

Part X Refresher: Role of the IPC & Part X Decisions

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Information and Privacy
Commissioner of Ontario

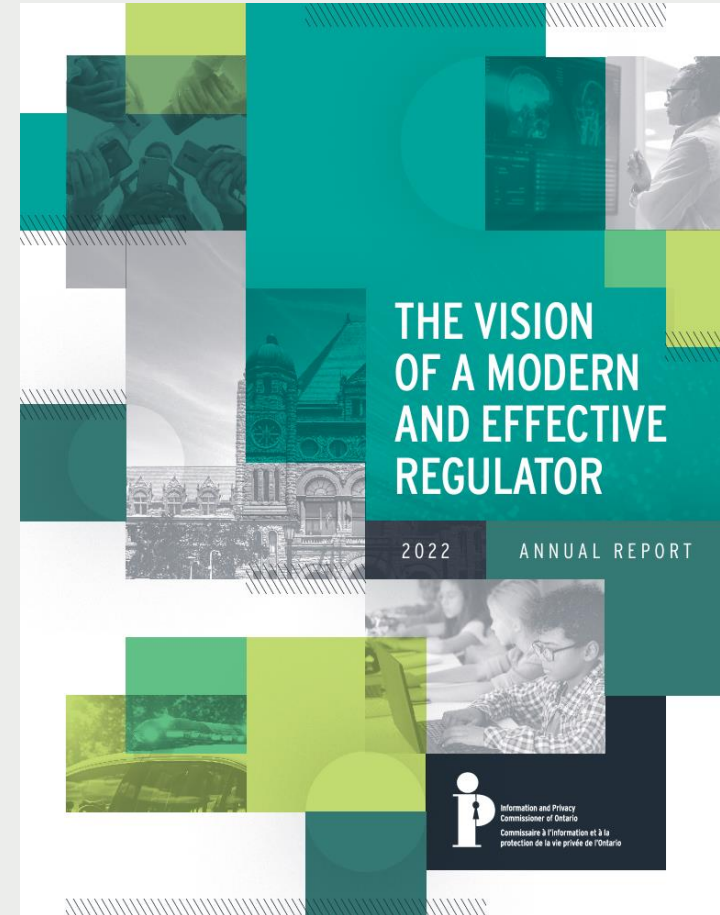
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

OCCAS Conference

October 25, 2024

Our Office

- The purpose of the IPC is to champion the public's right to know and their right to privacy and transparency.
- This involves overseeing Ontario's access and privacy laws, including Part X of the CYFSA.
- The IPC resolves freedom of information appeals and access and correction complaints, investigates privacy complaints, researches access and privacy issues, and educates the public on issues of access and privacy.



Ontario's Access and Privacy Laws

Freedom of Information and Protection of Privacy Act (FIPPA)

- covers 300 provincial institutions

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

- covers 1,200 municipal organizations

Personal Health Information Protection Act (PHIPA)

- covers individuals and organizations involved in the delivery of health care services

Child, Youth and Family Services Act (CYFSA)

- children's aid societies, child/youth service providers

Anti-Racism Act (ARA)

