

# Navigating the Complaint Processes Under the *CYFSA*

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PART X  
INFORMATION  
SESSION  
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# Role of the IPC Under the *CYFSA*

## s. 316 - 329

The IPC is the oversight body for Part X. Individuals **may make a complaint to the IPC** about any person who has or is about to contravene Part X.

Complaint types:

- Access/Correction Complaints
- Privacy Complaint
- Self-Reported Breach Complaint
- Commissioner Initiated Complaint



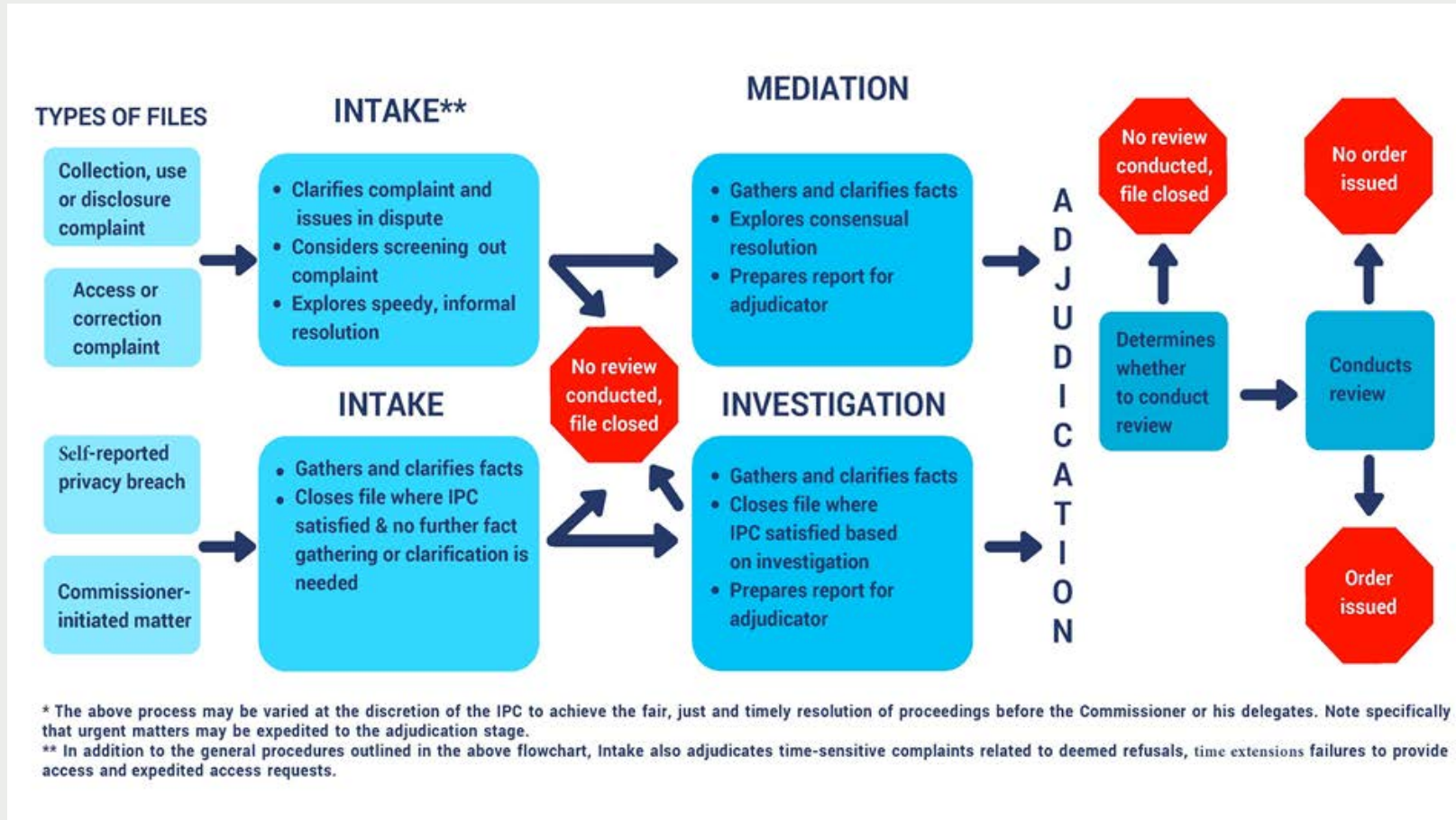
# A Complaint is Made to the IPC

What Happens Now?

