IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *West Vancouver Police Department v. British Columbia (Information and Privacy Commissioner),* 2016 BCSC 934

Date: 20160525
Docket: S152619
Registry: Vancouver

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C. 1996 C. 241 (AS AMENDED)

AND IN THE MATTER OF THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*, R.S.B.C. 1996 C. 165 (AS AMENDED)

AND IN THE MATTER OF ORDER NO. F15-15 OF THE DELEGATE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA

Between:

West Vancouver Police Department

Petitioner

And

The Information and Privacy Commissioner for British Columbia and Todd Charles Mosher

Respondents

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for Petitioner:	M. Hancock S. Kennedy
Counsel for Respondents:	T. Hunter A. Hudson
Place and Date of Hearing:	Vancouver, B.C. October 6 and 7, 2015
Place and Date of Judgment:	Vancouver, B.C. May 25, 2016

I. INTRODUCTION

[1] This is a judicial review of a delegate of the Information and Privacy Commissioner's decision ("Order F15-05"), which determined that disputed records relating to an internal police department investigation were not exempt from the application of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*]. The petitioner, the West Vancouver Police Department ("WVPD") had originally declined to disclose the records pursuant to the exclusions from *FIPPA* contained in s. 182 of the *Police Act*, R.S.B.C. 1996, c. 367. However, the delegate determined that provision did not apply in the circumstances.

[2] On this application, the petitioner submits that the delegate misinterpreted s. 182 of the *Police Act*, and seeks an order both quashing the decision below and declaring that the disputed records are excluded from the application of *FIPPA*.

[3] The respondent, the Office of the Information and Privacy Commissioner has appeared to explain the record below; address the standard of review; identify applicable case law; and frame the issues without directly defending the decision on its merits, in keeping with the appropriate role of a tribunal on a judicial review application. No objection was taken to the respondent's standing on the hearing of this application.

[4] Todd Mosher, the subject of the internal investigation who made the disputed records request, has not filed a response to petition in these proceedings.

II. BACKGROUND

[5] Todd Mosher is a former employee of the WVPD, a municipal police department tasked with policing in West Vancouver. As an employee of the WVPD, he was a member of a union with a collective agreement, which states that complaints against police officers and disciplinary action will be dealt with according to regulations issued by the police board and the direction of the *Police Act*. The *Police Act* requires municipal police departments to establish procedures for internal

disciplinary matters that are not inconsistent with its provisions, and then file those procedures with the Office of the Police Complaint Commissioner.

[6] On May 9, 2011, Mr. Mosher was suspended without pay pending the outcome of an internal discipline investigation into his conduct, attitude and ability or willingness to discharge his duties as a member of the WVPD.

[7] Police Inspector Rattray conducted the investigation. At the conclusion of his investigation, he submitted a 99-page final report to the WVPD, which resulted in the termination of Mr. Mosher's employment.

[8] On November 26, 2012, Mr. Mosher made a request to the WVPD under *FIPPA* for copies of all records used in the preparation of Inspector Rattray's investigation report. This request was subsequently narrowed to only encompass documents related to communications between Inspector Rattray and other WVPD members, as well as notebook entries made by Inspector Rattray with respect to his investigation.

[9] In response, the WVPD provided some redacted copies of the notebook entries, but otherwise denied Mr. Mosher's request, asserting that the disputed records fell within the exceptions contained in s. 182 of the *Police Act* and were therefore outside the scope of *FIPPA*.

[10] Section 182 of the *Police Act* reads as follows:

> 182 Except as provided by this Act and by section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to
>
> > (a) any record of a complaint concerning the conduct of a member that is made, submitted, registered or processed under this Part,
> >
> > (b) any record related to a record described in paragraph (a), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
> >
> > (c) any information or report in respect of which an investigation is initiated under this Part, or

> (d) any record related to information or a report described in paragraph (c), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
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> whether that record, information or report is created on or after a complaint is made, submitted or registered or the investigation is initiated, as the case may be.