- the collection and use of race-based data to address systemic issues of racism



IPC's Role

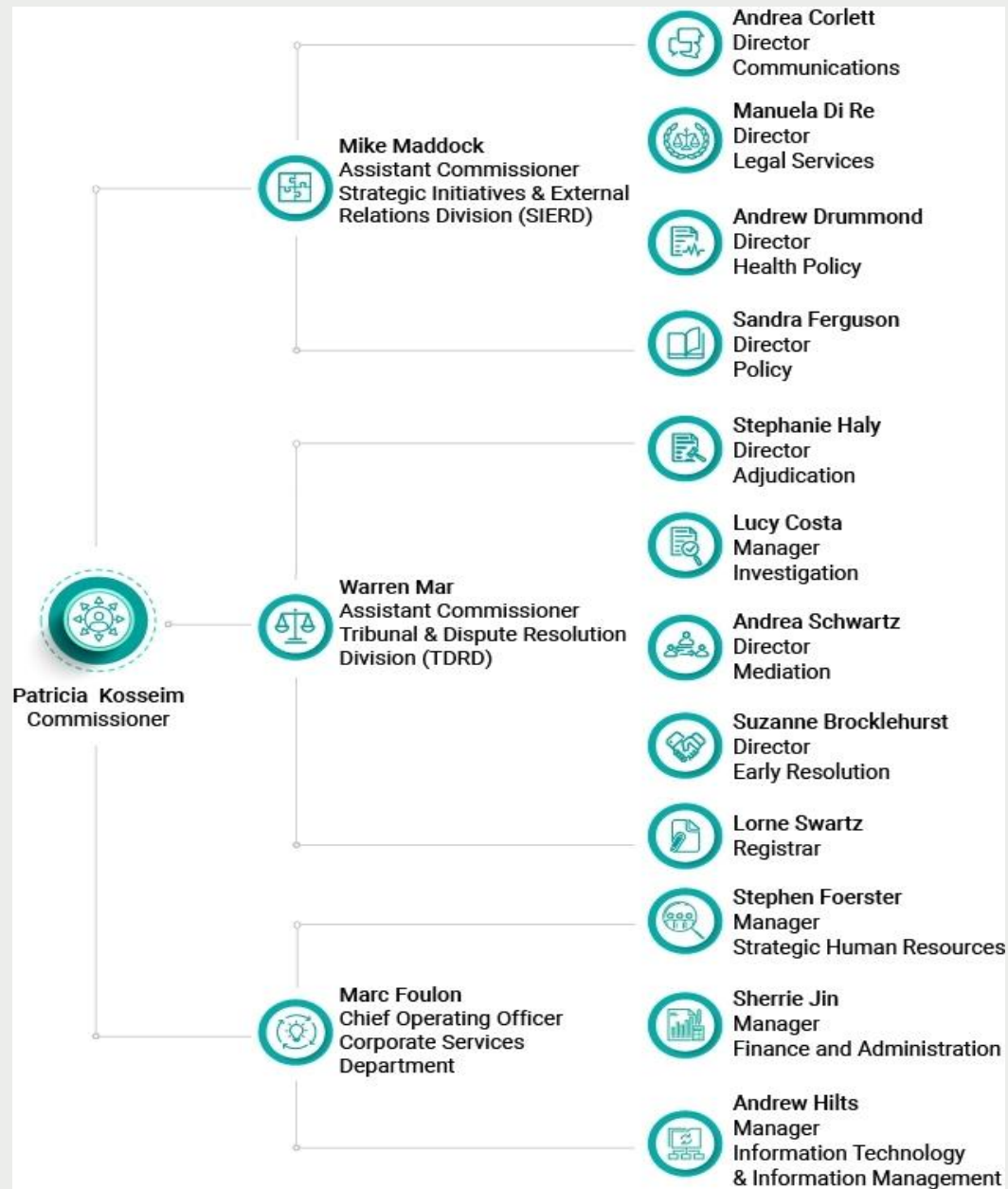
- Under the CYFSA, the IPC may also:
 - Offer **comments** on a service provider's actual or proposed information practices, at their request
 - Receive **representations** from the public about the purposes of Part X
 - Engage in or commission **research** into matters affecting the carrying out of Part X
 - Conduct public **education** programs and provide information about Part X and the IPC's role (this includes guidance materials for stakeholders)

Information and Privacy Commissioner of Ontario

- Commissioner **Patricia Kosseim**
- appointed by Ontario Legislature on July 1, 2020
- 5-year term

- The Commissioner reports to the Legislative Assembly of Ontario and is independent of the government of the day





Public Contacts

- First point of contact for access and privacy inquiries made to the IPC. (e.g. through phone or email at info@ipc.on.ca)
- Research and respond to inquiries from a wide variety of audiences, including the general public, public institutions, child and family service providers, and the health care sector.
- Where possible, provide general guidance but cannot provide legal advice
- Oversee the annual statistical reporting session.

