

CITATION: Cardoso v. LECA, 2025 ONSC 3450
DIVISIONAL COURT FILE NO.: 708/24
DATE: 20250617

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Coats, Matheson and Nakatsuru JJ.

BETWEEN:)
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)
TOM CARDOSO and THE GLOBE AND MAIL) *Frank Addario, James Foy and Cori Singer,*
) *for the Applicants*
Applicants)
)
)
– and –)
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)
)
INFORMATION AND PRIVACY) *Linda Hsiao-Chia Chen, for the Respondent*
COMMISSIONER OF ONTARIO and) *Information and Privacy Commissioner*
THE LAW ENFORCEMENT) *of Ontario*
COMPLAINTS AGENCY)
) *Pamela Stephenson Welch, for the Law*
Respondents) *Enforcement Complaints Agency*
)
)
) **HEARD at Toronto:** June 10, 2025

2025 ONSC 3450 (CanLII)

REASONS FOR JUDGMENT

Matheson J.:

[1] The applicants seek judicial review of the decision of the Information and Privacy Commissioner dated October 16, 2024 (the IPC Decision), regarding an access to information request made to the Office of the Independent Police Review Director (now the respondent Law

Enforcement Complaints Agency or LECA).¹ The Director is the statutory decision-maker responsible for receiving, managing and overseeing complaints about police officers in Ontario.

[2] The IPC Decision upheld a decision that LECA disclose some but not all of the requested information regarding police officers who were the subject of misconduct complaints. In particular, the IPC Decision upheld the refusal to include the names and badge numbers of the police officers.

[3] Although other issues were raised on this application for judicial review, the applicants' main focus is the alleged failure of the IPC Adjudicator to engage with the *Canadian Charter of Rights and Freedoms*, specifically the s. 2(b) guarantee of freedom of expression, including freedom of the press. The failure to address the *Charter* is the basis upon which I would grant this application, for the reasons set out below.

Background

[4] The applicant Tom Cardoso, a reporter, requested access to information from LECA under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (*FIPPA*). He requested information regarding complaints against police officers, including the name and badge number of the police officer who was the subject of each complaint, the date the complaint was received, the allegations, the findings and screening outcome, and other data. The access request covered a period of more than ten years.

[5] In response, Mr. Cardoso was provided with a detailed spreadsheet with about 40,000 rows of data, but the names and badge numbers of the police officers were withheld on the basis that they were subject to exclusions and exemptions under *FIPPA*. Mr. Cardoso appealed to the Information and Privacy Commissioner/Ontario (the IPC).

[6] Among the next steps, the IPC provided Mr. Cardoso with a lengthy Notice of Inquiry, which invited his submissions on the matters set out in the Notice as well as his response to the LECA submissions. The Notice contained extensive information about the IPC process, the legislation, and how aspects of the legislation had been interpreted in prior IPC decisions.

[7] The Notice included a discussion of the *FIPPA* sections relied upon by LECA for non-disclosure. LECA submitted that the names and badge numbers were personal information as defined in s. 2(1) of *FIPPA* and were subject the mandatory exemption in s. 21(1) of *FIPPA* for unjustified invasions of personal privacy. LECA relied on s. 21(3)(b), which provides that personal information compiled as part of an investigation into a possible violation of the law is presumed to constitute an unjustified invasion of privacy and therefore need not be disclosed.

¹ The OIRPD is called LECA in the rest of these reasons, for ease of readability.

LECA also relied on s. 14, which provides a discretion to refuse disclosure for certain law enforcement reasons.

[8] The Notice also acknowledged that Mr. Cardoso had raised what is sometimes called the public interest override in s. 23 of *FIPPA*. Under s. 23, an exemption from disclosure under certain sections does not apply “where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.”