[11] Mr. Mosher requested a review of the WVPD's decision to withhold the disputed records. The review was held before a delegate of the Information and Privacy Commissioner. The delegate interpreted ss. 182(c) and (d) of the *Police Act* and found that they did not apply to exclude the disputed records. For those subsections to apply, the investigation of Mr. Mosher must have been "initiated under" Part 11 of the *Police Act*. In his view, although the investigation was conducted in compliance with that Part, it was actually initiated pursuant to the WVPD's employment relationship with Mr. Mosher, the collective agreement, and the procedures the WVPD established for dealing with internal disciplinary matters and filed with the Office of the Police Complaint Commissioner. Consequently, the delegate ordered the WVPD to process Mr. Mosher's request for the disputed records.

[12] That decision is the subject of this judicial review.

III. ISSUES

[13] The following issues arise on this application for judicial review:

1. What is the standard of review that is applicable to the delegate's determination that the disputed records did not fall within the exclusions set out in s. 182 of the *Police Act*, and the WVPD were therefore required to process Mr. Mosher's request for disclosure under *FIPPA*?

2. According to the applicable standard, does the delegate's decision withstand judicial review?

[14] I will deal with each of these issues in turn.

IV. ANALYSIS

A. Standard of Review

[15] The standard of review refers to the degree of scrutiny that a court will apply to administrative decisions. Determination of the standard of review is an exercise requiring the court to ascertain the scope and extent of the powers that the legislature intended to confer on the administrative decision-maker.

[16] There are two common law standards of review: reasonableness and correctness: *Dunsmuir v. New Brunswick,* 2008 SCC 9 at para. 45. A third, patent unreasonableness applies under the *Administrative Tribunals Act,* S.B.C. 2004, c. 45*,* in BC but is not at issue here. When courts apply the reasonableness standard, they accord deference to the initial decision maker, only interfering if the result does not fall within a range of possible acceptable outcomes that are defensible on the basis of the facts and the law: *Dunsmuir* at paras. 47-49. A court applying the correctness standard, on the other hand, is entitled to undertake its own analysis of the question and substitute its own view for that of the initial decision-maker.

[17] Where prior jurisprudence has already satisfactorily determined the appropriate standard of review for a particular category of question, the court can apply that standard: *Dunsmuir* at para. 62. When precedent proves unhelpful, the court must proceed to analyze the factors discussed in *Dunsmuir* for identifying the proper standard of review. Those factors are: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of its enabling legislation; (3) the nature of the question at issue; and (4) the expertise of the tribunal: *Dunsmuir* at para. 64.

[18] When an administrative decision-maker is applying its own statute or statutes closely connected to its function, with which it will have particular familiarity, the reasonableness standard of review presumptively applies: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 30

[*Alberta Teachers*]. That principle applies unless the interpretation of the statute falls into one of the categories of questions to which the correctness standard continues to apply: constitutional questions; questions of law that are of central importance to the legal system as a whole and that are outside the decision-makers' expertise; questions regarding the jurisdictional lines between two or more competing specialized tribunals; and true questions of jurisdiction or *vires*.

[19] In the present case, the petitioner alleges that BC courts have already determined that the interpretation and application of the various exclusions from *FIPPA* are matters considered to be jurisdictional and thus attract a standard of correctness. As support for this proposition, the petitioner cites: *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner) et al.*, 2004 BCSC 1597; *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, 2009 BCSC 1481; and *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2010 BCSC 931.

[20] *British Columbia (Attorney General)* involved a decision of a delegate of the Information and Privacy Commissioner that ordered the BC Archives to process a request for the incomplete draft report of the Smith Commission of Inquiry into the affairs of the Nanaimo Commonwealth Holding Society. The BC Archives had previously declined the request, stating that the draft report was outside the scope of *FIPPA* by virtue of s. 3(1)(b) of that *Act*, which exempts personal notes, communications or draft decisions of a person acting in a judicial or quasi-judicial capacity. On judicial review, the court determined that the standard of review was correctness on the basis that the issue involved was one of jurisdiction: *British Columbia (Attorney General)* at para. 40. An application of the factors also led the court to the same result.

