

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pyne v. British Columbia (Information and Privacy Commissioner)*,  
2026 BCSC 677

Date: 20260219  
Docket: S64472  
Registry: Kamloops

Between:

**Derek Pyne**

Petitioner

And

**Information and Privacy Commissioner of British Columbia**

Respondent

Before: The Honourable Mr Justice Crerar

On judicial review from: A decision of the Office of Information and Privacy  
Commissioner, dated June 12, 2025 (OIPC File No. F24-02690).

## **Oral Reasons for Judgment**

In Chambers

The Petitioner, appearing in person:

D. Pyne

Counsel for the Respondent:

K. Phipps

Place and Date of Hearing:

Kamloops  
February 18–19, 2026

Place and Date of Judgment:

Kamloops  
February 19, 2026

## I. INTRODUCTION

[1] **THE COURT:** These are my oral reasons for judgment for the petition before me. I make the usual reservation to edit or expand these reasons if a transcript is ordered, or for any other reason. The substance and the result will, of course, remain the same.

[2] The petitioner, Dr Pyne, a former instructor at Thompson Rivers University, brings this judicial review of the Decision of an adjudicator of the Office of the Information and Privacy Commissioner (“**OIPC**”) set out in order F25-43, indexed as *Thompson Rivers University (Re)*, 2025 BCIPC 51, dated June 12, 2025, on the basis of alleged procedural unfairness as well as unreasonableness.

[3] The adjudicator in her Decision found that Dr Pyne had abused the access to information processes afforded by the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 [*FIPPA*], and cancelled his six extant files before that office.

[4] The adjudicator rejected the university’s request, in effect, to declare Dr Pyne a vexatious litigant; she specifically rejected the university’s request for an order prohibiting Dr Pyne from making further access requests about or relating to his employment:

[99] I reject the University’s request for future relief. It is always open to the University to ask the Commissioner for authorization under s. 43 to disregard an access request. This proceeding is not about s. 43 or the University’s ability to respond to access requests. Nothing in this order should be read as authorizing the University to disregard an access request without seeking prior authorization from the Commissioner. If, in the future, the University believes it should be authorized to disregard an access request, it may make a s. 43 application for the Commissioner or his delegate to consider.

[5] In finding that Dr Pyne’s use of the *FIPPA* proceedings constituted an abuse of process the Decision said as follows:

[57] I find that the Applicant’s use of *FIPPA*’s processes is excessive.

[58] The Applicant made at least five access requests *to the University* between December 2019 and December 2020. He then made 65 access

requests to the University between January 2021 and May 2024 for an average of 1.6 access requests each month for forty consecutive months.

[59] In early 2020, the Applicant opened two complaint files with the OIPC related to the University's handling of his personal information. He then opened 69 files with the OIPC related to his access requests to the University between January 2021 and May 2024 for an average of 1.7 files each month for forty consecutive months.

[6] As a corroboration of sorts with respect to the volume of Dr Pyne's access to information requests in proceedings before the OIPC, the record on this judicial review consists of three 4.5-inch binders, which contain 6,194 pages. The frequency and volume of the access to information requests and ensuing OIPC proceedings was not the only basis for the abuse of process finding and remedy. The Decision noted other behaviour on the part of Dr Pyne that was an indicator of abuse of process. Those included duplicative requests, and his use of FIPPA processes as a vehicle to provide his opinions on, and wage a form of vindictive war upon, the university faculty members and his faculty association representatives.

[7] Further, in the course of the FIPPA requests and the OIPC proceedings, Dr Pyne has directed intemperate and unsubstantiated serious allegations against former colleagues and others, such as the lawyer representing the university. These include allegations of corruption, perjury, and dishonesty:

[61] The Applicant has also engaged in other behaviours that are indicators of abuse of process. For example, there is evidence before me that the Applicant has made access requests seeking to obtain records he has already received in response to previous access requests. The Applicant has not adequately explained why he was using FIPPA's processes to obtain information he had already received under FIPPA. Without more information, I find this behaviour is a strong indicator that the Applicant is not using FIPPA's processes to obtain records and instead has an alternative, improper purpose for using FIPPA. Specifically, for reasons I will explain below, I find that the Applicant is using FIPPA's processes to create a forum in which to provide his opinions on, and force the University to engage with him about, the Underlying Dispute.

[62] Further, the Applicant has engaged in a pattern of treating OIPC files, including files in which he or the University is not a party, as one long interrelated process. This behaviour creates needless complexity in the OIPC's processes which causes confusion and additional work for the University and the OIPC. The Applicant is an educated professional, who has extensive experience participating in OIPC review processes and should now know that OIPC files are considered individually unless expressly bundled

together. Due to the frequency of this behaviour and the extra resources it consumes, I find that the Applicant's pattern of introducing needless complexity in the OIPC's processes weighs strongly in favour of finding that he is engaged in an abuse of process.

[63] Lastly, there are many examples of the Applicant using FIPPA's processes to air his non-FIPPA-related grievances about the University and the Union, make intemperate and unsubstantiated allegations, and berate individuals involved in the Underlying Dispute. In my view, this is the strongest indicator that the Applicant is engaged in a pattern of using FIPPA's processes for improper purposes.

[footnotes omitted]

[8] I will address two preliminary matters before proceeding.

[9] First, the university did not participate in this hearing. Ms Phipps appeared on behalf of the OIPC. As is usual, the tribunal took no position on the result of the judicial review. Ms Phipps, however, served as an officer of the court in providing necessary administrative and jurisprudential background, as well as details of the proceedings before the OIPC, in order to assist the Court. The Court is grateful for her assistance in this regard. The Court notes that Dr Pyne, while being an academic with advanced studies and experience in organising materials and presenting arguments, is representing himself. The Court would have been at a considerable disadvantage if it did not have at least one officer of the court providing this necessary contextual background.

[10] The other preliminary matter is that Dr Pyne in his initial petition raised a wide range of objections to the Decision based upon both reasonableness grounds as well as procedural fairness grounds. In the hearing before the Court, Dr Pyne, responsibly, in my view, honed his application so that only a portion of those initial pleaded grounds were in fact advanced. The grounds that were in fact advanced were largely those that were filed in the Registry on November 10, 2025, which materials include a document entitled: "Written Argument of the Petitioner."

[11] Ms Phipps's argument largely addressed the arguments advanced by Dr Pyne in his pleadings. Accordingly, in the course of her presentation of those

arguments, and at other times during the hearing, the Court confirmed with Dr Pyne the grounds that he was, in fact, advancing and those that he elected to withdraw.

## **II. THE DECISION**

[12] I will turn to an overview of the Decision under review, written by the adjudicator, Rene Kimmett. It is not a brief or cursory decision. It runs some 23 pages and 101 paragraphs. The Decision provides an introductory overview:

[1] Since January 2020, the Office of the Information and Privacy Commissioner (OIPC) has opened 71 files from one individual (the Applicant) related to Thompson Rivers University (the University). The Applicant currently has six files open with the OIPC in which he is seeking information from the University (the Current Files). Four of these files are at the inquiry stage of the OIPC's process and two are at the mediation stage.

