IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner),* 2011 BCSC 112

Date: 20110131
Docket: 09-2882
Registry: Victoria

Between:

The Office of the Premier and the Attorney General of British Columbia

Petitioners

And

Information and Privacy Commissioner of British Columbia and Stanley Tromp

Respondents

Before: The Honourable Mr. Justice Joyce

On Judicial Review from the Decisions of the Information and Privacy Commissioner for British Columbia dated November 5, 2008 (Orders F08-17 and F08-18)

Reasons for Judgment

Counsel for the Petitioners:	N.E. Brown and J.M. Tuck
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Counsel for the Respondent, Stanley Tromp	S. Hern
Place and Date of Hearing:	Victoria, B.C. June 21 - 22, 2010
Place and Date of Judgment:	Victoria, B.C. January 31, 2011

INTRODUCTION

[1] This is an application for judicial review of decisions of a Delegate of the Information and Privacy Commissioner ("IPC Delegate") made under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("*FIPPA*"), by which the Office of the Premier of British Columbia (the "OP") was ordered to give the respondent Stanley Tromp access to certain information from the records from various Government Caucus Committees ("GCCs") of the Government of the Province of British Columbia.

[2] In 2004 and 2006, Mr. Tromp made requests under *FIPPA* for copies of records relating to minutes and agendas of a number of GCCs. The OP, which provides support for the operations of the Executive Council of the Government of British Columbia ("Cabinet"), responded to the requests but withheld certain information on the basis that it was bound by s. 12 of *FIPPA* to refuse disclosure on the ground that the information would reveal the substance of deliberations of the Executive Council or its committees.

[3] Mr. Tromp asked the Information and Privacy Commissioner to review the decisions by the OP in accordance with s. 52 of *FIPPA*. The IPC Delegate conducted inquiries in relation to the requests and decided that some of the information that had been withheld did not fall under s. 12 of *FIPPA* and must be disclosed.

[4] The petitioners submit that the IPC Delegate committed reviewable errors in making its determinations and seeks to have the decisions quashed.

FACTS

[5] I will begin with a brief discussion of the GCCs established by Cabinet, whose records were sought by Mr. Tromp. Their nature and function is described in an affidavit sworn by Mr. Robert Lapper, Q.C., Deputy Cabinet Secretary, as follows:

> 2. The Executive Council, also called Cabinet, is the final decision-making body of executive government. It is responsible for

> determining the government's policies, priorities, legislative agendas and budgets; appointing individuals to specific agencies, boards and commissions; initiating, revising or deleting programs; and making decisions regarding legislative instruments such as regulations and orders-in-council. Cabinet committees are created, and are delegated some of the responsibility to review and analyze submissions to Cabinet, and to recommend to Cabinet appropriate action.
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> 3. The Cabinet decision process includes Caucus Cabinet Committees which are composed of both Members of the Legislative Assembly and Cabinet ministers. Each of these committees is chaired by a private member and has a minister as vice-chair. The Chairs of these committees attend Cabinet meetings.
>
> ...
>
> 5. Each Cabinet Committee deals with information "in the Cabinet stream" (that is, information that is intended to be submitted to Cabinet".
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> 6. The mandate of government caucus committees is, within the subject area assigned to each, (1) to review and make recommendations to Cabinet on policy, legislation, and programs; (2) to monitor existing programs and services through reviews of ministries' service plans; and (3) to receive public delegations. This is a mandate that other committees in the Cabinet decision-making system have had in the past.
>
> 7. Each government caucus committee operates as a committee that advises Cabinet and is an integral part of the Cabinet decision-making process. Policy issues first go to the Agenda Development Committee, then are referred to the appropriate committee (which could include a government caucus committee), and then to Cabinet for decision. Government caucus committees review ministry service plans in order to advise Treasury Board for Treasury Board's formulation of recommendations for Cabinet before final Cabinet decisions are made on the budget.
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> 8. Each government caucus committee functions in the same way as do the other cabinet committees. The members of each government caucus committee receive and review submissions intended to go to Cabinet. At meetings of each government caucus committee the issues are discussed, and advice and recommendations are formulated and recorded in minutes taken by a Cabinet officer. The advice and recommendations are for conveyance to Cabinet to assist Cabinet in decision-making. The advice and recommendations typically relate to (1) policy direction; (2) fiscal implications; and (3) implementation and communications strategy.

[6] The process giving rise to this application began on August 13, 2004, when Mr. Tromp made a request (the "Minutes Request") of the Information, Privacy, Security and Records Management Office of Finance, which provides services to the

OP, for copies of the minutes, agendas, records of committee membership and attendance rolls for meetings of the following GCCs during the stated time periods:

Government Caucus Committee	***Period***
Environment	January 1, 2002 to December 31, 2002
Natural Resources	January 1, 2002 to December 31, 2002
Health	January 1, 2002 to August 1, 2004
Education	January 1, 2002 to August 1, 2004

[7] The OP responded to the Minutes Request, in two stages, on September 28, 2004 and October 4, 2004. The OP advised that an Environment Committee did not exist. With regard to the other committees, the OP released a number of documents but severed and withheld portions of minutes of the other GCCs pursuant to s. 12 of *FIPPA*.

[8] On October 4, 2004, Mr. Tromp asked the IPC to review the decision by the OP with regard to the records that were withheld.

[9] Subsequently, the OP reconsidered the Minutes Request and, on October 12, 2007, it released further records of the GCC on Natural Resources, from which it severed some information pursuant to s. 12 of *FIPPA*.

[10] On October 26, 2006, Mr. Tromp made another request (the "Agendas Request") to the OP for copies of the agendas and lists of background papers presented to the GCCs on Social Development and Environment and Land Use, for 2006.

[11] The OP responded to the Agendas Request in two phases, on January 2, 2007 and January 23, 2007. Records were provided in relation to the GCC on Social Development and the GCC on Natural Resources and the Economy. It is not clear to me why records were provided for the latter GCC rather than the GCC on Environment and Land Use, although it may be that there was no committee for

Environment and Land Use for the relevant period of time. Once again, some records were severed pursuant to s. 12 of *FIPPA*.

