieved from that system much quicker than I can find it.

[57] The appellant has provided no basis for her assertion that I copied another adjudicator or that I included the names of persons involved in another appeal in correspondence I sent her in appeals PA15-113 and PA15-199. In addition, the appellant did not provide an explanation of how these allegations would give rise to a reasonable apprehension of bias on my part.

[58] I find that there is insufficient evidence to support the appellant's allegation. Accordingly, I find that there is no bias or a reasonable apprehension of bias on my part on this basis.

4. My declining to make a finding in Order PO-4022 on a different request of the appellant's for records exchanged between the tribunal and the opposing lawyer does not establish a reasonable apprehension of bias on my part

[59] In Order PO-4022, I acknowledged that the appellant questioned the reasonableness of the tribunal's search for records exchanged between the tribunal and opposing lawyer in her human rights complaint matter, but found that these records were not within the scope of the access requests that were before me, but rather were responsive to a different request submitted to the HRTO.

[60] In particular, at footnote 6 of Order PO-4022, I stated that the appellant's request for these records fell outside the scope of Order PO-4022.[11] On page 6 of Order PO-4022, I stated:

> Though it appears that the tribunal has on occasion expanded the scope of the appellant's requests to conduct a search for other documents during the mediation of this appeal, there was no requirement that the tribunal do so. Further, it does not appear that these records reasonably relate to the requests before me. In my view, the tribunal could rightly have directed the appellant to file a new request under the Act for similar or updated records. And it appears that in some instances, the appellant did file subsequent requests under the *Act*.
>
> Despite the tribunal's willingness to conduct searches for other records during the mediation process, the sole issue before me is whether the

[11] The appellant's request, dated August 5, 2015 sought access to "all communications" between the opposing party's lawyer or law firm and a named Assistant Registrar and the Vice-Chair of the HRTO, but not limited to these individuals, for the period of December 2009 to the date of the request.

> tribunal, in processing the appellant's January 22, 2015 and February 10, 2015 requests, made a reasonable effort to identify and locate responsive records created up to the date of those requests.
>
> My jurisdiction is limited to deciding the issue of reasonable search in relation to these two requests. I do not have the authority to comment on the tribunal's processing of requests that were not appealed to this office or assigned to me for adjudication.

[61] It is clear that the appellant disagrees with my ruling. However, as I noted above, mere disagreement with a ruling is not enough to substantiate an allegation of bias.

[62] Having regard to the above, I am not satisfied that my declining to make a finding on records not within the scope of the appeals before me in Order PO-4022 establishes bias or a reasonable apprehension of bias on part.

5. My declining to revisit my findings in PO-3699 and PO-3994-R regarding the appellant's request for the Vice-Chair's notes does not establish a reasonable apprehension of bias on my part

[63] Order PO-4022 also addressed the appellant's submission that the tribunal's search for records responsive to her January 22, 2015 and February 10, 2015 requests should have also included a search for the tribunal Vice-Chair's notes. This allegation is also related to the issue of the scope of the appellant's access requests before me, which I addressed in paragraph 21 of Order PO-4022, where I referred to Orders PO-3699 and PO-3994-R. In particular, in footnote 8 on page 5 of Order PO-4022, I stated that the "appellant's request for this information was addressed by me in Orders PO-3699 and PO-3994-R." In Order PO-3699, I found that the tribunal did not have custody or control of a Vice-Chair's notes made while presiding at the appellant's human rights complaint proceeding. The appellant subsequently filed a reconsideration request arguing that I erred in finding that the Vice-Chair's notes were not in the tribunal's custody or control. I dismissed the appellant's reconsideration request in Reconsideration Order PO-3994-R.

[64] The appellant also argues in her submissions that, in response to the *Toronto Star v AG Ontario*[12] (the Toronto Star decision), I should revisit my decisions in Orders PO-3699 and PO-3994-R and order the "HRTO to follow its new policy." In support of her position, the appellant states that "the HRTO can no longer rely on adjudicative privilege to continue to withhold the [Vice-Chair's notes] that I have requested" and refers to my mention of the Toronto Star decision in paragraph 28 of Order PO-4022.

[65] In her reconsideration submissions, the appellant suggests that my refusal to revisit my findings in Orders PO-3699 and PO-3994-R gives rise to a reasonable

12

apprehension of bias. The appellant stated in her submissions that:

> I [asked] for you to revisit your decision on the [Vice-Chair's] notes based on [the *Toronto Star*] ruling and the HRTO policy change. Again, you refused to revisit that issue. In effect, you dangled the proverbial carrot in front of me and then pulled it away when I asked you to revisit the matter.
>
> You continue to refuse to work with me on any issue.

[66] Again, the appellant disagrees with one of my rulings. However, mere disagreement with a ruling is not enough to substantiate an allegation of bias.

