

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4501-R

Appeal MA22-00245

City of Ottawa

Order MO-4452

March 19, 2024

Summary: The appellant submitted a request for reconsideration of Order MO-4452. In this reconsideration order, the adjudicator finds that the appellant has not established any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* and denies the reconsideration request.

Orders Considered: Orders PO-2538-R, PO-3062-R, and MO-4452.

Cases Considered: *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC); *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII); *Woolaston v. Canada (Minister of Manpower and Immigration)*, 1972 CanLII 3 (SCC).

OVERVIEW:

[1] This decision addresses the appellant's request for a reconsideration of Order MO-4452. That order involved an appeal with the threshold issue of whether the appellant assisted the City of Ottawa with clarifying or confirming the scope of his access request. During the inquiry, the appellant requested that I recuse myself and alleged bias on my part and that of the Information and Privacy Commissioner of Ontario (IPC) as an institution.

[2] As explained in Order MO-4452, I declined the appellant's request that I recuse myself and dismissed his bias allegations, with reasons, by letter.

[3] In Order MO-4452, I found that the appellant's representations did not establish that he assisted the City of Ottawa with clarifying or confirming the scope of his access request, so I dismissed the appeal without needing to address any other issues.

[4] The appellant contacted the IPC to express his dissatisfaction with Order MO-4452. He asked for a reconsideration of my decision.

[5] For the reasons that follow, I find that the appellant has not established grounds in section 18.01 of the *Code of Procedure* for reconsidering Order MO-4452 and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4452?

[6] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code of Procedure*. Section 18 reads, in part, that:

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.

[7] 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.¹ 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 of Procedure*. The provisions in section 18.01 of the *Code of Procedure* summarize the common law, acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances.² The Supreme Court of Canada has said that "there is a sound

¹ *Functus officio* is a common law principle which means that, once a decision-maker has determined a matter, he or she has no jurisdiction to consider it further.

² Order PO-2879-R.

policy basis for recognizing the finality of proceedings before administrative tribunals.”³

[8] The reconsideration process in section 18 of the IPC’s *Code of Procedure* is not intended to provide parties who disagree with a decision a forum to re-argue their case⁴ – whether or not they made those arguments during the inquiry.⁵ In other words, even if a party disagrees with an adjudicator’s interpretation of the facts or the legal conclusions drawn in a decision,⁶ the reconsideration process is not meant as a chance to convince the adjudicator to make a different decision.

[9] Therefore, for me to reconsider Order MO-4452, the appellant’s request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[10] Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. Past orders have found that various breaches of the rules of natural justice respecting procedural fairness will qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a).⁷ Examples of such breaches would include a failure to notify an affected party,⁸ or to invite sur-reply representations where new issues or evidence are provided in reply.⁹

[11] Section 18.01(b) relates to whether an adjudicator has the jurisdiction under the *Act* to make the order in question. An example of a jurisdictional defect would be if an adjudicator ordered a body that is not an institution under the *Act* to disclose records.

[12] Section 18.01(c), meanwhile, allows for reconsideration of an order that contains clerical or other similar errors or omissions.

[13] The appellant cites section 18.01(b). He also refers to natural justice, so I will consider section 18.01(a) of the *Code* too.

Analysis and findings

[14] Having reviewed the appellant’s reconsideration request, I find that he has not established that any of the section 18.01 grounds of the *Code* apply. I have reviewed his entire reconsideration request and I summarize the main points below.

³ *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC).

⁴ See Order PO-2538-R. Later IPC orders followed the approach in Order PO-2538-R (see, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R).

⁵ See Order PO-3602-R.

⁶ See Orders PO-2538-R and PO-3602-R. Examples of legal conclusions include an adjudicator’s finding that an exemption applies (or doesn’t apply), or that a search was reasonable in the circumstances (or not reasonable).

⁷ Order PO-4134-R.

⁸ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁹ Orders PO-2602-R and PO-2590-R.

[15] The appellant makes various remarks about the IPC and myself, similar to those which I had dismissed in response to his bias allegations. I find that repeating such unsubstantiated remarks in his reconsideration request does not establish bias in issuing Order MO-4452 (which would otherwise be a jurisdictional defect, under section 18.01(b) of the *Code*). To the extent that the appellant may be re-arguing this issue, that is similarly not a ground for reconsideration.

[16] I have considered the appellant's arguments as they relate to a violation of his constitutional rights, but I am unpersuaded that there is any basis that his constitutional rights were violated. Some of his *Charter* rights claims relate to arrests, but the constitutionality of those arrests is not governed by the *Act*, so these claims are not a basis on which to reconsider Order MO-4452 under the *Code*. To the extent that his arguments about the rule of law and sections 7 and 15 of the *Charter* were meant as challenges to Order MO-4452, they are unsubstantiated. That is, the appellant provides no evidence to support a rule of law claim, and I reject the argument that because the result of his appeal was unfavourable to him, that his right to life was violated [**“significant government inflicted harm (stress) to the mental state** of the individual,” emphasis the appellant's]. Likewise, he cites differential treatment under section 15 of the *Charter*, in reference to a racist mentality or historic treatment of Black people. However, there is no basis for concluding that my reasoning in Order MO-4452 reflected any such lens towards the appellant, such that bias could be engaged under section 18.01(b) of the *Code*. In my view, it does not honour the spirit or letter of section 15 of the *Charter* to baselessly claim that it has been violated in this way.

[17] The bulk of the appellant's reconsideration request relates to his view that Order MO-4452 lacked reasons, or sufficient reasons. The appellant asserts that I was required to set out ten points that he made in his representations and explain why I did not agree with each of them in my order. He also cites several court cases regarding adequacy of reasons in a decision, bolding portions of the court rulings that he set out in his reconsideration request. For example, he bolded a court's remarks in one case where the court found that there was an “absence of reasons,” and where it noted that the “provision of reasons is one of the indicators of the presence of natural justice” in another case. I understand the appellant to have highlighted these court cases as support for his view that I was required to set out his ten points and address each of them in Order MO-4452.

[18] The Supreme Court of Canada stated the following about reasons for a decision:

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make

an explicit finding on each constituent element, however subordinate, leading to its final conclusion [citation omitted].¹⁰

[19] Furthermore, the Supreme Court of Canada has long held that a decision-maker is presumed to have considered all the evidence before himself or herself.¹¹ A party wishing to rebut that presumption must provide clear and convincing evidence to do so.

[20] I find the analyses in these Supreme Court cases to be relevant and responsive to the appellant's arguments that MO-4452 should be reconsidered.

[21] My decision to not include certain representations or arguments in my decision is not a ground of reconsideration under section 18.01 of the *Code*. I find that the appellant's reconsideration request expresses disagreement with my assessment of the relevance (or irrelevance) of the evidence before me during the inquiry. However, as mentioned, disagreement with my analysis is not a ground of reconsideration. The appellant's dissatisfaction with my decision not to re-state in detail every part of his argument does not establish that I did not consider the arguments and issues before me. Therefore, I find that the appellant has not established that the adequacy of my reasons in Order MO-4452 is a fundamental defect in the adjudication process or a jurisdictional error, under section 18.01(a) or section 18.01(b) of the *Code*, respectively.

[22] In conclusion, the appellant has not established any of the grounds of reconsideration under the *Code*, and I therefore deny his reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original signed by: _____

Marian Sami
Adjudicator

_____ March 19, 2024

¹⁰ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 SCR 708.

¹¹ *Woolston v. Canada (Minister of Manpower and Immigration)*, 1972 CanLII 3 (SCC).