[21] *Simon Fraser University* concerned judicial review of an Order issued by a delegate of the Information and Privacy Commissioner, which found that requested records were under the control of the university and subject to disclosure under ss. 3(1) and 4(1) of *FIPPA*. Counsel for the Information and Privacy Commissioner

conceded that past decisions of the BC Supreme Court had used the correctness standard for this issue, but argued that subsequent Supreme Court of Canada jurisprudence had directed courts to take a restrained approach to the characterization of questions of jurisdiction: *Simon Fraser University* at para. 20. The court found that the subsequent jurisprudence had not altered the law in this respect, and then turned to prior cases of the BC Supreme Court dealing with decisions made under *FIPPA*, including *British Columbia (Attorney General)*, cited above. In the court's view, the BC Supreme Court cases had determined in a satisfactory manner that the proper standard of review for the Information and Privacy Commissioner's rulings interpreting ss. 3(1) and 4(1) of *FIPPA* was correctness: *Simon Fraser University* at para. 70. Those cases determined that correctness applied on the basis that the questions involved were ones of jurisdiction.

[22] In *Provincial Health Services Authority*, the court determined, at para. 19, that the standard of review applicable to s. 3(1)(b) of *FIPPA* was correctness purely on the basis of both *Simon Fraser University* and *British Columbia (Attorney General)*.

[23] Here, the respondent submits that the standard of review analyses contained in the aforementioned cases have been overtaken by the Supreme Court of Canada's decision in *Alberta Teachers*. As mentioned, an analogous argument was made and dismissed in *Simon Fraser University*, albeit referring to an alleged development in the law occasioned by *Dunsmuir*. Whereas previously, deference would usually result where a tribunal was interpreting its home statute, there is now a presumption of deference in these circumstances: *Dunsmuir* at para. 54; *Alberta Teachers* at para. 39. Further, jurisdictional questions have been significantly constrained; they are narrow and will be exceptional. As stated in *Alberta Teachers*:

> [34] The direction that the category of true questions of jurisdiction should be interpreted narrowly takes on particular importance when the tribunal is interpreting its home statute. In one sense, anything a tribunal does that involves the interpretation of its home statute involves the determination of whether it has the authority or jurisdiction to do what is being challenged on judicial review. However, since *Dunsmuir*, this Court has departed from that definition of jurisdiction. Indeed, in view of recent jurisprudence, it may be that the time has come to reconsider whether, for purposes of judicial review, the

> category of true questions of jurisdiction exists and is necessary to identifying the appropriate standard of review. However, in the absence of argument on the point in this case, it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.
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> [Emphasis added.]

[24] In my view, the respondent is correct that *Alberta Teachers* has rendered previous jurisprudence from this Court inapplicable to the question at hand. Those cases involved the Information and Privacy Commissioner's interpretation of provisions of its home statute, ss. 3(1) and 4(1) of *FIPPA*, which would have been presumptively entitled to deference. To the extent that the questions involved were ones of "jurisdiction", they fell under the broad definition of jurisdiction encompassing "anything a tribunal does that involves the interpretation of its home statute", which the Supreme Court of Canada has departed from. They were not the narrow and exceptional questions of jurisdiction that attract the standard of correctness.

[25] Conversely, the respondent submits that the standard of reasonableness presumptively applies because the decision-maker was applying a statute closely connected to his function. According to the respondent, s. 182 of the *Police Act* is inextricably intertwined with *FIPPA*. The section references *FIPPA* in its heading and its text, and specifically states that it is subject to s. 3(3) of *FIPPA*, which the decision-maker was required to consider in determining the scope of s. 182 of the *Police Act*. Section 79 of *FIPPA* was also necessary to consider, since it provides that if a provision of *FIPPA* is inconsistent with another *Act*, then *FIPPA* prevails unless that other *Act* expressly provides otherwise; in order to determine whether s. 182 of the *Police Act* expressly provides otherwise, the decision-maker would have to interpret it.

