IPC New Code of Procedure: Side by Side Comparison to AMCTO's Recommendations

AMCTO submitted recommendations to the Information and Privacy Commissioner's consultation on their revised Code of Procedures. The submission was informed by feedback received from members including the Legislation and Policy Advisory Committee (LPAC) prior to the close of the consultation period. Below is a comparison between what AMCTO submitted and what is in the new code. We have also identified other changes of note, but these may not be extensive. The IPC has provided an explanatory note highlighting changes to the Code. Clerks, FOI, Privacy, and Records Management professionals should review the new Code of Procedure and related Practice Direction documents in detail for other relevant changes.

Recommendation:	Code of Procedure:
Section 5: Section 5 discusses the Intake Process. • In the 2004 Code, Section 5.06 noted that when the appeal is not dismissed, the IPC will notify the Institution of the appeal. It is not clear in the new revised code when the Institution will be notified of the appeal. • AMCTO suggests that it would be beneficial to notify Institutions as to the nature of the appeal at this stage, as it would help Institutions prepare for more expedient mediation.	*A notice of appeal will be sent to all parties unless an appeal or part of an appeal is dismissed for lack of jurisdiction under section 6.01.* *It does not specify when this notice will be sent.*
Section 8: Section 8.03 allows the Adjudicator to decline to conduct an Inquiry where they conclude the Appellant failed or refused to engage in meaningful efforts to mediate the dispute. • AMCTO supports this and is appreciative of the efforts to ensure that time and resources are allocated to Appellants dedicated to seeing the process through.	*This section has been rolled into the list of reasons why an adjudicator may decline to conduct an inquiry rather than as a stand-alone section.*
Section 10: Section 10.01 states that the IPC may require to be produced any record that is in the custody or under the	*This section remains unchanged from the consultative draft.*

Recommendation:	Code of Procedure:
control of an Institution and may enter and inspect any premises occupied by an Institution • There may be challenges fulfilling this requirement, particularly in cases where the labour relations exclusion has been applied, or solicitor-client privilege needs to be considered. • Currently, in these types of cases municipalities often provide a summary or index of what is contained in the record to the IPC rather than the record. • AMCTO suggests that municipalities continue to be allowed to provide a summary or index in certain circumstances.	*There is an updated Practice Direction (PD) to the IPC During an Appeal which contains altered language from the now superseded PD: That a detailed index is now required when requested whereas it was previously stated that it should be provided.* *Additionally, the PD now states that records should be sent electronically.* *Moreover, the previous PD stated that the FOI coordinator must retain custody of records for at least 30 days. The new PD now says "an appropriate period of time"*
Section 12: Section 12.01 states that an Institution may make a new discretionary exemption claim only within 35 days after the Institution is notified of the appeal by the IPC. • Thirty-five days from the receipt of notice of appeal represents a very tight timeline for municipalities. It is unreasonable to expect Institutions to rereview entire release packages whenever a notice of appeal is received. • AMCTO suggests that 35 days from being advised of the issues at appeal would be more reasonable than from the notification of appeal and allow Institutions a chance to consider the issues and claim any missed exemptions.	*The IPC did not adjust this section to reflect AMCTO's concerns.* *However, there is a new subsection 12.02 which states that if the Appeal moves to Adjudication, the Adjudicator may decide in exceptional circumstances to consider a new discretionary exemption claim made after the 35-day period.*

Recommendation:	Code of Procedure:
• Furthermore, we note that it is important that the computation of dates under Section 12 is consistent with what is proposed under Section 18.	
Section 15: Section 15.01 states that IPC decisions are final, and reconsiderations of Orders can only be reconsidered under three circumstances. • 15.05 (which is perhaps intended to be 15.03 as there appears to be a numbering error) states that the IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative. • It is unclear whether Orders can only be reconsidered should it be established that 15.01 is satisfied and 15.05 is satisfied, or if an Order can be reconsidered if 15.01 or 15.05 is satisfied.	*The final code of procedure specifies that 15.04 and 15.05 must be satisfied. It may be that whether 15.01 is satisfied as part of the consideration is still up to interpretation.*
Section 16: Section 16.04 refers to attempts to contact a non-Institution Party who does not respond to the deadline specified by the IPC, suggesting that after two failed attempts at contact, the IPC may deem the appeal to be abandoned. • To further enhance transparency and predictability, AMCTO suggests defining a timeline when the attempts to contact will occur and by which a non-Institution Party must respond.	*The final Code revisions specify a 30-day time period for appellants to reply.* *The IPC retains discretion to deem an Appeal abandoned and proceed to close the appeal without further notice to appellants. The IPC will notify the other parties in writing of the closure of the appeal.* *It remains at IPC discretion within correspondence to the appellant to specify the deadline.*
Section 18: Section 18.01 refers to the computation of time where the IPC or this Code sets a timeframe. o 18.01(c) refers to "when the IPC's offices are close". AMCTO suggest	*There were no changes made to this section.*

Recommendation:	Code of Procedure:
these closures should be defined in relation to the Legislation Act.	
Section 19: Sections 19.01 and 19.02 refer to the abuse of process and vexatious appellants. o It would be helpful to know how the IPC arrives at the conclusion that an appeal may be an "abuse of its processes" and the threshold for vexatious. Do the determinations made by the IPC in finding an appellant to be vexatious and taking steps to limit future appeals align with expectations of Institutions? • To promote transparency, AMCTO suggests further defining the process to determine if an appellant is abusing the process or acting vexatiously, as this would be helpful in informing municipalities' own policies in this area.	*The Code does not contain more information as requested.*

Other Changes of Note:

Adherence to Code of Conduct

A new requirement within the Code that during the IPC's consideration of an Appeal, Parties shall adhere to the IPC's Public Code of Conduct.

Definitions

Defines: Constitutional Question, Early Resolution, Expedited Process, Index of Records, Intake, Notice of Appeal, Third Party Appellant,

Adjudication

New sub section: A party seeking a time extension shall make this request in writing, in accordance with the procedure in section 17, which the Adjudicator may consider.

Artificial Intelligence

A new section 20 has been added to the Code on the Use of Artificial Intelligence. The provisions appear consistent with some other legislative direction related to the use of AI in the context of employment matters.

Early Resolution

A new section 6 outlines the procedure for the early resolution stage the IPC has introduced.

Expedited Process

As the IPCO has introduced an expedited process to resolve certain access appeals and complaints more quickly, so parties can get to resolution sooner, Part III of the Code outlines the procedure for this process.