

CITATION: Talwar v. IPCO, 2025 ONSC 6461
DIVISIONAL COURT FILE NO.: 2974/25
DATE:20251121

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: RISHI TALWAR, Applicant

AND:

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO and DR.
TOMAS FOGL, Respondents

BEFORE: Justices Nakatsuru, O’Brien, and I. Smith JJ.

COUNSEL: *Rishi Talwar*, Self-Represented

Daniel Yang, Counsel for the Respondent, Dr. Tomas Fogl

Brendan Gray, Counsel for the Information and Privacy Commissioner of Ontario

HEARD: Virtually in Ottawa on November 17, 2025

ENDORSEMENT

Overview

[1] This application for judicial review arises from a dispute between the applicant, Mr. Talwar, and his former doctor about access to his health record. Mr. Talwar contacted Dr. Fogl in December 2022 to advise he did not want Dr. Fogl to continue as his doctor. He also made what is known as a “lockbox” request, which was to direct Dr. Fogl not to collect, use or disclose Mr. Talwar’s personal health information. In phone calls with Dr. Fogl on January 18, 2023, Mr. Talwar reiterated his lockbox directive.

[2] On January 28, 2023, Mr. Talwar filed a complaint with the Information and Privacy Commissioner of Ontario (IPC) related to the lockbox directive, but this complaint was subsequently closed after Mr. Talwar received Dr. Fogl’s confirmation that the lockbox directive had been implemented.

[3] Mr. Talwar also filed a complaint against Dr. Fogl to the College of Physicians and Surgeons of Ontario and subsequently sought a review of the College committee’s decision to the Health Professions Appeal and Review Board (HPARB). When he received HPARB’s record of investigation, Mr. Talwar discovered Dr. Fogl had added a note to his health record on January 18, 2023.

[4] Mr. Talwar then filed a second complaint to the IPC that Dr. Fogl accessed his health record and added information to it after he issued the lockbox directive.

[5] On January 31, 2025, an IPC analyst issued her decision that the complaint should not proceed through the complaints process. She concluded that Dr. Fogl's creation of the progress note did not contravene the *Personal Health Information Protection Act, 2004*, S.O. 2004, C. 3, Schedule A (PHIPA). She also was not persuaded by Mr. Talwar's submission that the date of the January 18, 2023 note was falsified. To the extent Mr. Talwar's concern was that the note was inaccurate, she stated it was open to him to pursue the process in the legislation for addressing perceived inaccuracies in medical records. Finally, she found that Mr. Talwar's allegations about Dr. Fogl's conduct during a January 18, 2023 telephone call was outside the scope of the privacy complaint.

[6] Mr. Talwar seeks judicial review of this decision. He submits that the IPC decision was unreasonable and procedurally unfair. According to Mr. Talwar, the IPC did not address all the documentation and information he provided, and did not contact Constable Smith of the Ottawa Police Service, who he says had relevant information. He submits the addition to his medical record was inaccurate and added after January 18, 2023.

[7] The standard of review for a decision of the IPC is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 16-17. With respect to procedural fairness, the court will determine whether or not the decision was procedurally fair applying the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 S.C.R. 817.

[8] For the following reasons, the application is dismissed.

Analysis

[9] The IPC has broad discretion to decide not to review a complaint: *Hopkins v. Kay*, 2015 ONCA 112, at para. 55. Subsection 57(4) PHIPA authorizes the Commissioner not to review the subject-matter of a complaint "for whatever reason the Commissioner considers proper." In *Hopkins*, at para. 60, the Court of Appeal noted that the "broad discretion conferred on the commissioner by PHIPA means that complainants would face an expensive and uphill fight on any judicial review challenging a decision not to review or proceed with an individual complaint."

[10] In this case, Mr. Talwar faced such an uphill battle, especially since the IPC analyst had specific legislative support for her decision not to proceed with Mr. Talwar's complaint. As stated in the analyst's decision, under s. 19(2) of PHIPA, any condition placed on the collection, use or disclosure of personal health information cannot prevent a health professional from recording it when the recording of health information is required by law or professional standards. It provides:

19(2) If an individual places a condition on his or her consent to have a health information custodian collect, use or disclose personal health information about the individual, *the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information*

custodian that is required by law or by established standards of professional practice or institutional practice. (emphasis added)

[11] The analyst reasoned that documenting all patient encounters is an established professional standard and, therefore, Dr. Fogl was authorized to add a progress note to Mr. Talwar's medical record on January 18, 2023. This was a reasonable conclusion.