# Complaint Process Has Three Stages

- Intake
- Investigation/Mediation
- Adjudication

# CYFSA Processes Flowchart



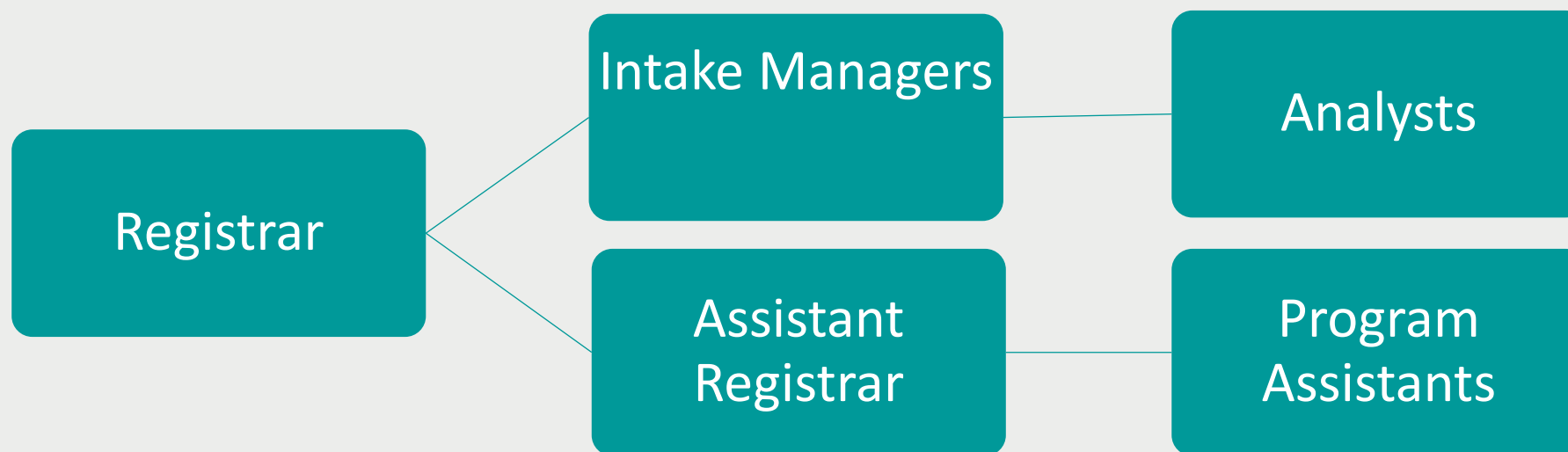
# Intake

- The goal of the intake stage is to resolve matters quickly and efficiently to the satisfaction of the IPC

*OR*

- To consider if the matter should proceed further through the complaint process, or if it should be dismissed

# Intake Group



# Initial Steps

- First contact from Tribunal likely to come from a Program Assistant, through a Notice of Complaint
- Types of notices you might receive for a complaint when it is first received:
  - a request to provide the documentation and records related to an access or correction complaint
  - a Notice of Complaint for access, correction or privacy complaints
  - a request for breach report



# Intake - Screening

- Registrar, Intake Managers and Analysts have delegated authority to screen out complaints in certain circumstances:
  - The Service Provider has responded adequately to the complaint
  - The complaint has been or could be more appropriately dealt with by another means
  - The length of time that has elapsed since the subject-matter of the complaint arose and the date the complaint was made is such that a review would likely result in undue prejudice to any person
  - The complainant does not have a sufficient personal interest in the subject matter of the complaint or
  - The complaint is frivolous or vexatious or is made in bad faith

