

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 136

A–M M, also known as
Jessica S

Complainant

and

Several named Public Hospitals, Community Care Access Centres¹, Medical Clinics,
Paramedic Services, Physicians, Physiotherapists and others

Respondents

Complaints HA14-36, HA14-37, HA14-38, HC14-33, HC14-34, HC14-35, HC14-36, HC14-37, HC14-38, HC14-39, HC14-57, HC14-58, HA19-00114, HA19-00115, HA19-00117, HA19-00118, HA19-00119, HA19-00120, HA19-00121, HA19-00122, HA19-00124, HA19-00125, HC19-00073, HC19-00074, HC19-00076, HC19-00077, HC19-00078, HC19-00079 and HC19-00080.

December 9, 2020

Summary: This decision addresses whether the complainant should be declared a vexatious litigant before the Information and Privacy Commissioner (IPC). The complainant has a long history of filing complaints with the IPC under the *Personal Health Information Protection Act*. She has demonstrated a persistent pattern of making complaints with no apparent basis; complaints that consist of bald allegations; and complaints that revisit matters previously

¹ Beginning in 2016, Community Care Access Centres (CCAC) were replaced by Local Health Integration Networks (LHIN). This decision will be provided to the corresponding LHIN for each named CCAC.

addressed by the IPC and found to be without merit. She has brought proceedings in multiple forums which all appear to relate to her contention that she has been misdiagnosed and her medical records have been falsified. She sends the IPC voluminous correspondence that is repetitive and incoherent and that cannot reasonably be reviewed by IPC staff.

In this decision, the adjudicator finds that the complainant meets the criteria for being a vexatious litigant. She dismisses her complaints as being frivolous, vexatious and/or an abuse of process and orders that she not be permitted to file any new complaints under the *Personal Health Information Protection Act* without first seeking permission in writing from this office in accordance with the terms set out below.

Statutes and IPC Procedures Considered: *Personal Health Information Protection Act, 2004*, sections 54(6), 54(8), 55(7), 55(8), 55(9)(b), 55(12), 56(1), 56(3), 57(3), 57(4), and 59; *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, sections 2.04, 4, 5, 31.02 and 31.03; *PHIPA Practice Direction 3: Publicly Released Decisions under the Personal Health Information Protection Act, 2004*; and *Courts of Justice Act* (Ontario), section 140.

Decisions Considered: PHIPA Decisions 36, 37, 39, 43, 47 and 91.

Cases Considered: *McKee v. McKee*, 2018 ONSC 4948; *Re Lang Michener and Fabian*, 1987 CanLII 172 (ON SC); *Dobson v. Green*, 2012 ONSC 4432 (CanLII); *Susin v. Susin*, 2009 ONCA 231; *Hicks v. St-Pierre*, 2019 HRTO 146; *Sajatovic v. McCarthy Tétrault*, 2018 HRTO 1557; *Hiamey v. Conseil scolaire de district Catholique Centre-Sud*, 2012 HRTO 1331 (CanLII); *Bishop v. Bishop*, 2011 ONCA 211, leave to appeal dismissed [2011] S.C.C.A. No. 239, *Finney v. Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII), *Blair v. Consolidated Enfield Corp.*, [1995] 4 SCR 5, *Howie, Sacks, & Henry LLP v. Wei Chen*, 2015 ONSC 2501, *Howie, Sacks & Henry LLP v. Chen*, 2016 ONCA 213, leave to appeal refused [2016] S.C.C.A. No. 211.

OVERVIEW:

[1] This decision addresses whether the complainant should be declared a vexatious litigant by the Information and Privacy Commissioner (IPC, or this office) and whether her complaint files under the *Personal Health Information Protection Act, 2004* (*PHIPA* or the *Act*) should be closed as frivolous, vexatious and/or an abuse of process.

[2] The complainant has a long history with the IPC, beginning with several *PHIPA* complaints she filed in 2014. As I will explain in more detail below, the particulars of the complainant's *PHIPA* complaints and her behaviour can be summarized as follows:

- The complainant has demonstrated a persistent pattern of making complaints under *PHIPA* where she has not set out the basis for her complaint. In particular, in relation to her access and correction complaints, it is impossible, by and large, to tell which access or correction decision(s), if any, of the respondents her complaint(s) relate to, and/or what access or correction request(s) the respondent's decision(s) relate to;

- It is evident that the vast majority of her complaints cannot succeed because they consist of bald allegations;
- Some of her complaints are a clear attempt to revisit matters previously addressed by this office, where her claims were found to be without merit;
- She has brought proceedings in multiple forums which appear to all relate to her contention that she has been misdiagnosed and her medical records have been falsified; and
- The complainant sends voluminous repetitive and incoherent correspondence to this office which cannot reasonably be reviewed by IPC staff.

[3] On September 25, 2020, I wrote the complainant a lengthy preliminary assessment letter, advising her that based on my review of the file materials, my preliminary view was that she should be declared a vexatious litigant and her complaint files under *PHIPA* should be closed as frivolous, vexatious and an abuse of process. I invited her to provide written submissions on my preliminary assessment and to explain why any or all of her complaints should proceed to the review stage of the complaint process and should not be dismissed as being frivolous, vexatious and/or an abuse of process. I further invited her to provide submissions on the terms of my proposed decision.