Policy Consultation Services

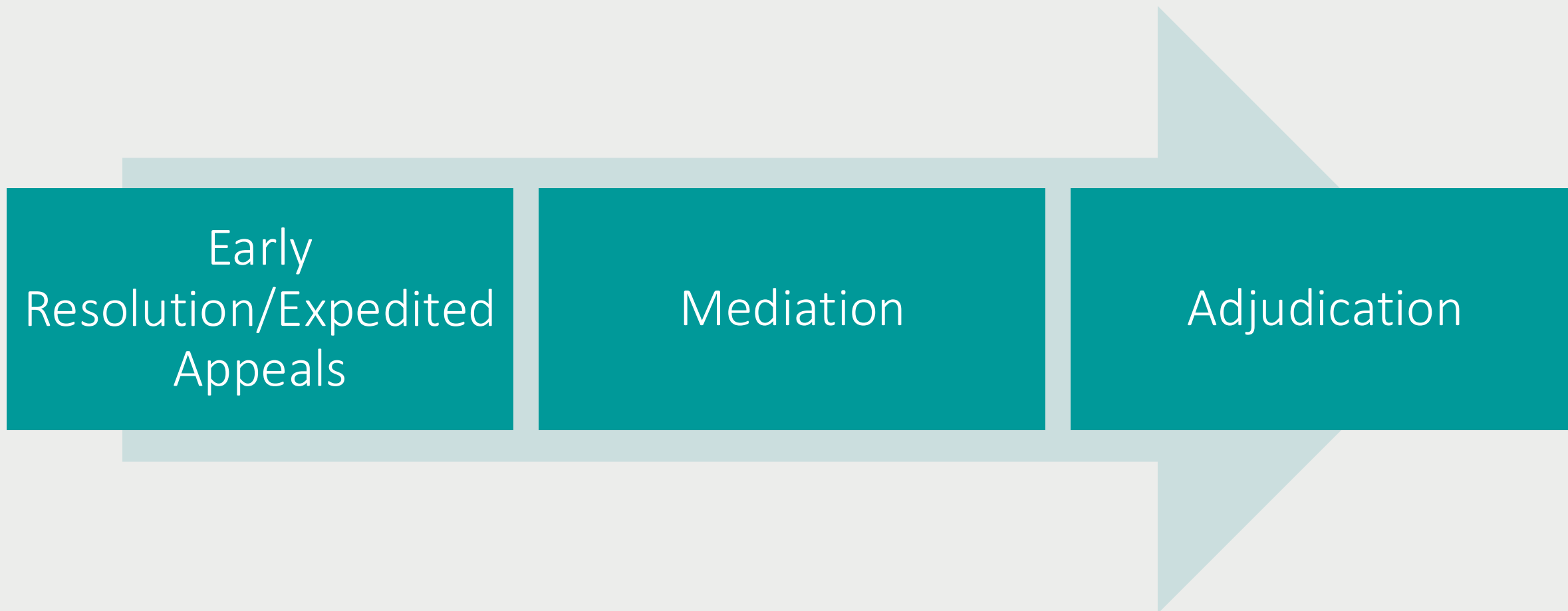
- Provide meaningful comments and general guidance to help you manage privacy and information security risks:
 - **Direct** you to resources to help you safeguard information and better understand your access and privacy obligations
 - **Provide** general guidance and best practices from IPC subject-matter experts
 - **Ontarians** benefit from enhanced compliance with access and privacy laws
- **Cannot** provide legal advice and **do not endorse** or approve any specific technology, device, or proposal

To learn more about the consultation process see our [FAQ](#) or to request a consultation, please contact us at policy.consultations@ipc.on.ca.

CYFSA 5-Year Review

- In July 2023, the IPC provided comments and recommendations to MCCSS as part of the 2023 5-Year Review of the CYFSA.
- The IPC's comments and recommendations are consistent with previous submissions and focus on the goal of strengthening the access and privacy protections afforded to Ontarians under the CYFSA and its regulations.
- Have we received any feedback from the sector about our submissions?

Stages of the IPC Complaint Process



Early Resolution

- Determine if appeals / complaints can be resolved at the Early Resolution Stage
- If an early resolution is not possible, Analysts have delegated authority from the Commissioner to dismiss files in appropriate circumstances or decide if they should continue through the process

Expedited Appeals Team

- Identify straightforward appeals or complaints for streamlined processing including, but not limited to, deemed refusals, time extensions, reasonable search, etc.
- Uses revised procedures and a single person processing model, with one case lead managing the processing of a particular file from start to finish.

Mediation

- Mediation is the process by which the IPC investigates the circumstances of an appeal / complaint and attempts to effect either the full settlement between the parties of all issues in the appeal / complaint or the simplification of a file (i.e. settling some of the issues; clarifying issues, etc.)

Mediation: critical to our success

- 76% of FOI appeals are closed before formal adjudication/investigation
- Successful resolution, through early resolution and/or mediation, saves significant time and resources for all parties
- The goal is to find a resolution that satisfies the interests of all involved

Adjudication Process

- Adjudication is a more formal inquiry (FIPPA and MFIPPA) or review (PHIPA and Part X) process where any outstanding issues in an appeal (FIPPA and MFIPPA) or complaint (PHIPA and Part X) are examined and an adjudicator decides whether to conduct an inquiry or review and issue an order (FIPPA and MFIPPA) or decision (PHIPA and Part X)
- The IPC may compel a party to produce documents or testimony
- The adjudication process begins with a “notice of inquiry” or “notice of review” inviting written “representations”
- Non-confidential portion of parties’ representations are shared with the other parties
- After all representations are received, the IPC may issue a [binding order / decision](#) which is published

Privacy Complaint Process

- A person who believes their privacy rights have been infringed by a service provider may file a complaint with the IPC.
- In certain circumstances, service providers must also report privacy breaches to the IPC. For example, where a breach is determined to be significant based on the sensitivity and volume of the information breached, the number of service providers involved, and the number of people affected.
- Privacy complaints and reported breaches go through our Tribunal

Intake Resolution

Investigation

Final Privacy
Complaint Report

Privacy Complaint Process

Intake Resolution

- some privacy complaints can be resolved without having to go through a formal investigation. In these cases, an informal settlement with the parties involved occurs