[12] We dismiss the submission that the IPC did not consider all the relevant supporting documentation and information provided by Mr. Talwar. The IPC's reasons are not required to respond to every item, argument or possible line of analysis. Here, the analyst expressly stated she had "thoroughly reviewed" all the documentation provided and specifically noted having considered the documentation Mr. Talwar sought to emphasize, such as statements allegedly made by Constable Smith and the College committee's decision. The analyst concluded the documents did not persuade her Dr. Fogl had created the progress note with a falsified date and explained why.

[13] On the information provided, it was open to the analyst to conclude the progress note was not made at a later date. She relied on the time stamps found in the electronic medical record, which showed the date and time of the note being signed. She further commented that there was no evidence of unauthorized alterations or irregularities to suggest that the note was created on a different date. This conclusion was open to her on the face of the record provided and did not require the input of expert evidence.

[14] Mr. Talwar specifically submits the IPC was required to contact Constable Smith. He says the progress note wrongly reflected that Dr. Fogl spoke to Constable Smith on January 18, 2023. There are two reasons it was reasonable for the analyst not to contact Constable Smith: First, it is important to remember that the IPC decided not to undertake a review. A review might have involved the collection of further information and evidence. But the crux of the IPC's decision was that there would be no review since Dr. Fogl's access to the health record was justified by s. 19(2) of PHIPA. In this context, the analyst did not have an obligation to speak to additional witnesses.

[15] Second, the allegation that the comments about Constable Smith were falsified relates to the accuracy of the medical record. The analyst concluded this issue was outside her mandate since Mr. Talwar had a process available to him to request a correction of his records. Section 55 of PHIPA states an individual may ask a custodian to correct a personal health record that he or she thinks is inaccurate or incomplete. If the custodian refuses to correct the record, the individual has a right to complain to the IPC. Considering this process, which Mr Talwar did not pursue, it was reasonable for the analyst to treat the accuracy of the record as outside the scope of the complaint.

[16] Mr. Talwar's allegations about the tone of the progress note and of his conversation with Dr. Fogl are also more appropriately dealt with in another forum, and not by the IPC. It was reasonable for the analyst therefore to not include them in the scope of her review.

[17] Overall, the analyst meaningfully engaged in the central issues raised by Mr. Talwar. She was not required to address each item in more detail than she did in her reasons, nor was she required to engage in issues that fell outside of the appropriate scope of the complaint.

[18] With respect to Mr. Talwar's allegation that the process was unfair, we disagree that the IPC breached Mr. Talwar's right to procedural fairness. Most of Mr. Talwar's arguments with respect to procedural fairness overlap with his submission that the analyst failed to consider all his documents and information. They are dismissed for the same reasons provided above. In addition, Mr. Talwar had a full opportunity to provide submissions in response to the IPC analyst's concerns. Before issuing her decision, the IPC analyst first issued a letter dated December 6, 2024 setting out her preliminary view that the documentation added to Mr. Talwar's medical record on January 18, 2023 was an authorized use of personal health information under PHIPA. She gave Mr. Talwar an opportunity to provide submissions in response to her letter, which he did. She only issued her decision not to review the complaint after considering and addressing Mr. Talwar's submissions.

[19] Finally, we disagree that the analyst acted in a procedurally unfair manner by indicating she believed Dr. Fogl about the timing of the progress note before hearing information from all parties. The analyst's email to Dr. Fogl's lawyer stated that she did not have a reason to disbelieve Dr. Fogl about the timing based on their first conversation, but that she was seeking further information in response to Mr. Talwar's position. She sent the email after she had received Mr. Talwar's submissions (and several additional emails) in response to her preliminary view. Her further efforts to contact Dr. Fogl demonstrate that she was continuing to consider the issue. We are therefore satisfied that she maintained an open mind and that there was no breach of procedural fairness.

Disposition

[20] The application is dismissed. Neither Dr. Fogl nor the IPC seek costs and none are ordered.

Nakatsuru J.

O'Brien J.

I. Smith J.

Released: November 21, 2025