[4] The complainant submitted 100 pages of correspondence in response to my preliminary assessment letter.² She did not, in any coherent fashion, address any of the issues that I asked her to address. While it is difficult to know what the complainant's correspondence is intended to address, it appears she is repeating many of the assertions in her various complaints with this office. This is a generous reading of her material, for it consists almost entirely of sentence fragments in quotation marks. Much of the handwriting is, unfortunately, indecipherable.

[5] I did not find it necessary to seek submissions from any of the respondents.

[6] In this decision, I find that the complainant meets the criteria for being a vexatious litigant. I dismiss her complaints³ as being frivolous, vexatious and/or an abuse of process and I order that she not be permitted to file any new *PHIPA* complaints without first seeking permission in writing from this office in accordance with the terms set out below.

² The IPC has received additional correspondence over and above this, but it is not clear whether it is a response to my preliminary assessment letter or whether it consists of additional complaints.

³ Her complaints include the matters assigned the file numbers above and the *PHIPA* complaints filed by her but not assigned a file number.

[7] The background to this matter and the reasons for my determinations follow.

Identifying the Complainant in this decision

[8] The IPC issues practice directions pursuant to section 2.06 of its Code of Procedure for Matters under the Personal Health Information Protection Act, 2004 (Code). While the IPC's PHIPA Practice Direction 3: Publicly Released Decisions under the Personal Health Information Protection Act, 2004 states that complainants are not named in PHIPA decisions, section 2.04 of the Code allows the IPC, in its discretion, to depart from any procedure in the Code where it is just and appropriate to do so.

[9] In my view, this is a case where it is just and appropriate to do so. The value to the health care sector of being put on notice that the complainant has been declared a vexatious litigant before the IPC outweighs the complainant's interest in not being identified. A decision that contains her name in full will be made available to all of the named respondents in her multiple complaints, as well as any other health care provider with a legitimate interest in this matter. However, I will only refer to the complainant as "A-M M, also known as Jessica S" in the decision that will be posted on the IPC's website and sent to CanLII (the Canadian Legal Information Institute) for publication.

[10] To further protect the complainant's privacy, I have not included any details of her diagnoses, symptoms or other medical information in this decision.

[11] In my preliminary assessment letter to the complainant, I informed her that I intended my final decision in this matter to be a public decision, and that I would name her in the public decision. I invited the complainant to state her views on my naming her in this decision. The complainant's response did not address this issue.

DISCUSSION:

Relevant Statutory and Procedural Sections

[12] As the adjudicator assigned to these complaints, I have the authority to decide whether or not this office should conduct a review of them pursuant to sections 57(3) and (4) of *PHIPA*. These sections state:

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith.

[13] The *Act* also grants the IPC the authority to make rules (section 59). One rule is found in section 31.02 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, (the Code) which states:

Where the IPC finds that a Complainant has persistently instituted vexatious Complaints or conducted Complaints in a vexatious manner, the IPC may find that Complainant to be a vexatious litigant. Where a Complainant is found to be a vexatious litigant, the IPC may, at any stage of the IPC's processes, close Complaints made by that Complainant as an abuse of process, and/or require that Complainant to obtain permission from the IPC to make further Complaints or take further steps in Complaints, subject to any conditions imposed by the IPC.

General background

[14] Beginning in 2014, the complainant has sent this office vast quantities of correspondence relating to her concerns about various health information custodians (custodians).⁴ On April 23, 2014 alone, the complainant submitted thirteen complaints relating to thirteen different custodians. The IPC's Registrar told the complainant in an

⁴ I make no finding at this time about whether the respondents are all health information custodians within the meaning of section 3(1) of the *Act*, though it appears that the majority or all of them are. For ease of reference, I will refer to them as custodians.

April 25, 2014 letter that:

The Tribunal Services Department of the IPC must ensure that it provides all persons filing appeals or complaints under the legislation it administers with acceptable service within a reasonable time period, while providing customer service to persons filing large number of appeals or complaints at one time. In order to meet our obligations, the Tribunal Services Department will place limits on the number of files that will be processed at a time for individuals/groups who submit large numbers of files or when there are many files relating to the same subject matter.

Therefore, this is to advise you that we will only process 2 of your open files at a time. All other files will be placed in an inactive status in the order in which they were/are received. When an active file is closed and there is only one active file remaining, the next non-active file will be activated for processing.

[15] The complainant continued to send additional complaints to the IPC. By letter dated July 2, 2014, the Registrar told the complainant that for the same reasons mentioned in his April 25, 2014 letter, he would not be opening any additional complaints until the complainant's existing 19 complaints (the total of the complainant's complaints at that time) had been processed.

[16] The IPC continued to process the complainant's complaints in sequence. In five privacy complaints the complainant filed with this office (Complaints HC14-28, 29, 30, 31, and 32), she claimed that the custodian had stolen, inappropriately accessed and/or altered her medical records. In each case, the matter was dismissed by the IPC's intake staff when the complainant did not provide any evidence to support her assertions. As explained in more detail below, some of the complaints before me are a clear attempt to revisit matters addressed in these now-closed files.

[17] The complainant's three access/correction files (Complaints HA14-27, 28 and 29) were also dismissed at the intake stage by decision letter when the complainant did not respond to the intake analyst's preliminary assessments that the complainant's complaints did not warrant further review under *PHIPA*.⁵ The complainant's contention in each matter was that the custodian had altered or replaced her medical records with someone else's record. For example, in Complaint HA14-28, the custodian advised the intake analyst that the complainant's requests for correction relate to her belief that her health records have been stolen, are not from her body, and have been altered. In addition, the complainant disputed most diagnoses. The intake analyst advised the

⁵ The information I have before me with respect to Complaints HC14-28, 29, 30, 31 and 32, and HA-27, 28 and 29 is the letters of the intake analysts.

complainant of the custodian's position in his preliminary assessment letter to the complainant, but the complainant did not respond.