Investigation

- If a complaint is not resolved informally and concerns a significant matter, the file will be assigned to an investigator. The Commissioner may also initiate an investigation in respect of a significant matter
- An investigator may send a draft report to the parties containing:
 - summary of complaint
 - discussion of and the information collected
 - investigator's conclusions recommendations

Final privacy complaint report

- At the end of the investigation, the investigator will issue a final report with findings and recommendations
- Investigator may follow-up to ensure recommendations have been implemented
- The IPC may also order the institution to cease and destroy an improper collection of personal information

CYFSA Annual Statistics

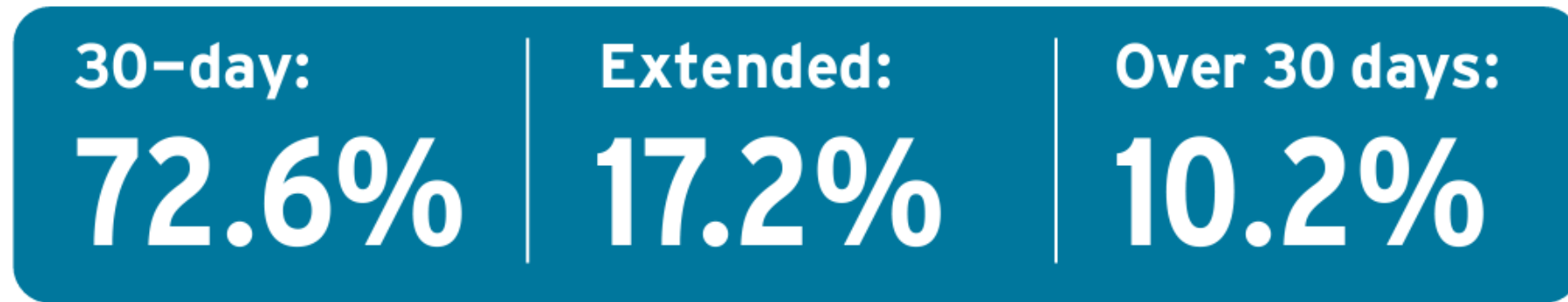
- The child and family services sector is required to report detailed statistics to the IPC on an annual basis.
- Deadline for submitting annual statistics is **April 1st**.
- Guide and answers to FAQ: [cyfsa-statistical-reporting-guidelines.pdf \(ipc.on.ca\)](#)
- **Online Statistics Submission Website:** [Login \(ipc.on.ca\)](#)



Part X of the *Child, Youth and Family Services Act*

In 2023, service providers subject to Part X of the CYFSA received 10,952 requests for personal information, an increase of over 10 per cent from 2022, when 9,923 requests were received.

Overall Compliance



Privacy breaches under Part X of CYFSA

Service providers under Part X of the CYFSA experienced 374 privacy breaches in 2023, a decrease of 17 per cent from 2021, when there were 451 breaches.

CYFSA files opened by issue in 2023

	#	%
Reported breach	62	45.3
Access/correction complaint	47	34.3
Collection/use/disclosure complaint	27	19.7
IPC Initiated collection/use/disclosure complaint	1	0.7
Total	137	100

Overall

Overall opened files 2019-2023

	FIPPA	MFIPPA	PHIPA	CYFSA	Total
2019	732	1,047	1,035		2,814
2020	923	768	926	151	2,768
2021	736	1,029	993	165	2,923
2022	682	916	884	92	2,574
2023	844	1,121	1,047	137	3,149

Overall closed files 2019-2023

	FIPPA	MFIPPA	PHIPA	CYFSA	Total
2019	743	947	1,002		2,692
2020	771	569	624	55	2,019
2021	708	1,021	1,079	168	2,976
2022	731	1,066	965	95	2,857
2023	763	1,087	988	129	2,967

Average duration (in months) to process and close a file 2019-2023

	Access appeals	Privacy files
2019	9.2	4.6
2020	10.9	7.8
2021	12.0	7.3
2022	12.5	8.1
2023	10.7	5.9

Resources

For Organizations:

- [Part X of the Child, Youth and Family Services Act: A Guide to Access and Privacy for Service Providers](#)
- [Reporting a Privacy Breach to the IPC](#)
- [Online Privacy Breach Reporting Form](#)
- [Guidelines for Submitting Annual Statistics to the IPC](#)
- [IPC CYFSA Decisions](#)

For Individuals:

- [Sharing Information in Situations Involving Intimate Partner Violence Guidance](#)
- [Know Your Rights: Your File and Your Rights Under Ontario's Child and Family Services Law](#)
- [Yes, you can](#)