[12] On January 26, 2007, Mr. Tromp made an appeal to the IPC for an order that the records relating to the Agendas Request that had been severed pursuant to s. 12 be released.

[13] A joint written inquiry was conducted by the IPC Delegate under Part 5 of *FIPPA* with regard to the Minutes Request and Agendas Request, during which she received affidavit evidence and submissions from the OP and Mr. Tromp.

[14] On November 5, 2008, the IPC Delegate who had conducted the inquiry issued Order F08-17, dealing with the Agendas Request, and Order F08-18, dealing with the Minutes Request.

[15] Order F08-17, which deals with the Agendas Request, ordered the disclosure of all of the information that had been severed from the agendas of the GCCs on Social Development and Natural Resources and Economy.

[16] Order F08-18, which deals with the Minutes Request, ordered the disclosure of some of the information that had been severed from the records and decided that some of the severed information had to be withheld pursuant to s. 12 of *FIPPA*.

[17] I will describe the kinds of information that was ordered to be disclosed and that which was to be withheld in greater detail when I review and discuss the decisions of the IPC Delegate later in these Reasons. First, I will review the provisions of *FIPPA* that are relevant to this application for judicial review.

THE STATUTORY FRAMEWORK

[18] The purposes of *FIPPA* are set out in Part 1, s. 2 as follows:

> **2**(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
>
> (a) giving the public a right of access to records,

(b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,

(c) specifying limited exceptions to the rights of access,

(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and

(e) providing for an independent review of decisions made under this Act.

[19] Section 3(1) provides that *FIPPA* applies to all records in the custody or under the control of a public body. It is agreed that the OP is a public body under *FIPPA*.

[20] The rights of a person to information under *FIPPA*, restrictions on those rights and the procedure for requesting information are set out in Part 2 of *FIPPA*. Those portions that are relevant to this proceeding include the following:

4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

...

12(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

...

(5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.

(6) A committee may be designated under subsection (5) only if

(a) the Lieutenant Governor in Council considers that

(i) the deliberations of the committee relate to the deliberations of the Executive Council, and

(ii) the committee exercises functions of the Executive Council, and

(b) at least 1/3 of the members of the committee are members of the Executive Council.

> (7) In subsections (1) and (2), **"committee"** includes a committee designated under subsection (5).

[21] Subsections (5) to (7) of s. 12 were introduced by an amendment to *FIPPA* effective November 1, 2002.

DECISIONS OF THE IPC DELEGATE

Order F08-17 - The Agendas Request

[22] The IPC Delegate noted that the GCCs in question, with regard to the Agendas Request, had been designated under s. 12(5) of *FIPPA*, so the issue was whether disclosure of the information in dispute would reveal the "substance of deliberations of those committees".

[23] The IPC Delegate described the kind of information contained in the agendas in question and the type of information that was either disclosed or severed in paras. 8 - 9 of her decision:

> [8] The records in dispute consist of a series of one-page committee agendas setting out the names of the committees, the dates on which they met, the name of the minister or official responsible for an item and standard headings, such as "items for discussion', "items for decision", "items for information/discussion", "items for information", "items for recommendation", "legislation review" or "items to be reported out on". The Premier's Office disclosed all of these types of information in the agendas.
>
> [9] The Premier's Office withheld most of the information under each heading, *e.g.*, the names of legislation under the heading "Legislative Review", the names of programs or plans under "Items for Information" and so on. This withheld information is the information in dispute in this inquiry.

[24] In its submission to the IPC Delegate, the OP argued that:

> "[T]he severed information, by its very nature, if disclosed would reveal the substance of deliberations of those cabinet committees. That information consists of descriptions of topics of discussion that have been deliberated upon by the cabinet committees in question.... Disclosure of the severed information would reveal which topics were discussed by the Cabinet Committee in question and, ultimately, by Cabinet itself.

[25] The OP relied on the decision in *Aquasource Ltd. v. British Columbia (Information and Privacy Commissioner)* (1998), 58 B.C.L.R. (3d) 61 (C.A.)

("*Aquasource*"), in which the court said that s. 12 "must be read as widely protecting the confidence of Cabinet communications", to argue that s. 12 must extend to "topics of discussion of meetings of Cabinet and its committees" because disclosure of such information would reveal the "substance" of deliberations.

[26] In rejecting the arguments of the OP, the IPC Delegate said at paras. 18 - 19:

> [18] The Premier's Office said that the severed portions of the records are "descriptions of topics of discussion that have been deliberated upon by the cabinet committees in question" and that they "describe the specific issues to be deliberated upon by cabinet or its committees." I consider these to be overly expansive characterizations. The severed information does not consist of "descriptions" of the issues or topics of discussion. The severed portions are, rather, a barebones series of subjects or agenda items, each item consisting of only a few words.
>
> [19] The Premier's Office argued that the severed "subject headings" are so specific that their disclosure would reveal the substance of deliberations. The Premier's Office's attempt to equate "subject of deliberations" with "substance of deliberations" is not persuasive. The severed items consist merely of the subjects set for discussion in the committee meetings. They do not record the committee members' discussions, opinions, arguments or debates on those subjects. Nor do they reveal what the members said or thought about the pros and cons of each item or any other types of information that past orders have considered to be the "substance of deliberations". There is no "substance" to them and they reveal no "deliberations".

[27] The IPC Delegate further observed that there was no suggestion that disclosure of the headings would, in combination with other publicly available information, reveal the substance of deliberations.

[28] The IPC Delegate required the OP to provide Mr. Tromp access to all of the information that it withheld in the agendas in question under s. 12(1) of *FIPPA*.

Order F08-18 - The Minutes Request

[29] The IPC Delegate described the kinds of information in issue in relation to the Minutes request at para. 14 as:

- Minutes and a few agendas for the Government Caucus Committee on Health for January to December 2002 and January to May 2004

- Minutes for the Government Caucus Committee on Education for January to July 2004
- Minutes and a couple of agendas for the Government Caucus Committee on Natural Resources for January to December 2002

[30] The IPC Delegate noted that the OP disclosed complete copies of any agendas that appear among the records without severing any information.