# Intake Early Resolution

- A matter may be resolved at the intake stage in the following circumstances:
  - The analyst is satisfied, based on a review of the information gathered from the parties, that the service provider has responded adequately to the complaint
  - The complainant is in agreement

# Intake – Case Example 1

## Deemed Refusal

- Request submitted to service provider
- Complaint filed as no written decision received by complainant
- Notice of Review sent to service provider – 2 weeks to issue decision if not already sent
- Opportunity for informal resolution
  - E.g., service provider and complainant agree to a new deadline for access decision
- If no informal resolution, may result in order to issue a final decision – no additional time extension allowed

# Intake - Case Example 2

## Privacy Complaint

- Complaint that a service provider inappropriately disclosed personal information of the complainant to the police
- Analyst gathers and clarifies information from the complainant
- Service Provider will receive a notice of the complaint and in most cases a copy of the complaint
- Service Provider will be asked to explain its authority to disclose the complainant's personal information without consent
- Service Provider relies on section 292(1)(a) of *CYFSA* – to aid in a law enforcement investigation

# Privacy Complaint

- Analyst's preliminary view is that disclosure was authorized communicated to complainant – complainant agrees, file resolved
- If complainant does not agree – provided with opportunity to make submissions
- Analyst makes final determination based on submissions received
  - complaint dismissed, or
  - complaint moves through the process

# Advantages of Early Resolution and Screening

- Early Resolutions — saving time and resources, often result in inventive outcomes
- Early dismissal of cases where it is clear the IPC does not have jurisdiction, or where the IPC is satisfied with the response or the steps taken by a service provider
- Under *PHIPA* the Intake team resolved or screened out (2018):
  - 65% Access Complaints
  - 95% Privacy Complaints
  - 98% Self Reported Breaches
  - 100% Commissioner Initiated Breach Reviews

# Mediation/Investigation Teams

- Report to Assistant Commissioner, Tribunal
- Composed of:
  - Director of Mediation
  - Manager of Investigation
  - Mediation Managers
  - Mediator/Investigators

# Investigation – Commissioner-Initiated and Self-Reported Breaches

- Systemic or complex issues that cannot be resolved at Intake
- Investigator will request information, which may include documents pertaining to:
  - notification and containment
  - policies, procedures, practices
  - staff training, confidentiality agreements
  - technological and security safeguards
- Generally, Investigator will work with Service Provider to ensure appropriate steps are taken to fully respond to the breach and prevent a reoccurrence



# Investigation — Commissioner-Initiated and Self-Reported Breaches

- Investigator may provide recommendations and give the Service Provider an opportunity to implement changes
- If satisfied, investigator will issue a public Decision (service provider will generally not be named)
- If not satisfied, investigator will issue an Investigator's Report and move the complaint to adjudication
- Review by Adjudicator will result in a public decision where the Service Provider may be named

# Mediation – Privacy Complaints

- Complainant-driven
- If unable to resolve or screen out at Intake, complaint moves to mediation
- Mediator will investigate circumstances of complaint and work with parties to resolve issues
- Similar to the investigation process, but complainant must be satisfied in order to close the file at mediation (often helpful to provide apology, implement changes to policy/practice, provide explanations etc.)
- If complainant is not satisfied, complaint will proceed to adjudication

# Mediation – Access Complaints

- IPC will request documentation and records being withheld
- Mediator contacts parties, explains the complaint process and the mediator's role, investigates the circumstance of the complaint and attempts to:
  - Settle all issues in the complaint; or
  - If not fully settled, narrow and clarify the issues that proceed to adjudication.
- Under *PHIPA*, the mediation team resolved 83% of access and correction complaints that were streamed to mediation (2018)

# Mediation – Case Example

- Whether the service provider has conducted a reasonable search for records responsive to the request
- Mediator will work with parties to resolve issues:
  - clarify requests
  - conduct additional searches during mediation
  - participate in teleconference with individuals who conducted searches and are familiar with the records and record-keeping
  - provide detailed explanation of searches
  - provide affidavits when appropriate
  - explore records retention schedules, archives/off-site storage