[26] As support for this argument, the respondent relies on *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31. In that case, a requester under Ontario's *Freedom of*

Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, sought disclosure of the number of registered sex offenders residing within the areas designated by the first three digits of Ontario postal codes. Section 67 of that *Act* stated that it prevails over a "confidentially provision" in any other *Act* unless subsection (2) (a list of specific exceptions) or the other Act specifically provides otherwise. The information was contained in a registry that was established and maintained under *Christopher's Law (Sex Offender Registry),* 2000, S.O. 2000, c. 1. The Ministry of Community Safety and Correctional Services refused to disclose the information, but that decision was overruled by the Information and Privacy Commissioner, who concluded that the Registry was subject to the freedom of information legislation and neither law enforcement nor personal privacy exemptions applied.

[27] At the Supreme Court of Canada, the Ministry conceded that the reasonableness standard generally applies when the Commissioner is interpreting and applying its home statute, but argued that because the Commissioner also interpreted an external statute, *Christopher's Law*, the standard of correctness should apply. The Court disagreed, stating at para. 27:

> … The Commissioner was required to interpret *Christopher's Law* in the course of applying *FIPPA*. She had to interpret *Christopher's Law* for the narrow purpose of determining whether, as set out in s. 67 of *FIPPA*, it contained a "confidentiality provision" that "specifically provides" that it prevails over *FIPPA*. This task was intimately connected to her core functions under *FIPPA* relating to access to information and privacy and involved interpreting provisions in *Christopher's Law* "closely connected" to her functions. The reasonableness standard applies.
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> [Emphasis added.]

[28] The petitioner submits that the present case is unlike *Ontario (Community Safety and Correctional Services)*, where the interpretation of an external statute was incidental to a decision that engaged the core functions of the Information and Privacy Commissioner under its home statute. Here, the sole issue was the interpretation of a foreign statute with which the Information and Privacy Commissioner has no particular familiarity or expertise. The petitioner points out that this is the first time a delegate of the Information and Privacy Commissioner has had

occasion to consider s. 182 of the *Police Act* and that there are over 140 legislative references to *FIPPA* in external statutes, which would presumably also be considered closely connected statutes if the respondent's position is accepted.

[29] I do not agree that the interpretation of s. 182 of the *Police Act* was completely foreign and outside the delegate's expertise. That provision deals with the creation of records containing personal information and the disclosure, or exclusion from disclosure, of those records; matters clearly familiar to delegates of the Information and Privacy Commissioner, which they are accustomed to weighing and balancing in the course of their statutory duties.

[30] While this was the first time that s. 182 of the *Police Act* was considered by a delegate, the respondent points out that the section only came into force on March 31, 2010. Delegates considered the predecessor to s. 182 in a number of cases and, after the delegate's decision in this case, the section was also considered in *British Columbia (Information and Privacy Commissioner) v. British Columbia (Police Complaint Commissioner)*, 2015 BCSC 1538 [*PCC*], discussed below.

[31] More importantly, the delegate was obliged to consider s. 182 as a consequence of his function under his home statute, as was the case in *Ontario (Community Safety and Correctional Services)*. Section 79 of *FIPPA* is analogous to s. 67 of the *Ontario Act*, which was at issue in the Supreme Court of Canada's decision. This is apparent from a comparison of the two sections.

[32] Section 79 of *FIPPA* reads:

> 79 If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[33] Section 67 of the Ontario *Freedom of Information and Protection of Privacy Act* reads:

> 67. (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.

[34] While s. 79 of *FIPPA* is obviously a more broadly-worded provision, the purpose of both sections is the same: to determine the relationship of the freedom of information legislation to other Acts. Both sections required the delegate to examine external statutes to determine whether the provisions of that other statute prevailed, which the Supreme Court of Canada held to be a task that is intimately connected to the Information and Privacy Commissioner's core functions under his or her home statute relating to access to information and privacy. The same result must follow here.

[35] I do not consider it significant that the delegate did not mention s. 79 of *FIPPA* in his decision. The starting point for the delegate's decision was s. 182 of the *Police Act* because that was the section upon which the WVPD based its refusal of Mr. Mosher's request. It is clearly the type of provision that engages the application of s. 79 of *FIPPA*, given that it expressly provides that it prevails despite *FIPPA*. If s. 182 of the *Police Act* did not apply, then Mr. Mosher would have been entitled to the records he sought. There was no requirement to state that which would have been superfluous in the circumstances.

