

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vancouver Whitecaps FC LP v. British Columbia (Information and Privacy Commissioner)*,
2020 BCSC 2035

Date: 20201221
Docket: S192591
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Vancouver Whitecaps FC LP

Petitioner

And

**Information and Privacy Commissioner for British Columbia,
BC Pavilion Corporation and Robert J. Mackin**

Respondents

Before: The Honourable Madam Justice Horsman

In Chambers

On judicial review from: An order of the Information and Privacy Commissioner, dated
January 25, 2019 (Order F19-03)

Reasons for Judgment

Counsel for the Petitioner:

J.M. Young
J. Clark, Articled Student

Counsel for the Respondent, Information and
Privacy Commissioner for British Columbia:

R.J. Gage

Counsel for BC Pavilion Corporation:

C.B. Ledingham

Place and Date of Hearing:

Vancouver, B.C.
November 16, 2020

Place and Date of Judgment:

Vancouver, B.C.
December 21, 2020

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OVERVIEW

[1] The petitioner applies for judicial review of a decision of a delegate of the Information and Privacy Commissioner for British Columbia (the "Commissioner") ordering the disclosure of information in the possession of the respondent BC Pavilion Corporation ("PavCo").

[2] The petitioner is a privately-owned professional soccer club that operates a team, the Vancouver Whitecaps, in Major League Soccer. The petitioner entered into a Sponsorship Addendum Agreement with the respondent PavCo, a provincial crown corporation, respecting the petitioner's use of BC Place Stadium (the "Agreement"). PavCo is a "public body" for the purposes of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 [*FIPPA*].

[3] The respondent Robert Mackin, a Vancouver journalist, requested that PavCo provide a copy of the Agreement pursuant to *FIPPA*. PavCo released a portion of the Agreement to Mr. Mackin but refused to disclose other portions. PavCo took the position that disclosure of the withheld information could reasonably be expected to harm the negotiating position of a public body (*FIPPA*, s. 17(1)(f)), and that the disclosure would reveal confidential commercial information about a third party that was supplied in confidence (*FIPPA*, s. 21(1)). Sections 17(1) and 21(1) are statutory exceptions that permit, or, in the case of s. 21(1), mandate, a public body to refuse to disclose information that it would otherwise be required to disclose under *FIPPA*.

[4] Mr. Mackin applied to the Commissioner for a review of PavCo's decision to withhold some of the requested information. The Commissioner appointed a delegate (the "Adjudicator") to conduct an inquiry. PavCo, the petitioner, and Mr. Mackin were all invited to, and did, provide submissions to the Adjudicator. In written reasons for decision dated January 25, 2019, the Adjudicator concluded that PavCo's decision to withhold information was not justified under either s. 17(1)(f) or s. 21(1) of the *FIPPA*. The Adjudicator ordered PavCo to provide the information to Mr. Mackin. This order has been stayed by consent pending the hearing of this petition.

[5] The petitioner says that the Adjudicator's decision is unreasonable. The petitioner no longer argues that PavCo was authorized to withhold the requested information pursuant to s. 17(1)(f) of *FIPPA*. The petitioner's grounds for judicial review focus exclusively on the Adjudicator's decision in relation to s. 21(1) of *FIPPA*.

[6] PavCo appeared at the hearing of this petition, but made no submissions. Mr. Mackin did not appear. The Commissioner was the only party who appeared to oppose the relief sought by the petitioner. I granted the Commissioner standing to defend the merits of the decision, without opposition from the petitioner. The law favours an exercise of discretion to grant standing to the Commissioner in these circumstances to ensure that the Court has heard both sides of the dispute: *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at paras. 54-59 [*Ontario (Energy Board)*]. The Commissioner's submissions on judicial review did not stray beyond the permissible bounds of the grant of standing. The Commissioner limited its submissions to highlighting what is apparent on the face of the record and responding to the arguments raised by the petitioner: *Ontario (Energy Board)* at paras. 69-70.

[7] The parties agree that the applicable standard of review in this case is reasonableness. The petitioner's grounds for review do not include any allegation of procedural unfairness. The only issue on this petition, accordingly, is whether the Adjudicator's decision that PavCo was not justified in withholding the disputed information under s. 21(1) of *FIPPA* was unreasonable.

STATUTORY FRAMEWORK

[8] The purposes of *FIPPA* are set out in s. 2(1) 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.