# Mediation – Correction Complaints

- IPC will request documentation and records at issue
- Mediator will work with parties to resolve correction issues, and educate parties about relevant IPC decisions
- Many correction complaints are resolved with a statement of disagreement
- Records can be corrected during mediation

# The Mediator's Report

- If complaint is not resolved, mediator prepares a report
- In access/correction complaints:
  - Sets out the request, decision(s), the issues resolved and those still in dispute
  - Includes a description of the records and exceptions at issue
- In privacy complaints:
  - Sets out the facts, allegations, responses, issues resolved and those still in dispute
- Parties are given 10 days to review the report for errors or omissions
- All parties receive a copy of the report, including the adjudicator

# Role of Mediator

- NEUTRAL THIRD PARTY
- NOT A DECISION-MAKER/CANNOT DISMISS COMPLAINTS
- Facilitates dialogue between the parties to generate options for resolving complaints
- Educates parties about complaint process, legislation, IPC decisions
- Works with the parties to clarify issues in dispute
- Assists parties in reaching voluntary, mutually acceptable resolutions
- Provide advisory opinions/reality check based on previous decisions
- Explore interest-based and rights-based approaches

# Methods of Mediation

- Conference call with the parties
- Shuttle mediation by telephone
- In person mediation (rare)



# Advantages of Mediation

- Parties can explain their respective positions to each other, directly or through mediator
- Parties retain control over the outcome
- Issues clarified, options generated, and agreements negotiated
- Quicker and less costly
- Win-win settlement that might not be possible through Adjudication
- Builds trust, understanding and communication between parties and thereby improves future interactions

# Adjudication

- In the *CYFSA* process, complaints can be streamed to the Adjudication stage directly from Intake, or after Mediation/Investigation
- At the Adjudication stage, an Adjudicator can:
  - Decide not to review a complaint (after giving a complainant a chance to explain why the complaint should be reviewed)
  - Conduct a review

# Overview of Review Process

- Generally, a review involves an Adjudicator soliciting written representations from the parties on the issues in the complaint, one party at a time
- If necessary, the Adjudicator can:
  - Receive oral evidence
  - Ask for affidavits
  - Inspect documents
  - Ask to review a workplace or electronic system

# Review Process

- Review process usually starts with Adjudicator sending a Notice of Review (NOR) to one of the parties, asking for their representations
- NOR contains a description of the background facts, the issues to be decided, and questions from the Adjudicator
- Written representations from one party are shared with other parties to the complaint unless there is an *overriding confidentiality concern*
- Each party is usually given a chance to comment on the representations and evidence from the other parties
- After receiving representations, Adjudicator can also ask a party for more evidence or to answer specific questions

# Outcome of Review

- At the end of the review, the Adjudicator issues a written decision which may contain:
  - An order directing a party to do something
  - Recommendations
  - No orders or recommendations
- The decision is published on the IPC's website and on CanLII (legal information database)
- Decisions generally identify the service provider but not the complainant or other individuals

# Representations

- Effective representations:
  - Address all of the issues and questions in the NOR thoroughly and completely
  - Highlight any portions the party wishes to keep confidential and explaining why
  - Provide supporting affidavits where necessary
- The Adjudicator will decide which portions should not be shared with the other parties
- If Adjudicator does not accept the party's request for confidentiality, they will provide advance notice to that party of the decision to share the representations

# Reconsideration of a Decision

- In rare instances, the IPC can reconsider a decision
- A reconsideration request is not an opportunity to re-argue a case
- A party asking the IPC to reconsider a decision must show:
  - A fundamental defect in the adjudication process
  - Some other jurisdictional defect in the decision
  - A clerical error, accidental error or omission or other similar error in the decision, or
  - New facts or material changes in circumstances
- IPC has discretion to accept or dismiss a reconsideration request



# Thank You

Questions welcome.