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OIPC Proceedings: Processes, Tips, and Tricks

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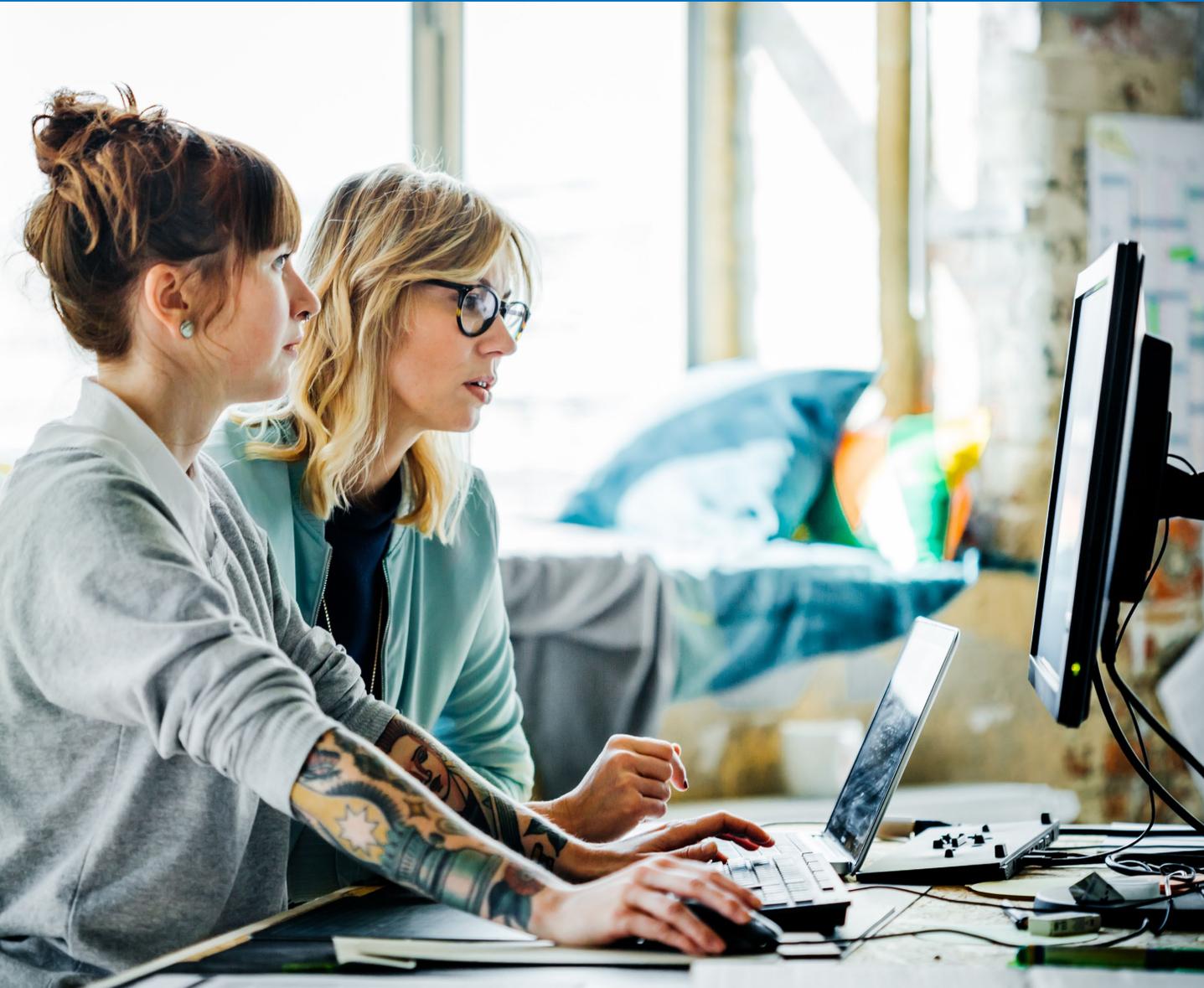
ABOUT THE OIPC



Commissioner Michael Harvey

- Who are we?
- What do we do?