[9] A person wishing to obtain access to a record in the possession of a public body may make a written request pursuant to s. 5 of *FIPPA*. Section 4 provides that a person who makes such a request has a right to access any record in the custody or under the control of a public body, subject to information that is excepted from disclosure under Division 2 of Part 2 of *FIPPA* (ss. 12-22.1).

[10] Section 17 provides that the head of a public body may withhold information where disclosure would harm the public body's financial or economic interests. Subsections (a) to (f) of s. 17(1) provide a non-exhaustive list of the kinds of information that, if disclosed, could reasonably be expected to cause harm to the financial or economic interests of a public body. This includes, in s. 17(1)(f), information that could reasonably be expected to harm the negotiating position of a public body or the provincial government.

[11] Section 21(1) requires a public body to refuse to disclose information to an applicant where disclosure may be harmful to the business interests of a third party. This section provides:

21(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
- (b) that is supplied, implicitly or explicitly, in confidence, and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
- (iii) result in undue financial loss or gain to any person or organization, or
- (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[12] If a public body intends to give access to a record that it has reason to believe contains information that might be excepted from disclosure under s. 21, then s. 23 requires the public body to give written notice to the third party. The written notice must, among other things, state that the third party is entitled to make written representations to the public body explaining why the information should not be disclosed: *FIPPA*, s. 23(3)(c). Section 24 provides that within 30 days of providing notice under s. 23, the public body must decide whether or not to give access to the record and provide written notice of that decision to the applicant and third party.

[13] The Commissioner is appointed, pursuant to s. 37, as an officer of the legislature and is generally responsible for “monitoring how this Act is administered to ensure that its purposes are achieved” (s. 42). The general powers of the Commissioner under s. 42(1) include the power to:

- (a) conduct investigations and audits to ensure compliance with any provision of this Act or the regulations,
- (b) make an order described in section 58(3), whether the order results from an investigation or audit under paragraph (a) or an inquiry under section 56, ...

[14] Pursuant to s. 52(1) of *FIPPA*, a person who makes a request to the head of a public body for access to a record may ask the commissioner to review any decision, act, or failure to act, by the head of the public body that relates to the request. Pursuant to s. 52(2), a third party notified under s. 24 of a decision to give access to a record may ask the Commissioner to review any decision made about the request by the public body.

[15] If a review is requested, and the matter is not settled or referred to a mediator, the Commissioner may conduct an inquiry pursuant to s. 56 of *FIPPA*. In an inquiry into a decision to refuse an applicant access to all or part of the record, the burden is on the public body to prove that the applicant has no right of access to the record: *FIPPA*, s.

57(1). The burden is reversed if the record that the public body has refused to disclose contains personal information about a third party. In that case, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[16] Section 58 of *FIPPA* sets out the orders that the Commissioner may make following an inquiry under s. 56. If the inquiry is into the decision of the head of a public body to give or refuse to give access to all or part of a record, the Commissioner must make one of the following orders pursuant to s. 58(2):

- (a) require the head to give the applicant access to all or part of the record, if the commissioner determines that the head is not authorized or required to refuse access;
- (b) either confirm the decision of the head or require the head to reconsider it, if the commissioner determines that the head is authorized to refuse access;
- (c) require the head to refuse access to all or part of the record, if the commissioner determines that the head is required to refuse access.

[17] The Commissioner, or a party affected, may file a certified copy of an order made under s. 58 with the Supreme Court of British Columbia pursuant to s. 59.01 of *FIPPA*. The order is then enforceable in the same manner as a judgment of the Court.

FACTUAL BACKGROUND

The review process before the Adjudicator

[18] On February 3, 2017, Mr. Mackin made a request to PavCo pursuant to s. 5 of *FIPPA* for the:

... 'final' (non-draft) amendment or modification of the Whitecaps Lease or license agreement with BC Place since September 2016, including any cover letter(s) that would have accompanied the document.

[19] The Agreement is the only record responsive to Mr. Mackin's request that PavCo located. PavCo reviewed the Agreement and concluded that it contained information that might affect a third party, that is, the petitioner. PavCo sought and received submissions from the petitioner on the disclosure of the Agreement.

[20] PavCo determined that the disclosure of certain information in the Agreement could reasonably be expected to harm the business interests of the petitioner, and therefore disclosure of the information was precluded by s. 21(1) of *FIPPA*. PavCo also

concluded that it was permitted to redact information from the Agreement pursuant to s. 17(1) of *FIPPA* because its disclosure would harm PavCo's future negotiating position.