[67] Having regard to the above, I find that the appellant's evidence fails to establish bias or a reasonable apprehension of bias on my part.

Summary of my findings on bias

[68] I have considered the appellant's submissions in support of her allegation of bias and deny her request that I recuse myself from deciding her reconsideration request. I also find that there is no basis to reconsider Order PO-4022 on the basis of a reasonable apprehension of bias. I will now turn to consideration of whether there are any other grounds for reconsidering Order PO-4022.

B. Has the appellant established any other grounds to reconsider Order PO-4022?

[69] Section 18 of the IPC's *Code of Procedure* reflects the common law in that there are only narrow grounds for finding that a decision can be reconsidered.[13] As noted above, a reconsideration request can only be granted on specific grounds: if there was a fundamental defect in the adjudication process; if there is some other jurisdictional defect in the decision; or if there is a clerical error, accidental error or omission or other similar error in the decision. The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases or an opportunity to present new evidence.

[70] In Order PO-2538-R, Senior Adjudicator John Higgins reviewed the case law regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Assn. of Architects*.[14] With respect to the reconsideration request before him, he concluded:

> [T]he parties requesting reconsideration … argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect… In my view,

[13] Reconsideration Order PO-4241-R.
[14] 1989 CanLII 41 (SCC).

> these arguments do not fit within any of the criteria enunciated in section 18.01 of the *Code of Procedure*, which are based on the common law set out in *Chandler* and other leading cases such as [*Grier v. Metro Toronto International Trucks Ltd*[15]].
>
> On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the LCBO and the affected party … As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[71] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.[16] In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding on the applicability of one of the Act's exemptions from the general right of access. She determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

> It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal…

[72] I agree with these statements and note that Senior Adjudicator Gillian Shaw recently stated in Order PO-4241-R that:

> The case law and section 18.02 of the *Code* make it clear that a reconsideration request is not a forum to re-argue a case or to present new evidence, whether or not that evidence was available at the time of the initial inquiry.

[73] The appellant's reconsideration submissions do not cite any of the grounds for reconsideration set out in section 18.01 of the *Code*. However, from the appellant's submissions, it would appear that she alleges that my decision in Order PO-4022 contains errors and that the errors may be remedied by the tribunal being ordered to conduct further searches.[17]

[74] As I stated above, the appellant's arguments about bias include general

---

[15] 1996 CanLII 11795 (Div. Ct.).
[16] See, for example, Orders PO-3062-R and PO-3558-R.
[17] 18.01(c) of the *IPC Code of Procedure* provides that: The IPC may reconsider an order or other decision where it is established that there is a clerical error, accidental error or omission or other similar error in the decision.

allegations about the fairness of my inquiry into her appeals. Accordingly, this discussion below also determines whether the appellant's submissions about fairness gives rise to a question as to whether a fundamental defect in the adjudication process occurred in the appeals leading to Order PO-4022.[18]

[75] For the reasons stated below, I find that there was no fundamental defect in the adjudication process within the meaning of section 18.01 (a) of the *Code*. In my view, the appellant's reconsideration request amounts to re-arguing the appeal or seeks to introduce new evidence. On that basis, I find that none of the criteria for reconsidering Order PO-4022 are met and I deny the reconsideration request.

Section 18.01(a) - Review of the appellant's submissions, my analysis and decision

The appellant's submissions do not establish that a fundamental defect in the adjudication process in the appeals that led to Order PO-4022 occurred.

[76] Section 18.01(a) provides that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. As stated above, the same arguments the appellant made in support of her position that I was biased give rise to the argument that a fundamental defect in the adjudication process occurred. To recap, the appellant argued that:

1. I failed to provide her reasonable accommodation during the inquiry into the appeals that led to Order PO-4022

[77] As established above, I am satisfied that accommodation provided the appellant during the inquiry that led to Oder PO-4022 was reasonable and adequately addressed her request for accommodation.

[78] The appellant's complaints that I failed to accommodate her accommodation request have no merit and thus do not establish that a fundamental defect in the adjudication process in the appeals that led to Order PO-4022 occurred. Accordingly, the appellant's evidence fails to establish grounds for reconsideration under section 18.01(a).

2. I denied her initial reconsideration request of Order PO-4022 by applying a rule in the Code that I did not provide her prior notice of

[79] The appellant argues that I should not have applied the rule in the IPC's *Code* which sets out the time limits for applying for a reconsideration request without giving her prior notice. Earlier in this order, I established that the appellant was provided with materials during the inquiry into the appeals that led to PO-4022 that directed her to

[18] 18.01(a) of the *IPC Code of Procedure* provides that: The IPC may reconsider an order or other decision where it is established that there is: a fundamental defect in the adjudication process.

the *Code* which "governs appeals under the *Freedom of Information and Protection of Privacy Act*."

