

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 224

Complaint PA23-00397

PHIPA Decision 211

A public hospital

August 29, 2023

Summary: In PHIPA Decision 211, the adjudicator declined to conduct a review under *PHIPA* of a complaint arising from a public hospital's refusal to make the complainant's requested changes to certain hospital records, or (in the alternative) to circulate his statement of disagreement to certain individuals and groups within the hospital. Additionally, she found there was no reasonable basis for the complainant's claims that the hospital's actions breached his rights under the *Canadian Charter of Rights and Freedoms*. The complainant requested reconsideration of PHIPA Decision 211. In this decision, the adjudicator finds that the complainant has not established any ground for reconsideration of the decision. She accordingly denies his reconsideration request.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A, section 64(1).

Decisions Considered: PHIPA Decisions 25 and 211.

Cases Considered: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII).

OVERVIEW:

[1] In this decision, I consider the complainant's request for reconsideration of PHIPA Decision 211, in which I explained my reasons for declining to conduct a review

of his complaint against a public hospital under the *Personal Health Information Protection Act, 2004 (PHIPA)*. For the reasons that follow, I find the complainant has not established any ground for reconsideration of the decision. I thus deny his reconsideration request.

[2] PHIPA Decision 211 concerned a complaint about a public hospital's refusal to make the complainant's requested changes to certain hospital records made by hospital staff in the course of their interactions with him. The hospital had also refused the complainant's request to circulate his requested changes (or, in the alternative, a statement of his disagreement with the contents of the original records) to a number of individuals and groups within the hospital. During the IPC process, the complainant challenged the constitutionality of the hospital's actions, outlining his claims in a Notice of Constitutional Question served on the IPC and on the Attorneys-General of Ontario and Canada.

[3] In PHIPA Decision 211, I explained why there are no reasonable grounds to conduct a review of this matter under *PHIPA*. I accordingly dismissed the complaint.

[4] The complainant then made lengthy submissions to me asking that I reconsider PHIPA Decision 211. I summarize his submissions below. In brief, the complainant alleges that I acted without jurisdiction and violated principles of natural justice in adjudicating his complaint, primarily because of a failure to reproduce verbatim in the decision his voluminous representations in support of his complaint.

[5] For the reasons set out below, I deny the complainant's reconsideration request.

DISCUSSION:

Are any of the grounds for reconsideration present?

[6] Section 64(1) of *PHIPA* provides for reconsideration of orders made following a review under *PHIPA*. This section states:

After conducting a review under section 57 or 58 and making an order under subsection 61 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

[7] It is clear that section 64(1) of *PHIPA* does not apply to the complainant's request for reconsideration. In PHIPA Decision 211, I found no reasonable grounds to review the matters raised by the complainant, and thus I conducted no review and issued no order. Moreover, the complainant has not submitted any new facts or evidence of a material change in the circumstances relating to the subject-matter of his

complaint.

[8] In addition to the power under section 64(1) of *PHIPA*, the IPC has recognized its discretion to reconsider a decision on other grounds. These are set out in the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* (the *Code*), which governs IPC proceedings under *PHIPA*. Section 27.01 of the *Code* states:

The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:

- a) there is a fundamental defect in the adjudication process;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or
- d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

[9] In PHIPA Decision 25, the IPC recognized that the reconsideration power is not intended to provide a forum for re-arguing or substantiating arguments made (or to raise arguments not previously made) during a review, nor to address a party's mere disagreement with a decision or legal conclusion.¹ The adjudicator in PHIPA Decision 25 noted the Supreme Court's recognition of the sound policy basis for recognizing the finality of proceedings before administrative tribunals.²

[10] In deciding this matter, I have examined the entirety of the complainant's submissions in support of his reconsideration request, as well as the underlying decision (PHIPA Decision 211) and the materials he submitted in support of his complaint that led to the decision. At the outset, I wish to note that while the complainant provided lengthy submissions in support of his reconsideration request, I will refer only to relevant portions in this decision. I set out the same caveat a number of times in PHIPA Decision 211.³

¹ PHIPA Decision 25, citing Order PO-3558-R at paras 21-24. The adjudicator in PHIPA Decision 25 recognized that this order arose in the context of a different statute (the *Freedom of Information and Protection of Privacy Act*); she also noted, however, that the principles expressed in that order (and in the orders and decisions quoted there) are generally applicable to a request for reconsideration under *PHIPA*, while recognizing the different legislative context and the fact that *PHIPA* contains the power set out in section 64.