[21] PavCo provided Mr. Mackin with a redacted version of the Agreement. The final redactions were contained in a copy of the Agreement that PavCo disclosed to Mr. Mackin on September 29, 2017. Mr. Mackin was not satisfied with the disclosure. He requested, pursuant to s. 52 of *FIPPA*, that the Commissioner review PavCo's refusal to release the redacted information.

[22] On March 1, 2018, the Commissioner served Mr. Mackin, PavCo, and the petitioner with a Notice of Written Inquiry. The Notice advised that a delegate of the Commissioner would conduct the inquiry into whether PavCo was authorized to refuse to disclose the redacted information under either ss. 17 or 21 of *FIPPA*. The Notice set out a schedule for the receipt of submissions and any supporting evidence.

[23] PavCo, the petitioner, and Mr. Mackin all provided submissions. The petitioner argued that PavCo was required to withhold the disputed information under s. 21(1) of *FIPPA*. The petitioner's supporting evidence consisted of the affidavit of Don Ford, the petitioner's Vice-President, Finance and Administration. An unredacted copy of the Agreement is Exhibit "A" to Mr. Ford's affidavit. The Adjudicator received Exhibit "A" *in camera*. PavCo adopted the petitioner's submission on s. 21 of *FIPPA*, and argued additionally that s. 17(1) was engaged. Neither PavCo nor Mr. Mackin tendered evidence in support of their submissions.

The Adjudicator's decision

[24] The Adjudicator provided written reasons for decision on the inquiry, dated January 25, 2019. The decision defines the record in dispute as follows:

[16] The record in dispute is a 27 page "Sponsorship Addendum Agreement" (Agreement) between PavCo and the Whitecaps. The Agreement sets out the locations within BC Place that the Whitecaps can use for sponsorship activities and how the Whitecaps can use them. The Agreement also addresses how the potential future sale of naming rights to BC Place stadium would affect the Whitecaps.

[25] In the decision, the Adjudicator reproduced the relevant portions of ss. 17(1) and 21(1) of *FIPPA*, and reviewed the Commissioner's jurisprudence interpreting these provisions. The Adjudicator summarized the submissions of the parties. The final section of the decision contains the Adjudicator's analysis.

[26] In addressing PavCo's argument that s. 17(1) of *FIPPA* authorized it to withhold the disputed information, the Adjudicator held that PavCo did not establish that the disclosure of any of the information in dispute could reasonably be expected to harm its financial or economic interests. In particular, the Adjudicator concluded that PavCo did not provide convincing detail or evidence to establish that the information in dispute will harm its negotiating position with potential name sponsors. As noted, the petitioner does not challenge this aspect of the Adjudicator's decision.

[27] In relation to the petitioner's argument based on s. 21(1) of *FIPPA*, the Adjudicator noted that the structure of the provision led to three separate inquiries: (i) first, was the withheld information "commercial" or "labour relations" information under s. 21(1)(a)(ii), as asserted by the petitioner?, (ii) second, was the information "supplied in confidence" within the meaning of s. 21(1)(b)?, and (iii) third, would the disclosure of the information reasonably be expected to cause any of the financial harm listed in s. 21(1)(c)?

[28] On the first inquiry, the Adjudicator concluded that all of the information in dispute was commercial information, in that it relates to the buying, selling, exchanging or providing of good and services. As such, it was unnecessary for the Adjudicator to consider whether some or all of the information was also labour relations information.

[29] On the second inquiry, the Adjudicator cited past jurisprudence of the Commissioner holding that information in an agreement will not normally be found to have been "supplied" by a third party because contractual terms are typically negotiated rather than supplied. The jurisprudence of the Commission carves out two exceptions to the usual rule. The first is where the information is relatively immutable or not susceptible to change, for example, where the third party has provided fixed overhead or labour costs for inclusion in a contract. The second is where disclosure would allow a reasonably informed observer to draw accurate inferences about underlying confidential information supplied by a third party.

[30] The Adjudicator interpreted the petitioner's submission to indicate reliance on the second exception; that is, that the disclosure of the disputed information would allow an informed observer to draw accurate inferences about the underlying confidential information that the petitioner supplied to PavCo. In rejecting the petitioner's submission on this point, the Adjudicator reasoned:

...the Whitecaps have not explained what accurate inferences could be drawn from which parts of the information in dispute. It is not evident to me how any of the information in dispute would allow an informed observer to draw accurate inferences about underlying confidential information supplied by a third party. Further, all of the information in dispute appears to be information that would have been susceptible to change during negotiations and is therefore not information that is “immutable”. On my review of the information in dispute, all of it appears to be negotiated rather than supplied.