The IPC Adjudication Team

- Adjudication is part of the IPC's Tribunal & Dispute Resolution Division
- The Adjudication team is:
 - 19 Adjudicators
 - 2 Adjudication Review Officers (AROs)
 - 2 Adjudication Managers
 - 1 Director of Adjudication
- All adjudicators resolve appeals under *FIPPA* and *MFIPPA*; some adjudicators also resolve complaints under *PHIPA* and Part X of *CYFSA*
- AROs communicate with the parties on behalf of Adjudicators (parties do not communicate directly with adjudicators)
- Adjudication Managers and the Director occasionally issue orders and decisions

CYFSA Complaint Procedure at Adjudication

- Complaints mainly arrive at adjudication after mediation (if the complaint has not fully settled) but sometimes directly from intake
- Adjudication is a written process
- Generally, the process is the following (although adjudicators may vary the process as appropriate):
 - The adjudicator examines the complaint file (excluding mediation privileged information) and decides whether to conduct a review [discretion to do so under ss. 317(3) and (4)]
 - if no review is warranted, the adjudicator sends a letter to the complainant (preliminary assessment not to conduct a review) and invites the complainant's response; after receiving a response, the adjudicator may issue a no review decision or decide there are reasonable grounds to conduct a review
 - if a review is warranted, the adjudicator prepares a Notice of Review

CYFSA Complaint Procedure at Adjudication continued: Initiating a review (Notice of Review)

- The Notice of Review (NOR):
 - sets out the facts and issues in the complaint
 - identifies the relevant legislative provisions
 - and asks questions about the legislative provisions and their application to the facts and issues in the complaint
- The adjudicator initiates the review by sending the NOR to the party that bears the initial onus (service provider); enclosed with the NOR is the guide "CYFSA Complaint Procedure at the Adjudication Stage"
- The service provider responds to the NOR with written representations

CYFSA Complaint Procedure at Adjudication continued: Representations

- Representations are legal arguments and evidence relevant to the issues, including:
 - Statements of fact (particularly if there is an error or omission in the facts set out in the NOR)
 - Sworn statement of fact in an affidavit (usually optional but sometimes required – the NOR will specify if an affidavit is required)
 - Statements of the law / how the law applies to the facts
 - Any other information relevant to the issues (relevant attachments may be included but their relevance must be explained)

CYFSA Complaint Procedure at Adjudication continued: Representations – tips

- Tips for preparing representations:
 - Know the facts and the records at issue – relevance is key
 - Understand the legislative provisions (research CYFSA decisions that have interpreted and applied them; if none, try PHIPA Decisions on any similar provisions, or MFIPPA/FIPPA orders on any similar provisions)
 - Be clear and concise
 - do not repeat the facts set out in the NOR
 - answer all the NOR questions and explain your responses
 - write your representations so that they can be shared with the other party (try to not include information that qualifies as confidential under the IPC's confidentiality criteria)
 - communicate any change in your position / decision (such as withdrawing your reliance on a legislative provision)
 - be succinct

CYFSA Complaint Procedure at Adjudication continued: Sharing of Representations

- The adjudicator will share the representations with the other party (and will describe the relevant portions of the representations in any public decision) unless there is a confidentiality concern
- Explain any confidentiality concern in your representations (sharing of representations is the first issue in the NOR) and identify the information you think meets the IPC's confidentiality criteria
- Confidentiality criteria:
 - a) sharing the information would reveal the substance of a record claimed to be exempt from a right of access
 - b) the information would be exempt if contained in a record subject to CYFSA
 - c) the information would identify a person, other than a complainant or respondent, who has provided information to the IPC and who has requested that the IPC keep that person's identity confidential
 - d) the information should not be shared with the other party(ies) because:
 - i. the party communicated the information to the IPC in confidence that it would not be shared with the other party(ies); and
 - ii. confidentiality is essential to the full and satisfactory maintenance of the relationship between the IPC and the party; and
 - iii. the relationship is one which in the opinion of the community ought to be diligently fostered; and
 - iv. the injury to the relationship that would result from sharing the information is greater than the benefit gained from the correct disposal of the file.

CYFSA Complaint Procedure at Adjudication continued: Further Representations

- The adjudicator decides whether to invite representations from the complainant
- If so, the adjudicator sends the same or a slightly modified NOR to the complainant enclosing the service provider's representations
- The complainant submits representations responding to the NOR questions and to the representations of the service provider.
- After receiving the complainant's representations, the adjudicator determines whether reply representations are needed from the service provider (due to new information / argument / issue)
- Some reviews go to reply and even sur-reply

CYFSA Complaint Procedure at Adjudication continued: Completing the Review

- The adjudicator determines when the review is completed and then adds the complaint to her decision queue
- Decisions may be issued with an order or with no order
- Timelines for reviews and for issuing a decision depend on:
 - the number of records and issues
 - the complexity of the issues
 - the volume and quality of the representations
 - the parties' conduct (late or missing representations, requests to put the complaint on hold)
 - the need to seek additional information from the parties or notify affected parties
 - the adjudicator's caseload