[31] With regard to the minutes that were provided, the IPC Delegate noted that the OP disclosed the following types of information:

- committee name
- date, time and location of committee meeting
- date of next committee meeting
- names of people who attended or who were absent
- subject headings related to presentations from outside organizations, together with almost all of the text of the minutes dealing with those presentations
- subject headings and most text relating to reviews of ministry service plans
- the words “Cabinet Submission” in subject headings (topic of submission withheld)
- some subject headings referring to reviews of named legislation and names of responsible ministries, together with, in some cases, some of the text related to the legislative reviews

[32] The severed information was described generally in para. 19 of the decision:

> [19] The Premier’s Office withheld, under s. 12 (1), the rest of the information in the minutes. This include: names of legislation, programs or policies in subject headings or subheadings; topics of any Cabinet submissions in subject headings or text; names or initials of responsible ministries in subject headings or subheadings; text under subject headings and subheadings.

[33] The IPC Delegate also made this comment with regard to the severing of information:

> [20] The Premier’s Office did not explain the apparent inconsistencies in its severing of the records in dispute. For example, it did not say why it disclosed the names of legislation and responsible ministries in some places but withheld these types of information in others. It also did not explain why it

> disclosed some portions of text in the minutes ... but withheld other portions which in my view are of a similar character.

[34] The IPC Delegate considered the application of s. 12(1) to the minutes in question based on two separated time frames. She noted that the records for the GCC on Health and the GCC on Natural Resources for the period from January to October 2002 pre-date the day on which the first *Committees of the Executive Council Regulation*, B.C. Reg. 290/2002, designated those committees under the new s. 12(5) and concluded that, for that period, those committees were not "committees" for the purpose of s. 12(1). She concluded that the question relating to the records made during that period of time was whether disclosure of the severed information would reveal the "substance of deliberations" of Cabinet.

[35] The IPC Delegate found that the three GCCs in question were designated by regulation during the period after November 1, 2002, and concluded that the issue with regard to records made after November 1, 2002 was whether disclosure of the severed information would reveal the "substance of deliberations" of Cabinet or one of its committees.

[36] With regard to the records created before November 1, 2002, the IPC Delegate first considered the subject headings that had been severed. She noted at para. 41 that:

> [41] The Premier's Office occasionally disclosed portions of a subject heading, such as the words "Cabinet Submission", "Legislation" or "Review of Legislation", together with the name of the responsible Ministry. However, the Premier's Office withheld the rest of the subject headings in these cases, such as the name of the Act which followed the term "Legislation" or the name of the topic accompanying the term "Cabinet Submission". In other instances, it withheld all of a subject heading or subheading.

[37] Applying the same reasoning that she had expressed in Order F08-17, the IPC Delegate concluded at paras. 45 - 47:

> [45] After a careful review of the records, I conclude that disclosure of some of the information in the severed and withheld subject headings or subheadings would reveal the substance of deliberations of Cabinet, as the information expressly or implicitly refers to proposals or recommendations to

> Cabinet, decisions intended for Cabinet to make or the content of proposed legislative amendments. I find that s. 12(1) applies to this information.
>
> [46] Other information in the subject headings or subheadings, however, concerns straightforward topics or subjects for discussion, such as the names of legislation, the name of the responsible ministry or the topic of the Cabinet submission being considered. As noted above, the Premier's Office was inconsistent in its severing of these types of information, withholding them in some places and disclosing them in others.
>
> [47] For the same reasons as I gave in Order F08-17, I find that disclosure of this latter type of subject heading or subheading information would not reveal the substance of deliberations of Cabinet and that s. 12(1) does not apply to this information.

[38] With regard to the text of the minutes that pre-date November 1, 2002, the IPC Delegate concluded that:

> [48] ... [A] number of the severed portions of the text either expressly or impliedly concern the contents of Cabinet submissions or of draft or proposed legislation or regulations or proposals intended for Cabinet's consideration, or set out the Committees' views on and recommendations to Cabinet on these matters. I am satisfied that disclosure of these types of information would reveal the substance of deliberations of Cabinet and that s. 12(1) therefore applies to these portions. ...
>
> [49] In the case of the remaining severed text in the minutes, however, it is not evident that its disclosure would reveal the substance of deliberations of Cabinet. Most of these severed passages deal with ministry plans or policies or with presentations on various topics to the committees. In some cases, these records also reveal the committee members' views and deliberations on these matters. These types of information do not appear in the context of matters prepared for or intended to go to Cabinet. There is no implicit or explicit reference in these passages to Cabinet submissions or to draft legislation on the issues the Committees are considering. These portions also contain no express or implied committee recommendations to Cabinet on these or other issues; nor do they contain or reveal other information expressly or implicitly submitted to or prepared for submission to Cabinet. I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information ....
>
> [50] Some other information consists of opening or closing sentences in the passages dealing with reviews of legislation, Cabinet submissions or policies. These sentences contain no information on the contents of the items under review. Nor do they contain any express or implied policy considerations, committee recommendations to Cabinet or other similar information. They also neither contain nor reveal any information expressly or implicitly submitted to or prepared for submission to Cabinet. They are simply straightforward remarks which are similar in character to information the

> Premier's Office disclosed in other portions of the minutes, such as those I quoted above. I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information.

[39] Turning to the records created after November 1, 2002, applying the same reasoning that she applied to the other records, the IPC Delegate concluded that s. 12(1) applied to some of the severed subject headings and did not apply to others.

[40] With regard to the severed text of the post-November 1, 2002 minutes, the IPC Delegate concluded s. 12(1) applied to much of the information withheld but found that:

> [55] ... [A] few of the withheld portions are opening sentences in the passages, similar in character to information the Premier's Office disclosed elsewhere and which I quote above. For the same reasons as those I discuss above at para. 47, I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information.

ISSUES

[41] This application raises the following issue for determination:

(a) What is the appropriate standard of review?