[2] The OIPC has also issued 17 orders involving the Applicant and the University, including Order F24-81. In the University's submissions for the inquiry that resulted in Order F24-81, the University argued that the Applicant had misused FIPPA "as a platform to mount a campaign against persons at [the University] with whom he has philosophical disagreements and a history of personal grievance." The adjudicator declined to add abuse of process as an issue in that inquiry. However, the Director of Adjudication (Director) took notice of this issue and initiated this proceeding to determine whether the Applicant's past and current use of FIPPA amounts to an abuse of FIPPA's processes and, if it does, what remedy, if any, is appropriate. The University and the applicant both provided submissions and supporting evidence in this proceeding. In addition, they each asked to submit portions of their inquiry materials *in camera* and I approved their requests in part.

[footnotes omitted]

[13] Paragraph 3 sets out the issues:

1. Is the Applicant's use of FIPPA an abuse of process?
2. If the Applicant has abused FIPPA's processes, what remedy, if any, is appropriate?

[14] The Decision then provides at paras. 4–29 an analysis of an adjudicator's authority to consider remedies based upon the doctrine of abuse of process at any stage in an OIPC file. The adjudicator then specifically considers her authority to initiate that proceeding on her own initiative: that is, *ex proprio motu*. She then dedicates several paragraphs to a discussion of the burden of proof in such a consideration, in response to submissions made by Dr Pyne in that regard.

[15] Before the adjudicator, Dr Pyne also raised issues before the adjudicator that are not raised here today as a ground for judicial review, including whether the adjudicator projected a reasonable apprehension of bias. Again, the adjudicator dedicated many paragraphs citing general propositions of a tribunal's ability to control its proceedings in reaching the conclusions she did with respect to her authority to consider the matter.

[16] At paras. 30–35, the Decision sets out the underlying dispute between the parties. The Decision notes that the disagreement between the university and Dr Pyne went back a decade, at least. The Decision notes that the university issued several written warnings about his behaviour, imposed a two-week suspension, a ban from campus, and then a one-year suspension, in a series of progressive discipline. The university then terminated Dr Pyne's employment. The Decision noted that Dr Pyne's union was engaged in labour arbitration with the university about the termination. In some of the submissions made in the course of the OIPC proceedings, the applicant expressed negative opinions about his union and the union representatives involved in his grievance.

[17] At para. 32 the Decision sets out the focus of the applicant's access to information requests, and a dominant theme of his submissions in the various OIPC proceedings: what are known as predatory journals and conferences. In a nutshell, as described by the Decision, and matching my understanding, a predatory journal or conference is not a conventional peer-reviewed process selecting articles for publication or speakers for conferences. Rather, it is a pay-for-play arrangement whereby the academic or the university pays for the prestige of having an academic publish or present.

[18] The Decision notes that Dr. Pyne has published extensively on this phenomenon. He has made media statements with respect to it. He considers it to be a dishonest and corrupt practice. He specifically alleges that Thompson Rivers University has engaged in what he considers a dishonest and corrupt practice. The Decision also notes that as support for his views, Dr Pyne pointed to an investigation

and report by the Canadian Association of University Teachers concluding that his first suspension, a ban from campus, violated his academic freedom.

[19] The Decision proceeds to set out the university's view of the underlying stress between Dr Pyne and the university, and that Dr Pyne's actions, behaviour, and communication go beyond an academic and professional concern, extending to harassment, including specific harassment directed towards female faculty members. Needless to say, at both the prior and present proceedings, Dr Pyne vigorously contests this characterisation.

[20] At paras. 36 and 37 the Decision notes that the doctrine of abuse of process is rooted in a judge or adjudicator's inherent discretion to prevent abuse of its processes, and notes that abuse of process is a wide doctrine. At para. 38 the Decision notes that it is appropriate for the decision maker to look at the entire history of the proceedings rather than simply an isolated instance:

[38] When considering this kind of an abuse of process the decision-maker must look at the whole history of the matter. Some applicants may, from the beginning, use FIPPA's processes for improper reasons; for example, to harass a public body or their employees. Other applicants may initially be seeking access to records for legitimate purposes, but then shift their focus towards hostility, delusion, or conspiracy such that the original purpose of the request is at best collateral. Both of these scenarios involve an abuse of process.

[footnote omitted]

[21] At para. 39 the Decision applied these abuse of process principles to the multi-year history of Dr Pyne's requests for information and the subsequent OIPC proceedings, citing his behaviour, as well as jurisprudential and tribunal considerations of abuses of *FIPPA* processes. At para. 40 the Decision emphasised that these patterns of behaviour, which often accompany a finding of abuse of process, may not in themselves evidence an abuse of process, and may, in fact, reflect good faith or legitimate uses of *FIPPA*. At para. 41 the Decision extended the further caution that broadly interpreting the criteria and indicia of abuse of process risks capturing applicants, particularly self-represented applicants such as Dr Pyne, who are well intentioned but ignorant of the proper procedures.

[22] In the conclusion in that section, however, the Decision notes that:

[42] That said, an applicant who engages in a pattern, or even a single egregious instance, of these behaviours indicates that they are using FIPPA's processes, not to obtain information or seek redress for complaints, but as a platform to air their grievances, harass individuals, or force a public body to engage with them about their non-FIPPA-related dispute.

[23] At paras. 43–46 the Decision summarises the university's submissions with respect to abuse of process. At paras. 47–54 the Decision summarises Dr Pyne's submissions with respect to abuse of process.

[24] Paragraphs 55–90 set out the Decision's lengthy analysis of whether the overall history of the requests and the subsequent proceedings before the OIPC should be considered an abuse of process. I have already set out in my introduction the key conclusions of the adjudicator in finding that Dr Pyne engaged in an abuse of process over the five years in question. Again, that conclusion was based not only on the volume of the number of requests, but also on the duplicative nature of the requests, the intemperate and unsubstantiated serious allegations that he made in the course of those communications and proceedings, the use of the request process as a form of revenge or harassment on his former employer and his former colleagues, as well as the use of the *FIPPA* processes as a vehicle or soap box on which to air various grievances, all in a manner that imposed a gross consumption of time by the university and, ultimately, the OIPC.

[25] At paras. 65–70 the Decision ties some of the patterns of abusive behaviour to examples of Dr Pyne's own actions in requesting access to information. Paragraphs 71–72 provides multiple bullet point examples of inappropriate statements and behaviour by Dr Pyne in the course of the proceedings, including, again, serious allegations of dishonest and, indeed, criminal behaviour against, for example, the university's lawyer, and a university dean.