Discretion not to review the subject-matter of a complaint

- s.317(3) - Commissioner may review the subject-matter of a complaint if there are reasonable grounds
- s. 317(4) - Commissioner may decide not to review the subject-matter of the complaint for whatever reason she considers proper, including:
 - (a) adequate response from the service provider
 - (b) complaint has been / could be more appropriately dealt with, initially / completely, by means of a procedure, other than a Part X complaint
 - (c) time elapsed would likely cause undue prejudice
 - (d) complainant does not have a sufficient personal interest in the subject-matter of the complaint
 - (e) complaint is frivolous / vexatious / made in bad faith
- CYFSA Decisions 3 and 5, interpreted and applied sections 317(3) and (4)

Overview of the IPC's CYFSA Decisions

- The IPC has issued 19 CYFSA Decisions to date, published and searchable here: <https://decisions.ipc.on.ca>
- CYFSA Decision 1 was issued November 2021, so only 3 years of IPC jurisprudence on Part X
- To date, one judicial review application has been filed about CYFSA Decision 19

No Review Decisions

CYFSA DECISION 3 (February 25, 2022)

- Complainant (a teacher) who was interviewed by the service provider as part of an investigation requested the correction of the service provider record detailing his interview; the service provider, which had provided the complainant with a severed copy of the record of his interview, refused the correction request
- IPC adjudicator determined that there were no reasonable grounds to conduct a review of the subject-matter of the complaint / a review was not warranted because the complainant has no right to request that the service provider correct the record under section 315(2) of the *Act* because he has no right of access to the record under section 312(1) of the *Act*; an individual's right to request a correction under section 315(2) is limited to records to which the individual has a right of access under section 312(1); the adjudicator declined to conduct a review and dismissed the complaint.

CYFSA DECISION 5 (April 29, 2022)

- Complainant's information was contained in records of a service provider relating to reports that a child suffered harm while in his care as a babysitter; the complainant sought access to all his personal information in the service provider's files; the service provider provided the complainant with a severed copy of records containing his personal information
- Exercising her discretion under sections 317(3) and 317(4) of the *Act*, the adjudicator determined that there were no reasonable grounds to conduct a review of the subject-matter of the complaint / a review was not warranted because the complainant has no right of access to the records under section 312(1) of the *Act* because the records do not relate to "the provision of a service" to him as required for the application of that section; the adjudicator declined to conduct a review and dismissed the complaint.

Individual's right of access – s.312(1)

- **312 (1)** An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless,
 - (a) the record or the information in the record is subject to a legal privilege that restricts its disclosure to the individual;
 - (b) another Act, an Act of Canada or a court order prohibits its disclosure to the individual;
 - (c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, has not been concluded; or
 - (d) granting the access could reasonably be expected to,
 - (i) result in a risk of serious harm to the individual or another individual,
 - (ii) lead to the identification of an individual who was required by law to provide information in the record to the service provider, or
 - (iii) lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence if the service provider considers it appropriate in the circumstances that the identity of the individual be kept confidential.

Right of access to "personal information" is defined in s.2(1) of the *CYFSA* (adopts the definition in of *FIPPA*)

- Section 2(1) of the *CYFSA* reads:
 - In this Act, "personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*
 - *FIPPA*'s definition in s.2(1) reads:
 - "personal information" means recorded information about an identifiable individual, including,
 - (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
 - (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, telephone number, fingerprints or blood type of the individual,
 - (e) the personal opinions or views of the individual except where they relate to another individual,
 - (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
 - (g) the views or opinions of another individual about the individual, and
 - (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

Definition of "personal information" continued

- The list of examples of personal information in s.2(1) of *FIPPA* is not exhaustive; this means that other types of "recorded information about an identifiable individual" may qualify as personal information
- Sections 2(2), (3) and (4) of *FIPPA* further define "personal information" by what it does not include:
 - Personal information**

(2) Personal information does not include information about an individual who has been dead for more than thirty years.
 - Business identity information, etc.**

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
 - Same**

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.
- However, if business identity information reveals something of a personal nature about an identifiable individual, it may qualify as personal information

Right of access - "to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual"

CYFSA DECISION 1 (November 30, 2021)

- Complainant (teacher) named in two reports made by a third party to a service provider about a child in need of protection; complainant sought access to "records of service" relating to himself; argued he required the responsive records to defend himself against the allegations because his employer, a school board, was acting on them; the records were contained in two intake files, each containing a referral and two investigation files
- the service provider refused the complainant's access request on the basis that it did not provide a "service" to him within the meaning of section 312(1) of the *Act* and, therefore, he has no right of access under the *Act*
- the adjudicator found that the complainant has no right of access to the records under section 312(1) of the *Act* because the records do not relate "to the provision of a service" to him.
- she considered sections 1(1) (the CYFSA's paramount purpose is to promote the best interests, protection and well-being of children), 2(1) (definitions of "service" and "service provider"), 35(1) (functions of a service provider), 281 ("service" is a service or program that is provided or funded under the CYFSA or provided under a licence) and 312(1) (right of access) of the CYFSA

