

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4469-R

Appeal PA21-00545

Champlain LHIN o/a Home and Community Care Support Services –
Champlain

Order PO-4455

December 19, 2023

Summary: The appellant submitted a request for reconsideration of Order PO-4455, claiming jurisdictional defects and breaches of natural justice in the decision. In this reconsideration order, the adjudicator finds that the appellant has not established any of the grounds for reconsideration contemplated in section 18.01 of the IPC's *Code of Procedure* and denies the reconsideration request.

Statute Considered: *IPC Code of Procedure*, section 18.01.

Order Considered: Order PO-7538-R.

Case Considered: *Chandler v. Alberta Association of Architects* [1989] 2 SCR 848 (SCC).

OVERVIEW:

[1] This reconsideration order addresses the appellant's request that I reconsider Order PO-4455. The appellant seeks reconsideration on the basis of jurisdictional defects that he describes as my failure to reproduce the points he made in his representations submitted during my inquiry and my failure to provide reasons for rejecting them.

[2] In Order PO-4455, I found that the records sought by the appellant in his access request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) are not within the custody or under the control of the Champlain Local Health Integration Network (the LHIN), the institution to which his request was made. In addition, I found that the LHIN had discharged its duty under section 25(1) of the *Act* by forwarding the appellant's request to a specified health service provider (HSP).

[3] During the appeal, the appellant filed a Notice of Constitutional Question (NCQ) with the Information and Privacy Commissioner of Ontario (IPC) and the offices of the Attorney Generals of Ontario and Canada. I declined to consider the NCQ as I was not satisfied that it discloses a constitutional question to be answered.

[4] The appellant wrote to the IPC expressing his dissatisfaction with Order PO-4455. Citing section 18.01(b) of the IPC *Code of Procedure* (the *Code*)¹, the appellant states that there are jurisdictional defects in Order PO-4455 and asks that I address them. I have treated the appellant's letter as a request for reconsideration of Order PO-4455.

[5] For the reasons that follow, I am not satisfied that the appellant has established grounds for reconsidering Order PO-4455 under section 18.01 of the *Code* and deny the reconsideration request.

DISCUSSION:

[6] The sole issue in this decision is whether there are grounds for reconsideration of Order PO-4455 under section 18.01 of the *Code*.

[7] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18.01 sets out the grounds for reconsideration and reads:

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 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.

¹ Section 18 of the *Code* sets out the IPC's reconsideration process.

[8] Ordinarily, under the common-law principle of *functus officio*, once a decision-maker has determined a matter, he or she does not have jurisdiction to consider it further. I am *functus* unless the party requesting the reconsideration – in this case, the appellant – establishes one of the grounds in section 18.01 of the *Code*. The provisions in section 18.01 of the *Code* summarize the common law position acknowledging that a decision-maker can re-open a matter to reconsider it in certain limited circumstances.²

[9] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases. 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 Association of Architects*.³ With respect to the reconsideration request before him, he concluded that:

[T]he parties requesting reconsideration ... argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect ... In my view, 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 Trucks Ltd.*].⁴

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 [respondent] 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.

[10] Subsequent IPC orders have taken this approach, which I agree with and adopt in this reconsideration order.⁵

The appellant's reconsideration request

[11] The appellant cites section 18.01(b) of the *Code* as the basis for seeking reconsideration of Order PO-4455, namely on grounds of jurisdictional defects. The appellant submits that I acted without jurisdiction by failing to reproduce the arguments that he made in his representations during my inquiry in Appeal PA21-00545 and setting out my reasons for rejecting them.

[12] The appellant provides two reasons for asking me to address his dissatisfaction

² Order PO-2879-R.

³ [1989] 2 SCR 848 (S.C.C.).

⁴ 1996 CanLII 11795 (ONSC), 28 OR (3d) 67 (Div. Ct.).

⁵ See, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R,

with Order PO-4455. First, the appellant claims that it violates natural justice for failing to give reasons for rejecting his submissions. The second reason is that the order violates the “constitutional rule of law against ‘arbitrary’, ‘overbroad’, ‘grossly disproportionate’, ‘abuse of process’ statutory interpretation” to breach the *Charter* by giving the LHIN power to “lie” that the records he is seeking are not within its custody or control.