[9] Mr. Cardoso made detailed written submissions in response to the Notice. He disagreed with LECA’s submissions that the names and badge numbers were personal information as defined in s. 2(1) of *FIPPA*. Mr. Cardoso also disagreed with LECA’s reliance on ss. 14 and 21(3)(b). Lastly, Mr. Cardoso submitted that if the requested information was exempted under s. 21, the public interest override in s. 23 of *FIPPA* applied and there should be disclosure.

[10] Within his submissions about s. 23 and the public interest, Mr. Cardoso cited and quoted from *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23, [2010] 1 S.C.R. 815, at para. 37, as follows:

[T]here is a *prima facie* case that s. 2(b) may require disclosure of documents in government hands where it is shown that, without the desired access, meaningful public discussion and criticism on matters of public interest would be substantially impeded. ...

[11] The *Criminal Lawyers’ Association* case also arose from an access request under *FIPPA* that included an issue about s. 23.

[12] It is apparent from Mr. Cardoso’s submissions that he was not seeking any of the relief that would require the service of a notice of constitutional question either under s. 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, or under the parallel rule at the IPC. He was submitting that the *Charter* was relevant to the public interest analysis in s. 23 of *FIPPA*.

[13] Mr. Cardoso, then unrepresented, did not mention what is sometimes referred to as a *Doré/Loyola* balancing analysis. The *Doré/Loyola* cases address the required approach to a *Charter* review of an administrative decision, by asking whether the decision reflects a proportionate balance of the decision-maker’s statutory mandate with the *Charter* right at issue: *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395; *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 S.C.R. 613.

The IPC Decision

[14] In summary, the IPC Decision concluded as follows:

- (i) The spreadsheet contained “personal information” as defined in s. 2(1) of *FIPPA*. The inclusion of the names and badge numbers meant that the police officers were identifiable. Having regard for the context, the disclosure of the names and badge numbers would reveal something of a personal nature about each named individual.

- (ii) The mandatory personal privacy exemption at s. 21(1) applied to the information at issue. Considering s. 21(3), which lists several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy, s. 21(3)(b), relied on by LECA, was not applicable (investigation into a possible violation of the law). However, s. 21(3)(d) did apply (employment history). The Adjudicator observed that although LECA had not relied on s. 21(3)(d), the Adjudicator was obliged to consider all the presumptions in determining whether there was a mandatory personal privacy exemption.
- (iii) Although the names and badge numbers alone did not constitute “employment history”, taken together with the rest of the data in the spreadsheet, the complaints were part of that history. The mandatory exemption in s. 21(1)(d) applied.
- (iv) Because of this finding, it was unnecessary to consider other sections relied upon by LECA.
- (v) Section 23 of *FIPPA* did not apply. Although insight into LECA and police oversight were matters of public interest, there were many existing sources of information about that topic through LECA and other parts of the police oversight process. There was insufficient evidence to accept that there was a public interest in disclosure of the names and badge numbers in the spreadsheet. There was therefore no need to go on and consider whether the public interest was “compelling” – the next requirement of s. 23.
- (vi) On the *Charter*, the reasons for decision said as follows, at para. 76:

The appellant [Mr. Cardoso] also appears to raise a constitutional argument, albeit in passing (not having taken the steps required to raise constitutional questions), submitting that “the disclosure of documents that would serve the public interest is such an important concept that it was even recognized by the Supreme Court of Canada as a potential Charter right”.

Footnote to paragraph: “The appellant cites *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23, [2010] 1 SCR 815.”

[Emphasis added.]

[15] The applicants then commenced this application for judicial review.

Issues and Standard of Review

[16] The applicants raise these issues:

- (1) whether the Adjudicator erred by failing to consider *Charter* rights and values in reaching the IPC Decision, specifically s. 2(b) of the *Charter*;
- (2) whether the process was unfair due to the lack of notice that s. 21(3)(d) (employment history) would be used to justify non-disclosure; and,
- (3) whether the IPC Decision is, in any event, unreasonable.

[17] The parties disagree on the standard of review for the *Charter* issue. The applicants submit that it is correctness. The respondents submit that this Court should ask whether there was a *Doré/Loyola* balancing (which they submit there was) and whether it was reasonable. This is further addressed below.