CYFSA DECISION 4 (April 26, 2022)

- Complainant requested access to records about a family member and the service provider refused the request
- the adjudicator found that the complainant does not have a right of access to personal information of his family member under the *Act* because he is neither the individual to whom the personal information relates nor an authorized substitute decision-maker for that individual; the service provider properly exercised its discretion under a potentially applicable section of the *Act* that permits disclosure in some circumstances; she also upheld as reasonable the service provider's search for other records within its custody or control about the complainant and other family members

Exemptions from the right of access

CYFSA Decision 7 (February 28, 2023)

- Complainant sought access to his family's entire case file with a service provider and was granted partial access; the service provider denied access to the name of an individual under the exemption at section 312(1)(d)(ii) of the *Act* (identification of an individual required by law to provide information to a service provider)
- The adjudicator found that the exemption at section 312(1)(d)(ii) applies to the withheld name

CYFSA DECISION 10 (October 12, 2023)

- Complainant (a mother) sought access to her family's entire file with a service provider; the service provider granted her partial access to the responsive records, denying access to some information pursuant to sections 312(1)(a) (legal privilege) and 312(1)(d)(iii) (identification of a source) of the *Act*.
- The adjudicator found that the exemptions at sections 312(1)(a) and 312(1)(d)(iii) apply to the information for which they were claimed

CYFSA DECISION 12 (October 25, 2023) - reconsidered by **CYFSA DECISION 16** (December 18, 2023)

- Complainant sought access to her entire file with a service provider and was granted partial access; but was denied access to information relating to other individuals pursuant to the exemption at section 312(1)(d)(iii) of the *Act* (identification of an individual who provided information explicitly or implicitly in confidence)
- The adjudicator upheld the service provider's decision in part - she upheld the decision to withhold information in records contained in the complainant's protection file, which includes records pertaining to the complainant's family; but she ordered the service provider to grant greater access to records contained in the complainant's care file (since these latter records are dedicated primarily to the provision of a service to the complainant, and the claimed exemption does not apply to some of the withheld information)

CYFSA DECISION 11 (October 25, 2023) - reconsidered by **CYFSA DECISION 15** (December 18, 2023)

- Complainant sought access to her entire file with a service provider and was granted partial access; but was denied access to information relating to other individuals pursuant to the exemption at section 312(1)(d)(iii) of the *Act* (identification of an individual who provided information explicitly or implicitly in confidence)
- The adjudicator upheld the service provider's decision in part – she upheld the decision to withhold information in records contained in the complainant's protection file, which includes records pertaining to the complainant's family; but she ordered the service provider to grant greater access to records contained in the complainant's care file (since these latter records are dedicated primarily to the provision of a service to the complainant, and the claimed exemption does not apply to some of the withheld information)

Adoption records exclusion – s.285(4)(a) – see CYFSA Decisions 2, 6 and 14

CYFSA DECISION 2 (December 17, 2021)

- Complainant (adopted person) requested access to all information about himself, including information about his birth parents; the service provider granted partial access to the requested records (severed all identifying information about the requester's birth parents)
- The adjudicator found that the identifying information about the requester's birth parents is excluded from the scope of Part X of the *CYFSA* under the section 285(4)(a) as information that relates to an adoption.

CYFSA DECISION 6 (October 31, 2022)

- Complainant (adopted person) requested access to her complete file, including information about her birth parents, particularly about her birth father. The service provider granted partial access to the requested records, disclosing all information but for identifying information about the requester's birth parents, which it redacted.
- The adjudicator found that the redacted information, the identifying information about the requester's birth parents, is excluded from the scope of Part X of the *Act* under section 285(4)(a), as it is information that relates to an adoption.

CYFSA Decision 14 (November 30, 2023)

- Complainant (adopted person and former child in care) requested access to all records containing his personal information, including his adoption file; the service provider granted partial access to the requested records, disclosing all non-identifying information to the requester.
- The adjudicator found that the information in the records is excluded from the scope of Part X of the *CYFSA* under s.285(4)(a) because it is information related to an adoption.