(b) Did the IPC Delegate make a reviewable error in determining that the records of the GCC on Health and the GCC on Natural Resources that pre-date November 1, 2002 must be withheld under s. 12(1) of *FIPPA* only where they would reveal the substance of deliberations of Cabinet?

(c) Did the IPC Delegate make a reviewable error by concluding that the disclosure of the disputed information would not reveal the substance of deliberations of Cabinet committees?

ANALYSIS

What is the appropriate standard of review?

Position of the parties

[42] The OP initially submitted that the appropriate standard of review in this case with regard to the interpretation of s. 12 of *FIPPA*, is the "correctness" standard but that in reviewing the decision as to the application of s. 12 to the actual records at issue in this case, the appropriate standard was "reasonableness" and the decision maker is entitled to deference. With regard to the issue of the effect of the designation of committees under s. 12(5) on records created before the date of designation, the OP submitted that the appropriate standard is "correctness".

[43] Mr. Tromp and the IPC argued that the appropriate standard of review for both decisions is "reasonableness".

Framework for analysis

[44] As the *Administrative Tribunals Act*, S.B.C .2004, c. 45, does not apply to the IPC, the determination of the appropriate standard of review is based on the common law alone (see: *Weyerhaeuser Company Ltd. v. British Columbia (Assessor of Area No. 4 - Nanaimo Cowichan*), 2010 BCCA 46).

[45] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 ("*Dunsmuir*") the Supreme Court of Canada defined two standards for the judicial review of administrative decisions: (1) the "correctness" standard, to be used in those circumstances where the reviewing court should not defer to the decision-maker's decision; and (2) the "reasonableness" standard to be used in all other circumstances where the court must defer to the decision-maker's decision.

[46] The Court identified circumstances where the reasonableness standard will usually apply as including:

- where there is a privative or preclusive clause, which indicates a legislative intent to give deference to the decision maker (para. 52.)

- where the question is one of fact, discretion or policy (para. 53.)

- where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity (para. 54.)

- where an tribunal has developed particular expertise in the application of a general common law or civil rule in relation to a specific statutory context (para. 54.)

[47] At para. 55 the Court summarized:

> **55** A consideration of the following factors will lead to the conclusion that the decision maker should be given deference and a reasonableness test applied:
>
> - A privative clause: this is a statutory direction from Parliament or a legislature indicating the need for deference.
> - A discrete and special administrative regime in which the decision maker has special expertise (labour relations for instance).
> - The nature of the question of law. A question of law that is of "central importance to the legal system ... and outside the ... specialized area of expertise" of the administrative decision maker will always attract a correctness standard (*Toronto (City) v. C.U.P.E.*, at para. 62). On the other hand, a question of law that does not rise to this level may be compatible with a reasonableness standard where the two above factors so indicate.

[48] The Court indicated that an exhaustive review of these factors will not be required in every case to determine the proper standard of review. Existing jurisprudence may identify questions that generally fall to be determined according to the correctness standard, for example:

- constitutional questions regarding the division of powers between Parliament and the provinces (para. 58.)

- true questions of jurisdiction or *vires* in the narrow sense of whether or not the tribunal had the authority to make the inquiry (para. 59.)

- where the question at issue is one of general law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.

[49] This two-step analysis was summarized at para. 62:

> **62** In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[50] In *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, at para. 25 the Supreme Court of Canada commented that:

> **25** ... *Dunsmuir* recognized that with or without a privative clause, a measure of deference has come to be accepted as appropriate where a particular decision had been allocated to an administrative decision-maker rather than to the courts. This deference extended not only to facts and policy but to a tribunal's interpretation of its constitutive statute and related enactments because "there might be multiple valid interpretations of a statutory provision or answers to a legal dispute and that courts ought not to interfere where the tribunal's decision is rationally supported" (*Dunsmuir*, at para. 41). A policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (*Dunsmuir*, at para. 49, quoting Professor David J. Mullan, "*Establishing the Standard of Review: The Struggle for Complexity?*" (2004), 17 C.J.A.L.P. 59, at p. 93). Moreover, "[d]eference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context" (*Dunsmuir*, at para. 54).

[51] With regard to the standard applicable when a tribunal is required to interpret its statute, in *Nolan v. Kerry (Canada) Inc.,* [2009] 2 S.C.R. 678, where the issue was the standard of review in the context of the review of the Ontario Financial Services Tribunal's interpretation of its authority to award costs of an appeal out of a pension trust fund, the Court said at paras. 33 - 34:

> **34** The inference to be drawn from paras. 54 and 59 of *Dunsmuir* is that courts should usually defer when the tribunal is interpreting its own statute

> and will only exceptionally apply a correctness of standard when interpretation of that statute raises a broad question of the tribunal's authority.
>
> **35** Here there is no question that the Tribunal has the statutory authority to enquire into the matter of costs; the issue involves the Tribunal interpreting its constating statute to determine the parameters of the costs order it may make. The question of costs is one that is incidental to the broad power of the Tribunal to review decisions of the Superintendent in the context of the regulation of pensions. It is one over which the Court should adopt a deferential standard of review to the Tribunal's decision.

Step 1 - Does existing jurisprudence determine the standard of review?

[52] Turning to the first question posed in *Dunsmuir*, does the previous jurisprudence provide an answer as to the appropriate standard of review to be applied in this case?

[53] *Aquasource* concerned both the interpretation and application of s. 12(1) of *FIPPA*. In an inquiry concerning the disclosure of severed Cabinet records the Commissioner had to interpret s. 12(1). In doing, so he rejected the argument that the words “including any advice, recommendations, policy considerations or draft legislation submitted or prepared for submission to the Executive Council or any of its committees” expanded the scope of the operative phrase “substance of deliberations”, which preceded the enumerate categories. As stated in para. 10 of the decision, the Commissioner concluded that:

> What is meant to be protected is the "substance" of Cabinet deliberations, meaning recorded information that reveals the oral arguments, pro and con, for a particular action or inaction or the policy considerations, whether written or oral, that motivated a particular decision.
>
> * * *
>
> The first sentence in section 12(1) determines the scope of information covered by section 12(1): "information that would reveal the substance of deliberations of the Executive Council or any of its committees." The four categories of records listed later in section 12(1) normally fall within the boundaries set by the opening words of section 12(1). These categories do not expand the coverage of section 12(1), but provide some examples of what falls within the "substance of deliberations.

