Time for an update: IPC revises code of procedure

September 10, 2024

Introduction

Given the increase in access to information requests and appeals, public bodies should become acquainted with changes to the IPC's Code of Procedure (the Code), which are to take effect on Sept. 9, 2024.

The updates relate to appeals under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

Key takeaways

The Information and Privacy Commissioner/Ontario (IPC) has long enjoyed the power to control its own procedure, but the Code now expressly sets out mechanisms to enable the IPC to more actively manage its large and growing case load. Notable revisions to the Code include an expediated appeals process, an early resolution process, enhanced case management powers, and a directive on the use of artificial intelligence tools.

Key revisions

Expedited appeals process & early case resolution

The Code now stipulates that a wide variety of appeals can be expedited, including appeals related to the adequacy of decisions, deemed refusals, failures to disclose, fees, the reasonableness of searches, time extensions, transfers, and any others as determined by the IPC. The expedited process will speed up the resolution of appeals through various streamlined procedures, which may include shortened timelines, peremptory deadlines, fixed-day informal dispute resolutions (possibly a form of mediation-adjudication), and reliance on affidavit evidence of the parties.

Additionally, early resolution is now expressly available to dispose of issues of jurisdiction. Where an appeal or part of an appeal is outside the IPC's jurisdiction, it may be dismissed without a full inquiry. Appeals that are not resolved at early resolution will be moved to another stage in the appeal process—such as expedited appeals, mediation, or adjudication—based on the IPC's discretion.

Enhanced case management powers

The Code now expressly provides for new case management powers, including when an appeal can be closed or deemed to be abandoned, and the reconsideration of a decision.

a. Closing an appeal or deeming an appeal to be abandoned

A mediator can close a file where an appellant refuses to advance the appeal to adjudication after being notified that further mediation is not possible. Similarly, if the IPC is unable to contact an appellant after two attempts, it may deem the appeal abandoned and close the file.

If a party, other than an institution, fails to submit representations by a deadline, the IPC may either proceed with the inquiry without those representations or deem the appeal abandoned and close the file. In cases where an institution fails to submit its representations, the IPC may continue with the inquiry and issue an Order.

b. Reconsideration

Under the revised Code, only one reconsideration request is allowed per decision or Order, and the IPC will not consider a reconsideration request of a reconsideration Order. To enhance efficiency and manage time effectively, an initial screening will assess whether a reconsideration request meets the specified criteria. If the criteria are not met, the request will be denied, and the appeal will be closed.

Use of Artificial Intelligence

The Code has been amended require a party who uses AI in preparing representations to disclose the use of AI, detail the type of AI used, and specify how it was used. Additionally, parties must review the accuracy of legal references or analysis in AI-generated content and confirm that review to the IPC in writing.

With the increase in requests and appeals, the use of AI to prepare submissions may be of interest to institutions. The IPC's acceptance of AI, in compliance with new requirements, is notable. Appellants, too, may already be using AI, and the new Code provisions will help ensure transparency and fairness.

Conclusion

The Code changes are not fundamental, but do signal an IPC interest in pursuing a more expeditious procedure. The average time to close an appeal decreased in 2023, following the upwards trend since 2019. A new outlook by the IPC, reflected in a new

Code, may continue this trend. This is of interest to institutions, who should be prepared for a potential change in pace.

If you have any questions or require assistance in responding to access to information requests or navigating the appeals process, please get in touch with our Ontario freedom of information team.

By

Daniel J. Michaluk

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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