[26] The Decision then reviews those allegations and behaviour in the context of his submissions about predatory publications. Paragraphs 73–75 similarly canvass the allegations of perjury and unlawful conduct in his submissions: summarised at

paras.76–80. And then it sets out similar sorts of misuse of the *FIPPA* process, as well as unsubstantiated irrelevant and inappropriate statements and behaviour with respect to his submissions before the OIPC: paras. 81–86. Paragraphs 87–90 set out the adjudicator’s conclusion on abuse of process, as encapsulated in para. 89:

[89] In this case, I accept that the Applicant likely has a genuine interest in obtaining records from the University related to the Underlying Dispute because they relate to the termination of his employment and his interest in predatory publishing. However, it is also clear to me that the Applicant’s focus has shifted such that any legitimate interest he has in the records is eclipsed by his insistence on using FIPPA’s processes excessively to harass the University, air his grievances about the Underlying Dispute, engage in name calling, and make intemperate allegations of perjury, negligence, incompetence, and unlawful conduct. I find, based on the totality of the circumstances, that the Applicant’s intention, in submitting an excessive number of access requests and subsequent requests for review, is to create a platform through which he can air his grievances about the University, the Union, and various individuals involved in the Underlying Dispute. This conclusion is supported by the content of the Applicant’s access requests, requests for review, inquiry submissions, and submissions in this proceeding.

### **III. PROCEDURAL FAIRNESS**

[27] I will turn first to the procedural fairness basis of the judicial review advanced by Dr Pyne.

[28] There was much talk of the applicable law with respect to procedural fairness and with respect to reasonableness in the course of the hearing, and I took some pains to set out the legal test that Dr Pyne has to meet. I referred him to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] and *Cimolai v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948, both of which cases are discussed at length in the response to petition, as well as in the argument provided by the OIPC counsel. I encouraged Dr Pyne to review those authorities so that he could focus his submissions.

[29] The recent decision of *Cimolai* issued by Justice Iyer (before her translation to the Court of Appeal), provides a useful summary of the applicable law governing a procedural fairness review:

**STANDARD OF REVIEW**

[22] The standard of review for procedural questions is correctness: *Murray Purcha & Son Ltd. v. Barriere (District)*, 2019 BCCA 4 at para. 3. The presumptive standard of review for substantive decisions is reasonableness. This includes jurisdictional questions that do not concern the boundaries between two or more administrative tribunals or between courts and administrative bodies with concurrent jurisdiction: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 16-17.

**FAIRNESS OF THE PROCESS**

[23] Recently, in *Airbnb Ireland UC v. Vancouver (City)* 2023 BCSC 1137, Justice Basran summarized the principles of procedural fairness:

[71] The duty of procedural fairness is triggered whenever an administrative body's decision affects the rights, privileges, or interests of an individual: *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320 at para. 28 [Taseko] citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 20, 1999 CanLII 699.

[72] The content of this duty is inherently contextual and must be determined having regard to the circumstances of a given case: *Taseko* at para. 30 and *Baker* at para. 21.

[73] A non-exhaustive list of factors that inform the content of the duty of procedural unfairness includes:

- a) The nature of the decision being made, and the process followed in making it;
- b) The nature of the statutory scheme;
- c) The importance of the decision to the affected individual or individuals;
- d) The legitimate expectations of the person challenging the decision; and
- e) the choices of procedure made by the administrative decision-maker itself.

See *Baker* at paras. 23-27, cited with approval in *Vavilov* at para. 77.

[74] The purpose of the participatory rights contained within the duty of procedural fairness is to "ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and

evidence fully and have them considered by the decision-maker": *Baker* at para. 22, cited with approval in *Taseko* at para. 29.

[24] Justice L'Heureux-Dube's often-cited comments in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, are worth repeating:

[21] The existence of a duty of fairness... does not determine what requirements will be applicable in a given set of circumstances. As I wrote in *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653, at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural fairness: *Knight*, at pp. 682-83; *Cardinal*, supra, at p. 654; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170, per Sopinka J.

[22] Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[emphasis in original]

[30] As noted in the style of proceedings, *Cimolai* has some parallels to the present case. It is not a generic judicial review; indeed, it arises from the same tribunal, the Information and Privacy Commissioner. It also involved, in part, a sophisticated professional—that is, Dr Cimolai—making a large number of requests for review or complaints to the OIPC, and challenging aspects of the access to information request of recipients' responses to those requests. I would also note the utility of *Cimolai* in that Iyer J (now JA) is particularly experienced and respected in matters of administrative and privacy law.

[31] Dr Pyne argues that he was denied procedural fairness, as he never received a certain email sent by the adjudicator. In that email the adjudicator invited him to make further submissions, if he wished, with respect to various documents that the adjudicator requested following the parties' exchange of the primary and responsive submissions.

[32] I will provide a factual background leading to the email that Dr Pyne claims that he never received. Prior to the inquiry itself, which was conducted in written form, the adjudicator directed that each side would exchange primary submissions of a maximum 25 pages each. The adjudicator further directed that each side would then be permitted to advance and exchange response submissions of a maximum 25 pages each.

[33] Both parties followed this protocol. It is not controversial that Dr Pyne provided his written arguments at each stage: the primary submissions around November 1, 2024, and then his responsive submissions around November 18, 2024. In his response submissions, Dr Pyne took the position that "most of the university's submission is irrelevant," but, nonetheless, availed himself of the opportunity to provide his response submissions.

[34] The adjudicator read those arguments. In those arguments both sides made reference to documents that had been generated and submitted in early information requests and proceedings initiated by Dr Pyne in front of the OIPC.

[35] The adjudicator did not have those materials from other files before her with respect to the specific inquiry that she was considering. Accordingly, on January 14, 2025, she asked both sides to provide those earlier referenced documents to her for her proper consideration. The adjudicator went beyond that request and specified, in an attached table, 19 specific documents that she directed the university to produce, based upon its references in its submissions. She directed Dr Pyne to produce some 17 documents that he referred to in his submissions.

[36] I pause here to emphasise that these are documents that the parties themselves had already referred to, and that the parties themselves already had in their possession, from those earlier other requests and proceedings. It was only the adjudicator who was in the dark about these materials. It was only the fact that one or both sides had referred to these materials in their own submissions that alerted the adjudicator to their existence. In short, these materials and documents were not only already known and in the hands of the parties, but they were documents that the parties had actively directed their minds to and had based their arguments on before the adjudicator, in their written submissions.

[37] Returning to the sequence. On February 10, 2025, the parties provided those documents to the adjudicator. In his cover letter, Dr Pyne did provide submissions of sorts in the form of commentary on some of these documents that he was providing.

[38] After receipt of those additional documents, the adjudicator wrote a letter to the parties, on April 22, 2025:

I thank the parties for providing their responses to my January 14, 2025 letter. After reflecting on the material before me, I have determined that it is appropriate to provide the Applicant with the opportunity to make a final reply. Dr. Pyne, you are invited to provide your final remarks on the materials submitted in this process and the questions posed at page 2, paragraph 4 of the Director's October 7, 2024 letter.