[54] Mr. Justice Donald, speaking for the Court, held that in reviewing the decision of the Commissioner with respect to the interpretation of s. 12, the appropriate standard was “correctness”. In doing so, he was influenced by his view that the case

was "primarily one of statutory interpretation" in which the Court was "as well equipped as the Commissioner to settle the meaning of s. 12" and involved no special expertise possessed by the Commissioner. The interpretation of the section was a question of law, not heavily burdened with facts.

[55] Donald J.A. concluded the Commissioner erred in not giving a broad interpretation to the phrase "substance of deliberations". At paras. 39 and 41, he said:

> **39** ... Standing alone, "substance of deliberations" is capable of a range of meanings. However, the phrase becomes clearer when read together with "including any advice, recommendations, policy considerations or draft legislation or regulations submitted ....". That list makes it plain that "substance of deliberations" refers to the body of information which Cabinet considered (or would consider in the case of submissions not yet presented) in making a decision. An exception to this is found in s. 12(2)(c) relating to background explanations or analysis which I will discuss later.
>
> **41** It is my view that the class of things set out after "including" in s. 12(1) extends the meaning of "substance of deliberations" and as a consequence the provision must be read as widely protecting the confidence of Cabinet communications.

[56] At para. 48, Donald J.A. formulated the following test for s. 12(1) questions: "Does the information sought to be disclosed form the basis for Cabinet deliberations?"

[57] Mr. Justice Donald also said that "reasonableness" was the appropriate review test for "the application of the Act to the particular circumstances of the case (para. 29). He found that the Commissioner applied s. 12 in a reasonable manner to the records in question.

[58] Counsel for the IPC and counsel for Mr. Tromp submit that the standard of review analysis in *Aquasource*, which pre-dates *Dunsmuir*, has been overtaken by later jurisprudence. The IPC referred to *Macdonell v. Quebec (Commission d'accès à l'information)*, [2002] S.C.J. No. 71, which concerned a review of the Commissioner's decision denying access to a document concerning the expenses of Members of the Quebec National Assembly based on his interpretation of sections of the applicable freedom of information legislation. A majority of the Supreme Court

of Canada held that the applicable standard for review of the decision interpreting the sections was “reasonableness”.

[59] *British Columbia (Minister of Water, Land and Air Protection) v. British Columbia (Information and Privacy Commissioner)*, [2004] B.C.J. No. 735, concerned, amongst other things, the question of the appropriate standard of review of a decision of the IPC under s. 54 of *FIPPA* concerning persons entitled to notice of an inquiry. The Court referred to a number of factors that supported a reasonableness standard and specifically made reference to *Macdonell*. At para. 33, Hall J.A. said:

> **33** In the instant case there is neither a privative clause nor a right of appeal. The absence of such clauses in itself is not determinative; this is somewhat of a neutral factor. However, the statute is the constituent legislation of the tribunal. This latter circumstance could be said to indicate a more deferential standard of review. The relative expertise of the tribunal also falls to be considered. This area of access to information is a fairly specialized area and one with which the Commissioner will, over time, gain a familiarity. He is well situated to appreciate the issues and concerns that have arisen and will arise in the operation of the Act. The continuing administration of the Act will cause the Commissioner to be alive to issues such as the parameters of likely concern by those who could be potentially affected by decisions relating to the release of information under the Act. There is in my respectful opinion an obvious factual component to any decision made by the Commission under s. 54 concerning notice and participation. The effective administration of the Act requires that the Commissioner be afforded a reasonable ambit of discretion in deciding who it is appropriate to notify and to allow to formally participate in any inquiry. In *Macdonell v. Quebec (Commission d'accès à l'information)*, [2002] 3 S.C.R. 661, 2002 SCC 71 [*Macdonell*], a case where a limited right of appeal in the legislation could have been indicative of a less deferential standard of review, Gonthier J., speaking for the majority, had this to say, at para. 8, regarding the expertise of privacy commissioners:
>
> > The Quebec Commission d'accès à l'information has no special interest in the decision it must make, and so it is able to play its role independently. By virtue of the fact that it is always interpreting the same Act, and that it does so on a regular basis, the Quebec Commissioner develops general expertise in the field of access to information. That general expertise on the part of the Commission invites this Court to demonstrate a degree of deference.
>
> In *Macdonell*, the court found it appropriate to apply a standard of reasonableness to the decision of the Commissioner.

[60] In *British Columbia Teachers' Federation v. British Columbia (Information and Privacy Commissioner)*, 2006 BCSC 131 ("*BCTF*"), Garson J. (as she then was) summarized the evolution of the standard of review jurisprudence to that point at paras. 71 - 77:

> **71** In British Columbia, courts have decided that pure questions of law that limit or define the scope of the *Privacy Act* or that are not regarded as essential to core expertise of the Commissioner such as issues of solicitor client privilege and Cabinet deliberative secrecy have attracted the correctness standard of review. *Aquasource Ltd. v. British Columbia (Information and Privacy Commissioner)* (1998), 58 B.C.L.R. (3d) 61 (C.A.); *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, [2004] B.C.J. No. 2534 (S.C.).
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> **72** Decisions on matters within the Commissioner's core expertise-for example, fact-intensive questions and the interpretation and application of disclosure exceptions, the burden of proof in s. 57, and the Commissioner's discretionary powers concerning his own process (notice and receipt of in camera evidence) have been reviewed on the reasonableness standard. *Jill Schmidt Health Services Inc. v. British Columbia (Information and Privacy Commissioner)*, [2001] B.C.J. No. 79 (S.C.) paragraphs 31, 32; *British Columbia (Minister of Water, Land and Air Protection) v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 2307 paragraphs 6-9, rev'd in part [2004] B.C.J. No. 735 (C.A.); *Architectural Institute of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2004] B.C.J. No. 465 (S.C.).
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> **73** In this case, the most important of the issues under review concerns the application of the disclosure exceptions under s. 22. Those issues, at least at the first stage of the analysis, involve questions of statutory interpretation, for instance whether s. 4 permits the severing of non-personal information from personal information in a record that the Petitioner contends is in its entirety, exempt from disclosure under s. 22(3)(d). The application of that statutory interpretation to the documents under review is a question of mixed fact and law. I conclude that these questions of statutory interpretation are questions that engage the core expertise of the Commissioner. They are not pure questions of law outside of his expertise.
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> **74** In *Aquasource*, Donald J.A. said: "The Commissioner possesses no special expertise in statutory interpretation which would justify according deference to his interpretation of a provision such as s. 12:
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> **75** That statement must be considered to have been overtaken somewhat by subsequent Supreme Court of Canada dicta in which that court acknowledged expertise and deference to a tribunal in the interpretation of its own statute. In *Moreau-Berubé v. New Brunswick (Judicial Council)* [2002] 1 S.C.R. 249 at paragraph 61 Arbour J. stated:
>
> > However, questions of law arising from the interpretation of a statute within the tribunal's area of expertise will also attract some deference ... As Bastarache J. noted in *Pushpanathan*, [1998] 1 S.C.R. 982