² Assistant Commissioner Sherry Liang cited Sopinka J. in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848, at 861.

³ Including at paras 6, 12, 45, 57, and 69.

[11] While the reconsideration request identifies three specific grounds for reconsideration (which I will summarize further below), I understand the complainant to be raising, as an overarching ground for his reconsideration request, an allegation that I violated the principles of natural justice by failing to provide adequate reasons, and/or by failing to properly consider his evidence in support of his position. The complainant cites two court decisions⁴ and states the following:

An honest adjudicator will reproduce Grounds verbatim and attempt to defeat them within the order with "reasons for its assessment of the competing views" "context of the evidence, the submissions ... and the history" "precise reasons for accepting ... evidence and rejecting ... evidence" "precisely what evidence he accepted and rejected" "substance of the matter" "Honest" "Reasons ... Principle Of Natural Justice" AND without violating the rule of law against "arbitrary," "overbroad" or over-narrow, "grossly disproportionate," "abuse of process" statutory interpretation rather than fraudulently conceal them because the adjudicator knows they are true.

[12] I have examined the 2008 and 2015 court decisions cited by the complainant, and I do not agree with his characterization of the conclusions to be drawn from them.

[13] More importantly, I observe that the Supreme Court of Canada has more recently confirmed that, in general, an administrative decisionmaker's reasons are entitled to deference, and a decisionmaker's failure to explicitly include in her decision "all the arguments, statutory provisions, jurisprudence or other details" is not, on its own, a basis to set the decision aside.⁵ In particular, it is not necessary for an administrative decisionmaker to "respond to every argument or line of possible analysis," or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion"⁶ in order to demonstrate that she has meaningfully accounted for the central issues and concerns raised by the parties—that she has "actually *listened* to the parties."⁷

[14] With these principles in mind, I have considered the complainant's submissions in support of his reconsideration request. They largely centre on my failure to have reproduced in full in PHIPA Decision 211 certain extracts from the complainant's

⁴ The complainant appears to be referring to *Dichmont v. Newfoundland and Labrador (Government Services and Lands)*, 2015 CanLII 4857 (NL SC), in which the Supreme Court of Newfoundland and Labrador set aside a decision of the provincial Human Rights Commission because of the Commission's failure to provide reasons. He also cites *R. v. R.E.M.*, 2008 SCC 51 (CanLII), a criminal matter in which the Supreme Court of Canada reinstated a trial judge's convictions after concluding that the trial judge's reasons (which a court of appeal had deemed deficient) were adequate.

⁵ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) (*Vavilov*), at para 91, affirming the Court's findings in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), at para 16.

⁶ *Vavilov*, at para 128, citing *Newfoundland and Labrador Nurses* at paras 25 and 16.

⁷ *Vavilov*, at para 127.

representations in support of his complaint against the hospital. He takes particular issue with my failure to have “explicitly reproduce[d]” the following portions of his representations: the full text of various sections of *PHIPA*; selected quotes from a 2005 Supreme Court of Canada decision considering the constitutionality, under the Quebec *Charter of Human Rights and Freedoms*, of certain provisions of Quebec legislation;⁸ and the entirety of the complainant’s evidence in support of his assertion that the hospital provides a particular service (contrary to a statement he wishes to have corrected in the records that indicates the hospital does not, in fact, provide such a service).

[15] I acknowledge that I did not itemize and address in PHIPA Decision 211 every argument the complainant raised in his voluminous representations. I do not agree, however, that my summaries of his arguments and evidence amounted to a “fraudulent misrepresentation” of the position advanced in his representations. In my adjudication of the matter resulting in PHIPA Decision 211, I considered the complainant’s submissions in their entirety, and I provided reasons for my findings that accounted for the central issues and concerns raised in those representations. It was not necessary for me to reproduce the particular extracts identified by the complainant to demonstrate that my findings were based on a rational chain of analysis, in view of all the information before me; this information included all the arguments and evidence put forward by the complainant. In this regard, I reject the complainant’s central premise that my failure to quote more extensively from his representations violated the principles of natural justice and warrants reconsideration of PHIPA Decision 211 on the ground of a fundamental defect in the adjudication process (section 27.01(a) of the *Code*) and/or some other jurisdictional defect (section 27.01(b) of the *Code*). I find no evidence for the claim that any such defect occurred.