[80] In any event, I reversed my initial decision and opened a reconsideration file to address the concerns set out in the appellant's reconsideration request. Accordingly, the appellant's complaint fails establish a ground for reconsideration under section 18.01(a).

3. During the inquiry into the appeals that led to Order PO-4022, I sent a letter to her which I copied to another IPC adjudicator, who "has a documented record of arbitrarily refusing information to [her] that [she] is entitled to under [the Act]"

[81] The appellant has provided no basis for her assertion that I copied another adjudicator or that I included the names of persons involved in another appeal in correspondence I sent her in appeals PA15-113 and PA15-199. In addition, the appellant did not provide an explanation of how these allegations would give rise to a fundamental defect in the adjudication process. Accordingly, I find that the appellant's evidence falls short of establishing that a fundamental defect in the adjudication process under section 18.01(a) occurred.

4. I declined to make a finding in Order PO-4022 on a different request of the appellant's for records exchanged between the tribunal and the opposing lawyer in the human rights complaint.

[82] Earlier in this order, I explained why I decided not to make search findings in Order PO-4022 regarding records I found not within the scope of the appeals PA15-113 and PA15-199.

[83] The appellant argues that my decision to not address her evidence as to why she believed the tribunal had additional records and not solicit the tribunal's answers in response to her evidence during the inquiry of appeals PA15-113 and PA15-199 demonstrates a fundamental defect in the adjudication process.

[84] The appellant's argument does not establish that a fundamental defect in the adjudication process under section 18.01(a) occurred as the issue she says should have been addressed during the inquiry was not within the scope of the appeals.

5. I declined to revisit my findings in PO-3699 and PO-3994-R that the Vice-Chair's notes were not in the custody or under the control of the tribunal.

[85] Again, the appellant disagrees with one of my decisions and asserts that I "refuse to work with [her] on any issue." The appellant's disagreement alone does not establish a ground to reconsider.

[86] Furthermore, in this case, the decision the appellant opposes falls outside the scope of appeals that led to Order PO-4022.

[87] Having regard to the above, I find that the appellant's argument fails to establish a basis for reconsideration Order PO-4022 under section 18.01(a).

There is no other basis on which a reconsideration should be granted

The appellant's submissions do not establish any other grounds for reconsidering Order PO-4022

[88] The sole issue identified in the Notice of Inquiry sent to the parties inviting their representations was whether the tribunal conducted a reasonable search for records responsive to the appellant's requests for records relating to the misplaced file and release. Paragraphs 35, 59 and 62 of Order PO-4022 indicate that the appellant's evidence received in response to the Notice of Inquiry "did not specifically address the tribunal's evidence regarding its search" for records which would be responsive to the misplaced application file and release requests.

[89] In Order PO-4022, I found that the tribunal's search for responsive records was reasonable and declined the appellant's request that I order further searches.

[90] A common theme throughout the appellant's reconsideration submissions is her allegation that there is a pattern of me refusing to consider her submissions or solicit her evidence during the inquiry in reply to the tribunal's evidence. The appellant makes many general statements to this effect, such as the following in her reconsideration submissions, dated May 14, 2021:

> You have made rulings without considering the clear, cogent, and compelling evidence that I have provided in support of my position and that you have, without fail, accepted the submissions of the HRTO without question even when that information is incorrect and, in this instance when a sworn affidavit is not true.
>
> … a prudent adjudicator, interested in being fair to both sides, would have asked me to provide some evidence in support of my position. [You] have not done so, which clearly indicates your unwavering bias toward the HRTO without availing yourself of all of the available evidence.

[91] Most of the appellant's evidence in support of this argument focusses on her allegation that I failed to consider her evidence that communications exchanged between the opposing lawyer in her human rights complaint matter and the tribunal exist. In support of this argument, the appellant identified a number of emails between the tribunal and opposing lawyer as proof of the type of records she requested that the

tribunal failed to locate.[19]

[92] The appellant also sets out her reasons why she believes that additional records relating to the missing file and release requests exist. However, the appellant's May 14, 2021 letter filed as part of her reconsideration submissions is the first time the appellant provided this information.

Analysis and findings

[93] As set out above, the scope of the search issue in Order PO-4022 was confined to the appellant's requests, dated January 22, 2015 and February 10, 2015. Accordingly, the Notice of Inquiry sent to the parties in Order PO-4022 and the evidence adduced was limited to those requests.

[94] In support of her position that the tribunal's searches for records responsive to the missing file and release requests were unreasonable, the appellant provided evidence in her reconsideration submissions that was not supplied during the inquiry into the appeals that led to Order PO-4022.

[95] I have considered the appellant's submissions and find that they do not establish a basis for me to reconsider Order PO-4022. The appellant's submissions either focusses on matters outside the scope of the appeals that led to Order PO-4022 or seek to introduce new evidence.