I ask that your submissions not exceed 25 pages in length. If you would like to provide a final reply, please submit it to the Registrar of Inquiries by **Monday, April 28, 2025** and copy TRU.

[emphasis in original]

[39] The April 22, 2025 letter was sent to the parties by email to the email addresses that the parties had used throughout the proceedings before the OIPC. Specifically, Dr Pyne's email address was his Shaw email account.

[40] Dr Pyne claims that he did not receive the April 22, 2025 invitation letter. Accordingly, he did not avail himself of the adjudicator's invitation to provide any further or final remarks on the materials and documents that were provided in February pursuant to the adjudicator's direction. And then, as set out above, the adjudicator issued her Decision on June 12, 2025.

[41] There has been apparently no judicial contemplation of the procedural entitlements to be bestowed on a party before an OIPC adjudicator in determining whether a matter should be cancelled based upon an abuse of process finding. *Marcus Ooms (Re)*, 2025 BCIPC 70, a recent decision of another OIPC adjudicator. concludes that the standard, based upon the *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC), is at the medium placement in the range::

[23] The nature of this proceeding as Commissioner-initiated meant some departure from processes followed in other OIPC matters was necessary. For example, the choice to send the Clarification and provide a further opportunity to be heard was made recognizing more explanation would be necessary to ensure the Respondent had a meaningful opportunity to participate and understand the process.

[24] Overall, the procedural entitlements owed to the Respondent fall in the middle of the range, with a court process being at the highest end of that spectrum. The entitlements are similar, but not exactly the same as the OIPC provides parties in an Inquiry; the most formal process the OIPC oversees.

[25] In this case, those entitlements included:

1. notice of the proceeding with an opportunity to provide submissions;
2. clarification of procedural questions and misunderstandings and further opportunity to provide submissions;
3. identification and provision of documents that would be relied on by the decision-maker;
4. a preliminary view of the opinion of the decision-maker; and
5. the legal standard that would be relied upon for making a final decision.

[42] I agree that this is an appropriate standard to apply to the present case.

[43] As I noted in the course of submissions, the result of the finding of abuse of process is not something of particularly grave consequence to Dr Pyne, like a deportation or a cancellation of a business licence, such that one would expect elaborate procedural safeguards. Rather, the result of the Decision is the cancellation of six of some 70 requests for consideration filed by Dr Pyne over the course of these proceedings. As noted earlier, the adjudicator did not accede to the university's more draconian request for an order going forward that would bar

Dr Pyne from future access to information requests. Rather, the adjudicator took the less drastic means of annulling only six files that were before the Office at the time.

[44] For the multiple reasons that follow, with an eye to the totality of the circumstances, and the law summarised in *Cimolai*, I dismiss this ground of judicial review advanced by Dr Pyne.

[45] I will first focus on the practicalities of the circumstances in question, as well as the evidence before the Court presented by Dr Pyne.

[46] I would first note that Dr Pyne has presented no evidence to the Court that the email was not sent, was not transmitted, or was not received. In these circumstances, one would expect, at a minimum, a formal affidavit from Dr Pyne that sets out the circumstances of his email address, the circumstances of his search for the email—for example, looking in his spam folder and the like—and other reassurances to the Court, as well as a statement that not only had he not received the email but that he had made all reasonable inquiries to confirm that assertion. We have no reassurance in this regard.

[47] Instead, Dr Pyne attaches as Appendix A to his argument a version of a portion of the April 22, 2025 email that purports to provide metadata of the header information of that email. While this excerpt indicates the “From” and “To” lines of the initial email, it largely consists of coding and punctuation characteristic of metadata revealed to the operation of an application or otherwise. There is nothing on the face of the header information that would indicate that the email failed to transmit from the sender to the recipient. Dr Pyne says that it is obvious on its face. It is not.

[48] For what it is worth, as I noted in the course of submissions, prior to my appointment to the Bench I did have some experience with technology law. I have authored papers on revealing evidence that can be derived from email metadata for the purpose of unmasking an anonymous sender, in the context of defamation and similar litigation.<sup>1</sup> To this judge, it is certainly not obvious from the face of the header

information that there was any technological failure with respect to the transmission of the April 22<sup>nd</sup> email.

[49] In this face of this technological dispute, one would also expect a party advancing this argument on a judicial review to provide some sort of expert affidavit illuminating the header information, or other purported indicia of non-transmission. Again, there is no expert affidavit. There is not even a sworn affidavit from Dr Pyne himself that would provide evidence that could be relied upon by the Court that he never received the email.

[50] In addition to this evidentiary failure, I would note that it would be passing strange if the email did not successfully transmit from the OIPC to Dr Pyne. On a high-level basis, the OIPC sends tens of thousands of emails to parties every year in its proceedings. If it did, in fact, have some sort of technological problem with its email system, I have no doubt that, first, the entire process would come crashing down and, second, OIPC would be well aware of this problem through complaints that would arise.

[51] Dr Pyne himself acknowledges that, in the course of the proceedings, OIPC has successfully sent to him, in his words, in “the low hundreds” of emails. Again, those were successfully transmitted, with no technical problems. Again, for what it is worth, the three thick volumes submitted for this judicial review—which comprises much of that correspondence—confirms the volume and number of emails successfully transmitted to and from Dr Pyne in these proceedings.

[52] Even assuming for the sake of argument that the email was not sent, or not received, I am satisfied that there was no prejudice or manifest impairment suffered by Dr Pyne. For this proposition, I will quote *Campbell v. The Bloom Group*, 2023 BCCA 84:

[48] The foundation of procedural fairness is the principal of *audi alteram partem*: to hear the other side, or let the other side be heard: *LLA v. AB*, [1995] 4 SCR 536 at para. 27; *Telecommunications Workers Union v. Canada (Radio- television and Telecommunications Commission)*, [1995] 2 SCR 781 at para. 29. This encompasses both the right to be heard, and the right to an unbiased decision-maker: *Baker v. Canada (Minister of Citizenship*

*and Immigration*), [1999] 2 SCR 817 at para. 45. Fairness is a concept fundamentally concerned with appropriate procedures, rather than the guarantee of particular outcomes: *Baker* at para. 21. With respect to participatory rights, the key question for a reviewing court is “whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly”: *Baker* at para. 30. In the absence of a statutory instruction, a tribunal’s decision can be set aside for procedural unfairness only if it resulted in a manifest unfairness, or actual prejudice, to the applicant’s right to be heard: S. Blake, *Administrative Law in Canada*, 7th ed. (LexisNexis Canada Inc., 2022) at 8.09.

[emphasis added]

[53] I find that there was no unfairness, let alone manifest unfairness, or actual prejudice, for several reasons, several of which I have alluded to already and I will repeat here.