[31] The Adjudicator accordingly held that the information in dispute was not “supplied” by a third party. In light of that conclusion, the Adjudicator found it unnecessary to decide whether the information was supplied in confidence or whether disclosure of the information could reasonably be expected to cause any of the harms under s. 21(1)(c) of *FIPPA*.

STANDARD OF REVIEW

[32] The parties agree that the standard of review in this case is reasonableness. This is the presumptive standard of review of a tribunal’s decision unless the case falls within one of the exceptions identified by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. The parties agree that none of the exceptions arise here.

[33] As explained in *Vavilov*, review for reasonableness is concerned with the justification, transparency, and intelligibility of a decision, and whether it is justified in relation to relevant factual and legal constraints. While reasonableness review is not a “line-by-line treasure hunt for error”, the reviewing court must be satisfied that there is a line of analysis in the reasons that could reasonably lead the tribunal from the evidence before it to the reasons arrived at. Any alleged flaws must be sufficiently central or significant to the reasoning process to render the decision unreasonable. The reasons should be read holistically and with due sensitivity to the administrative regime within which they were given: *Vavilov* at paras. 99-104.

[34] Aside from the internal coherence and rationality of the decision, reasonableness review is also informed by surrounding contextual considerations. By way of example, the decision must be consistent with the overall scope and purposes of the statutory scheme, and any specific constraints imposed within the statute, such as statutorily defined terms. Common law rules and past precedents may act as a constraint on what a decision maker can reasonably decide. The decision must be based on the evidence

that was before the tribunal and must meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at paras. 105-135.

[35] With that framework for reasonableness review in mind, I turn to the petitioner's specific challenges to the Adjudicator's decision in this case.

WAS THE ADJUDICATOR'S DECISION UNREASONABLE?

[36] The petitioner argues that the Adjudicator's decision was unreasonable because the Adjudicator failed to give appropriate deference to PavCo's decision not to release the information, failed to appropriately balance the legitimate interests of a private party in ordering the disclosure of confidential commercial information, and gave insufficient reasons while applying an overly onerous standard of proof under s. 21(1). I will address each ground of challenge in turn.

(i) Deference to PavCo

[37] The petitioner says that the Adjudicator ought to have accorded deference to PavCo's decision as to what information should be redacted from the Agreement to ensure compliance with s. 21(1) of *FIPPA*. While acknowledging that *FIPPA* provides for a statutory right of review, the petitioner says the review should be interpreted as a limited one. The petitioner argues that the Adjudicator did not have expertise in "understanding the nuances of the business of the private party", in contrast to PavCo's direct knowledge of the information contained in the Agreement and the circumstances in which it was supplied. As I understand the argument, the petitioner says that the Adjudicator's role under *FIPPA* was limited to reviewing the reasonableness of PavCo's redaction decisions, rather than exercising a *de novo* jurisdiction to determine whether the redactions were justified.

[38] The petitioner characterizes its argument on deference to the public body as "novel", and concedes there is no case law on point. The issue of the internal standard of review is not addressed in the reasons of the Adjudicator. It is not, as far as I can tell from the record, an issue that was raised by the parties before the Adjudicator. The court has the discretion to decline to entertain issues on judicial review that were not raised before the tribunal whose decision is under review. This is because the role of the court on judicial review is to review the reasonableness of the tribunal's decision, not to make decisions in the first instance: *Johnson v. British Columbia (Workers' Compensation Board)*, 2011 BCCA 255 at paras. 42-52.

[39] In the present case, it might have been argued that court should decline to entertain the issue of internal standard of review for the first time on judicial review when it had not been raised before the Adjudicator. The question of what deference, if any, is owed is primarily one of legislative intent. The Adjudicator would have been entitled to deference in deciding whether the legislature intended deference to be accorded to the public body. However, the Commissioner did not ask the court to exercise discretion to decline to entertain this ground of judicial review. Instead, the Commissioner made submissions in response to the substance of the petitioner's argument. As no party sought to invoke the court's discretion to decline to consider new issues on judicial review, I will decide the issue on its merits.