[18] The complainant persisted in sending the IPC an extraordinarily high volume of correspondence. After several conversations with IPC staff in 2015, it became apparent that the complainant had visited multiple health care providers, received her health records through access requests and then disputed the contents of those records. The complainant's main complaint was that the records were not accurate and that they related to another person, or were somehow not related to her body.⁶

[19] On July 13, 2015, the Registrar wrote to the complainant as follows:

You have continued to send many additional complaints to the IPC. I will not be opening any additional complaints until we have processed the files that have already been opened.

I have been advised by our staff at reception that you place an unreasonable amount of phone calls and voice messages with respect to your complaints. In addition, you have placed a large number of calls and voicemails to me that are aggressive and abusive. The manner in which you have chosen to communicate with this office is inappropriate, wasteful of the resources of our agency and does nothing to further your concerns.

[20] In the same letter, the Registrar told the complainant that she was not to phone the IPC, that any communication with this office shall be in writing only, and that written communication considered inappropriate and repetitive may not be responded to.

[21] Again, however, the complainant persisted in sending this office an extraordinarily high volume of correspondence and complaints. As I explain in more detail below, the complainant's correspondence is not only voluminous, but also highly disorganized and confusing. In most cases, it is not possible to isolate one complaint from the next, or to even separate out the custodians against whom the complainant has complained. However, IPC intake staff have, to the extent reasonably possible, attempted to separate some of the complainant's correspondence into files, with each file number relating to a different custodian.⁷ These files have been streamed directly to adjudication and assigned to me.

⁶ For example, in the complainant's conversations with IPC staff relating to Complaint HC14-31.

⁷ These are the complaint numbers in the header of this decision.

Nature and volume of material the complainant has sent to the IPC

[22] The complaint files before me contain approximately 5,000 to 6,000 pages of correspondence from the complainant. The materials are very unclear. Some of the complainant's correspondence appears to relate to decisions made by the respondents in response to requests the complainant has made to them under *PHIPA* for access to, or correction of, records of the complainant's personal health information.⁸ Other correspondence does not appear to relate to any access or correction decision of a respondent, but rather, sets out a variety of general concerns relating to the care the complainant has received, and what the complainant sees as numerous errors in the medical records relating to her. The complainant also states that various health professionals have shared with one another false information about her health issues over the internet and without the complainant's consent.

[23] Some of the complainant's correspondence includes an IPC complaint form, while much of it does not. Much of the complainant's correspondence attaches other correspondence that the complainant has sent either to this office, to one of the respondents, or elsewhere, the relevance of which is not explained in the complainant's letters to the IPC. In most cases, it is impossible to match the complainant's correspondence to this office with an access or correction decision of one of the respondents (the custodian's decision that is the subject of the complaint to the IPC), if such a decision exists. Even where a decision of the custodian is provided, the complainant has not provided a copy of the access or correction request she submitted to the custodian. Many of the complainant's letters are 50 pages or more in length.

[24] In addition to the 5,000-6,000 pages of material that has been included in the files opened by IPC intake staff, the IPC has received a further 4,000 or so pages of correspondence from her. In many cases, it is entirely unclear why the complainant wrote to the IPC.

[25] These additional materials include a 183-page statement of claim the complainant apparently issued against approximately 40 custodians in the Superior Court of Justice. She has also provided copies of various materials filed in the Court by defendants in an action or actions brought by her. These include materials in support of the defendants' application under section 140 of the *Courts of Justice Act* to have the complainant declared a vexatious litigant, as well as the Order of the Superior Court of Justice that declared the complainant a vexatious litigant.⁹ From the materials the complainant has filed, it is also evident that, prior to that court order, one or more of

⁸ However, in most cases, the complainant has not provided any clear indication of what her access or correction request was or what the custodian's decision in response to an access or correction request was.

⁹ Order of Justice C.F. de Sa dated October 6, 2017 in Court File Numbers 124/17, 144/17, 168/17.

the complainant's court actions was dismissed on the basis that it was without merit, had no reasonable prospect of success, and was frivolous or vexatious or an abuse of process.

[26] The materials also include correspondence relating to her closed files with this office. I address this below under "Revisiting Matters Previously Decided".

[27] As an example of the nature of the material the complainant habitually files with this office, I refer to PHIPA Decision 91. In that decision, I declined to continue my review of the complainant's complaint relating to a public hospital's refusal to respond to any more of the complainant's requests for access to or correction of the complainant's health records. The background to my decision not to continue with the review was set out as follows in that decision:

[3] I decided to conduct a review of the complaint and began my review by sending a Notice of Review to the hospital, inviting its submissions on the issues raised by the complaint, including the nature of the complainant's request which led to the [hospital's] June 7, 2017 [decision] letter and whether the hospital was entitled to refuse the complainant's request on the grounds that it is frivolous or vexatious.

[4] The hospital provided written representations in response. After reviewing these representations, I sent the complainant a letter dated October 24, 2018 in which I requested that she send me only a copy of the access or correction request that resulted in the hospital's June 7, 2017 letter, and nothing further. In response, the complainant sent in approximately 150 pages of material, mostly consisting of letters from the complainant to this office.