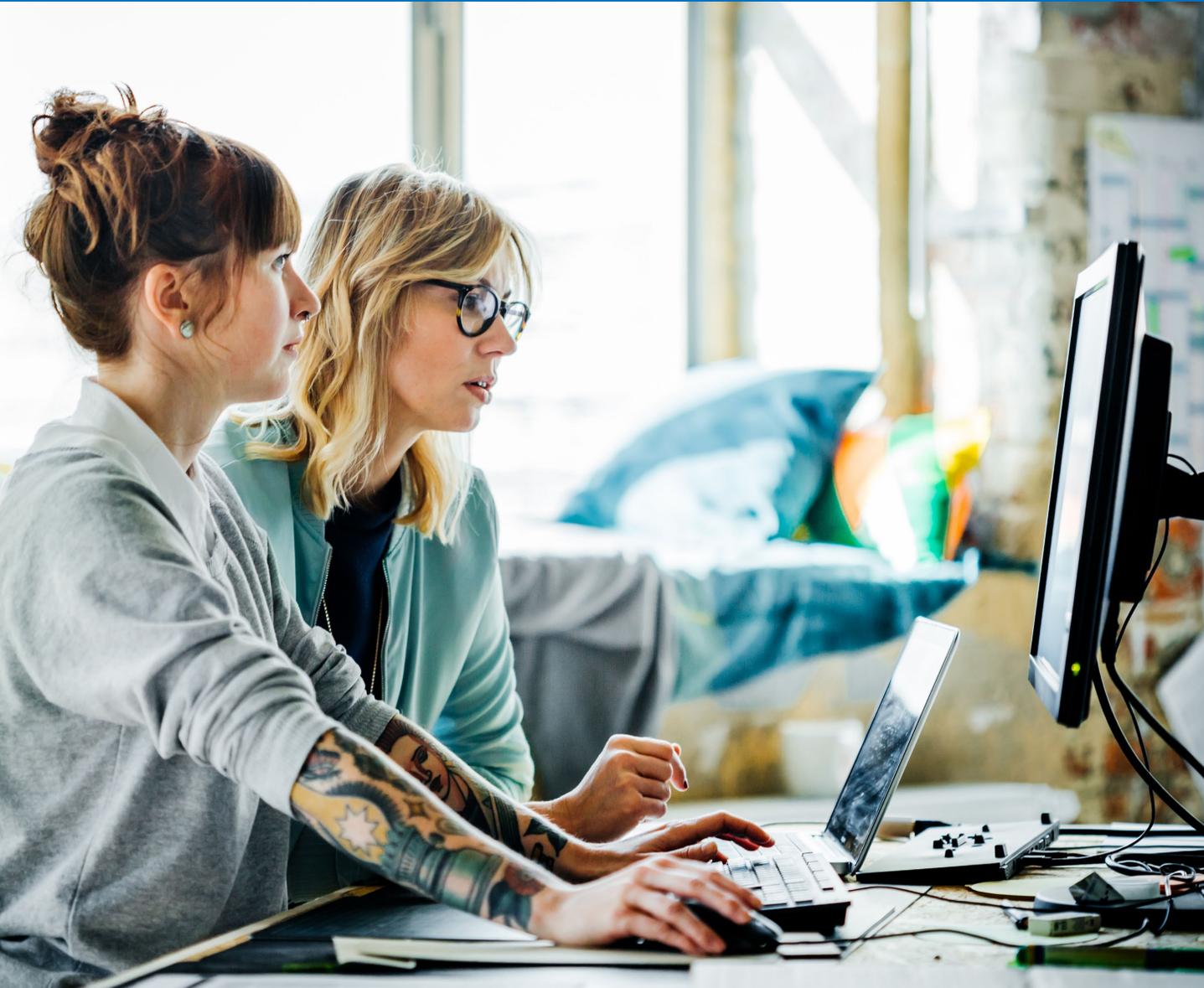
FILE PROGRESSION



An overview of files typically resolved at the investigations stage:

- Access Complaints
- Fee Complaints

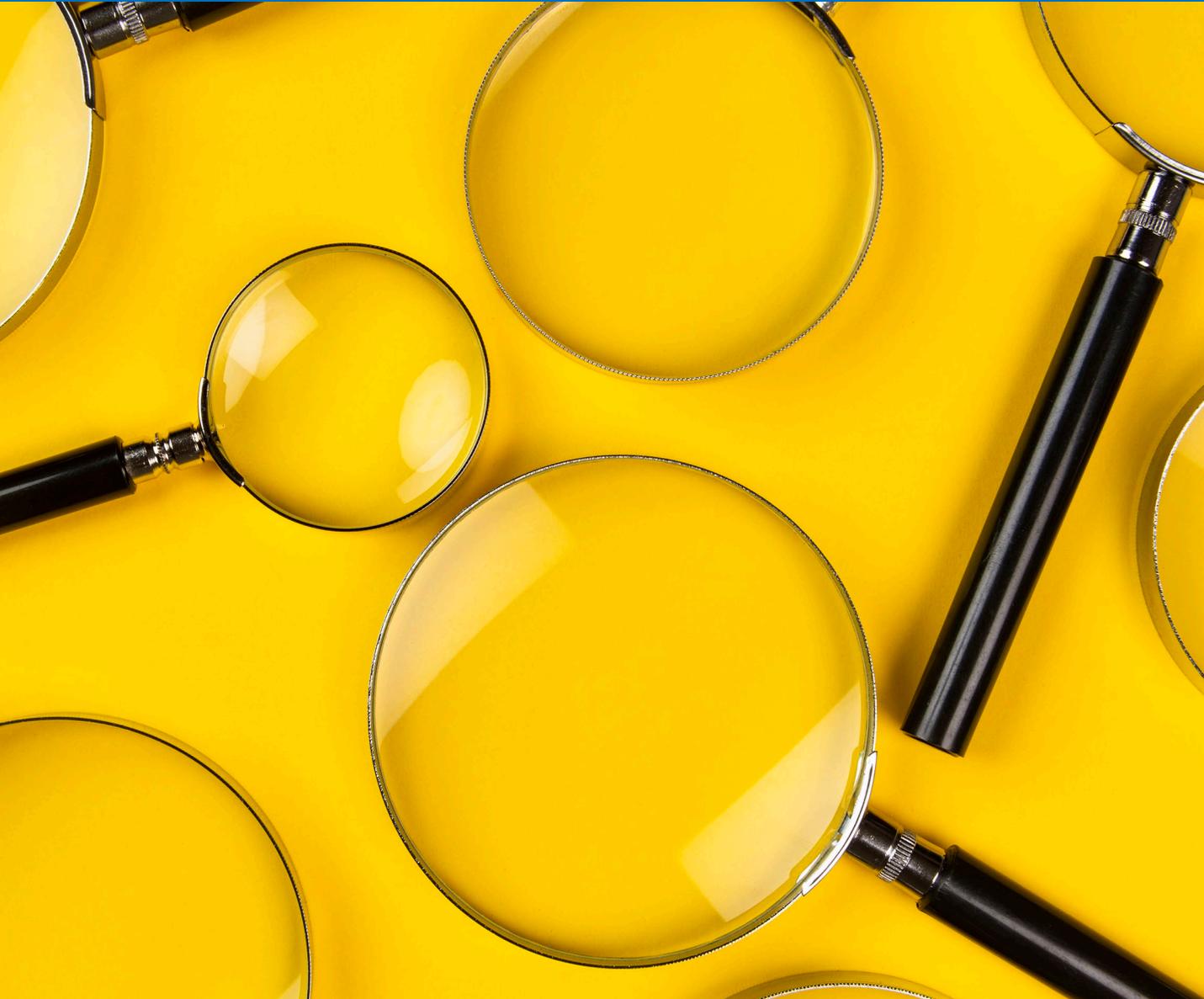
FILE PROGRESSION



An overview of files typically resolved at the investigations stage:

- Privacy Complaints
- Breaches

FROM MEDIATION



What is a request for review?

TO INQUIRY

When, and why,
do we escalate
files to inquiry?



Interlocutory Matters & Applications in OIPC Proceedings

Abuse of Process Proceedings



Abuse of Process Proceedings

- An abuse of process means using the OIPC's processes or exercising rights granted under the Acts for **improper purposes**
- Enabled by the Commissioner's broad discretionary powers:
 - FIPPA, s. 42(1): “. . . the commissioner is **generally responsible for monitoring how [FIPPA] is administered to ensure that its purposes are achieved. . .**”
 - FIPPA, s. 56(1): “. . . the commissioner **may conduct an inquiry and decide all questions of fact and law** arising in the course of the inquiry.”

Abuse of Process Proceedings

- Abuse of process proceedings are conducted at the Commissioner's discretion, whether at the request of a party or on the Commissioner's own initiative
- Various remedies are available:
 - Closing files
 - Cancelling active investigations or inquiries
 - Limiting a party's exercise of their rights under FIPPA or PIPA
 - Imposing restrictions on a party's access to OIPC services