[13] The appellant cites sections of the *Act*⁶, section 52(1) of the *Constitution Act*, section 219 of the *Criminal Code* and several cases in his request for reconsideration.

[14] The appellant quotes three extracts from my analysis in Order PO-4455, which he lists as three “reasons why the adjudicator lie” and submits that in these portions of my analysis I “cover up” falsehoods in the LHIN’s response to the appellant’s request made under the *Act* and “defraud” him of records that prove the LHIN’s “lie”.

[15] The appellant also reproduces portions of his representations submitted during my inquiry into his appeal. Finally, the appellant provides extracts from 13 court decisions on the theme of procedural fairness and a decision maker’s duty to give reasons. These decisions date from the Supreme Court of Canada’s decision in *Baker v. Canada (Minister of Citizenship and Immigration)*⁷ in 1999 to the decision of the Superior Court of Newfoundland and Labrador in *Dichmont v. Newfoundland and Labrador (Government Services and Lands)*⁸ in 2015. Within these case extracts, which are reproduced without any analysis or argument, key phrases are emboldened for emphasis.

[16] This is a summary of the appellant’s request for reconsideration. I assure the appellant that though the request is not reproduced here in full, I have considered it in its entirety, together with Order PO-4455.

Analysis and findings

[17] For the reasons that follow, I find that the appellant has failed to establish defects in Order PO-4455, as contemplated by section 18.01 of the *Code*.

Breach of natural justice

[18] The appellant expresses his dissatisfaction with Order PO-4455 as arising from my failure to provide reasons for rejecting his submissions in breach of the rules of natural justice. I have therefore considered whether there is a fundamental defect in the adjudicative process as contemplated by section 18.01(a) of the *Code* because I failed to give reasons for my findings in Order PO-4455, as the appellant asserts.

⁶ Sections 1(a), 10(1), 11(1), 13(2), 24(1) and (2), 32, 33, 48(1), 50(1)(a) and 52(1)(a).

⁷ 1999 CanLII 699 (SCC).

⁸ 2015 CanLII 4857 (NLSC).

[19] From my review of Order PO-4455, I am satisfied that I provided reasons for my findings and for rejecting the appellant's submissions. In paragraphs [26] to [30] of Order PO-4455, I summarise the appellant's position that the records he is seeking are within the LHIN's custody or control. I acknowledge that the appellant's representations made during my inquiry are extensive, comprising more than 250 pages, and I explain that I have provided a summary but assure the appellant that I reviewed them in full. I am satisfied that I provided reasons for not reproducing the appellant's representations in their entirety.

[20] In Order PO-4455, I list the issues to be addressed in disposing of the appellant's appeal. I invited the parties to address these issues, which were set out in the Notices of Inquiry, in their representations.

[21] From my review of Order PO-4455, I am satisfied that I provided reasons for my findings on the issues that I identified:

- i. I accepted the LHIN's submission that it does not provide oversight of the HSP's clinical decision making. In paragraphs [32] to [35], I provide reasons for concluding that the SAA gave the LHIN oversight of the HSP in relation to funding alone and that there was no evidence before me that the LHIN's mandate included accountability for the HSP's clinical decision making.
- ii. I determined that the LHIN did not have possession of the records being sought by the appellant. In paragraphs [36] and [37], I explain that the appellant did not address the question of "possession" in his representations but maintained his position that the records are within the LHIN's custody.
- iii. I considered the two-part test in *National Defence* and additional factors to determine that the records being sought by the appellant are not within the LHIN's custody or control. In paragraphs [40] to [42], I explain why the appellant's submissions on the LHIN's "control" of the records did not assist my analysis. Similarly, in paragraph [44], I explain why I do not accept the appellant's submission regarding the LHIN's power to require production of the records.
- iv. I considered the LHIN's response to the appellant's request and found that it had discharged its duty under section 25(1) of the *Act*. In paragraphs [57] to [65], I consider the parties' representations and explain my finding that the LHIN's decision to forward the appellant's request was appropriate.
- v. In relation to the appellant's NCQ, in paragraphs [75] to [79], I provide a summary of the appellant's submissions in relation to the NCQ. In paragraphs [82] to [86], I explain why I am not satisfied that the NCQ discloses a constitutional question to be answered.