[36] Therefore, the reasonableness standard presumptively applies.

[37] That presumption is not rebutted. The present case does not fall into the exceptional category of cases involving true questions of jurisdiction or *vires*, and no constitutional questions have been engaged. Although law enforcement occupies an integral position in society, that does not mean that the issues of statutory interpretation engaged by the delegate's decision involves a question of law that is of central importance to the legal system as a whole that is outside the delegate's expertise. To hold otherwise would be to subject any decision that touches on the subject of law enforcement, however tangentially, to the standard of correctness. The delegate's task was a "nuts-and-bolts question of statutory interpretation confined to a particular context", which cannot be said to impact the administration of justice as a whole: see *McLean v. British Columbia (Securities Commission)*, 2013

SCC 67 at paras. 27-28. His interpretation of the phrase "initiated under" as it appears in s. 182 of the *Police Act* would have no application outside of that *Act*.

[38] This is also not a situation involving the jurisdictional lines between two or more competing specialized tribunals. That is the distinction between this case and the *PCC* decision. In the *PCC* decision, the Information and Privacy Commissioner had issued an order under s. 44(1) of *FIPPA* requiring the Police Complaint Commissioner to disclose records in its possession to the Information and Privacy Commissioner. But the Police Complaint Commissioner refused, stating that the records fell within the exceptions set out in s. 3(1)(c) of *FIPPA* and s. 182 of the *Police Act*. The Police Complaint Commissioner's office was a "specialized tribunal" competing with the Information and Privacy Commissioner for jurisdiction over the records in question. In other words, there was an "impasse between the two officers of the Legislature": *PCC* at para. 4. Accordingly, the standard of correctness applied.

[39] However, the present case does not engage the authority of the Police Complaint Commissioner, who was invited to participate in the underlying decision as an intervenor but declined: Order F15-05 at para. 6. Rather, it involves the WVPD, a municipal police department established by a municipal police board in order to enforce municipal bylaws and the criminal law, maintain law and order, and prevent crime: see *Police Act*, s. 26. The WVPD falls under the auspices of the *Police Act*, but it is not a specialized tribunal tasked with administering and overseeing the polices of that Act. Consequently, there could be no competition between the WVPD and the Information and Privacy Commissioner for jurisdiction over the records in question.

[40] The presumption that reasonableness applies has not been rebutted, meaning that this standard must be used to evaluate the delegate's decision that the disputed records do not fall under the exclusions created by s. 182 of the *Police Act* and are thus subject to disclosure under *FIPPA.*

B. Reasonableness of the Delegate's Decision

[41] The focus of the delegate's decision was on whether ss. 182(c) or (d) applied to exclude the disputed records. In order for either of those subsections to apply, the disputed records had to relate to an investigation "initiated under" Part 11 of the *Police Act*: Order F15-05 at para. 27.

[42] According to the delegate, although the investigation of Mr. Mosher was conducted in compliance with the provisions of Part 11 of the *Police Act*, it was not initiated thereunder.

[43] Part 11 is a section of the *Police Act* entitled "Misconduct, Complaints, Investigations, Discipline and Proceedings". It is comprised of three different types of complaints and investigations:

> a) complaints and investigations alleging police officer misconduct (Division 3). For example, an investigation into an allegation of unnecessary use [of] force by a police officer would be conducted under this division;
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> b) complaints and investigations to the police complaint commissioner about a service or policy of a municipal police department (Division 5); and
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> c) internal discipline matters for municipal police departments (Division 6). These investigations relate to matters that do not directly involve or affect the public.
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> [Order F15-05 at para. 35]
>
> [Footnotes omitted.]

The investigation of Mr. Mosher fell under the third category, contained in Division 6.

[44] In the delegate's view, there are material differences between Division 6 and Divisions 3 and 5 of the *Police Act*. The latter two divisions contain the right to make complaints and provide procedures for the handling of investigations: Order F15-05 at para. 36. They also contain similar language to that found in s. 182, referencing the initiation of an investigation in response to complaints. No such terminology is contained in Division 6. Division 6 merely provides general guidelines for police departments with respect to internal discipline.