> "even pure questions of law may be granted a wide degree of deference where other factors of the pragmatic and functional analysis suggest that such deference is the legislative intention."
>
> **76** The Commissioner does have specialized expertise accumulated by his office in the operation of the Act generally, and specifically in applying the presumptions and exceptions in sections 21 and 22. The title of the Act, Freedom of Information and Protection of Privacy, illustrates the tension between disclosure of information in the possession of public or government bodies, and the protection against the invasion of the privacy of individuals. The careful balancing of those competing policy objectives is the task of the Office of the Commissioner.
>
> **77** Accordingly even on the questions of statutory interpretation I find that the Commissioner is entitled to deference based on his expertise and his polycentric functions. Considering all the factors mandated by the functional and pragmatic analysis as set out above and the weight of the judicial authority just quoted, I conclude that the appropriate standard of review is reasonableness.

[61] I agree with the submission of the IPC that the pre-existing jurisprudence on s. 12(1) of *FIPPA* does not satisfactorily determine the appropriate standard of review for questions of interpretation in view of the transformation of the law since *Aquasource* was decided. I agree with the submission that the standard of review analysis in *Aquasource* on questions of interpretation has been superceded by the Supreme Court's clarification of the law of judicial review, which establishes that deference is the norm for questions of law involving a decision maker's interpretation of its home statute and that correctness applies only to true jurisdictional questions.

Step 2 - Analysis of the relevant factors

(i) Presence or absence of privative clause or statutory right of appeal

[62] There is no privative clause or statutory right of appeal contained in *FIPPA*. I consider the absence of these provisions neutral in the standard of review analysis (see *Khosa* at para. 25.)

(ii) Purpose of the decision maker as determined by interpretation of the enabling legislation

[63] *FIPPA* creates a discrete and specialized administrative regime to deal with rights of access to information in records held by public bodies, the limited

exceptions to those rights, and the Commissioner's independent oversight of the administration of the Act.

[64] One of the express purposes of the legislation is to provide for an independent review of decisions made under *FIPPA* (s. 2(1)(e)). The Legislature has accomplished this through the specialized tools and powers given to the Commissioner in the Act. The Commissioner has multiple roles in relation to education, research, public information, policy advice, compliance investigations and audits, complaint and review investigations and mediations, inquiries and order making. He is charged with reviewing the decisions of public bodies in relation to access requests. The Commissioner's varied oversight responsibilities under the Act are not similar to the normal role of a court.

[65] In *Ontario (Minister of Health and Long-Term Care) v. Ontario (Information and Privacy Commissioner*, [2004] O.J. No. 4813 (C.A.) 1465, the Ontario Court of Appeal observed at para. 28 that the Ontario Information and Privacy Commissioner, who has similar powers to the IPC, that the very structure of the office "and the specialized tools given to it to discharge one of the Act's explicit objectives suggests that the courts should exercise deference in relation to the Commissioner's decisions".

54. This factor supports deference to the IPC's interpretation and application of the statutory machinery for access requests and reviews under the Act, including the disclosure exception in s. 12.

(iii) Nature of the question at issue

[66] In accordance with *Dunsmuir*, deference will apply to questions where the "legal and factual issues are intertwined with and cannot be readily separated" and will generally apply where the decision maker is interpreting its own or closely relates statutes. Deference will also be warranted where a decision maker has developed particular expertise in the application of a general common law rule in relation to a specific statutory context (*Dunsmuir*, paras. 53 - 55).

[67] The principal question at issue in this case is whether disclosure of the records in dispute would reveal the substance of Cabinet deliberations. This is a question of mixed fact and law that required the IPC Delegate to interpret the phrase "substance of deliberations" in s. 12(1) and to apply that test to the records in issue. This is a question of mixed law and fact. The question of law concerned the interpretation of the IPC Delegate's home statute. Likewise, the decision concerning the effect of the designation of committees on records created before the committee was designated involves a question of law concerning the decision maker's home statute that, in my view, warrants deference.

[68] In my opinion, these are not questions that fall within any of the categories of true jurisdictional questions identified in *Dunsmuir* that would attract a correctness standard.

[69] The petitioners suggest that the interpretation of s. 12 has broad implications for "the public interest in the proper administration of the affairs of government". However, that characterization does not, in my view, raise the question to one of "general law of central importance to the legal system as a whole" which is one of the categories of true jurisdiction identified in *Dunsmuir*.

[70] The interpretation of "substance of deliberations" in s. 12(1) does not have implications beyond the application of *FIPPA*. The interpretation and application of the statutory formula governing the circumstances for the protection of Cabinet deliberations under the Act are matters that fall squarely within the four corners of the statute and lie at the heart of the role of the IPC.

[71] Since *Dunsmuir*, the correctness standard has been applied to questions of statutory interpretation involving the decision maker's home statute where the issue involves a 'broad question of the tribunal's authority' to embark upon the inquiry. That is not the case here.