[5] After reviewing this material, it was not evident to me that it contained the access or correction request leading to the hospital's June 7, 2017 letter.

[28] I concluded that I should not continue with the review, stating:

[10] In this case, it appears that the hospital refused to grant a request for access or correction on the grounds that the request was frivolous or vexatious pursuant to either section 54(6) (which addresses access requests) or 55(6) (which addresses correction requests) of *PHIPA*. In the usual case, the issue to be decided would be whether the health information custodian has demonstrated that there are reasonable grounds to believe this is the case.

[11] However, in the case at hand, neither the hospital nor the complainant has identified what request the complainant made that resulted in the hospital's June 7, 2017 letter. While I understand that the

complainant has wide-ranging concerns about the hospital's responses to her various requests, the complainant's stated requirement that I consider all matters relating to her requests to the hospital did not assist me in identifying what request the hospital was addressing in its June 7, 2017 letter.

[12] Without the request before me, it is not possible for me to make a determination as to whether the hospital had reasonable grounds to determine that the request was frivolous or vexatious. I also note that the appropriate order in cases where this office does not uphold a custodian's determination that a request is frivolous, vexatious or made in bad faith is to order the custodian to issue a decision in response to the request under *PHIPA*. In this case, I would not be able to make such an order, because the request at issue has not been identified.

[13] As a result, I maintain my preliminary determination that without knowing what the request was, there are no reasonable grounds to continue with a review of this complaint.

[29] The correspondence in the complaint files before me, and the correspondence in the additional 4,000 pages of material, is of a similar nature. The complainant's correspondence, for the most part, has no organizing principle. She habitually fails to file a complaint that adequately identifies any custodian's decision it relates to, and any access or correction request that the decision addresses. The IPC's Complaint Form, which the complainant had access to and which she filed in some instances, clearly states that a complainant must provide a copy of the complainant's access or correction request, as well as a copy of the custodian's decision. Similarly, the complainant's apparent privacy complaints (about custodians cyberstalking/emailing each other about her) appear to consist of bare assertions that do not contain the minimum amount of information necessary to process the complaint, including the "what, when, who, how, where and why" required by the IPC's complaint form for such matters.¹⁰

Nature of the complainant's complaints and why the overwhelming majority of them cannot succeed

[30] While the complainant's correspondence is highly disorganized, non-specific, and confusing, some patterns appear.

[31] The complainant's correspondence refers to many concerns that are outside the

¹⁰ Sections 4 and 5 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, which applies to any complaints submitted after March 15, 2017, also set out the requirements for filing a written notice to the IPC of a complaint. However, I appreciate that this *Code* did not come into force until March 15, 2017 and the complainant's complaints date back to 2014.

jurisdiction of this office. An individual is entitled pursuant to sections 54(8), 55(7), 55(12), 56(1) and 56(3) of the *Act* to complain to the IPC about a custodian's response to an access or correction request, or a contravention of the *Act* by any person. The IPC does not have jurisdiction to address a complaint about the care given to the complainant by custodians, or other professional obligations unrelated to the statutes administered by the IPC. An example of such a complaint is the June 11, 2014 correspondence the complainant sent to this office (filed in Complaint HA19-00119), where the complainant refers, in part, to her family doctor's terminating the doctor-patient relationship after the complainant reported the physician to the College of Physicians and Surgeons of Ontario. The complainant's letter reads in part:

I received this registered letter from [the family doctor] that she is no longer will be my family doctor, due to me lodging a complaint on her, to College of Physicians + Surgeons, Complaint + Resolution Departments... Being like the rest of the Doctors I reported to College of Physicians + Surgeons Complaints Dept, claiming I had [specified medical condition] test results, [lying] to me, thinking I am Dumb + Stupid. I Received in the Mail from [the family doctor] – which take Notice – [various diagnoses] that I DO NOT Have... I DID NOT sign Release of Information Forms with [the clinic] to get all of this 100% false information about me off the internet, from [another doctor], cyber-bullying my Mental, Physical, Health on the Internet, to every Doctor, everywhere about me having [specified] Illnesses, And I have "NO" [specified] Illnesses, and + "NO" [specified] Disorders. I will never find a Doctor to believe me that I have serious internal injuries, + "NO" serious [specified] Illnesses, "NO" [specified] Disorder... I am trying get the Police involved as I think [a custodian's Privacy Officer] should be calling the Police, as there was a theft from my Health Record at the [named custodian]. I wasn't to report to Police there was a theft of my Health Records, My Urine Test Results, stolen from my Health Records ...

[32] Most of the complainant's remaining complaints about the respondents appear to fall into the following two categories:

1. The complainant states that the respondents have altered her records of personal health information. Related to this are her statements that records of various diagnostic imaging and other laboratory results provided to the complainant in response to her access requests are not "her body" or not "her internal body".
2. The complainant disagrees with the diagnoses of her medical condition(s) made by the health care providers referenced in the complainant's materials.