[54] First, again, none of the documents that were the subject of the April 22<sup>nd</sup> invitation letter were brand new. They were not only in the possession of the parties and known by the parties; they were already the specific subject matter of considered submissions by both parties. That is the very reason that the adjudicator requested their production, to herself, in the April 22<sup>nd</sup> letter.

[55] The present circumstances stand in contrast to cases in the jurisprudence where the court finds that a failure to afford a reply constitutes prejudice or a manifest unfairness. I will give an example: *Jack v. Wildcat*, 2024 FC 1, where the materials in question were new to the party complaining about an inability to provide submissions. *Jack* in turn quoted *C.W. Casino World Ltd. v. British Columbia (Gaming Commission)*, [1996] BCWLD 2278, 1996 CanLII 8639 (SC), aff’d 30 BCLR (3d) 186, 1997 CanLII 3632 (CA). *Jack* contrasts the unfair denial of any opportunity to provide submissions on new material, to a case (as in the present case or in the cited *Forest Industrial Relations Ltd. v. I.U.O.E., Local 882*, [1962] SCR 80, 1961 CanLII 294), where a party complains that it was not permitted to provide further submissions on materials already before the adjudicator:

[99] The British Columbia Supreme Court held that because of the new material in the company’s reply to the casino’s information, the casino should have been able to respond to those new materials (*CW Casino* at para 45):

Counsel for the Commission has referred me to *Forest Industrial Relations Ltd. v. I.U.O.E., Local 882*, [1962] S.C.R. 80. The respondent union sought certification to represent certain workers in ten lumber plants. After a full hearing and a view of two of the plants, the Labour Relations Board advised the interested parties it would consider further written submissions. The respondent made written submissions which were sent to the appellant company and the appellant union, who then replied in writing. Those replies were not sent to the respondent union so it had no opportunity to answer them. The Supreme Court found that both parties had been given a full opportunity to reply. Judson J. said at p. 83:

After hearing from one side and hearing from the other side in reply, it is not a departure from the rules of natural justice for the Board to hold that the debate had gone on long enough and that it was time to stop.

However, it is clear from reading the entire judgment that there was no new material in the replies which the respondent union was not given to answer.

[emphasis in original]

[56] Further, again, Dr Pyne and the university, had already made submissions on those documents in the earlier phases of the proceedings. Again, the submissions' references to those documents triggered the adjudicator's request for those documents and the April 22<sup>nd</sup> letter. Again, Dr Pyne, to some extent, made submissions or, at least, comments on those documents in his cover letter providing those documents to the adjudicator, although he was not invited to do so. He, in effect, did have the opportunity to provide submissions on those documents, and took that opportunity.

[57] Further, as evidenced by the tenacity and frequency of Dr Pyne's requests and proceedings, he is not a shrinking violet. I have every confidence that had for whatever reason Dr Pyne wished to make submissions with respect to the requested documents, he would have done so, whether invited or not. Again, indeed, he did so when he provided those documents to the adjudicator in his cover letter. If Dr Pyne truly had something further to say about those documents that he had not said in the first two rounds of submissions, I have no doubt that he would have done so, whether expressly invited to or not.

[58] In this, I agree with the OIPC's description of the April 22<sup>nd</sup> letter as issued out of an abundance of caution, or courtesy. It was not some sort of acknowledgement that further submissions were necessary as a matter of procedural fairness or adjudicative completeness. Nor was it a direction or rule somehow fettering the adjudicator's ability to proceed to consider the dispute and issue her decision until and unless she received either further submissions from Dr. Pyne or a confirmation that her April 22<sup>nd</sup> letter had been successfully transmitted.

[59] In this, I further agree with the OIPC's submission that it was open to the adjudicator to proceed to consider the issues before her, and issue the Decision, on the assumption that Dr Pyne had not availed himself of the invitation to make more submissions, even if—and I do not think this was the case—there was an unsuccessful transmission of that email. The well-known *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560 at 568–69, notes the broad ability of an adjudicator in a tribunal to govern themselves by procedural rules and to exercise their discretion with respect to the administration of the proceedings before them:

Powers of the Adjudicator

We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.

[60] The OIPC did provide me with one case with somewhat analogous circumstances to the present: *Créations Guimel Inc. v. Canada (National Revenue)*, 2025 FC 814. There, the applicant argued that the decision maker—that is the CRA—was required as a matter of procedural fairness to provide what is described as a “final delay” notice before making its decision. The decision maker argued that

it had, in fact, provided a notice, as a courtesy, by way of a voicemail. The applicant denied receiving that voicemail.

[61] The decision maker argued that regardless of whether or not the voicemail as a matter of technological reality was actually left, procedural fairness did not require the provision of any final delay notice:

[57] The Applicant submits that the CRA breached its right to procedural fairness because, in August 2023, it did not give it sufficient notice and provide a “final delay” to file the T2 return, failing which the VDP application would be denied. Specifically, the Applicant takes issue with the CRA reasons stating that “[w]e contacted you on August 1, 2023 informing you that we had not received the following [...] and [w]e provided you with a final opportunity to reply or the disclosure will be considered incomplete” (Exhibit A of the Affidavit of Me Leibovich, AR at 34). The Applicant asserts that this statement is untrue and that the CRA never made this final communication.

[58] The Applicant also asserts that the CRA ought to have provided it with a “final delay” by way of letter sent to both Me Leibovich and the owner of the Applicant because previously, the CRA had twice sent notices imposing deadlines on October 5, 2022, and on January 15, 2023, by letter to each of them (Exhibits L and N of the Affidavit of Me Leibovich, AR at 150–153, 168–169). Instead, on August 1, 2023, Ms. Trites allegedly only left a message on Me Leibovich’s voicemail, but did not contact or send letters to the Applicant’s representative and owner, which the Applicant argues she should have done.

.....

[62] In oral argument, the Respondent stated that Ms. Trites did leave a voicemail message but that in any event, even had she not made that call, the issue is of no consequence in the case because no additional “notice” or “final delay” was required under the Information Circular and the lack of a call did not breach the Applicant’s right to procedural fairness.

[62] The Court notes, as this Court is noting, that the applicant was provided with all of the rights that he was entitled to under the decision maker’s processes:

[71] There is therefore no breach of procedural fairness, and the removal of a second review level has no impact on that assessment. The Applicant was offered the entire extent of the procedure provided under the Information Circular, and an additional extension of time. ***The Information Circular does not provide an obligation upon the CRA to offer additional “final delays,” and procedural fairness does not require in this case a second review or an additional notification of “final delays” offered by the CRA for the Applicant to meet their case, before a decision is made.***

[72] The Applicant in this case was provided with the full procedure offered under the Information Circular. Had the Applicant been more diligent, or better communicated with the CRA on its timeline issues, perhaps the Decision would have been different.

[emphasis added]

[63] The Federal Court noted the history of frequent communications with the applicant by telephone, as I have done here (with respect to email communications). The Court preferred the decision maker's evidence that the voicemail was, in fact, left. Again, there is no evidence to the contrary in the present case.