[40] In my view, the argument that the Commissioner, in conducting a review, is required to show deference to the determination of a public body in applying the exceptions under *FIPPA* is contrary to the text of the statute. The Commission is authorized to conduct an "inquiry" into the decision of a public body to refuse to disclose information; it is not an appeal. The Commissioner has, pursuant to s. 56 of *FIPPA*, broad power to determine how an inquiry will be conducted, and, pursuant to s. 58, broad remedial jurisdiction. If the inquiry concerns a refusal by the head of a public body to give an applicant access to all or part of the record, then s. 57 requires the public body to prove that the applicant has no right of access. This burden of proof, in itself, contradicts the notion that the Commissioner is required to defer to a public body's decision to refuse access.

[41] The suggestion that the Commissioner must accord deference to the head of the public body is also inconsistent with the overall context and purposes of *FIPPA*. The creation of an enforceable right to access information in the possession of public bodies serves goals that are important to the democratic process. The right of access promotes meaningful political participation by citizens and ensures that government remains accountable to the citizenry: *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403 at para. 61. These goals are furthered, under *FIPPA*, by the appointment of an officer to exercise independent oversight of the steps taken by public bodies to comply with their obligations. The statutory purposes set out in s. 2 include, in subsection (e), "*providing for an independent review of decisions made under this Act*". Consistent with that objective, the Commissioner is an independent officer the legislature, rather than an employee of government.

[42] It would be entirely antithetical to the statutory scheme and its overarching purposes to require the Commissioner to defer to the decisions of public bodies in conducting a review under *FIPPA* rather than exercise the independent review function assigned that is assigned to the Commissioner by the Act. There is no basis in the text, purpose, and context of the statute to support such a legislative intent.

[43] Accordingly, I conclude that the Adjudicator was not unreasonable in failing to defer to PavCo's decision to redact information from the Agreement under s. 21(1).

(ii) Balancing the private interests of third parties

[44] The petitioner next argues that the Adjudicator was unreasonable in concluding that the purposes of *FIPPA* do not include the protection of the interests of private organizations. The impugned portion of the Adjudicator's decision is as follows:

[8] Finally, I do not agree with the Whitecaps' assertion that a purpose of *FIPPA* is to protect the interests of private organizations. The purposes of *FIPPA* are set out in s. 2 and include giving the public a right of access to records and specifying limited exceptions to the rights of access. Private organizations that contract with public bodies do so with the knowledge that public bodies are subject to *FIPPA*.

[45] The petitioner says that the Adjudicator is wrong in the characterization of statutory purposes, and that, in fact, one purpose of *FIPPA* is to protect the interests of private organizations. The petitioner relies on the decision of the Supreme Court of Canada in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 [*Merck Frosst*], which concerned analogous federal legislation, the *Access to Information Act*, RSC 1985, c. A-1. The petitioner highlights passages from *Merck Frosst* holding that where third party information is in issue, the broad right of access created by the statute must be balanced against the legitimate private interests of third parties: *Merck Frosst* at paras. 2-4, 23.

[46] The significance of the impugned passage to the Adjudicator's substantive analysis of the scope of the relevant exceptions in *FIPPA* is not obvious. The paragraph quoted above is contained in a section of the Adjudicator's decision headed "Preliminary issues – Request to disallow applicant's submissions". I accept that the Adjudicator might have overstated the point in suggesting that protection of the interests of private organizations is not a purpose of *FIPPA*. It is not an expressly stated purpose in s. 2, but the existence of the exception in s. 21(1), and the related third party procedural rights in ss. 23 and 24, evidence that at least one objective of *FIPPA* is to protect the

interests of private parties in prescribed circumstances. However, it is not clear to me that the impugned passage had any significance, or even relevance, to the Adjudicator's analysis of the s. 21(1) exception in this case.

[47] The petitioner argues that the Adjudicator's comments on the purposes of *FIPPA* led the Adjudicator to impose an unreasonably high burden of proof on the petitioner to establish an exception from disclosure. I take from this that the petitioner's criticism of para. 8 of the Adjudicator's decision is an aspect of the petitioner's overall challenge to reasonableness of the Adjudicator's application of s. 21(1) to the facts of this case, rather than a stand-alone ground of review.