[45] Based on these differences, the delegate determined that only Divisions 3 and 5 were intended to operate outside the scope of *FIPPA*, whereas Division 6 was not. He surmised that the possible legislative intention behind this distinction was that Division 6 relates to investigations that do not directly involve or affect the public and therefore engage different access to information and privacy interests: Order F15-05 at para. 38. Instead, such investigations involve labour-management issues analogous to those conducted outside the law enforcement sphere, which are generally subject to *FIPPA*.

[46] The delegate concluded that the internal investigation of Mr. Mosher was initiated pursuant to WVPD administrative policy AC 0375, entitled "Complaints Against Members - Internal Discipline Rules", which governed the parties' employment relationship with one another. Since the investigation was not initiated under Part 11, the disputed records did not fall within ss. 182(c) or (d) of the *Police Act*, so the WVPD was ordered to process Mr. Mosher's request for them.

[47] In coming to his decision, the delegate utilized various extrinsic interpretive aids, including the *Webster's New World College Dictionary* and the Hansard legislative debates regarding an earlier iteration of the *Police Act*. The petitioner takes issue with the delegate's recourse to these sources, noting that the Supreme Court of Canada has cautioned against overreliance on them in several decisions. The petitioner cites *R. v. Clark*, 2005 SCC 2 at paras. 44-46, wherein it was stated that the words in a statute must be interpreted and understood within a particular context and do not always reflect their ordinary usage; and *Canadian National Railway Co. v. Canada (Attorney General),* 2014 SCC 40 at para. 47, wherein courts were instructed to remain mindful of the limited reliability and weight of Hansard evidence. That caution is undoubtedly especially important in the context of the present case, where the Hansard evidence related to a previous iteration of the *Police Act.*

[48] However, I am satisfied that the delegate's use of these extrinsic aids was appropriate. Rather than exclusively relying on the dictionary definition of the word

"initiated", he found that the definition was consistent with the way the term appeared to be used in the *Police Act* as a whole: Order F15-05 at para. 31. I also note that in the *Clark* decision itself, at para. 13, the Supreme Court of Canada looked to the dictionary as well as the context within which the term was found to discern the definition of "access".

[49] As for the Hansard evidence, the delegate recognized that he was using older debates, and he only used this evidence for the limited purpose of trying to understand the legislative intention behind the provision at issue, in the context of his overall analysis based on the modern principle of statutory interpretation: Order F15-05 at para. 40. This is a permissible use of such evidence, as the Supreme Court of Canada stated in *Canadian National Railway Co.* at para. 47: "Hansard references may be relied on as evidence of the background and purpose of the legislation or, in some cases, as direct evidence of purpose".

[50] The petitioner further asserts that the delegate's decision is inconsistent with the ordinary meaning of s. 182 of the *Police Act*. Since that section refers to "this Part" and fails to differentiate between the different divisions of Part 11, the petitioner submits that s. 182 was meant to refer to all three categories of complaints and investigations referred to above; if the legislature meant to exclude Division 6, it would have done so explicitly.

[51] The petitioner also submits that the delegate's interpretation of the phrase "initiated under" is inconsistent with the judicial interpretation of the word "under" in a similarly structured statutory provision. The petitioner relies on *Bensol Customs Brokers v. Air Canada* (1979), 99 D.L.R. (3d) 623 (Fed. C.A.), wherein Lebel J. (as he then was), in his concurring judgment, defined the term "under" as follows:

> There is nothing in this language to suggest that the claim must be based solely on federal law in order to meet the jurisdictional requirement of section 101 of the *B.N.A. Act*, and I do not think we should apply a stricter requirement to the words "made under" or "sought under" in section 23 of the *Federal Court Act*. There will inevitably be claims in which the rights and obligations of the parties will be determined partly by federal law and partly by provincial law. It should be sufficient in my opinion if the rights and obligations

> of the parties are to be determined to some material extent by federal law. It should not be necessary that the cause of action be one that is created by federal law so long as it is one affected by it.
>
> [Emphasis added.]