[64] That said, in the end, the Court found that it was inconsequential whether or not the voicemail was, in fact, left. Had the decision maker made its decision, even without the voicemail, the process remained reasonable, and the lack of a voicemail would not have breached the applicant's right to procedural fairness:

[95] In the end, the issue of Ms. Trites' voicemail is inconsequential. Regardless of whether the voicemail of August 1, 2023, was actually made, the Applicant was properly notified of the VDP and its process, and of the consequences of not being responsive to requests from the CRA in due course. Indeed, because there was no additional request for an extension of time, when the deadline indicated in the CRA letter (extended by the March 16, 2023, telephone call) lapsed, it was open for the CRA to make its decision without providing the Applicant another opportunity to produce the documents. In that sense, the August 1, 2023, call is not determinative. Had the CRA made the decision without that call, the CRA Decision would remain reasonable in the circumstances and would not have breached the Applicant's right to procedural fairness or reasonable expectations, because of the Applicant's failure to request another extension of time and provide the CRA with adequate information on its efforts to file the T2 return for the 2007 taxation year.

[65] Before moving on to the next set of arguments under reasonableness, I am going to address two further arguments advanced by Dr Pyne. At paragraph 11 of his argument, he states that "non-delivery of OIPC emails to me is a known documented common recurring issue." In support of this, he cites a single assertion by himself from April 2021 that relates to a communication sent to him by a now retired OIPC Registrar: that is, it would be difficult for the OIPC to respond to this bald allegation. I agree with the OIPC that this very dated and solitary example, even if true, is far from establishing a pattern of non-transmission of emails such as to displace any of the conclusions I have reached above.

[66] The second argument advanced by Dr Pyne relates to a case he cites: *Dugré v. Canada (Attorney General)*, 2021 FCA 8. *Dugré* does not assist Dr Pyne with respect to the present facts. *Dugré* does not advance some sort of general proposition that a party is always entitled to a reply at every stage of every proceeding. At paragraph 30 of *Dugré*, relied upon by Dr Pyne, the Court simply describes the process that was used in the Court in that instance, and sets out a general description of the principle of *audi alteram partem*: that is, an opportunity to present one's case. That must be considered, of course, in the context of the adjudicative body in question. *Dugré* does not stand for a general proposition of a right to a reply to the specific documents that each party provided, pursuant to the adjudicator's request.

#### **IV. UNREASONABLENESS**

[67] I turn to the second ground on which Dr Pyne bases his judicial review: unreasonableness.

[68] I took some pain during the proceedings to direct Dr Pyne to the governing *Vavilov* decision, including specific paragraphs therein. I also reassured Dr Pyne that the OIPC's summary of the key points of *Vavilov*, as set out in their petition and argument, indeed represented a fair encapsulation of the *Vavilov* approach to reasonableness review. I noted that many passages of the OIPC's argument either paraphrased or quoted from *Vavilov*.

[69] In *VinAudit Canada Inc v. Yukon (Government of)*, 2023 YKSC 68, I summarised the principles of a reasonableness review in the context of an access to information proceeding in a judicial review in Yukon, based on largely similar legislation. Incidentally, in that judicial review I found that the decision maker's reasons were inadequate and failed to satisfy the *Vavilov* requirements:

[36] Reasonableness review is a deferential standard: *Vavilov* at para. 85. It still "finds its starting point in judicial restraint": *Vavilov* at para. 75. It is based on respect for the role of administrative decision makers.

[37] The petitioner bears the onus of establishing that the decision under review was unreasonable. It is a high standard. As set out in *Vavilov*, minor flaws in reasoning will not suffice:

[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[38] The reviewing court is not to impose the conclusion that it would have made in the administrative decision maker's place:

[15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

....

[82] Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir*, at paras. 27-28 and 48 ....

[83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own

yardstick and then use that yardstick to measure what the administrator did”: at para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

[emphasis in original]

[39] Similarly, the reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para. 125, citing *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 at para. 55.

### C. A “reasons first” analysis of reasonableness

[40] Generally, the reasons of the decision maker are the starting point of judicial review. As stated in *Vavilov*:

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable ... a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[41] The reviewing court considers both the outcome of the decision and the reasoning process that led to that outcome: *Vavilov* at paras. 86–87. As stated here:

[86] ... Reasonableness, according to *Dunsmuir*, “**is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process**”, as well as “**with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law**”: *ibid.* **In short, it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies.** While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, **an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.**

[emphasis added]

[42] A reasonable decision is one “based on reasoning that is both rational and logical”, and a failure in either may lead the reviewing court to conclude that a decision must be set aside: *Vavilov* at para. 102.

[43] The reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and

must be satisfied that “there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived”: *Vavilov* at para. 102, citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 55. The court must ultimately be satisfied that the decision maker’s reasoning “adds up”: *Vavilov* at para. 104.

[44] Further, the reasons should not be read in isolation, but must be “read in light of the record and with due sensitivity to the administrative regime in which they were given”: *Vavilov* at para. 103.

[45] *Vavilov* at paras. 102–104 provides principles and examples of unreasonableness that may prompt the setting aside of a decision:

- a) if the reasons, read holistically, fail to reveal a rational chain of analysis;
- b) if the reasons reveal that the decision was based on an irrational chain of analysis;
- c) if the conclusion reached cannot follow from the analysis undertaken;
- d) if the reasons read in conjunction with the record do not make it possible to understand the decision maker’s reasoning on a critical point; and
- e) if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalisations or an absurd premise.

[46] To be reasonable, the decision must also be justified in light of the legal and factual constraints that bear on the decision maker: *Vavilov* at paras. 105–107. The Court provides a non-exhaustive list of such considerations:

- a) *Governing statutory scheme*: a decision may be unreasonable where it fails to comply with the rationale and purview of the governing statutory scheme, or where it exceeds or inadequately exercises the powers given to it. This is usually the most salient consideration (paras. 108–110).
- b) *Other statutory or common law*: if the decision involves interpretation of the governing statute, is it consistent with common or statutory law? That said, it may be reasonable for a decision maker to adapt a common law or equitable doctrine to the administrative context (paras. 111–114).
- c) *Principles of statutory interpretation*: is the decision maker’s interpretation of a statutory provision consistent with the text, context, and

- purpose of the provision in view of the entire statutory scheme (paras. 115–124)?
- d) *Evidence before the decision maker*: the decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and the decision must be reasonable in light of them. As well, “[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (paras. 125–126).
  - e) *Submissions of the parties*: the principles of justification and transparency require a decision maker’s reasons to “meaningfully account for the central concerns raised by the parties”. But a reviewing court cannot expect administrative decision makers to respond to every argument or line of possible analysis, or to make an explicit finding on each constituent element (paras. 127–128).
  - f) *Past practices and past decisions*: while administrative decision makers are not bound by their previous decisions, general consistency is desirable; like cases should generally be treated alike. Where a decision does depart from longstanding practices or established internal authority, it will be unreasonable to fail to explain that departure (paras. 129–132).
  - g) *Impact of the decision on the affected individual*: where the decision severely impacts the individual’s rights and interests, the reasons must reflect those high stakes. In such circumstances, a failure to grapple with such consequences may well be unreasonable (paras. 133–135).