Duty to notify (loss / theft / unauthorized use or disclosure) – s.308(2)

CYFSA DECISION 19 (July 5, 2024) (application for Judicial Review in Divisional Court received in August 2024)

- In February 2022, a service provider was the subject of a ransomware attack; while the service provider’s investigation did not find any evidence that the threat actor had accessed or exfiltrated any data stored in the service provider’s environment, it found that the threat actor had encrypted several service provider servers, including those containing personal information
- The IPC initiated a review of the matter; s.308(2) of the *CYFSA* sets out a duty on service providers like the service provider to notify individuals at the first reasonable opportunity if their personal information is stolen, lost, or used or disclosed without authority. The service provider asserts that because the ransomware attack targeted its servers at the external or “container” level, the attack did not “individually impact” file folders and files of personal information held inside the encrypted containers. The service provider takes the position that the encryption event did not result in a theft, loss, or unauthorized use or disclosure of personal information within the meaning of section 308(2), and that the duty to notify does not apply.
- The adjudicator found that the threat actor’s encryption of the service provider servers at the container level affected the personal information in those servers, by making that personal information unavailable and inaccessible to authorized users. The ransomware attack resulted in both an unauthorized use and a loss of personal information within the meaning of section 308(2). As a result, the service provider had a duty to notify affected individuals “at the first reasonable opportunity” of the incident. After taking into account relevant circumstances, including the evidence of diligent efforts by the service provider to contain and to mitigate the risks of the privacy breach, the adjudicator finds that the notice requirement can be met in this case through the posting of a general notice on the service provider’s website, or another form of indirect public notice. The adjudicator ordered the service provider to provide this notice within 30 days of the date of this decision.

"Dedicated primarily to the provision of a service to the individual requesting access," within the meaning of section 312(3) of the *Act*

CYFSA Decision 17 (April 24, 2024)

- Complainant sought access to his “entire family file” with a service provider and was granted partial access to the responsive records but was denied access to information relating to other individuals
- The records were described at paragraph 11:
 - 52 pages (dated 1945 to 1954) that comprise the service provider’s file for the complainant’s family, which was closed before the development of CPIN; the service provider said that its practice of cataloguing documents as child’s service record (or child-in-care records or historical child-in-care file) or family service records (or family records or historical protection file) was not applied to this file
- The adjudicator ordered the service provider to grant the complainant full access to three records she found were dedicated primarily to the provision of a service to the complainant, and to grant greater access to the complainant’s personal information that can reasonably be severed from other information in records not dedicated primarily to the provision of service to him

Duty to correct records – s. 315(9)

CYFSA Decision 18 (April 30, 2024)

- Complainant requested seven corrections be made to certain records in his Children's Services Record; the service provider refused the correction request, and the complainant filed a complaint with the IPC for a review of the refusal; the complainant also challenged the reasonableness of the service provider's search for records responsive to his request and alleged that certain service provider staff who were addressing his correction request were in a conflict of interest
- The service provider subsequently granted the complainant's request for two corrections but maintained that for the remaining five requested corrections the complainant had not demonstrated to its satisfaction that the records were inaccurate or incomplete, as required for the application of the duty to correct in section 315(9) of the *Act*
- s.315(9) reads: "The service provider shall grant a request for a correction if the individual demonstrates, to the service provider's satisfaction, that the record is inaccurate or incomplete and gives the service provider the information necessary to enable the service provider to correct the record."
- The adjudicator considered the correction provisions in the *Act* and upheld the service provider's decision that the duty to grant a correction in section 315(9) of the *Act* applies in respect of two of the seven requested corrections and she concluded that the service provider had granted the two required corrections in compliance with sections 315(1) and 315(11) of the *Act*; she also upheld the service provider's refusal of the remaining requested corrections and the reasonableness of its search for responsive records, and she determined that the complainant's conflict of interest concern is unfounded; no order is issued

Access to deceased person's personal information

CYFSA DECISION 13 (November 28, 2023)

- Complainant requested access to records about her deceased uncle and her entire family; the records at issue were 44 pages and over 67 years old: 43 pages from the family file and one from the complainant's uncle's file.
- The adjudicator found that the complainant did not have a right of access to the personal information of her deceased uncle and of her family members under section 312(1) of the *Act* as the records are not records of the complainant's personal information and they do not relate to the provision of a service to her; she could not exercise a right of access under section 312(1) of the *Act* on behalf of her deceased uncle or her other family members, the substitute decision-maker provisions of the *Act* do not apply to a request concerning the personal information of a deceased individual; and the disclosure provisions in the *Act* do not apply to the complainant's request for records relating to her family and her deceased uncle
- Part X of the *Act* does not contain explicit authority for an individual to act on behalf of a deceased individual in respect of the deceased individual's personal information; the complainant had not demonstrated that she is lawfully authorized under the *Act* to make a request on behalf of her other family members for access to records about them
- The adjudicator upheld the service provider's decision that none of the discretionary disclosure provisions in section 292 (permitting or requiring disclosure of personal information) applies in the circumstances; no order was made in this decision