Abuse of Process Proceedings

Indicia of Abuse of Process

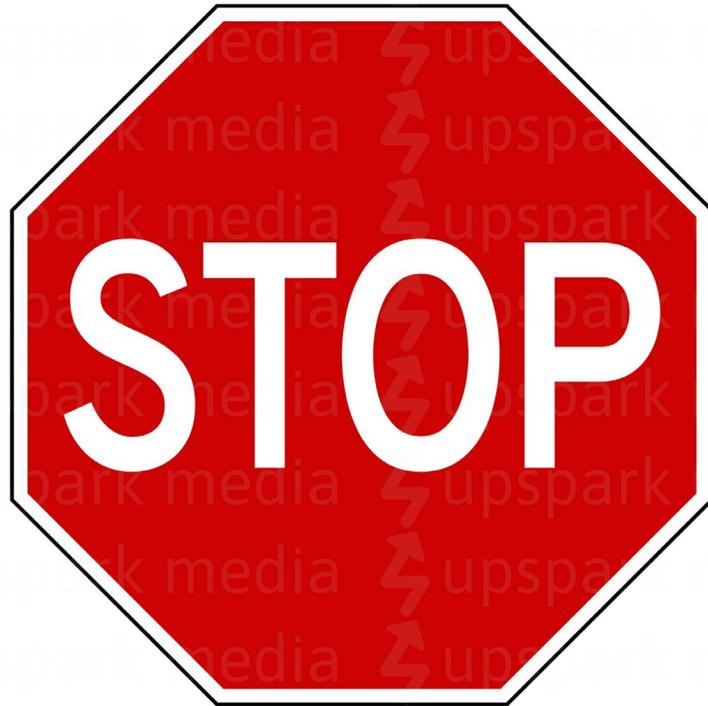
- excessively using PIPA or FIPPA's processes;
- “springboarding”, using information received in response to an access request as fodder for additional access requests or complaints to prolong the dispute;
- creating a **complex web** of interrelated proceedings;
- attempting to obtain records or information already received;

Abuse of Process Proceedings

Indicia of Abuse of Process continued

- Making arguments that are irrelevant or unsubstantiated, especially after the OIPC has rejected or declined to address them;
- using PIPA or FIPPA's processes to vent anger and berate other parties involved in the OIPC proceedings or underlying disputes;
- making unfounded, unsubstantiated, or intemperate allegations of bias, illegality, incapacity, fraud, misrepresentation, conspiracy or tampering.

Request to Not Conduct an Inquiry



Request to Not Conduct an Inquiry

FIPPA, s. 56 (1):

“If the matter is not referred to a mediator or is not settled under section 55, the commissioner **may** conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.”

PIPA, s. 50 (1):

“If a matter is not referred to a mediator or is not settled under section 49, the commissioner **may** conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.”



Request to Not Conduct an Inquiry

Why might the Commissioner decide to not conduct an inquiry?

- the review has **no reasonable prospect of succeeding**, including because it is plain and obvious that requested records are subject to an exception to disclosure or fall outside the scope of the Acts;
- the review is **frivolous, vexatious or otherwise an abuse of process**;
- the review is **trivial** or **no meaningful remedy is required or available** under the Acts;
- the substance of the review is **more appropriately dealt with in another proceeding** or process; or
- the “**Discontinuing Investigations or Reviews**” policy applies.

Request to Not Conduct an Inquiry

- A s. 56(1) application does not duplicate or replace the inquiry process.
 - **Tip:** Consider whether time and effort is better spent preparing arguments and evidence for the inquiry submissions instead.
 - **Tip:** Do not wait until a matter is referred to inquiry before asking for procedural relief if you already have a reason for the request.



Anonymity



Anonymity

May a party stay anonymous?

- In publicly-issued OIPC decisions?
- In relation to the OIPC?
- In relation to counterparties?



Anonymity

In OIPC Decisions

- The OIPC typically does not disclose individual party names in publicly-issued decisions
- Exceptions exist:
 - Abuse-of-process decisions
 - Court matters
 - If disclosing the name is necessary to deliver intelligible reasons

Anonymity

In relation to the OIPC

- Anonymity is rarely (if ever) granted in relation to the OIPC at the inquiry stage.
- Anonymity would hinder the OIPC's control over its processes, specifically, by frustrating OIPC control over party conduct.

Anonymity

In Relation to Counterparties

- The presumption is full disclosure of the parties' identities.
- A party may be granted anonymity only if their interest in participating anonymously outweighs the adverse effects of anonymity and any other factors that favour openness.
- Above all, consider **procedural fairness**: Is identity relevant to the issues and other parties' ability to make submissions?

See: Decision F25-02, 2025 BCIPC 63 (CanLII)

In-Camera Submissions



In-Camera Submissions

May a party provide submissions that only the adjudicator can see?

- Not by default - must apply for permission
- Guided by **procedural fairness**
- Balance of one party's opportunity to provide best available arguments and evidence, versus the other party's opportunity to know and answer the case to meet



In-Camera Submissions

- The Commissioner may accept material in camera if that material:
 - a) would **reveal the information in dispute** in the inquiry; or
 - b) is **information that a public body or organization would be required or authorized to refuse to disclose** under FIPPA or PIPA.

See:

- OIPC's *Instructions for Written Inquiries*;
- FIPPA, s. 56(2) & PIPA, s. 50(2);

In-Camera Submissions

- In-camera applications are made to the Registrar of Inquiries by the deadline in the Notice of Inquiry.
- Normally, counterparties are not notified of the application. However, all parties receive notice of a decision to receive any material in-camera.
- **Tip:** Explain both why in-camera material is necessary and why the counterparty would not be prejudiced.



Thank you.

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