[47] The recent Supreme Court of Canada decision in *Mason* confirms the “reasons first” approach governing judicial review:

- [59] ***When an administrative decision maker is required by the legislative scheme or the duty of procedural fairness to provide reasons for its decision, the reasons “are the primary mechanism by which administrative decision makers show that their decisions are reasonable” (Vavilov, at para. 81). The purpose of reasons is to “demonstrate ‘justification, transparency and intelligibility” (para. 81). Reasons are***

“the means by which the decision maker communicates the rationale for its decision” (para. 84). This Court emphasized that “***it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons***, by the decision maker to those to whom the decision applies” (para. 86 (emphasis in original)).

- [60] A decision will be ***unreasonable*** when the reasons “***fail to provide a transparent and intelligible justification***” for the result (para. 136). A reviewing court ***must therefore take a “reasons first” approach that evaluates the administrative decision maker’s justification*** for its decision (para. 84). It must “***begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion***” (para. 84, citing D. Dyzenhaus, “The Politics of Deference: Judicial Review and Democracy”, in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286). As noted by Professor David Mullan, the “reasons first” approach “underscores a commitment to deference” and requires that reasons are “the principal lens through which the exercise of reasonableness review takes place” (p. 202). Thus, as he explains, “the starting or focal point for the conducting of truly deferential reasonableness review should be the reasons provided by the decision-maker” (p. 215; see also Daly (2022), at pp. 108-10).
- [61] Under Vavilov’s “reasons first” approach, the reviewing court should remember that “***the written reasons given by an administrative body must not be assessed against a standard of perfection***”, and ***need not “include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred***” (para. 91). The reviewing judge must ***read the administrator’s reasons “holistically and contextually”*** (para. 97), “in light of the ***history and context of the proceedings*** in which they were rendered”, including “***the evidence before the decision maker, the submissions***

**of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body" (para. 94). Reasons must be read "in light of the record and with due sensitivity to the administrative regime in which they were given" (para. 103). Such factors may "explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency" (para. 94).**

[emphasis in original]

[70] Apart from the deferential approach that *Vavilov* and *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 require with respect to the present decision, and the necessity of refraining from substituting my own view for that of the adjudicator, I find that the Decision before me goes beyond the deferential standard at the foundation of the *Vavilov* analysis. The Decision, when read as a whole, and in light of the record and the administrative context, provides more than an intelligible rationale and reasonable basis for finding Dr Pyne to be abusively misusing the *FIPPA* processes. I find that the Decision sets out these reasons in a comprehensive, logical, and clear manner, in its 101 paragraphs that I have surveyed above.

[71] I am satisfied that the Decision is rational and coherent. It hangs together. Its conclusions are certainly those that could have been reasonably reached based on the evidence read as a whole before the adjudicator, and the history of the proceedings. I am satisfied that the reasons, the conclusions, and the remedies are all those that are well situated within a range of reasonable outcomes, with a view to all of the circumstances. In reaching the conclusions it did, as set out above, the Decision addresses the arguments made by both sides.

[72] Dr Pyne has failed to show that the Decision or any aspects of the Decision are unreasonable. He has failed to show any fatal flaws in the reasoning process. He has failed to show that the conclusions reached were not open to the adjudicator.

Rather, on a high-level basis, Dr. Pyne’s various arguments with respect to the alleged irrationality or unreasonableness of the Decision effectively ask the Court to do precisely what *Vavilov* prohibits: reweigh the evidence. Based on the same voluminous evidence that was before the adjudicator, he asks me to substitute my own views. He asks me in many instances to make findings that the adjudicator’s characterisation of some of his actions and submissions were unfair or unwarranted or incorrect.

[73] Dr Pyne largely reargues the case before the adjudicator: again an impermissible exercise on a judicial review. He largely quibbles about microscopic aspects of phrasing and categorisation made in the Decision, of submissions and actions of Dr Pyne. Of course, as set out in the *Vavilov* and *Mason* jurisprudence that I have just surveyed, the reviewing court is not to seize upon isolated findings or phrases in a decision under review, in isolation from the history, materials, and arguments in front of the adjudicator. Rather, the court must consider the adjudicator’s reasoning and conclusions in light of the overall administrative context and the totality of the materials and history before it.

[74] In his arguments before the Court today, Dr Pyne often preceded those arguments with the telling phrase “I don’t think that” to indicate his disagreement with the conclusion reached by the adjudicator, rather than an identification of fatally irrational or unreasonable aspects of the Decision itself.

[75] I am not going to attempt to address all of the individual assertions of unreasonableness set out in the written argument of Dr Pyne. I will make reference to the reasonableness section of Dr Pyne’s argument: specifically paragraphs 15–76 of his written argument.

[76] With respect to his heading 3: “Unreasonableness — Mischaracterization of My Submissions (General)”: again, as an overarching comment on his submissions, he focusses on one isolated aspect of the Decision and claims that the adjudicator unfairly criticised him for addressing issues that she considered irrelevant. He argues that he addressed these issues because the university raised them first. As

set out in the Decision, the subject matter of these irrelevant submissions were not only in response to the university's submissions, but also related to aspects of the union representation, his relationship with his former colleagues, his relationship with his employer, the university, his assessment of the honesty and probity of the actions of the university officials and of the university's lawyer. These went well beyond responding to the university's submissions.

[77] In any case, comments on Dr Pyne's submissions, and noting that aspects of those submissions are irrelevant, are not somehow confined by any authority to his primary submissions made at the first round. It was completely open to the adjudicator to talk about Dr Pyne's submissions as a whole, whether they were done in the first instance or in response to the university's submissions. From the materials before me, and the summary of those materials in the Decision, it was clear that Dr Pyne frequently raised irrelevant matters before the adjudicator. It was certainly open to the adjudicator to reach that conclusion and characterise his submissions in that manner.

[78] Similar comments could be made with respect to the unreasonableness alleged in his paragraph: "Unreasonableness — Use of Prior Inquiry Submissions." The abuse of process inquiry does take into account the totality of the history between the parties. It was open to the adjudicator to note the irrelevance of repeated and extensive references to expenses for predatory conferences and journals generally. I note that even today, and in his present arguments, Dr Pyne was seeking to make reference to findings of the United States Courts with respect to predatory conferences: irrelevant for the purposes of the judicial review. Insofar as he made extensive submissions with respect to his views on the wrongness of predatory conferences and papers at length in the history of proceedings involving the university and the OIPC, of which there is ample evidence in the materials far beyond the statements in the Decision itself, it was absolutely open to the adjudicator to reach that conclusion.