[33] Given the sheer volume of correspondence that the complainant has sent to this office, I cannot begin to set out every one of her allegations that the respondents have falsified records of her personal health information and/or that they have misdiagnosed

her. Some examples are:

- Complaint HA19-00124: the complainant's Complaint Form reads in part, "To get all of my corrections done to my records that have 100% been altered."
- Complaint HA19-00124: the complainant's Request to Correct Personal Health Information reads in part, "Filled up with [specified medical condition] – should have read filled up [specified substance] in my whole [specified body] area."
- Complaint HA19-00120: the complainant's Request to Correct Personal Health Information reads in part, "Altered my Personal Health Information – [six specified diagnoses] – Altered Blood Tests Results – Altered Urine Tests Results I DO NOT have [specified] Illness, I DO NOT have [specified illness]– I DO NOT have [specified illness].... All of my Diagnostic Imaging has been altered in my Health Records everywhere. I DID NOT state [specified symptom]. Which is 100% false information – 100% altered information by this R .Nurse. On this record – I would have told this R. Nurse – I have [various symptoms]. from my fall on [named custodian's] property. My [body part] ruptured at [custodian's] . recovery room .. after I had my [specified medical procedure].... [specified symptoms].... Comments: Claims very difficult to triage – patient insistent that she was misdiagnosed in Hospital and refuse to go back. Yes I am very angry – I have been in pain and suffering since Nov 6 2013 and Physically mentally emotionally, psychologically, financially abused by Doctors and ER Nurses which has traumatized me. With my list of all of Diagnoses from Doctors – with "NO" medical evidence. Just altered records, all altered diagnostic Imaging, altered Blood, Urine, Tests Results in my Health Records to support all of the Diagnosis."
- Complaint HA19-00120: another Request to Correct personal health Information: "And the reports in my Health Records at [named custodian]....are bogus and or some body else's internal body "NOT" my internal body."

[34] The complainant's unsupported allegations that most or all of the respondents have altered records of her personal health information cannot succeed. While I will leave open the possibility for the complainant to argue this in any given future complaint, based on proper evidence,¹¹ she cannot succeed by repeatedly making the same bald claim that the custodians against whom she has levelled this accusation have altered her medical records. She did not provide any evidence to support these allegations in response to my preliminary assessment letter.

[35] Equally unable to succeed is the complainant's bald allegation, set out repeatedly in her letters, that various diagnostic imaging or other laboratory records that bear her

¹¹ See the order provisions below.

name are in fact about a body other than hers. Again, leaving it open for the complainant to argue this in any given future complaint, based on proper evidence, her unsupported and repeated assertions that diagnostic imaging from a variety of sources, all of which bears her name, is not about her body, cannot succeed.

[36] With respect to the complainant's disagreement with the diagnoses she has received, the *Act* and IPC decisions that have applied the *Act* make it clear that disagreement with a custodian's diagnosis made in good faith is not a basis for correction of a record. Section 55(8) of the *Act* states:

The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[37] Section 55(9)(b) of the *Act* states:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

...

It consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[38] Previous IPC decisions have consistently found that where a complainant's requested correction amounts to a disagreement with the custodian's diagnosis made in good faith, the requested correction should not be granted.¹² I agree with the reasoning in those decisions and will apply it here.

[39] In my view, the complainant's repeated bald assertions that all or almost all of the respondents have misdiagnosed her do not even approach the requirement to show that these diagnoses (i.e., professional opinions) were made in bad faith. The onus is on the complainant to demonstrate bad faith in these circumstances.¹³ The same applies to professional observations.

[40] Some of the complainant's correspondence also alleges that various custodians have breached her privacy by emailing each other with false information about her health conditions. As an example, one of the complainant's letters in Complaint HC19-

¹² PHIPA Decisions 36, 37, 39, 43, 47 and others.

¹³ *Finney v. Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII); *Blair v. Consolidated Enfield Corp.*, [1995] 4 SCR 5.

00079 states in part:

RN or RNS illegally email [named custodian] with that falsified Personal Health Information to get that falsified Personal Health Information illegally from [named custodian]. I signed "NO" Consent Forms with [named custodian] to release that falsified Personal Health Information to [named custodian]. .. I have no privacy nowhere! As I am cyber bullied on the internet by Doctors + Nurses, Physiotherapists, + Occupational Therapist- with 100% falsified my Personal health information – out on the internet illegally, by emailing each other illegally.

[41] It is not necessarily plain and obvious that every one of these privacy complaints has no merit on its face. However, as will be seen below under "Summary", I have decided that they too must be dismissed.

[42] As I note above, in addition to the 5,000-6,000 pages of correspondence that have been assigned the above file numbers, the complainant has sent this office an additional 4,000 or so pages of correspondence. In a box received on March 20, 2018, the complainant sent about 2,000 pages of material ostensibly relating to a named custodian, though much of it relates to other custodians. The material does not clearly state what she is asking the IPC to do, although one can infer from a review of it that the complainant disagrees with the contents of her medical records from 2015 to 2018. The first batch of pages, dated March 17, 2018, states in part:

"Pages [named custodian] ER Dept Falsified fabricated Heath Records my Personal Health Information + Information About myself WITH A LOT OF MISSING IMPORTANT PERSONAL HEALTH INFORMATION THAT WAS ALL DELIBERATELY ILLEGALLY + DECEITFULLY WITHHELD OFF ALL OF MY VISITS TO [named custodian] er Dept...

[43] Included in the box are approximately 150 Request to Correct Personal Health Information forms that the complainant states she sent to a named custodian. The requests relate to a wide variety of medical records. A few examples of what the complainant has written on the forms are:

Corrections – inaccurate information on [named custodian] [named procedure] Operative Note for Jan 30/2014 by [doctor] claims – The patient tolerated the procedure well 100% falsified – as before procedure on Jan 29/30/2014 at [a named custodian] ER Dept I [had various symptoms and conditions]. ... My original record has been stolen out of my Health Records at [a named custodian] + then replaced with falsified record...