[16] In addition to this general claim, the complainant identifies three other specific bases for his reconsideration request.

[17] The first is his objection to my finding that the records at issue are records of the complainant’s “personal health information” within the meaning of *PHIPA*, despite his assertion that they are not subject to *PHIPA* because the primary purpose of the records was not a health care purpose, but rather a “police criminal investigation” purpose. He quotes the following findings I made in paragraph 27 of the decision:

... These records of the complainant’s personal health information are held by the hospital in its capacity as a health information custodian within the meaning of section 3(1) of *PHIPA*. Thus, whatever the nature of the events that led to the complainant’s interactions with hospital staff, the records at issue (which arose from those interactions) are subject to *PHIPA*. In confirming this finding, I explicitly reject the complainant’s claim that the records are not subject to *PHIPA* because (he says) they

⁸ The complainant cited portions of *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 (CanLII).

document the hospital's refusal to provide a certain kind of health care to him. Even if true, this would not be relevant to my finding that *PHIPA* is the applicable statute.

[18] The complainant states that there is a lack of jurisdiction and violation of natural justice in my failure to have reproduced in full the definition of "health care" at section 2 of *PHIPA* and an exception, at section 4(4) of *PHIPA*, to the definition of "personal health information." He alleges that I violated the rule of law governing statutory interpretation by applying these sections in a manner that engenders racism. He also states that I failed to provide a rebuttal to his arguments about the primary purpose of the records.

[19] The second specific ground is an objection to my finding that the duty to correct in section 55(8) of *PHIPA* was not established in the circumstances. He quotes the following finding I made in paragraph 38 of the decision:

... The complainant's extensive submissions to the hospital (and provided to the IPC) do not establish a reasonable basis to believe that a particular kind of assessment is provided at the hospital, or that the records are otherwise incomplete or inaccurate within the meaning of section 55(8).

[20] The complainant states that there is a lack of jurisdiction and violation of natural justice in my having made findings without reproducing the entirety of his position on the issue. He submits that I failed to rebut his evidence that in his view establishes that the hospital's statements are false.

[21] The third specific ground is an objection to my finding that the complainant's Notice of Constitutional Question did not raise reasonable grounds to establish a breach of his rights under the *Canadian Charter of Rights and Freedoms*. He quotes the following from paragraphs 65 and 70 of the decision:

[In my correspondence to the complainant, I shared with him my preliminary view] that the claims set out in the Notice of Constitutional Question do not establish a breach of his *Charter* rights.

...

[I have considered the complainant's submissions on this issue. Even I were to accept the claim that the Notice of Constitutional Question was filed in time, I maintain my view that] the Notice does not raise reasonable grounds to establish a breach of the complainant's *Charter* rights. The additional representations filed by the complainant on this issue do not assist in this regard.

[22] The complainant states that there is a lack of jurisdiction and violation of natural justice in my having reached these conclusions without having reproduced and

“providing a rebuttal” to a Supreme Court of Canada decision he quoted in his representations (*Chaoulli v. Quebec (Attorney General)*, cited above). He also states that I failed to address his evidence of bad faith by hospital employees, and asserts that I have demonstrated a deliberate intent to defraud the *Freedom of Information and Protection of Privacy Act*.

[23] The three more specific grounds raised by the complainant do not establish a basis to reconsider PHIPA Decision 211. In the main, they allege a failure to have reproduced in the decision certain portions of his representations. As I have explained above, such failure does not, by itself, impugn the validity of the decision.

[24] Beyond this general criticism, the complainant’s submissions amount to a disagreement with my findings on the evidence before me. The complainant’s view that I ought to have been persuaded by his arguments and evidence does not establish a fundamental defect in the adjudication process, a jurisdictional defect in the decision, or other error warranting reconsideration of PHIPA Decision 211. In addition, and as noted above, even if PHIPA Decision 211 had included an order that could be rescinded, varied, or otherwise affected as contemplated by section 64(1) of *PHIPA* and section 27.01(d) of the *Code*, the complainant has not established any new facts or material change in circumstances to warrant exercising my discretion in this manner.

[25] I conclude that the complainant has not established any ground for reconsideration of PHIPA Decision 211. I deny the reconsideration request.

NO RECONSIDERATION:

For the foregoing reasons, I deny the reconsideration request.

Original Signed by: _____
Jenny Ryu
Adjudicator

_____ August 29, 2023