[72] This aspect of the test also supports a reasonableness standard.

(iii) Expertise of the decision maker

[73] Expertise must be evaluated contextually, taking into account the decision maker's expertise under the statute, the reviewing court's expertise relative to that of the decision maker, and the nature of the specific issue before the decision maker relative to this expertise (*BCTF* at para. 27).

[74] In *Macdonell,* the Court recognized the relative expertise of information and privacy commissioners performing similar oversight powers as the Commissioner in this province.

[75] In *Ontario (Minister of Health and Long-Term Care) v. Ontario (Information and Privacy Commissioner*, [2007] O.J. No. 4813 (C.A.), the Court described the expertise of the Ontario Information and Privacy Commissioner, who also has similar powers to the Commissioner in this province, in the following way:

> **28** The second contextual factor is the relative expertise of the Commissioner and the court both in relation to the Act generally and to the particular decision under review. One of the principles the Act is expressly founded on is that disclosure decisions should be reviewed independently of government. It creates the office of the Commissioner to deliver on that principle and gives the Commissioner broad and unique powers of inquiry to review those decisions. It constitutes the Commissioner as a specialized decision maker. In my view, this implies that the legislature sees the Commissioner as the appropriate reviewer of disclosure decisions by government. The very structuring of the office and the specialized tools given to it to discharge one of the Act's explicit objectives suggests that the courts should exercise deference in relation to the Commissioner's decisions.
>
> ...
>
> **31** In every review of disclosure decisions by government, the Commissioner is required by the Act to strike the delicate balance required between its two fundamental purposes, providing the public with the right of access to information held by government and protecting of the privacy of individuals with respect to that information. This is not a task for which the courts can claim the same familiarity or specialized expertise.

[76] The Ontario Commissioner's expertise in relation to Cabinet privilege was expressly acknowledged in *Ontario (Ministry of Finance) v. Ontario (Assistant Information and Privacy Commissioner),* [1997] O.J. No. 1465 (Ont. Div. Ct.) where Justice Sharpe, for the Court, held that the reasonableness applied to the Commissioner's interpretation of s. 12 of the Ontario Act (the counterpart to s. 12 of the Act). The Court accepted "that this is an area where deference is to be paid to

the specialized expertise of the Commissioner in relation to the interpretation of the Act …".

[77] In my view, this factor also favours deference to the decision maker.

[78] I am satisfied that given the development of the law since *Aquasource* and the framework for the determination of the appropriate standard of review set down in *Dunsmuir* that it is open to this court to conclude, as I do, that the appropriate standard of review of the decisions of the IPC in this case is that of reasonableness.

Did the IPC Delegate make reviewable errors?

[79] Having concluded that the appropriate standard of review of the decisions of the IPC Delegate is reasonableness, this issue may be restated as whether the IPC Delegate's decisions were reasonable. How is that standard to be applied?

[80] In *Dunsmuir*, the Court described what is meant by "reasonableness" at para. 47 in these terms:

> **47** Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of [page221] justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

The decision concerning the effect of the designation of GCCs in November 2002

[81] As I have already noted, the IPC Delegate treated the records of the GCC on Health and the GCC on Natural Resources that were created prior to the date those committees were designated differently from the records created after the committees were designated. She concluded that prior to designation under s. 12(5)

the committees were not Cabinet committees within the meaning of s. 12(1) and the test, therefore, was whether disclosure of the records would reveal the substance of deliberations of Cabinet as opposed to the substance of deliberations of the GCCs.

[82] The IPC Delegate did not provide detailed reasons or analysis to support her conclusion in this regard. It appears to me that her reasoning must have been along these lines: because s. 12(1) protects the secrecy of deliberations of a designated committee, if a committee is not designated when it deliberates there is no protection afforded by s. 12(1) of the deliberations of the committee or of the records created contemporaneously with the deliberations, except insofar as they would reveal the deliberations of Cabinet itself. Thus, the designation of a committee does not have retrospective effect to clothe prior records with the protection afforded by s. 12(1).

[83] Under this interpretation, Cabinet has the opportunity to protect the deliberations of a GCC that does not otherwise meet the requirements of a Cabinet Committee by designating it under s. 12(5). If it so designates, then the deliberations of that Committee are protected from disclosure. If it does not designate a GCC, then the deliberations of that committee are not protected unless they would reveal the deliberations of Cabinet.

[84] The OP argues that there is nothing in *FIPPA* that supports this interpretation and that a plain reading of the statute lead to the conclusion that the exceptions contained in s. 12(1) apply to records in the custody or control of a GCC that has been designated, regardless of when the records were created.

[85] The OP submits that there is a legitimate concern that the approach taken by the IPC Delegate, if applied to other situations, could result in harm to government or other interests and gives, as an example, the protection given by s. 22.1 to abortion related information, which came into effect in 2001. The OP says that the interpretation given by the IPC Delegate to s. 12(1), if followed in relation to s. 12(5), would mean that information that came into existence before 2001 would not be protected by s. 22.1 (although it may be protected by other sections).

[86] The OP draws the distinction between a statute that has retroactive effect and one that has retrospective effect and argues that s. 12(5) has retrospective effect, which it says has the following meaning:

> … A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statue operates backwards. A retrospective statue operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was, a retrospective statute changes the law from what it otherwise would be with respect to a prior event.
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> E. Driedger, "*Statutes: Retroactive Retrospective Reflections*", [1978] 56 CBR 264 at 269-269, adopted in *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at para 39.

[87] The OP argues that while there is a presumption against the retroactive or retrospective operation of a statute, that presumption is not absolute. It argues that the presumption does not apply unless the consequences attaching to the prior event are prejudicial ones, namely a new penalty, disability, or duty and those penalties, disabilities, or duties are intended as punishment for a prior event rather than as protection for the public (*Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301, paras. 48 and 53).

[88] The OP says the mandatory exception is instituted to protect the public interest in the confidentiality of Cabinet deliberations and the presumption does not apply.

[89] In the alternative, the OP submits that if the presumption against retrospective operation applies, the presumption is displaced by the express words of the statute.