[79] With respect to the unreasonableness ground set out in (5) of his argument, the “Treatment of *In Camera* Requests”, Dr Pyne is asking me to reweigh evidence. In any case, the fact that an *in camera* request was granted on other grounds does not have any particular bearing on the adjudicator’s categorisation of his own request for an *in camera* hearing (which purportedly sought to prevent the realisation of his stated fears that the university would rush to prospective journals and attempt to persuade them not to publish Dr Pyne’s papers on predatory practices in academia). It was open to the adjudicator to make these findings with respect to *in camera* requests and characterise the arguments with respect to *in camera* requests in the manner she did.

[80] With respect to ground 6: “Unreasonableness — FOI Reasonableness”, attacking the adjudicator’s conclusion that he was unreasonable in making 70-plus requests for freedom of information, Dr Pyne advanced various arguments. He argued that he could have filed one large freedom of information request for all records mentioning his name: such an approach would not have been efficient. It was more efficient to make multiple requests and, it was more efficient to make more narrow requests. Then, if that request revealed other documents that he would seek, it would be responsible for him to make further requests. Rather than this constituting an instance of abusive “springboarding”, as noted in the Decision, that process would be a proportionate and responsible and good faith manner of proceeding on his part.

[81] He also argues that it was unfair and unreasonable for the adjudicator to describe his 70-plus requests as excessive or duplicative. He argues that some of the requests were related to the assertion of privileged and unshared material and that he needed to test that assertion. He argues that other requests flowed naturally from the information provided as a result of earlier requests.

[82] I asked for an approximation of the number of requests that could be deducted from the 70-plus requests as falling under these various categories of reasonable multiple requests. Dr Pyne approximated eight requests with respect to

privileged documents. There would be, it appears, other deductions from the 70-plus requests based upon these other, in his mind, justifiable multiple requests.

[83] Even if one deducts liberally from the 70-plus requests, we are still dealing with a remarkable number of requests. It was open to the adjudicator on the evidence before her to find that the number of requests was excessive. It was open to the adjudicator on the material before her to find that the requests were inefficiently duplicative. I must respect her ability to weigh the evidence and consider the long history between the parties, on the entire record before her; I am not entitled to reweigh that evidence today. The adjudicator is operating within the specialised context of the very adjudicative body that has an expertise in assessing whether a mode of making information requests constitutes an excessive or duplicative or irresponsible use of the *FIPPA* processes.

[84] The adjudicator in this instance was especially well placed to make findings about whether Dr Pyne's use of the *FIPPA* processes, under the very statute that she herself must adjudicate and consider, were abusive. Her conclusions were open to her. As summarised above, she provided cogent and extensive reasons for reaching her conclusions.

[85] Heading 7: "Mischaracterization of "Irrelevant" content." My comments above would also apply to this argument. It was open to the adjudicator, on the totality of the evidence before her, to describe aspects of Dr Pyne's requests and submissions as irrelevant, unsubstantiated, and inappropriate. As set out in the Decision at paras. 73–75, Dr. Pyne was specifically warned that his submissions were irrelevant and at times inappropriate; nonetheless, he continued with those submissions, as set out in the Decision at paras. 85–86 and with specific examples.

[86] There are multiple examples of unsubstantiated attacks and other irrelevant and inappropriate communications that not only impugn the professional reputations of individuals and their employers and clients, but also that wasted considerable amounts of the OIPC's scarce resources. Again, based on the totality of the evidence and materials before the adjudicator, and the adjudicator's knowledge of

the *FIPPA* process, these conclusions were absolutely open to her to make. Dr Pyne has identified nothing unreasonable in these conclusions.

[87] With respect to heading 8: “Internal Inconsistency”: these largely repeat Dr Pyne’s disagreements with the adjudicator’s characterisation of certain aspects of his submissions and arguments and requests before the tribunal, as unsubstantiated or irrelevant. Again, I cannot interfere with those comments as unreasonable, for the reasons set out above.

[88] Finally, heading 9: “Disproportionate Invocation of Abuse of Process”. As set out in my review of the Decision, the adjudicator reviewed the bases for finding abuse of process generally. She set out in some detail typical patterns and actions that indicate an abuse of process. She noted that these patterns may not in themselves or in totality indicate an abuse of process. She also set out the foundation on which she could make a finding of abuse of process. The Decision sets out in detail multiple examples, apart from the volume of the requests, of inappropriate and irrelevant statements and actions by Dr Pyne, on which she founded her Decision.

[89] Authorities such as *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 and *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4 establish that abuse of process is a broad doctrine. Those authorities also establish that an adjudicator has broad discretion to invoke the doctrine of abuse of process and broad discretion in tailoring a remedy to counter abuse of process. As set out above, *Prassad* empowers adjudicators, such as the present, to govern their processes in order to fulfill their legislatively-conferred duties. As set out above, *Ooms* confirms the process to adjudicate and decide issues of abuse of process.

[90] I am satisfied that, based of the totality of the evidence and the institutional context, abuse of process was a conclusion open to the adjudicator. I will go a step further: I find that this conclusion was wholly appropriate in the overall circumstances of this case, given the history of Dr Pyne’s voluminous requests to the university, and his extensive proceedings before the OIPC.

[91] Although Dr Pyne does not present it as such, it would appear that this argument could also assert a breach of procedural fairness. Although I am not being asked to rule on this issue, for the same reasons that I noted above with respect to procedural fairness, I would conclude, citing *Prasad* and *Ooms*, that on a correctness standard the adjudicator made no error in reaching her well-reasoned and restrained conclusion that Dr Pyne's actions and requests constituted an abuse of process. This led to the proportionate and restrained remedy that she imposed.

## **V. CONCLUSION**

[92] Anything arising from that? And, again, there is no expectation. I am just doing this as a courtesy as the court would ordinarily do at the end of issuing its reasons for judgment. Ms Phipps?

[93] CNSL K. PHIPPS: Nothing. I would just note that the OIPC does not receive costs in this matter.

[94] THE COURT: Yes. So, that is good news for you, Dr Pyne. Although that is a typical stance in this sort of hearing, there are avenues for a party to seek costs against an unsuccessful applicant for judicial review. They have not done that. That is a responsible position. You are not in peril of paying court costs here. So, there is some good news to you. Is there anything else arising from these reasons?

[CONCLUDING DISCUSSIONS]

[95] Anything else? Okay. Good luck everyone. And I would say on the record, I thank Madam Registrar for staying so late in this matter so that these people could have their answer today.

“Crerar J.”

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<sup>1</sup> David A. Crerar and Ryan Purita, “No Hiding Place in Cyberspace: Electronic Discovery from Non-Parties” updated version: (CLEBC 2011); original: 64 *The Advocate* (November 2006) at 781.