Correction – inaccurate information on [a named custodian] – Final Note Date Sept. 19/1998 + DT – Oct 29/1998 by [doctor] states – There is some background history of [specified] disorder – as stated on my

Assessment at [a named custodian] In-Patient .. Health – on letter Date April 11/1998 by [a named doctor] - Practice in [named medical specialty] “NO” Mention of [specific disorder] – “NO Mention of [specific disorder] This letter Date April 1/1998 has been stolen out of my Health Records at [a named custodian]...

[44] To protect the complainant’s privacy, I have omitted her graphic descriptions of her apparent symptoms.

[45] The remainder of the materials in this box are medical records and long letters the complainant wrote to a custodian and this office. Again, due to the volume of the complainant’s correspondence, I cannot set it all out here. A few excerpts are:

To have [a named custodian] ER Dept. All Doctor, All Nurse All charged, with Deliberately illegally + deceitfully falsifying, fabricating, my Personal Health Information + information about myself on All Health Records... Going back to 1997 + ongoing.

All of my Life threatening serious internal injuries since Nov. 6/2013 from my Fall on [named custodian]’s property, duty to a hold on [named custodian]’s property on Nov. 6/2013. IS ALL Deliberately illegally + deceitfully, stolen out of my Health Records at [named custodian] Health Records Dept.

Also on letter Date – Dec. 19/2017 from [a named individual] – Chief Privacy Officer for [a named custodian] which states: “THE FAXES CONTAIN NUMEROUS REQUESTS + MULTIPLE PAGES OF HANDWRITTEN DOCUMENTATION WHICH DO NOT CLEARLY OUTLINE THE COMPLAINANT’S REQUEST”. ... ALSO on letter Date-Dec 19/2017 from [a named individual] – Chief Privacy Officer for [a named custodian] – which states: “IF THE COMPLAINANT WISH TO SUBMIT A REVISED CORRECTION REQUEST OR REQUEST FOR INFORMATION I ASK THAT THE COMPLAINANT PROVIDE A CONCISE STATEMENT DETAILING THE COMPLAINANT’S REQUEST”. (Where this is ALL 100% falsified, fabricated wrong information about PHI.

I am writing my letter to Inform the you as with “All of the Criminal Decision, behaviours, action + tactics “COMMITTING FRAUD” “COMMITTING CRIMES”, going on at [named custodian].

[46] Again, the complainant is asserting that custodians have falsified or stolen her records, and takes issue with their diagnoses of her condition(s). For the reasons I previously stated, I am of the view that these claims cannot succeed.

Revisiting matters previously decided

[47] Included in the 4,000 or so pages of correspondence not assigned a new file number are approximately 600 pages of materials received in 2017 and 2018, which relate to Complaints HA14-27, HA14-28 and HA14-29. As I noted above, these correction complaints were all dismissed at the intake stage of the complaints process. From my review of the complainant's correspondence, which was submitted after she was notified of the files having been closed, it is clear that it is an attempt to revisit the subject matter of the closed complaint files.¹⁴

[48] Moreover, three of the complaint files before me, Complaints HA19-00114, HA19-00124 and HC19-00073, relate to custodians that were the subject of complaints previously dismissed by this office: Complaints HC14-28, HC14-29, and HC14-32. From my review of the large amount of materials the complainant has submitted for the files before me, all of which address wide-ranging concerns with the custodians, it is clear that they are an attempt, at least in part, to revisit matters that were addressed in these closed files.

Other recent correspondence from the complainant

[49] The complainant continues to send this office correspondence relating to her health records, and continues to assert that her records have been falsified and her diagnoses are wrong. For example, in the complainant's letter of June 25, 2018, the overall purpose of which is not clear to me, she again states that certain health records are falsified. For example:

Falsified, fabricated Chest + Abd/XRays Reports For July 11/2017 – by
[doctor] "WHICH WAS NOT MY INTERNAL BODY ON JULY 11/12/2017 at
[a named custodian] ER DEPT.

[50] The remainder of the approximately 50 pages of this letter continues in a similar vein; she clearly disagrees with the contents of her medical records held by a particular custodian.

[51] The complainant's letters of January 31, 2020 (26 pages), February 11, 2020 (43 pages) and March 6, 2020 (30 pages) are largely illegible or incomprehensible, in the sense that I cannot decipher what the complainant is asking the IPC to do. While they appear to relate to matters under the *Freedom of Information and Protection of Privacy*

¹⁴ They are simple repetitions of her arguments with no indication that there are any legitimate grounds for requesting a reconsideration of the decisions.

*Act*¹⁵ and not *PHIPA*, the complainant veers off into matters that appear to be *PHIPA*-related. For example, the complainant's January 31 letter includes this passage:

"IN REGARDS". "TO ALL CD'S". "IS TO BE WITH ALL DIAGNOSTIC IMAGINGS". "FROM MEDICAL HEALTH FACILITIES" TO BE FROM DIAGNOSTIC IMAGINGS LIBRARY". + INFO BE FROM STAFF". "ALL ACCORDING TO ALL OF MY RIGHTS". ... "[named custodian]".

[52] The complainant's March 6, 2020 letter appears to take issue with the services provided to her under a government program. The complainant's letter states in part as follows:

INFO TO BE ALL 100% TRUTHFUL INFORMATION = NOT [indecipherable]
ALL FALSIFIED ALL FABRICATED ALL MISSING ALL INFORMATIONS.