[22] The appellant's dissatisfaction with Order PO-4455 is based upon my failure to

give reasons for deciding “who is lying”. This is a reference to the appellant’s understanding that the issue before me in his appeal was to determine which party is “lying” in relation to the custody or control of the records that he seeks to access. The appellant’s framing of the appeal in these terms is misguided. The Notice of Inquiry sent to both parties during my inquiry identified the issues to be determined and the IPC’s jurisprudence relating to each issue, highlighting the factors relevant to deciding whether an institution has custody or control of records for the purposes of the access regime of the *Act*. The parties were invited to provide representations addressing the facts and issues set out in the Notice of Inquiry.

[23] In my view, the appellant’s dissatisfaction with Order PO-4455 is because I did not reproduce and address the issues that he identified as he organised them in his representations. I am not persuaded that the appellant has established that this was procedurally unfair so that it amounts to a breach of natural justice. As I have noted, the issues to be determined in the appellant’s appeal were identified in the Notice of Inquiry that was sent to him and he was provided with the LHIN’s representations and invited to submit representations addressing the issues and responding to the LHIN’s position. I am satisfied that I provided the appellant with notice regarding the issues that I identified were to be decided and an opportunity to make submissions addressing them.

[24] In Order PO-4455, I set out the issues, the parties’ positions and their representations and provide reasons for my findings. I explain why I summarised the appellant’s representations and explain when they did not assist me in making my findings.

[25] Accordingly, I find that the appellant has not established a breach of natural justice amounting to a defect in the adjudicative process in Order PO-4455 because I declined to adopt his framing of the issues in the appeal, reproduce them in my decision or provide reasons for not doing so.

Jurisdictional defect

[26] A jurisdictional defect in a decision under section 18.01(b) of the *Code* goes to whether an adjudicator had jurisdiction to make the decision under the *Act*. From my review of the appellant’s correspondence asking me to address jurisdictional defects in Order PO-4455, I am not satisfied that the appellant articulates how I lacked jurisdiction to dismiss his appeal.

[27] The appellant lists several sections of the *Act*⁹ and section 52(1) of the *Constitution Act* and simply asserts that I failed to “act within the jurisdiction of these sections”. Apart from listing these sections, the appellant provides no cogent argument as to how I did not have jurisdiction to reach my findings that disposed of the issues in

⁹ The appellant asserts that I failed to act within the jurisdiction of sections 1(a, i, ii, iii), 10(1), 11(1), 13(2), 24(1a, b)(2), 32, 33, 48(1, c, 1, d, e), 50(1a) and 52(1a) of the *Act*.

the appeal. None of the sections listed by the appellant were considered in his appeal.

[28] Similarly, although the appellant makes reference to the *Charter*, he provides no cogent argument for asserting a lack of jurisdiction in my decision not to address the NCQ that was filed during his appeal.

[29] As noted earlier, the IPC's reconsideration process is not intended to provide parties with a forum to re-argue their cases or to substantiate arguments made during the inquiry into the appeal.¹⁰ In my view, this is what the appellant seeks to achieve in his correspondence by asking me to "adjudicate" what he terms to be "jurisdictional defects" but which I consider to be a reiteration of the points made in his representations.

[30] From my review of the appellant's request, I am not satisfied that it amounts to more than an expression of disagreement with the findings I made in Order PO-4455 and an attempt to re-open them to obtain a more favourable outcome. I agree with the comments of Justice Sopinka in *Chandler* quoted above, that there are sound policy reasons for recognising the finality of proceedings in administrative tribunals and the appellant has not satisfied me that I should not do so in this instance.

[31] As I am not persuaded that the appellant has established a fundamental defect in the adjudication process, jurisdictional defect or any other error in Order PO-4455, as contemplated by the IPC's reconsideration process in section 18.01 of the *Code*, there is no basis for me to reconsider my decision. Accordingly, Order PO-4455 is final and the request for reconsideration is refused.

ORDER:

I deny the appellant's reconsideration request.

Original signed by: _____

Katherine Ball
Adjudicator

December 19, 2023

¹⁰ Order PO-3062-R.