(iii) Section 21(1) of *FIPPA*

[48] This leads, accordingly, to the petitioner's third ground of challenge which is the reasonableness of the Adjudicator's decision that the redactions to the Agreement were not justified under s. 21(1) of *FIPPA*. The petitioner argues that the Adjudicator cited the wrong test for determining when information is "supplied" to a public body for the purpose of s. 21(1)(b) and failed to consider the full context provided by the evidence of Mr. Ford.

[49] The petitioner argues that the Commissioner's jurisprudence establishes that the test for when information contained in a contract will be found to have been "supplied" is whether disclosure "could allow" a reasonably informed observer to draw accurate inferences about the underlying confidential information supplied by a third party. The petitioner says that in the critical passage of the decision, the Adjudicator restated the test as whether the disputed information "would allow" an informed observer to draw accurate inferences.

[50] In my view, this is a distinction without a difference. A choice between the phrases "would allow" and "could allow", which I note are used interchangeably in the Commissioner's jurisprudence on this point,^[1] makes no substantive difference in this context. The Adjudicator's central point is that the disputed information does not on its face appear to give rise to accurate inferences about underlying confidential information, and the petitioner did not adequately explain in its submissions what accurate inferences it maintained could or would be drawn from the information. The petitioner's argument on the "would allow/could allow" distinction, in my view, consists of the type of "line-by-line treasure hunt for error" that *Vavilov* warns against.

[51] For the purpose of completeness, I am also not persuaded by a submission that the Adjudicator was influenced into applying a more onerous standard by the belief that the protection of the interests of private organizations is not among the purposes of *FIPPA*. The Adjudicator cited past precedents of the Commissioner interpreting the scope of s. 21(1)(b) that the petitioner accepts governed the analysis. The Adjudicator did not reject the petitioner's submission on the basis that its interests were not entitled to protection under *FIPPA*, but rather on the basis that the statutory exception was not established on the evidence.

[52] The petitioner further argues that the Adjudicator failed to consider the full context of the petitioner's evidence in dismissing its arguments. The petitioner complains that the reasons are lacking in detail and analysis, and fail to address the petitioner's submissions with sufficient particularity. The petitioner is critical of the Adjudicator for devoting only four paragraphs of the decision to the question of whether the disputed information was "supplied".

[53] In my view, this is not a legitimate criticism of the Adjudicator's decision. The Adjudicator decided the s. 21(1) issue on a relatively narrow ground. Having concluded that the petitioner had failed to show that the information was "supplied", it was unnecessary for the Adjudicator to go further. In particular, the Adjudicator found it unnecessary to address whether the information was supplied in confidence, or whether disclosure of the information could reasonably be expected to cause harm to the petitioner. It was not unreasonable for the Adjudicator to decide the s. 21(1) issue on a narrow ground that was dispositive, that is that the petitioner had failed to establish a necessary condition to the exception, and then decline to decide additional issues that did not have to be resolved.

[54] The reality is that the petitioner's submission to the Adjudicator on the issue of whether the disputed information was "supplied" itself comprised only four paragraphs. The submission consisted primarily of the assertion that the information provided to PavCo was provided in confidence, without a precise articulation of the nature of the information or how it might give rise to reasonable inferences about the petitioner's confidential business information. The same is true of the affidavit evidence of Mr. Ford, provided in support of the petitioner's submission, which was primarily directed at explaining the harm that disclosure of the information would cause rather than why the information should be construed as "supplied" within the meaning of s. 21(1) of *FIPPA*. It is also relevant to note that the Adjudicator received at least portions of Mr. Ford's

affidavit *in camera*. The Adjudicator was necessarily and properly constrained in reporting the details of the content of the affidavit in the decision.

[55] The Adjudicator's reasoning, even if concise, was logical and rationale. It demonstrated a clear path between the evidence and the ultimate outcome. The Adjudicator cited the correct test, and applied it to the facts in issue. The Adjudicator concluded that the record was insufficient to establish that the disputed information was supplied by the petitioner notwithstanding that it was contained in a negotiated agreement. In particular, the Adjudicator was not persuaded by Mr. Ford's evidence. The decision was for the Adjudicator to make. It is subject to review in this Court only on the grounds of reasonableness. I conclude that the Adjudicator's decision was justified, intelligible and transparent, and therefore reasonable.

CONCLUSION/ORDER

[56] The petition is dismissed.

“Horsman J.”

^[1] For example: Order F16-27, BC Pavilion Corporation, 2016 BCIPC 19, at paras. 33, 38-39; Order 01-39, Translink, 2001 CanLII 21593, at para. 50.