[90] The OP says the issue is whether designation as a committee by regulation is relevant based on the date of creation of the documents (as the IPC Delegate concluded) or the date of the disclosure request (as the OP contends). The OP asks, rhetorically, how documents could continue to be protected if a designation is repealed if the interpretation given by the IPC Director applies. While that issue does not arise in this case, I do not see a difficulty. If protection arises and s. 12(1)

operates in connection with documents that were created when a committee was designated, I do not see that it follows that the protection concerning those records would be lost if the designation is repealed.

[91] Mr. Tromp submits that the presumption against retrospectivity applies and is insurmountable. He says that the amendments adding subsections (5) to (7) of s. 12 were in specific response to a decision of the IPC on July 26, 2002 (Order 02-38) that decided that a committee that included both non-members and members of the Executive Council was not a committee for the purpose of s. 12(1). He argues that it was open to the Legislature to indicate that the amendment and designations had retrospective effect but there is nothing in the language of the *FIPPA* or the regulation designating the GCCs to indicate such an intention. He says there is no basis to imply such an intention.

[92] In my opinion, the decision of the IPC Delegate on this issue is reasonable. The purpose of s. 12(1) of *FIPPA* is to protect the confidentiality of the deliberations of Cabinet and its Committees, including committees designated under s. 12(5). That purpose is effecting by providing that records of the Cabinet or designated committees that would reveal those deliberations must not be disclosed to the public. The deliberations of committees that do not meet the requirements of s. 12(1) are not protected, nor are records that would reveal those deliberations. I can see nothing in the Act that expressly or impliedly indicates an intention that deliberations that were not, at the time, subject to protection are retrospectively to be given protection when a designation is made. I do not agree with the OP that the interpretation given by the IPC Delegate seriously undermines the purpose of s. 12.

The decisions requiring the release of severed records

Order F08-17

[93] I have reviewed the records that are the subject of Order F08-17 as they appear without severing. As noted by the IPC Delegate, the severed portions, consisting largely of the names of Acts, programs and plans identifying, without elaboration, the bare topics for discussion.

[94] The OP submits that the records at issue that identify the topics of discussion of the committees would allow someone to draw an accurate inference about the "substance of deliberations" of Cabinet or a Cabinet committee.

[95] The IPC Delegate concluded that the severed words do not consist of "descriptions" of the issues or topics of discussion, but are "a barebones series of subjects or agenda items". She concluded that there is no "substance" to them and that they reveal no "deliberations".

[96] The OP submits that the headings describe the specific issues to be discussed and therefore reveal the substance of deliberations. Having reviewed the records in dispute, I cannot agree with that submission. In my view, the IPC Delegate's characterization that "there is no 'substance' to them and they reveal no 'deliberations'" is reasonable.

[97] In my view, the conclusion of the IPC Delegate, that headings that merely identify the subject of discussion without revealing the "substance of deliberations" do not fall within the s. 12(1) exception, was a reasonable decision. I can find no reviewable error with regard to Order F08-17.

Order F08-18

[98] As the IPC Delegate observed, the severed information dealt with in Order F08-18 falls into two categories: (1) subject headings in the minutes and (2) portions of the actual text of the minutes.

[99] As to subject headings, applying the same reasoning that she used in deciding Order F08-17, the IPC Delegate concluded that some of the subject headings would reveal the substance of Cabinet deliberations (in the case of pre-November 2002 minutes) or the substance of Committee deliberations (in the case of post-November 2002 minutes) while other subject headings would not.

[100] Once again, I have reviewed the records in their un-severed form and I am satisfied that the IPC Delegate's decision as to those subject headings that would not reveal the substance of deliberations was reasonable.

[101] With regard to the severed portions of the text of minutes of the GCCs, the IPC Delegate, in her reasons, provided her analysis of the reasons for concluding why some, but not all, of the severed text of the pre-November 2002 minutes would reveal the deliberations of Cabinet at paras. 48 - 49 of her reasons, quoted above.

[102] I am unable to say that the IPC Delegate erred with regard to her approach to the matter. However, I am of the opinion that the IPC Delegate's application of the principles she identified is inconsistent and unreasonable in some instances, namely:

(a) Item 3, minutes of GCC on Health of February 28, 2002

[103] While I agree that the heading and the first sentence of severed text would not reveal the deliberations of Cabinet, it seems to me that the rest of the severed text come within the description of information that the IPC Delegate said, in para. 48 of her reasons, should not be revealed:

> [Portions of text that] either expressly or impliedly concern the contents of Cabinet submissions or of draft or proposed legislation or regulations or proposals intended for Cabinet's consideration, or set out the Committee's views on and recommendations to Cabinet on these matters.

(b) Item 1, minutes of GCC on Health of April 11, 2002

[104] In my view those portions of severed text following the first sentence likewise fall within the description of information described by the IPC Delegate in para. 48 of her reasons and should not be disclosed.

(c) Item 4, minutes of GCC on Health of May 27, 2002

[105] In my view those portions of severed text following the first sentence likewise fall within the description of information described by the IPC Delegate in para. 48 of her reasons and should not be disclosed.

(d) Item 2, minutes of GCC on Natural Resources of April 18, 2002

[106] In my view those portions of severed text following the first sentence likewise fall within the description of information described by the IPC Delegate in para. 48 of her reasons and should not be disclosed.

(e) Item 2, minutes of GCC on Natural Resources of May 2, 2002

[107] In my view the whole of the severed text after the heading falls within the description of information described by the IPC Delegate in para. 48 of her reasons and should not be disclosed.

(g) Item 2, minutes of GCC on Natural Resources of October 29, 2002

[108] In my view the last sentence of the last portion of text under this heading falls within the description of information described by the IPC Delegate in para. 48 of her reasons and should not be disclosed.

DECISION

[109] The petitioner's application for judicial review of Order F08-17 is dismissed.

[110] The application for judicial review of Order F08-18 is allowed to the extent that the part of the decision of the IPC Delegate requiring the OP to disclose the information that I have identified in paragraphs 105 - 110 of these reasons is set aside.

"B.M. Joyce J."