

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION ORDER MO-4264-R

Appeal MA20-00476

City of Peterborough

Order MO-4236

October 24, 2022

**Summary:** The appellant in Order MO-4236 requests a reconsideration of that order. In this reconsideration order, the adjudicator explains why she denies that request.

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

**Orders Considered:** Orders PO-2538-R, PO-3062-R, and MO-4236.

**Cases Considered:** *Woolaston v. Canada (Minister of Manpower and Immigration)*, 1972 CanLII 3 (SCC); *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.); *Grier v. Metro International Trucks Ltd.*, (1996), 28 O.R. (3d) 67 (Ontario Divisional Court); *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 SCR 708.

### OVERVIEW:

[1] The appellant in Order MO-4236 requests a reconsideration of that order. In this reconsideration order, I explain why I will not reconsider Order MO-4236.

[2] In the appeal resolved by Order MO-4236, the request made to the City of Peterborough (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) was for access to records related to the inspection and closure of a complaint made about a certain issue at a specified address (of a specified file number).

The city issued a decision granting partial access to a three-page record. The city withheld access to portions of the record under the mandatory exemption at section 14(1) (personal privacy) of the *Act*. I upheld the city's decision to withhold the information at issue, but under the discretionary exemption at section 38(b) of the *Act*, having found that the records also contained "personal information" (as that term is defined in section 2(1) of the *Act*) of the appellant. As a result, I dismissed the appeal.

[3] After I issued Order MO-4236, the appellant requested a reconsideration of the order, but did not cite any of the three grounds under section 18.01 of the IPC's *Code of Procedure* (the *Code*) for doing so.

[4] For the reasons that follow, I deny the reconsideration request.

## **DISCUSSION:**

### **Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4236?**

[5] The only issue to be decided is whether the appellant has established that there are grounds under section 18.01 of the *Code of Procedure* to reconsider Order MO-4236.

[6] The *Code* applies to appeals under the *Act*. The IPC's reconsideration process is set out in section 18.01 of the *Code*:

18.01 The IPC may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

[7] Past IPC orders have explained that an adjudicator is *functus* unless the party requesting the reconsideration (in this case, the appellant), establishes one of the grounds in section 18.01 of the *Code*.<sup>1</sup> *Functus officio* is a common law principle, and means that once a matter has been determined by a decision-maker, he or she generally has no jurisdiction to further consider the issue. However, the *Code* provisions in section 18.01 reflect the common law, which acknowledges the ability of a decision-maker to re-open a matter to reconsider it in narrow circumstances.<sup>2</sup>

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<sup>1</sup> See, for example, Orders MO-2904-R, MO-4042-R, and MO-4057-R.

<sup>2</sup> Order PO-2879-R.

[8] 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) of the *Code*.<sup>3</sup> Examples of such breaches would include failure to notify an affected party<sup>4</sup> or to invite sur-reply representations where new issues or evidence are provided in reply.<sup>5</sup>

[9] Section 18.01(b) of the *Code* 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.

Previous IPC orders have held that an error under section 18.01(c) may include a misidentification of the "head" or the correct ministry,<sup>6</sup> or another mistake that does not reflect the adjudicator's intent in the decision.<sup>7</sup>

### **The appellant's reconsideration request**

[10] As the appellant would not agree to sharing the contents of his reconsideration request, I will not set them out here. However, I can make two general points. First, his overall position is that his reconsideration request fits within section 18 of the *Code*. I note that he does not specify which ground of reconsideration relates to any of the points he makes.<sup>8</sup> Second, the appellant expresses disagreement about certain findings in Order MO-4236, and questions why some arguments made were not addressed, or not discussed in greater detail. He seeks an order that reflects the points made in his reconsideration request.

### **Analysis/findings**

[11] For the following reasons, I deny the appellant's reconsideration request.

[12] The reconsideration process set out in the IPC's *Code* is not intended to provide parties with a forum to re-argue their cases.

[13] In Order PO-2538-R, the adjudicator reviewed the case law regarding an

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<sup>3</sup> Order PO-4134-R.

<sup>4</sup> Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

<sup>5</sup> Orders PO-2602-R and PO-2590.

<sup>6</sup> Orders P-1636 and R-990001.

<sup>7</sup> Order M-938.

<sup>8</sup> While he did raise what amounted to an error in the originally issued order (which can be viewed as a claim of section 18.01(c) of the *Code*), the order was corrected and re-issued to him and the other parties. To the extent that portions of the appellant's representations relate to this error, I have, therefore, not considered them for the purpose of this reconsideration order. This reconsideration order relates to the appellant's remaining points in his letter requesting a reconsideration.

administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*.<sup>9</sup> With respect to reconsideration, the adjudicator 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.*]<sup>10</sup>

On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the LCBO and the affected party. ... As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[14] This approach has been adopted and applied in subsequent orders of the IPC.<sup>11</sup> For example, in Order PO-3062-R, the adjudicator was asked to reconsider her finding that the discretionary exemption did not apply to information in records at issue. She determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

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

[15] I agree with this approach, and adopt it here. As noted, the appellant disagrees with various statements and findings in my order. However, disagreement with my analysis of the evidence that was before me is not a ground for reconsideration under section 18.01 of the *Code*. With respect to the appellant's questioning of why some arguments he made were not discussed in the order, in my view, this is simply another way that the appellant is expressing disagreement with my assessment of the relevance (or irrelevance) of the evidence before me during the inquiry.

[16] For the benefit of the appellant, he may wish to consider that I had full access to the information that the city withheld in the record at issue, the IPC's record of the partial disclosure made to the appellant by the city, and the parties' full representations. It may also be useful for him to consider these words from the Supreme Court of

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<sup>9</sup> [1989] 2 SCR 848 (S.C.C.).

<sup>10</sup> 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

<sup>11</sup> See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

Canada, in relation to his views about what should have been discussed in more detail, or at all, in my order:

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].<sup>12</sup>

[17] Furthermore, the Supreme Court of Canada has long held that a decision maker is presumed to have considered all the evidence before it.<sup>13</sup> A party wishing to rebut that presumption must provide clear and convincing evidence to do so.

[18] I agree with the analyses in these court cases and adopt that reasoning here. I was not required to discuss every argument made in the appellant's representations in my order. My decision not to discuss arguments that I assessed to be irrelevant is not a ground of reconsideration under section 18.01 of the *Code*. Furthermore, since the appellant would not agree to the sharing of some of his representations with the other parties or in the public order, I was limited in the type of detail I could include in my order to begin with. In any event, by expressing his views about my analysis of the evidence, he has not established any ground for reconsideration under section 18.01 of the *Code*. Furthermore, as noted, an adjudicator is presumed to have considered all of the evidence before him or her, and in this case, the appellant has not provided sufficient evidence to rebut that presumption.

[19] For these reasons, I am not satisfied that the appellant's reconsideration request cites and establishes a relevant ground for reconsideration in section 18.01 of the *Code*. As a result, I deny the appellant's reconsideration request.

## **ORDER:**

The appellant's reconsideration request is denied.

Original Signed By: \_\_\_\_\_

Marian Sami  
Adjudicator

October 24, 2022 \_\_\_\_\_

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<sup>12</sup> *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 SCR 708.

<sup>13</sup> *Woolston v. Canada (Minister of Manpower and Immigration)*, 1972 CanLII 3 (SCC).