[52] The various provisions of Division 6 of Part 11 set standards, establish procedures, and create obligations for municipal police departments to follow in their conduct of internal discipline matters. Since internal discipline matters are determined to a material extent by Division 6 of Part 11, it follows that investigations of those matters are "initiated under" Part 11 of the *Police Act*.

[53] Lastly, the petitioner argues that the delegate failed to apply the modern principle, and erroneously focussed on what the *Police Act* was not intended to achieve rather than what it was intended to achieve.

[54] I cannot accede to these submissions. They are based on an extraction of the term "under" from the phrase in which it is found in s. 182 of the *Police Act*, "initiated under", contrary to the modern principle of statutory interpretation, part of which requires the court to consider words "in their entire context": see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27. Further, I agree with the respondent's submission that the delegate did perform the analysis required according to the modern principle and considered the policy objectives of Part 11 and s. 182 of the *Police Act*; the delegate simply adopted a different view of those objectives from the one advanced by the petitioner. Such does not permit interference by this Court when deference is applied.

[55] More importantly, the respondent's submissions constitute the suggestion of an alternative reasonable interpretation of the provision at issue, which is contrary to what the reasonableness standard of review requires. While the decision to effectively hive off a portion of Part 11 for the purpose of the exclusions found in s. 182 of the *Police Act* was not the only reasonable result that the delegate could have come to, that does not make it unreasonable.

[56] In *McLean*, the Supreme Court of Canada dealt with the issue of two competing interpretations of a statutory provision in the context of a judicial review on the reasonableness standard. Justice Moldaver stated that it will not always be the case that a particular provision permits multiple reasonable interpretations. Sometimes the tools of statutory interpretation lead to only one permissible result. However, Moldaver J. found that the case before the Court was not one of those cases, and in so finding, stated the following:

> [39] But, as I say, this is not one of those clear cases. As between the two possible interpretations put forward with respect to the meaning of s. 159 as it applies to s. 161(6)(d), both find some support in the text, context, and purpose of the statute. In a word, both interpretations are *reasonable.* The litmus test, of course, is that if the Commission had adopted the other interpretation — that is, if the Commission had agreed with the appellant — I am hard-pressed to conclude that we would have rejected its decision as unreasonable.
>
> [40] The bottom line here, then, is that the Commission holds the interpretative upper hand: under reasonableness review, we defer to *any* reasonable interpretation adopted by an administrative decision maker, *even if* other reasonable interpretations may exist. Because the legislature charged the administrative decision maker rather than the courts with "administer[ing] and apply[ing]" its home statute (*Pezim*, at p. 596), it is the decision maker, first and foremost, that has the discretion to resolve a statutory uncertainty by adopting any interpretation that the statutory language can reasonably bear. Judicial deference in such instances is itself a principle of modern statutory interpretation.
>
> [41] Accordingly, the appellant's burden here is not only to show that her competing interpretation is reasonable, but also that the Commission's interpretation is *unreasonable.* And that she has not done. Here, the Commission, with the benefit of its expertise, chose the interpretation it did. And because that interpretation has not been shown to be an unreasonable one, there is no basis for us to interfere on judicial review — even in the face of a competing reasonable interpretation.
>
> [Emphasis in original.]

Those comments are equally appropriate in the context of the case at bar.

[57] The delegate's decision was arrived at after an appreciation of the interpretive context within which s. 182 was found. The delegate examined the structure and provisions of the *Police Act* and explored the possible intentions of the legislature in arriving at the result. In short, he undertook an analysis based on the meaning of the

words “initiated under” as they appeared “in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of the legislature”: Order F15-05 at para. 38, citing *John Doe v. Ontario (Minister of Finance)*, 2014 SCC 36 at para. 18. I cannot say that the conclusion he reached was unreasonable.

V. CONCLUSION

[58] In sum, I have determined that the appropriate standard of review to be applied to the delegate’s decision to order the WVPD to process Mr. Mosher’s application for the disputed records is reasonableness. The application of that standard of review leads to the conclusion that this petition for judicial review must be dismissed, with thanks to counsel for their able submissions.

“Harvey J.”