[18] On procedural fairness, the question is whether the appropriate process was provided to Mr. Cardoso. On the third issue, the standard of review is reasonableness.

Charter Issues

[19] The applicants submit that the Adjudicator erred in failing to consider *Charter* rights and values, focusing on the s. 2(b) guarantee of freedom of expression and freedom of the press. The applicants submit that the Adjudicator should have both considered the *Charter* under s. 23 of *FIPPA* and engaged in a *Doré/Loyola* balancing of the LECA decision. Neither was done.

[20] The applicants rely on *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, at para. 91. The Supreme Court held that where a *Charter* right applies, an administrative decision-maker should perform an analysis that is consistent with the relevant *Charter* provision.

[21] The applicants further rely on the *Criminal Lawyers' Association* case, which Mr. Cardoso quoted in his submissions to the IPC as set out above.

[22] LECA acknowledges that the Adjudicator did not expressly reference the *Charter* (other than to say it was not properly raised). However, LECA submits that the Adjudicator's discussion of the public interest under s. 23 implicitly considered and balanced freedom of expression. The IPC similarly submits that a *Doré/Loyola* balancing is embedded into *FIPPA* because its structure requires considering the public's right to access as well as privacy interests. In short, the respondents do not dispute the relevance of the *Charter* but submit that it was implicitly addressed in the IPC Decision.

[23] I am not prepared to imply that the *Charter* was properly considered in this case. In my view, the single paragraph in the reasons for decision that mentions the *Charter* is inconsistent with an implication that the Adjudicator considered the *Charter* at all. The applicants submit that the adjudicator wrongly focused on the lack of a notice of constitutional question. I agree. As a result of that error, the *Charter* was ignored.

[24] I therefore conclude that the Adjudicator erred in failing to properly consider the *Charter*. Some of the reasons for decision may well overlap with what may be said in the consideration of freedom of expression and the public interest under s. 23, or a *Doré/Loyola* analysis, but that is insufficient.

[25] Given the stark nature of this error, even if the standard of review was reasonableness, this error alone would render the IPC Decision unreasonable.

[26] In the circumstances, the appeal to the IPC should be done anew. Given that the issues have developed somewhat since the original submissions to the IPC, the parties should have the opportunity for new or supplementary written submissions to the new adjudicator. In that regard, the issues would benefit from submissions on the *Charter* under s. 23 in particular, and the role of the *Doré/Loyola* analysis in this case, as well as any other submissions the parties choose to advance about this or the other issues on the appeal.

Other Issues

[27] The applicants submit that the process leading up to the IPC Decision was unfair because Mr. Cardoso should have been given notice and an opportunity to make submissions about s. 21(3)(d) – employment history. That subsection had not been relied upon by LECA, nor was it discussed in the very lengthy and detailed Notice of Inquiry.

[28] It will not necessarily be the case that a notice must include everything that might come up. Nonetheless, given the particular form of this lengthy notice, and its focus on the sections relied on by LECA, I conclude that there is some merit to this issue. However, given the remedy that I would order arising from the *Charter* issue, Mr. Cardoso will have a fresh opportunity to make submissions about all issues. There is therefore no need to analyze this issue further. Similarly, there is no need to analyze the other grounds raised in support of a submission that the IPC Decision is unreasonable. There will be a fresh decision on all issues, not constrained by the IPC Decision.

Order

[29] I would therefore grant this application on the following terms: The IPC Decision is quashed. The matter is remitted to the IPC for a new appeal decision by a different adjudicator. In accordance with the remedy requested by the applicants, the IPC appeal will proceed on the current IPC record except that both sides shall have the opportunity to make fresh or additional written submissions on all issues. As agreed, there shall be no order as to costs.

Matheson J.

I agree: _____
Coats J.

I agree: _____
Nakatsuru J.

Date: June 17, 2025