Vexatious litigants

[53] What constitutes a vexatious litigant has been discussed in prior court decisions and the principles have also been applied in some tribunal decisions. The decision of the Ontario Superior Court of Justice in *McKee v. McKee*,¹⁶ referencing the seminal case of *Re Lang Michener and Fabian*,¹⁷ sets out the following non-exhaustive list of characteristics of a vexatious proceeding:

- a. the bringing of one or more actions to determine an issue which has already been determined by a Court of competent jurisdiction constitutes a vexatious proceeding;
- b. where it is obvious that an action cannot succeed, or if the action would lead to no possible good or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- c. vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- d. it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and

¹⁵ This decision does not affect the current status of any of the matters the complainant has filed under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) or her appeal rights with respect to *FIPPA* matters.

¹⁶ 2018 ONSC 4948 at para. 26 [*McKee*].

¹⁷ 1987 CanLII 172 (ON SC).

supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

- e. in determining whether proceedings are vexatious, the Court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- f. the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious; and
- g. the respondent's conduct and persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[54] A party need not meet all of the above characteristics in order to be declared a vexatious litigant.¹⁸ As noted by K.L. Campbell J. in *Dobson v. Green*¹⁹, these principles have been consistently approved by appellate courts and applied by trial courts across Canada. In that case, the Court elaborated on the common characteristics shared by vexatious litigants:

Generally speaking, vexatious litigants often share common characteristics. They advance claims that are often manifestly without merit. They tend to ignore adverse rulings and procedural setbacks, such as costs orders against them. They may resort to multiple, repetitive proceedings, often against the same adversary. They will sometimes similarly engage others who present themselves as an obstacle in their path. They often launch court proceedings as if unconcerned about the financial resources invariably consumed by such actions. They tend to be litigants who, with persistence, abuse the court process for their own selfish and single-minded goals. They are typically self-represented litigants who seem intent, through a series of persistent and fruitless proceedings, on wearing down their opponents through an ongoing battle of attrition....²⁰

[55] The impact of a party's conduct on the scarce resources of the court is also one of the factors relevant to whether a party is a vexatious litigant. As the Court of Appeal

¹⁸ *McKee* at para. 31, referencing *Howie, Sacks, & Henry LLP v. Wei Chen*, 2015 ONSC 2501 at para 30, aff'd *Howie Sacks & Henry LLP v. Chen*, 2016 ONCA 213, leave to appeal refused [2016] S.C.C.A. No. 211 [*Howie*].

¹⁹ 2012 ONSC 4432 (CanLII) [*Dobson*].

²⁰ *Ibid* at para 7.

stated in *Susin v. Susin*:²¹

His conduct in this case is indicative of persistent and unwarranted pursuit of legal proceedings that are both meritless and frivolous. His conduct has resulted in enormous inconvenience and expense, over many, many years, to opposing litigants and in this era of strained court resources, he can no longer be permitted unrestrained access to the courts of Ontario.²²

[56] The courts have also stated, however, that the power to declare someone a vexatious litigant must be “exercised sparingly and with the greatest of care”.²³ In my view, both of these principles would apply equally to tribunals and the IPC in particular.

[57] Tribunals have issued similar orders to those issued by the courts, such as in two decisions of the Human Rights Tribunal of Ontario, in *Hicks v. St-Pierre*²⁴ and *Sajatovic v. McCarthy Tétrault*,²⁵ which also address the issue of abuse of process. In particular, I agree with the statement of the Human Rights Tribunal of Ontario in *Hiamey v. Conseil scolaire de district Catholique Centre-Sud*, referring to the above list of characteristics of vexatious litigants:

It is not necessary that all of these factors be present in order for an individual to be declared a vexatious litigant. In order to declare the applicant to be a vexatious litigant, I must be satisfied on an objective standard that the applicant has persistently and without reasonable grounds, instituted vexatious proceedings or conducted himself in a vexatious manner during the proceedings.²⁶

[58] While some of the factors considered by Ontario courts are not directly applicable to complaints before the IPC (such as unpaid costs awards), in my view these principles are otherwise generally applicable in the context of the IPC. I find that the complainant’s conduct, as described above, bears the hallmarks of that of a vexatious litigant and also amounts to an abuse of the IPC’s process. First, the complainant’s complaints, by and large, do not include a reference to the complainant’s access or correction request, or the decision of the custodian that the complainant is complaining about. In filing these types of complaints, the complainant has persistently failed to provide the IPC with the basic information and evidence it would need to process or adjudicate her complaints. Second, it is obvious that the vast majority of her

²¹ 2009 ONCA 231.

²² *Ibid* at para 1.

²³ *McKee* at para. 31, referencing *Howie* at para. 27, quoting with approval from *Dobson* at para. 6.

²⁴ 2019 HRTO 146.

²⁵ 2018 HRTO 1557.

²⁶ *Hiamey v. Conseil scolaire de district Catholique Centre-Sud*, 2012 HRTO 1331 (CanLII) at para. 28 [*Hiamey*].

complaints – her allegations that the respondents are stealing and/or altering her records, that her diagnostic imaging or other laboratory reports relate to someone else’s body, and that all the diagnoses she has received are incorrect – cannot succeed. Like the litigant in the *Hiamey* case, she is bombarding the IPC with repetitive correspondence making egregious claims.²⁷ Third, at least some of the complainant’s complaints are a clear attempt to revisit matters that were addressed in now-closed complaint files. Fourth, and in my view this is highly significant, the complainant’s conduct in sending the IPC thousands of pages of freeform correspondence is burdening the IPC and straining its resources.