[96] Most of the appellant's submissions in support of her reconsideration request focus on her argument that I should have considered her evidence that the tribunal failed to locate records exchanged between the opposing lawyer in her human rights matter and the tribunal. However, in Order PO-4022 I clearly set out that the appellant's request for those records was not within the scope of the appeals that led to Order PO-4022. Accordingly, the appellant's evidence that I should have solicited her evidence on this issue does not establish grounds for reconsideration.

[97] The remainder of the appellant's submissions seek to introduce new evidence in support of her position that the tribunal failed to conduct a reasonable search for records which would respond to the misplaced file and release requests. In Order PO-4022, I made several references to the fact that the appellant's evidence did not address the specific issues before me.[20]

[98] However, as I have stated above, the IPC's reconsideration process, which is set out in the section 18 of the *Code* and has been considered in many past orders, is not intended to provide parties with a forum to re-argue their cases or an opportunity to

---

[19] The appellant refers to emails dated December 23, 2009, December 29, 2009, December 30, 2009, January 4, 2010, January 8, 2020, January 14, 2010, January 20, 2010, January 21, 2010 and February 3, 2011 and says that these emails provide a "short list of some of the emails" in her possession.
[20] See paragraphs 8, 59 and 62 of Order PO-4022.

present new evidence. Section 18.02 of the *Code* provides that the IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

[99] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[21] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, the IPC may order the institution to conduct another search for records.

[100] The *Act* does not require the tribunal to prove with certainty that further records do not exist. However, the tribunal must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[22] that is, records that are "reasonably related" to the request.[23] In the case of Appeals PA15-113 and PA15-199, I was satisfied that the tribunal's evidence demonstrated that it had expended a reasonable effort to locate records that would respond to the appellant's misplaced file and release requests, dated January 22, 2015 and February 10, 2015, and I dismissed the appeals.[24]

[101] In any event, I am not satisfied the appellant's new information would have changed the result in Order PO-4022, or that it otherwise establishes any basis for reconsidering the order. In arriving at this conclusion, I note that some of the new information the appellant provided is a departure from the information she previously provided regarding her request for the misplaced file. In paragraph 39 of Order PO-4022, I noted that the appellant stated in January 22, 2015 request that it had come to her attention that the "physical file" was "lost." The request also specifies that the records being sought are "documents verifying when the physical file was found and to who [and] when it was distributed." However, the appellant now questions the tribunal's position that the file was misplaced. The appellant also now says that she has in her possession a copy of the release the tribunal was unable to locate in its searches in response to her February 10, 2015 request. The appellant says that the tribunal provided her a copy of this record in June 2015 when it provided her a copy of her application file.

[102] In my view, the new information appellant now presents would not have changed my finding that the tribunal made a reasonable effort to identify and locate responsive records. I note that paragraph 1 of Order PO-4022 stated that "[t]he documents relating to the appellant's human rights matter were filed in a hard copy application file. The tribunal also maintained an electronic file on its system comprising of scanned copies of hard copy documents." In addition, in paragraph 54 of Order PO-4022, I acknowledge the unique circumstances of the appeals before me and stated:

---

[21] Orders P-85, P-221 and PO-1954-I.
[22] Orders P-624 and PO-2559.
[23] Order PO-2554.
[24] The reasons supporting my decision are set out in paragraphs 54 to 64 in Order PO-4022.

> The circumstances of this appeal are unique. The appellant's hard copy file moved between offices during various stages of her human rights complaint, hearing and reconsideration request. The application file also travelled back and forth to the coordinator's office. There is no dispute between the parties that the hard copy file was lost at some point and later recovered. In addition, the tribunal, having agreed to conduct further searches, has located additional records. For instance, the tribunal's search for the meeting minutes requested by the appellant did not result in these records being located but the tribunal did locate an additional folder of documents that should have been placed in the hard copy file.
>
> However, the fact that the tribunal located additional records after processing the present requests does not mean that its searches for records that would respond to the two requests before me were not reasonable. Rather, I am satisfied that the tribunal's searches for responsive records were reasonable, and decline to order any further searches. As noted above, the *Act* does not require the tribunal to prove with absolute certainty that further records do not exist. Instead, the tribunal was required to provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.

[103] I have considered the appellant's evidence along with the circumstances of this appeal, I find that the appellant's new information fails to establish any basis for reconsidering the order.

Summary of my findings

[104] Having regard to the above, I conclude that the appellant has not established a fundamental defect in the adjudication process under section 18.01(a) of the *Code* or any other basis for reconsidering the order.

[105] As the appellant has not established any of the grounds to reconsider set out in section 18.01(a), (b) or (c), I deny the reconsideration request.

ORDER:

The appellant's request to reconsider Order PO-4022 is denied.

Original Signed By: April 26, 2022
Jennifer James
Adjudicator