[59] Finally, it would also appear that the complainant is bringing proceedings in multiple forums against the same custodians, and that these proceedings all relate to her belief that her diagnoses are wrong and her medical records are being altered. In *Bishop v. Bishop*,²⁸ the Court of Appeal affirmed that a court is entitled to consider a litigant’s conduct in non-judicial proceedings, because such conduct may constitute evidence from which a court could infer that court proceedings are not *bona fide* but, rather, the product of someone who is unreasonably obsessed with a cause and likely to pursue vexatious court proceedings on an indefinite basis unless stopped. In my view, a tribunal, and specifically the IPC, is likewise entitled to consider a party’s conduct in proceedings before other bodies to make similar inferences.

[60] In this regard, I note the complainant has already been declared a vexatious litigant in the Ontario Superior Court of Justice. Also, by the complainant’s own admission, she has complained to the College of Physicians and Surgeons of Ontario and the College of Nurses of Ontario, about various doctors and nurses with whose diagnoses and/or notes she disagrees. While the complainant’s claims before the courts and the various health professions colleges are not directly before me, they are evidence of her continuing pattern of behaviour in bringing proceedings against her health care providers in which she disputes their diagnoses and alleges that they have falsified her health records. The complainant is repeating to the IPC the various grounds and issues she has raised in other forums and in my view, she is likely to continue to do this unless stopped.

Summary

[61] For the above reasons, I conclude that the complainant’s persistent conduct in sending this office correspondence that:

²⁷ *Hiamey, supra*, at para. 31.

²⁸ 2011 ONCA 211, leave to appeal dismissed [2011] S.C.C.A. No. 239.

- does not adequately identify an access or correction decision that she is complaining of, and/or what access or correction request she made that led to the decision;
- consists of bald allegations that have no prospect of success;
- attempts to revisit matters addressed in closed complaints;
- forms part of a pattern of conduct of making the same complaints about her health care providers in multiple forums, including one (the Superior Court of Justice) that has declared the complainant a vexatious litigant in that forum; and
- overwhelms this office's capacity to process it due to its volume, repetitiveness, disorganization and lack of coherence amounts to vexatious conduct on her part.

[62] I conclude, therefore, that I ought not to conduct a review of any of the complainant's existing *PHIPA* complaints filed with this office, and that they should all be dismissed as frivolous and/or vexatious and an abuse of process. I am mindful that such a decision and order should only be made sparingly, with the greatest of care and in the clearest of cases. In my view, the complainant's conduct and these complaints meet these thresholds.

[63] I have also considered whether any of the complainant's complaints should be placed on hold rather than dismissed. While, as noted above, it is plain that the vast majority of her complaints cannot succeed, it is not necessarily plain and obvious that not one of her hundreds of complaints (for example, the complainant's privacy complaints referred to above in paragraphs 40-41) found in the vast volume of materials has any merit on its face. However, I have concluded that I should not allow any of the complainant's complaints to proceed, for the reason that they are buried in thousands of pages of correspondence from the complainant and they are typically conflated with her repeated assertions that her medical records have been falsified. In my view, it would present an unreasonable burden for IPC intake staff to pore through these materials to try to isolate any claims that might warrant further processing by the IPC. In my preliminary assessment letter, I informed the complainant of my intention to dismiss all of her complaints as vexatious and an abuse of process, and invited her to explain why any or all of them should proceed. Her response did not address this.

[64] This office has an obligation to serve all parties to complaints and appeals and it does not have unlimited resources to do so. It would be a tremendous drain on this office's resources, and a diversion from processing others' files, to work through the disorganized mass of material the complainant has filed in an attempt to see if there is any complaint that merits further processing by the IPC's intake department. In my view, it is not fair to this office or to parties in other matters for the IPC to attempt to do so. I also note that, as a practical matter, isolating one complaint from the next poses great challenges, given the manner in which the complainant has corresponded with this office.

ORDER:

For the above reasons, I order that:

- a. The complainant, A-M M, also known as Jessica S is declared to be a vexatious litigant before the IPC;
- b. The complaints in the file numbers listed above, and all additional *PHIPA* complaints that have been received but not assigned file numbers, are dismissed as frivolous and/or vexatious and an abuse of process;
- c. The complainant must obtain written leave of the IPC's Registrar to make any further complaints to the IPC under *PHIPA*;
- d. If the complainant seeks leave of the Registrar to make any such further complaints, she must include her intended complaint with her request for leave and include submissions that outline why the complaint is intended as a legitimate assertion of rights under *PHIPA*, is not frivolous or vexatious and will not result in an abuse of process. Any request for leave to the Registrar shall not exceed 15 pages in total, including enclosures and attachments. The Registrar will not consider any further complaints which fail to comply with the above requirements; and
- e. Where a request for leave complies with these requirements, the Registrar will consider whether leave should be granted. If such leave is refused, the complaint will not proceed and no review will be conducted under *PHIPA*. If leave is granted, the complaint will be streamed to an analyst in accordance with the IPC's processes and the complaint will be considered to have been filed with the IPC on the day the IPC receives the request for leave.

Original signed by: _____
Gillian Shaw
Senior Adjudicator

December 9, 2020 _____